

of *Nations*, which, in turn, is followed by references to and excerpts from decisions of the Swiss Federal Court and the German Supreme Court. The section ends with two cases in which the United States Government expressed its attitude toward the *clausula*, in one case against it, in the other in favor of it.

The purpose here and elsewhere obviously is, not to give merely the official position of the Government of the United States, but to put the American practice into the framework of the general theory and practice of international law. From the point of view of this purpose, the representative character of the references is then of decisive importance. Paragraph 689² deals with the League of Nations and neutrality. Of the voluminous literature which considers the important problem whether or to what extent neutrality was possible under the Covenant of the League, two books are quoted, Oppenheim-Lauterpacht's standard treatise and Georg Cohn, *Neo-Neutrality*. It is hard to see what the representative character of the latter work is. If, however, it has any such character, no indication is given why this volume deserves citation while none of the other writings relevant to the subject is mentioned. It would have served the purpose better to cite only Oppenheim-Lauterpacht or to make reference to several publications representative of the different positions taken with respect to the problem.

Such minor flaws cannot detract from the essential value of the series which, in its own way, is a worthy continuation of the tradition established by Wharton and Moore.

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Die Aktiengesellschaft nach dem Gesellschafts-, Bilanz-, und Steuerrecht der Vereinigten Staaten von Amerika. By Professor Dr. H. Trumpler. Basel: Verlag für Recht und Gesellschaft A. G., 1942. Pp. xxiii, 518.

This book is intended to serve as an introduction into the American law of corporations for the European lawyer. It may be said at the outset that the author has succeeded in presenting, on some five hundred pages, a complete and accurate "biology" of American corporate organization, accounting, and taxation—a unique achievement which may prove of occasional value even to the American lawyer.

In the first part, Professor Trumpler gives a brief summary of the American legislative and judicial process and of the history of the American corporation (not only of American stock corporations, as the title, probably in consequence of the lack of a comprehensive German term, might indicate). In this first part, the European lawyer will find not only a fascinating general picture of American corporate organization, but much detail of stimulating significance. He will notice with satisfaction that the common law is inclined to sacrifice the concept of corporate "personality," which has haunted European legal minds for centuries, to practical considerations, wherever this may seem desirable. He will meet legal institutions such as the "de facto corporation" or the "corporation by estoppel," and business creations such as employees' stock corporations, which, though familiar to him from cautious beginnings in European theory and practice, are new to him as independent legal entities.

While the average Continental lawyer may have difficulty in evaluating the second part, dealing with the law and practice of corporate accounting, he will be greatly attracted by the third part, probably the most brilliant part of the book, which discusses

² Vol. VII, p. 668.

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the law of corporate taxation. The author emphasizes the highly developed autochthonous character of this branch of American law, excelling its English model by its systematic organization, logical foundation, and precise formulation. Those of its aspects which the author is inclined to criticize for having turned it into a "source of controversy and a battlefield of ingenious lawyers"¹ may be partly due to the difference between the Continental and the American systems of judicial review. Continental tax legislation can well be satisfied with broad general statements, since it may rely on departmental elaboration, and is largely independent from judicial control, while the American legislator is often compelled to meet specific judicial attack with still more specific remedial provisions.

In a few instances, inaccuracies are clearly due to the author's efforts to make a technical subject easily comprehensible to the foreign lawyer, as, e.g., where he entitles a chapter "Non-resident Foreign Citizens and Non-resident Foreign Corporations,"² where he defines a foreign personal holding company as a "personal holding company organized and residing in a foreign country,"³ or where he speaks of "surtax on improperly accumulating surplus."⁴ A real, though minor, error has occurred in the treatment of the three-years rule of Section 501(a)(1) of the Internal Revenue Code;⁵ the example is wrong.⁶

Knowledge of Anglo-American law and legislative thought, which has always been sorely lacking in Europe, will be indispensable to the Continental lawyer after this war. The author's publications on American law⁷ will be found most valuable tools for the acquisition of such knowledge.

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¹ P. 293.

² At p. 420. The terms are not coordinated, since they contain the word "non-resident" in two different connotations. While a foreign citizen may be "non-resident," though engaged in a trade or business in the United States, the absence of such an activity is the very criterion of a foreign "non-resident" corporation. See Int. Rev. Code, §§ 211 (b), 231 (a) (1).

³ At p. 409. Under the Internal Revenue Code "personal holding company" and "foreign personal holding company" are coordinated terms, so that a "personal holding company" may be a domestic or a foreign corporation.

⁴ At p. 385. This terminology obscures the fact that the Code (§ 102) treats "corporations improperly accumulating surplus" as a distinct category. This type was succeeded by the personal holding company and the latter by the foreign personal holding company, in the course of legislative reaction against a failure to make distributions. This historical interrelation is not transparent in the Code (see § 102, then §§ 500-511, and then *back* to §§ 331-40).

⁵ At p. 407.

⁶ Here is another example. The X and Y companies qualify as personal holding companies in 1940. In 1941 and 1942, respectively, both of them have a "personal holding company income" of 67 per cent and 68 per cent, respectively; in 1943 the X Co. has 70 per cent, the Y Co. only 69 per cent, income. Now, Y has achieved "three consecutive taxable years" as required by Section 501 (a) (1); X has not. Consequently, for 1944, X is taxable as personal holding company at a 70 per cent income, while Y is not—at a 79 per cent income.

⁷ "Die Börsengesetzgebung der Vereinigten Staaten von Amerika" (Walter de Gruyter & Co., Berlin, 1938) and "Unlauterer Wettbewerb und Antitrust-Recht der Vereinigten Staaten von Amerika" (Verlag für Recht und Gesellschaft, Basel, 1942).

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