

## Book Reviews

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## Book Reviews

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**TAX LAWS OF MARYLAND, ANNOTATED, Second Edition.** Compiled and Edited by Huntington Cairns. Baltimore. State Tax Commission of Maryland 1937. Pp. xviii, 516 (Paper or Cloth).

Perhaps the first scholarly approach to the Maryland system of taxation was made by the Tax Revision Commission, under Arthur W. Machen, Esq., in 1928. As a result of its labors a new tax statute was enacted the following year. The effort was to bring all the tax laws into one article of the Code and to achieve at least a working consistency and harmony among the different provisions. No attempt was made to change the broad general lines of the taxing system.

But tax laws refuse to stay in the orderly compartments in which commissions, from time to time, arrange them. Before long Federal coercion produced the Maryland Estate Tax, which was enacted as a new article of the Code. Emergency relief problems demanded emergency revenues, and sales or gross receipts taxes, taxes on recorded instruments, direct inheritance taxes and now an income tax have been the subject of recent experiment. Thus, a compilation of the tax laws of today meets a two-fold need: First, the need for an authoritative guide to the statute law as revised by the 1928 Commission, and second, the need for arrangement of the wealth of new material in its proper setting and perspective.

These ends have been admirably achieved by Mr. Cairns. The State Tax Commission is to be congratulated upon rendering a timely service to the bar and the public in arranging for the publication of this volume, and on its selection of Mr. Cairns as editor. His experience as a practitioner in the field of corporate taxation and as a teacher of taxation well equipped him for the task.

On first examining the volume, one is impressed with the tremendous bulk of legal material now made available, much of it for the first time. Cases construing the old law have been retained and appear, with proper qualification, under the corresponding sections of the 1929 revision. To these have been added extensive references to rulings of the Attorney General, cross-references, and other material which might throw light on the proper construction of the law. Notes showing the source and history of each section are provided. It is noteworthy that at least sixty percent addi-

tional material appears in this edition as compared with the previous one prepared by Mr. Cairns in 1936.

Despite the wealth of material one is reminded that many interesting questions still remain to be settled. Is the income tax constitutional? Mr. Cairns has discussed this point in the last issue of the REVIEW. What is the exact scope of review of assessments by the Courts? How can overassessment be attacked as a violation of the due-process clause? What is a "franchise tax" under the Maryland statute—is it a property tax on intangibles or a privilege tax? To what extent is the gross receipts tax on utilities (which is termed a "franchise tax") dependent on property taxes? All the Maryland law on these and other questions can be found in Mr. Cairns' book. Much litigation of vital consequence to taxpayers may be anticipated, and the practitioner will find the tasks of advising clients and preparing litigation greatly simplified by use of this work.

This reviewer regrets that he is unable to single out any feature of the compilation for adverse criticism which might lead to improvement in a later edition. On the contrary, he heartily recommends the present edition to the bar "as is". It is, in his opinion, an essential part of the equipment of every Maryland law office.

—HERBERT M. BRUNE, JR.\*

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THE COMMERCE CLAUSE UNDER MARSHALL, TANEY AND WAITE. By Felix Frankfurter. Chapel Hill. The University of North Carolina Press, 1937. Pp. 114.

This slim volume embraces three delightfully written essays, which should assume a deserved importance as lucid, scholarly and entirely dispassionate contributions to American constitutional history. We think of the commerce clause today as being primarily an instrument for the extension of Federal governmental power. But for the greater part of its history, and up until the last fifty years, it served almost entirely as a restriction upon the legislative powers of the States, and it has not lost its importance from that viewpoint. Its development in this respect by the Supreme Court involved, as it does today, the reconciliation of the conflicting claims of the States and the Federal government as well as the relationship between business and government, and while the author in his introduction cautions against regarding the Supreme Court as reflecting the

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views of any one judge, however great, yet the influence of the three Chief Justices presiding over the Court during a very large part of its history is an obvious one.

To Maryland readers, the author's discussion of Taney, his doctrines and his effect upon the development of the commerce clause will be of particular interest. It is a thoughtful and sympathetic discussion and he pays a warm tribute to "the intellectual power of his opinions and their enduring contribution to a workable adjustment of the theoretical distribution of authority between two governments for a single people." He places Taney second only to Marshall in the constitutional history of our country and comments upon the tragedy that his greatness as a judge has been so long overshadowed by the storm aroused by the Dred Scott decision.

The difference of viewpoint between Marshall and Taney as to the extent to which the commerce clause operates to impose restrictions upon state legislative and taxing authority is developed with great clarity and is in striking contrast to the traditional explanation of a clash between the adherent of a strong central government and the States' rights man. The author points out that Taney's thesis as laid down in *The License Cases* had history on its side.

