

of parents (1), birthplace of parents (1, 5), their economic status (1, 3), family moral standards (1), conjugal relations of parents (1, 3, 4), affection of parents for offenders (1), discipline by parents (1, 4), broken homes (1, 4), early abnormal environmental experiences (1, 3, 4), time between first delinquency and first arrest (1), accomplices in offense for which brought before a juvenile court (1, 2, 5), habits of offenders (1, 3), school conduct (1), school retardation (1), mental condition (1, 3, 5), age at first arrest (2), education of parents (3, 4), affection of fathers for offenders (4), early associates (5).

Of high practical value is the demonstration by the authors of the feasibility of combining certain of the factors associated with continuance in criminality into a predictive instrument for the use of courts and parole boards. They present eight prediction tables indicating probable behavior during the different forms of correctional and penal treatment. Particularly helpful is the chapter devoted to cases illustrating the use of prediction tables.

This study by the Gluecks, like its predecessors, is a substantial addition to our knowledge of crime. It challenges present common-sense methods of treatment of the criminal. It presents prediction techniques in a form that can be used, in addition to other available data, by the judge and by the parole board in their administration of criminal justice.

ERNEST W. BURGESS*

Studies in Federal Taxation, Third Series. By Randolph E. Paul. Cambridge: Harvard University Press, 1940. Pp. xi, 539. \$6.00.

A few months ago a nationally known columnist¹ complained bitterly, in discussing the federal tax decisions of the Supreme Court rendered during the 1939 term, how strange it was that leaders of the tax bar should all of a sudden find themselves not knowing much tax law after all! This complaint was prompted by the Federal Government's success in convincing the Court of the wisdom of overruling certain cases which theretofore had been utilized by taxpayers as justifying various forms of tax reducing arrangements. The question as to whether the columnist was justified in his complaint is of little concern here; for present purposes the importance of his wail lies in the fact that the Supreme Court in the 1939 term did, and in the present term is still continuing to, surprise a large number of tax lawyers.² The chief significance of the latest volume of *Studies in Federal Taxation* published by Mr. Paul lies in the ability with which he makes it perfectly clear that there is nothing static about tax theory and that intelligent wide-awake lawyers should never expect it to be so.

The appearance in 1934 of the six-volume work on the *Law of Federal Income Taxation* by Mr. Paul and Jacob Mertens, both practicing tax lawyers in New York City, marked a significant event in the field of literature on the taxation of income. In addition to its comprehensiveness, the work reflected in the main a refreshing absence of a priori reasoning and of bias either pro taxpayer or pro tax collector. Theretofore most of the published texts exhibited with all too often frequency a prejudiced and uncritical approach which curtailed their usefulness. Mr. Paul's contribution to the enlargement of income tax literature has not stopped with the publication of the work

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¹ David Lawrence, Supreme Court "Captured" in Tax Cases, *Washington Star*, Oct. 9, 1940.

² See Magill, *The Supreme Court on Federal Taxation, 1939-40*, 8 *Univ. Chi. L. Rev.* 1 (1940).

just mentioned; during the past six years there have flowed from his pen numerous law review articles and, including the present volume, three volumes of selected studies on divers problems of federal taxation. He has carried over into his writings, published since 1934, skill and industry no whit less intensive than were so obvious in the original work of which he was co-author. In the volume which is the subject of this review he maintains the same high standard of workmanship.

Though problems of taxation abound with a not insubstantial amount of color, human interest and even dramatics, tax literature has been, generally speaking, dry and technical. It is a credit to the author that though dealing with technical and complicated subjects he is able in his writings to get away from a tiring technical and complicated discussion. A sense of humor is not at all wanting; *bon mots* and brisk wording light up many a page.

The present volume covers five general subjects, headed, (a) Reorganizations, (b) Revocable Trusts and the Income Tax, (c) Federal Income Tax Problems of Mortgagors and Mortgagees, (d) Life Insurance, Annuities and the Income Tax, and (e) Use and Abuse of Tax Regulations in Statutory Construction. Tax lawyers will readily agree that Mr. Paul did not choose for himself easy chores, but, on the contrary, tackled some of the most troublesome and controversial problems.

The discussion on the manifold tax aspects of corporate reorganizations—comprising 160 pages, the longest section in the book—is a job very well done. The uninitiate will get a good picture of the interplay of conflicting theories of statutory construction and Congressional policy, such as may be divined; the initiate likewise have much to gain from this coherent treatment of the subject. Though not of major importance, the following observation may, however, be permitted. Of the pyrrhic victory of the government in the *Hendler* case,³ the author writes: "A startled Treasury, horrified by what its attorneys in the Department of Justice had accomplished in its behalf . . . rushed to Congress for help."⁴ That statement is lurid to the point of exaggeration. In implying an absence of coordination between the Treasury and the Department of Justice it is contrary to fact.

