

A further suggestion is that the Bureau of Standards or some similar body make and publish tests of the quality of the products made by each manufacturer. This is the only concrete proposal which is designed to implement the theory of trusteeship for consumers. The suggestion is interesting, but the difficulties which would be involved in any attempt to put it into effect are much greater than the authors recognize.

The fact that it is only in the field of trusteeship, as distinct from that of bureaucracy, that Messrs. Dimock and Hyde suggest legislative measures makes the trusteeship portion of their monograph of somewhat greater professional interest to lawyers than the bureaucracy part. The trusteeship proposals are, however, for the most part, either relatively unimportant or, like the Bureau of Standards suggestion, too foreign to the primary subject of the authors' research to gain any strength from their studies. The bureaucracy portion of the monograph, on the other hand, is a substantial contribution to our knowledge of the internal organization of the giant corporation, of the problems to which the inevitable complexity of that organization gives rise, and of the methods by which defects that are characteristic of corporate administration may be minimized, insofar as those human beings within the corporation who have power to introduce administrative reforms have sufficient incentive to adopt the role of reformers.

E. MERRICK DODD‡

Federal Estate and Gift Taxation. Vols. 1 and 2. By Randolph E. Paul.* Boston: Little, Brown & Co., 1942. Pp. xx, 818; x, 819-1615. \$20.00.

Statutory subjects are the delight of publishers of services, and the despair of authors. The sections of the statute provide not only a ready-made outline, but a series of neat pegs on which to hang digests of interpretative cases. Annual revisions of the statute and daily accretions of new cases only make the service indispensable and require regular new editions. The volume of digests may become tremendous (and has, in the field of federal taxation); but that is primarily the reader's problem. If he is to specialize in this field, he ought to be a tough fellow, and to have grown up with the subject, so that he knows by experience and instinct the little variations in successive acts and in successive courts; why a decision in 1933 by Mr. Justice Cardozo is a good precedent;¹ a decision by Mr. Justice Sutherland in 1932 is a doubtful one;² and a decision by Mr. Justice Sutherland in 1935 is not to be relied on at all.³ Authors who have wished to interpret the principal federal taxes, however, and not merely to digest decisions, are plagued not only by the complexity of the subject—the number and the range of statutes and decisions—but by the amount of good, honest, legal reasoning and analysis that can be devoted to each of the great number of important topics. The desire to be thorough has led to a recent flow of essays and studies and law review articles, rather than to an integrated consideration of some tax in all its various as-

‡ Professor of Law, Harvard University.

* Assistant to the Secretary of the Treasury; Visiting Sterling Lecturer on Taxation at Yale University School of Law.

¹ *Burnet v. Guggenheim*, 288 U.S. 280 (1933).

² *Heiner v. Donnan*, 285 U.S. 312 (1932).

³ *Helvering v. St. Louis Union Trust Co.*, 296 U.S. 39 (1935), overruled in *Helvering v. Hallock*, 309 U.S. 106 (1940).

pects. Mr. Paul has been a leader in this kind of writing. His present book is a major contribution of the other sort—a thorough, complete discussion of the complications attendant upon federal taxes upon transfers of property by gift and at death.

The field is a happy one for a lawyer of Mr. Paul's learning and experience. Although all family settlements and transfers must be drawn with an eye on these two federal taxes, there has not been the overwhelming amount of litigation over details here that exists in the case of the income tax. Mr. Paul cites about 3,600 decisions, and presumably that is all the quarter-century has given us. Statutory changes have also been much less common here than in the income tax. Hence an intelligent lawyer can not only get on top of the subject, and write with that clarity which is the product of understanding; but he can afford to devote a dozen or so pages to the *Sanford* case,⁴ nine to the *Guggenheim* case,⁵ twenty-five to the *Hallock* case,⁶ and so on. He can develop statutory history fully; he can present his own ideas on the proper future development of each phase of the tax; he can note the undecided problems, as well as discuss at length what has been decided. In other words, he can give to other lawyers who have not lived in the field for twenty-five years the background and the analysis they must have for the daily task. In addition, if he is Mr. Paul, he will still have space to annotate every sentence exhaustively and even amusingly, not only with decisions but with the writings of Mr. Justice Holmes, Judge Jerome Frank, Sir William Blackstone, and Messrs. Wu, Vanoni, and Demogue, to mention a few out of hundreds of authors cited.