In some ways, the essay on Waite is the most interesting of the three. For here is a judge who lacked color, and in whom the spark of genius, if present, flashed very dimly behind a dull and matter-of-fact style. Contemporary opinion regarded him as a safe and sound, but mediocre figure, and the author is not over-successful in convincing the reader that he was more. The impressive feature of his work is found to lie not in the statesman-like quality of his specific doctrines, but rather in his adherence to traditional and conventional canons of constitutional adjudication and review. One questions whether his influence upon the development of constitutional doctrine deserves to be placed in the same class as that of his great predecessors. For the most part it seems a negative influence only, as Waite himself seems for the most part a negative figure. And in his most famous opinion, that in *Munn v. Illinois*, his unfortunate generalization as to property affected with a public interest brought difficulties only too familiar in its train.

These three essays deserve reading by every lawyer interested in constitutional history.

—ROGER HOWELL.\*

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HOW LAWYERS THINK. By Clarence Morris. Cambridge. The Harvard University Press, 1937. Pp. xiv. 144.

The reader should not miss the flattery of the profession implicit in Professor Morris' title. It is comforting to have assurance that lawyers need to think and do think. This fairly interesting little book—written with the perspective of the professional law teacher—is of a sort published more frequently in recent years. These are books about the law written so that laymen, as well as lawyers may have some insight into what might vaguely be called "jurisprudence".

Whether such books be written by active practitioners or judges or by members of the teaching branch of the profession is immaterial. Each side has much to learn from the other. It is to be encouraged that those on either side of the campus gates shall attempt to formulate ideas gleaned from their immediate experiences, so that others may profit. That the book under review does not quite reach the goal it seeks is not to be blamed on defective execution so much as on the impossibility of imprisoning on paper any description of how lawyers do think.

How lawyers think is something that cannot be taught in law schools nor be written in books. The lawyer's mental processes in working out the solution of a problem are developed by practice rather than learned as a method. The technique of the adviser-advocate is an art rather than a science.

The book under review is built around the idea of problem solving. The lawyer's task is assumed to be that of searching out the answer to a problem laid before him. Despite Justice Holmes' famous dictum that experience, not logic, is the life of the law, the emphasis throughout is on logic and syllogisms. This makes for dull reading in spots, although the writer's style is, generally, very readable. This surfeit of logic seems unnecessary. Do lawyers use, or need to use formal logic in their daily tasks? Certainly not to the extent implicit in this book.

The type of lawyer who practices "by ear" will not use a book of this sort. The one who conscientiously works up the book law of all his cases will not need it. It is doubtful that students will be able to follow it, at least until they have progressed so far that they will not need it. Thus it is that dissent must here be indicated from the enthusiastic book-jacket blurb of the publishers to the effect that the book may be well-nigh indispensable both to lawyers and students.

Despite the dullness inevitably resulting from the emphasis on logic, the book contains occasional passages that stand out, in one or two instances where the writer is talking about how judges, rather than lawyers, think. The conclusion is, perhaps, superior to the other chapters. While one can find little to quarrel with in the book itself, yet its publication poses the question of the utility of logic in the legal scene. Perhaps a better title would have been "How Logic Minded Lawyers Think."

—JOHN S. STRAHORN, JR.\*

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## Book Notes

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INTERPRETING THE CONSTITUTION. By William Draper Lewis. Charlottesville. The Michie Company, 1937. Pp. vi, 117.

A series of lectures delivered under the auspices of the William H. White Foundation at the University of Virginia Department of Law, in which are presented and analyzed the function of the Supreme Court as an interpreter of the Constitution, some of the factors which affect it in the performance of that function, and some present problems of constitutional interpretation confronting the Court. The author emphasizes both in his foreword and conclusion, that he is not seeking to advocate or to impose upon his readers any particular constitutional doctrines, and wishes only to present to them the problems discussed in order that they may form their own opinions with respect thereto. In doing so, he adheres strictly to this determination, to the extent indeed that it detracts somewhat from the undoubted value of the book as a simple and clear, if somewhat elementary, exposition of the questions discussed. It is to be regretted that the very full footnotes are collected at the end of the book. This is a practice which is hardly to be commended.

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STATE HOUSE V. PENT HOUSE: LEGAL PROBLEMS OF THE RHODE ISLAND RACE-TRACK ROW. By Zechariah Chafee, Jr. Providence. The Booke Shop, 1937. Pp. xxiv, 165.

This is a novel type of book, issued by Professor Chafee of the Harvard Law School, and of the Rhode Island Bar, and it treats of the late controversy between the Governor of Rhode Island and the manager of the Narragansett Race Track which filled the columns of the newspapers in late 1937. The book is one of the Dorr Pamphlets, edited by Mr. Chafee as "A Series of Discussions and Documents on Rhode Island Affairs—Past, Present, and Future." The immediate purpose of this one seems to have been to awaken the people of Rhode Island to what a mess their affairs are in and to stimulate them to do something about it. The book is of unusual style. It contains the author's text, extensive documentation, a chronological survey of the activities of the principal actors, many illustrations of the race track, of soldiers on duty thereat under martial law, of newspaper headlines, and of other relevant facts. Each chapter starts with a cogent quotation. The Appendix takes half the book. The whole book makes interesting reading, not only to students of the current scene, but to those interested in problems of administrative government and of martial law. Students of criminal libel and of horse racing will also find much of value in it.