It is somewhat surprising to find that the author accepts quite readily the rationale of the *Kitselman*⁵ and *Newberry*⁶ cases insofar as they stand for the proposition that bondholders become stockholders for purposes of the reorganization provisions when the corporation becomes insolvent.

The second subject, Revocable Trusts and the Income Tax, is like the first treated with keen analysis. The title is somewhat disconcerting inasmuch as trusts not falling within the description of Section 1667 are exhaustively canvassed. Subsequent to publication of Mr. Paul's book, the Supreme Court in *Helvering v. Horst*⁸ held that a father owning interest coupon bonds was taxable on the interest coupons notwithstanding a prior gift of them to his son. The future trend in the taxation of trust income will undoubtedly be vitally affected by the broad statements in the *Horst* case. That case is a challenge as well as a green light to the tax administrator in the proper exploitation of its principles.⁹

³ *United States v. Hendler*, 303 U.S. 564 (1938).

⁴ P. 139.

⁵ *Com'r v. Kitselman*, 89 F. (2d) 458 (C.C.A. 7th 1937), cert. den. 302 U.S. 709 (1937).

⁶ *Com'r v. Newberry Lumber & Chemical Co.*, 94 F (2d) 447 (C.C.A. 6th 1938).

⁷ See *Helvering v. Wood*, 309 U.S. 344 (1940).

⁸ 61 S.Ct. 144 (1940).

⁹ "Common understanding and experience are the touchstones for the interpretation of the revenue laws." *Ibid.*, at 147.

The fiction that where there has been a statutory reenactment the legislature is deemed to have adopted administrative construction, is in the main a useful tool to taxpayers and the Government alike. Its usefulness, however, depends entirely upon the realization that a fiction, and nothing else, is involved. Over a period of years there was uncritical acceptance by courts of that fiction with the not unexpected result that some day a reexamination of the place of administrative construction in the field of statutory interpretation would have to be made. That day came when the *Reynolds Tobacco* case¹⁰ was decided. Since then the Court has had occasion to amplify its views on the limitations of the binding effect of administrative construction. The Court is groping to enunciate a coherent philosophy but at the present writing there is much yet to be heard from it before the problems it has itself raised will be answered.

Mr. Paul poses a suggestion that a "feasible remedy to prevent possible abuse of the regulatory power might be to require public hearings in the future upon all proposed interpretative or legislative regulations to be issued under new sections of the statute."¹¹ He also suggests that the Board of Tax Appeals should within a certain time pass upon the validity and reasonableness of any retroactive amendment to the regulations.¹² These are challenging suggestions but one may be permitted to venture a doubt as to whether they will be of much help. The ogre of an anti-taxpayer departmentalized viewpoint is itself fictional.

LEO A. DIAMOND*

An Introduction to Administrative Law. By James Hart. New York: F. S. Crofts & Co., 1940. Pp. xviii, 621. \$5.00.

This work is an "introduction" to administrative law. Its avowed purpose "is not so much to present a complete picture as it is to open up some of the problems that constantly recur."¹ The strength of the work lies in the fact that the student who does a minimum² amount of reading will be able to "talk like a lawyer"³ when confronted with a problem in administrative law.

Moreover, the lawyer who must make a snap judgment as to whether a client has been rightfully removed from a civil service job or as to whether a tax assessment is *res judicata* may be glad he studied Hart's book rather than some of the other recent casebooks in the field, which though not avowedly introductory, include no material on these subjects. The basic question which the book raises in my mind, however, is whether a work on administrative law can justify itself if it merely instructs the reader in the arts of glib manipulation of concepts and broad use of generalization.

A few examples will illustrate the pitfalls which, to my mind, are common. We are informed that "*discretionary* rules are said to have the force and effect of law provided they are not *ultra vires* or made under an unconstitutional delegation. *Interpretive* reg-

¹⁰ *Helvering v. Reynolds Tobacco Co.*, 306 U.S. 110 (1939). ¹¹ Pp. 466-67. ¹² P. 468.

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¹ P. 153.

² Cf. Davison, *Review of Sears, Cases and Materials on Administrative Law*, 6 *Univ. Chi. L. Rev.* 521, 523 (1939): "This case book contains more purely administrative material than do others available. Yet it does not present a realistic cross section of administrative activity because of lack of adequate space. This reviewer feels that a volume of about 3,500 pages would be necessary to achieve such a realistic presentation."

³ With apologies to Professor J. W. Moore.