

merit. The substance of the argument for judicial review is excellent and eminently worthy of presentation.

JEFFERSON B. FORDHAM†

FEDERAL INCOME TAXATION OF CORPORATIONS AND SHAREHOLDERS. By Boris I. Bittker. Federal Tax Press, 1959. Pp. xxiv, 422. \$15.00, Student Edition, \$5.00.

THE provisions of the federal income tax statutes specifically applicable to transactions of corporations and shareholders have long been thought to be particularly complex and subtle. This appraisal may have been an instance of transferred characterization in its origin. The corporate transactions to which the tax statutes related have often been both intricate in their mechanisms and subtle in their legal and financial operation, as any study of corporate finance and reorganization will witness. The structure and mechanisms of the corporate provisions of the Revenue Acts for the decade from 1924 until 1934 were relatively simple. Whether this was the simplicity of inadequacy or the simplicity of a well-conceived and efficient functionalism is another matter. The Revenue Act of 1934 initiated a process of elaboration and differentiation, a process which has since moved at a pace quickening as though in its own career to verify Henry Adams' Dynamic Theory of History and Law of Acceleration. Indeed, with the enactment of the Internal Revenue Code of 1954 and subsequent amendments, it might be said of this process, as Adams said of power, that it "seemed to have outgrown its servitude and to have asserted its freedom."¹ Does one detect voices asserting, if not yet in the accents of anger and alarm that Adams heard, "that the new forces must at any cost be brought under control"?²

In more muted tones Professor Bittker's Preface appears to suggest such ideas:

The Internal Revenue Code has recently been brought to the workshops of Congress for repairs and alterations with increasing frequency, and with each visit, its basic structure becomes more obscure. Despite this, I believe that enough landmarks remain for a guidebook to serve a useful function—and perhaps even to help in turning the attention of interested persons away from details and toward our major problems, a shift of focus that is a pre-condition to statutory reform.³

One might press further and question whether there remains anything of structure, or only segments, if by structure one implies some coherence of pat-

U.S. 497 (1956), in which Smith Act supersession of a Pennsylvania anti-sedition law was determined as to sedition against the United States. Black says the court held that there was complete supersession. P. 135.

†Dean, University of Pennsylvania Law School.

1. ADAMS, THE EDUCATION OF HENRY ADAMS 499 (1918).
2. *Ibid.*
3. P. v.

tern—whether a multiplicity of nonfunctional standards, differentiations, exceptions, and provisions for special or alternative treatment have not reduced what were heretofore landmarks to the status of identification markers among a haphazard of isolated results. But to argue this point is only to debate the subclassification appropriate for the jumbled and irregular terrain through which Professor Bittker provides guidance; it relates not at all to the merits of his distinguished performance.

Guidebook is not a term frequently employed with reference to a legal text. Its aptness indicates Professor Bittker's sensitivity to the nature of his amorphous subject matter and his appreciation of what is probably the most useful task which could be undertaken in dealing with it. Not purporting to be a comprehensive treatise, this relatively brief and compactly written book nevertheless presents the principal elements of most of the major and many of the minor problems peculiar to corporate taxation, and presents them with critical evaluation of the legislative, administrative, and judicial performances which have in some instances created the problems and in others offered solutions. This is no small task. Its successful accomplishment requires clarity of statement and of organization in dealing with materials which possess neither, a critical discernment of problems both inherent and created, a just measurement of success or failure in dealing with them, an alert sensitiveness to latent contradiction and anomaly. Each of these Professor Bittker supplies, and in good quantity. No statement of agreement with all of his evaluations and conclusions is required in order to make one eligible to express admiration for the large measure of his success. Limitations there are, as in every extended work. But for the most part they consist only of brief departures from the high level of critical acumen which predominates, and they hardly diminish the usefulness of the whole.

Professor Bittker's Preface suggests the hope that his survey and evaluation of statutory provisions which appear to have lost coherence and pattern will give some impetus to reform, a reform in which consideration of function may precede and pervade the separate formulations which a comprehensive tax statute necessarily requires. One can join in this hope without reservation. It is true that the task of legislation is only rarely the proclaiming of universals, and much more frequently the drawing—or rather, the indication or suggestion—of lines. But line-drawing for its own sake is an occupation either of children or of absent-mindedness, and not much more can be said of lines which are drawn almost at random because the individual line appears to be the product of an isolated bright idea or the protection of a particular interest.

Because his book does not, at least explicitly, suggest even the outlines of the statute which he hopes will follow the jumble of today's corporate tax legislation, it would hardly be appropriate to offer extensive comment or criticism of what one might infer to be Professor Bittker's views of the tax legislation which reform should produce. But when relative judgments of past and present are explicit we may reasonably infer at least which of those would be preferred for the future. I should therefore like to register dissent when reference

is made to "the sophisticated reorganization provisions of the 1954 Code"⁴ as "the progeny of surprisingly primitive ancestors."⁵ If the reference backward were to the reorganization provisions of 1918 one would unhesitatingly agree. But the description of the "primitive" ancestry clearly relates to the reorganization provisions which prevailed from 1924 until 1934. They were by no means perfect, but to a large extent they had—or, if read wisely, might have had—a unity and coherence of concept which is entirely lacking today. The Supreme Court went a long way toward destroying this coherence of plan which was simple, rather than primitive. And amendatory legislation worsened rather than improved the resulting situation. This is not the occasion for the telling of this long and involved story, and the detailing of the method by which, as shown by selected lower court opinions, the original section 112 might have been retained with improving amendments which refined, rather than destroyed, the sound concepts which it embodied. One recalls Maitland's remark, "Simplicity is the outcome of technical subtlety; it is the goal not the starting point. As we go backwards the familiar outlines become blurred; the ideas become fluid, and instead of the simple we find the indefinite."⁶ If one searches for adjectives to describe the reorganization provisions, one might, in Maitland's terms, describe the 1918 provisions as indefinite, the 1924 provisions as simple. Following this progression I am afraid that we should have to refer to the reorganization provisions of the 1954 Code, and indeed to the corporate provisions as a whole, as decadent. I know no better demonstration of the justice of this term than the evidence which Professor Bittker's book adduces.

ERNEST J. BROWN†

LAW AND MEDICINE, Text and Source Materials on Medico-Legal Problems.

By William J. Curran, LL.M., S.M. Hyg. Boston: Little, Brown and Company, 1960. Pp. 829. \$12.50.

TAKE two professional offices; one is Victorian, with pictures of those later legal lights, Sir William Blackstone and Chief Justice John Marshall adorning the walls. On the reception table of this office is the latest volume of the *NACCA Law Journal* and several current advance sheets. The comparison office contrasts sharply: it is modern in decor, and on the walls are framed likenesses of Louis Pasteur and Sir William Osler, medical mammoths. Its reception room reading material includes the *American Medical Journal* and the latest reprint on lung cancer by the great New Orleans surgeon, Alton Ochsner.

4. P. 392.

5. P. 391.

6. MAITLAND, *DOMESDAY BOOK AND BEYOND* 9 (1897).

†Professor of Law, Harvard Law School.