The organization of the book is essentially orthodox. There are chapters on each of the major forms of transfer subject to the estate tax, on deductions, practice and procedure in the bureau and in the courts; three chapters on the gift tax; and a final chapter on valuations. Each of these chapters is an exhaustive, scholarly treatment of its subject. Mr. Paul has not only collected the relevant material from statutes, regulations, rulings, decisions, and articles, but he puts at the reader's disposal his own conclusions and suggestions. His ideas are assembled in Chapter 1, General History and Description, and in conclusions to subsequent specific chapters. His point of view is that of an experienced tax administrator—he describes the current defects in the tax laws and tells how they might be improved. He devotes no space to advising how taxes may be saved, for he is obviously uninterested in that aspect of his subject. Certainly in some instances even a dispassionate author might have said more for the taxpayer. For example, the present law as to deductions for charitable pledges has been left by the Court in a quite unsatisfactory condition; it ought to be remedied. Mr. Paul notes the point, but makes little of it. The book does not make clear when statutory retroactivity is permissible, when constitutionally objectionable. Insurance by business partners or by a corporation of its officers could have been given more comprehensive treatment. These are minor defects; the main point is that the author's analysis will be useful to a tax lawyer long after tax avoidance manuals have become obsolete.

Most of Mr. Paul's suggestions for improvements in the law are good. The estate tax and gift tax should at least be correlated and better still combined. The estate

⁴ *Estate of Sanford v. Com'r*, 308 U.S. 39 (1939).

⁵ *Burnet v. Guggenheim*, 288 U.S. 280 (1933).

⁶ *Helvering v. Hallock*, 309 U.S. 106 (1940).

tax should be clarified. The provisions dealing with powers of appointment must be broadened, and tightened; and it is part of the job to reconsider the whole method of taxing life and remainder interests. The insurance section should be redrawn so that it says what it means. The deduction provisions require rewriting. Mr. Paul does not perhaps sufficiently recognize that the taxing provisions might be drawn in much more general terms, while this Supreme Court sits; but the deduction provisions must either be more specifically stated, or else specific authority must be conferred on the commissioner to make regulations. Mr. Paul's discussion of tax avoidance in the first chapter is somewhat too hortatory. Although, like Mr. Justice Holmes, he disclaims any intention of placing his discussion on moral grounds, he obviously feels a strong distaste for those who seek to discount the price we must pay for civilization. Finally, I would have liked to see more discussion of the effect on the gift tax and the estate tax of *Douglas v. Willcuts*,⁷ and the *Clifford*⁸ and *Horst*⁹ cases. The comment on the latter, "In such cases the gift tax has no function to fulfill," is incomprehensible to me.

The mechanical features of the books are generally excellent. There is a 100-page index, much above the average; a 30-page author-index; and a 100-page table of cases, additionally useful because the original citations are included. The publishers should have inserted page references in the table of contents, but the sections are fairly easy to find. Altogether the books are a fine piece of work, well-written, thorough, informative, suggestive.

ROSSELL MAGILL†

Cases and Materials on Labor Law. By Charles O. Gregory.* Chicago: University of Chicago Bookstore, 1941. Pp. v, 721. \$6.00.

Labor Cases and Materials. By Carl Raushenbush‡ and Emanuel Stein.§ New York: F. S. Crofts & Co., 1941. Pp. xvi, 674. \$4.00.

John Chipman Gray once remarked that constitutional law was not law at all, it was a study of politics. In a sense this is particularly true of those aspects of constitutional law which impinge upon the law of labor relations. In the past few years such well-imbedded doctrines as the repugnancy of minimum wage legislation to the due process clause, the immunity of sweat-shops in manufacturing from congressional regulation, and the complete freedom of employers to hire and discharge workers have been eliminated from our fundamental law. The Supreme Court has not rested, however, with merely freeing labor from the restrictions which prevented legislative assistance. It has developed new constitutional doctrines for labor's protection. Thus after the recognition in *Thornhill v. Alabama*¹ of picketing as a facet of the right of freedom of speech, the Court held that the Fourteenth Amendment prevented state courts from issuing injunctions against picketing of a non-violent character.² Yet, less than twenty years

⁷ 296 U.S. 1 (1935).

⁸ *Helvering v. Clifford*, 309 U.S. 331 (1940).

⁹ *Helvering v. Horst*, 311 U.S. 112 (1940).

† Professor of Law, Columbia University.

* Professor of Law, University of Chicago.

‡ Assistant Professor of Economics, New York University.

§ Assistant Professor of Economics, New York University.

¹ 310 U.S. 88 (1940).

² *AFL v. Swing*, 312 U.S. 321 (1941).