

time and to preserve unity, coherence and emphasis in his presentation. Indeed, one serious question is whether the casebook does not devote too much space to the minutiae of federal income taxation, and so not enough to the major propositions that are actually about all a student can be expected to take away with him. Professor Bittker was, of course, aware of this problem, and his inclusion of a generous amount of tax minutiae was the result of conscious decision. In his view, no "survey" treatment could sufficiently convey the essential spirit and flavor of income tax law.*

Presumably this tax course would be the student's first course in the subject. What does he need to learn first? Probably what is the nature of income, the concept of income developed by our courts. Professor Bittker offers him "some characteristics of income" and then, by way of contrast, "non-taxable items." He divides the following chapters into: The Individual, Non-Business Taxpayer, and The Business Taxpayer. The succeeding major divisions are: The Splitting of Income; Capital Gains and Losses; The Corporation and Its Stockholders; Accounting and Income Taxation; and Tax Practice and Procedure. Not everyone will agree with the order, but it can easily be changed by any instructor.

The casebook as a whole exhibits the editor's broad acquaintance with the materials, and his skill in annotating them well. The book is fully up-to-date and keyed to the 1954 Code, last year's wholesale revision of the internal revenue laws; and many of the more significant changes made by the new Code are indicated and explored. Plainly, a tremendous amount of work went into this book. An industrious and well-informed teacher of taxation will find here a wealth of materials for his use.

ROSWELL MAGILL†

GOVERNMENT BY INVESTIGATION. By Alan Barth. New York: Viking Press, 1955. Pp. 231. \$3.00.

FROM his vantage point as an editorial writer on the Washington Post, Alan Barth has had a ringside seat to observe and to reflect deeply upon congressional investigations running wild. The fruits of that reflection are contained in this compact and perceptive analysis of legislative usurpation of power.

Accounts of the abuses of legislative investigating committees are no longer novel.¹ Mr. Barth's contribution is in his concentration on the direction, rather than the methods, of current investigations. He is justly alarmed at three

* P. vii.

†Member of the New York Bar.

1. See BARRETT, *THE TENNEY COMMITTEE; LEGISLATIVE INVESTIGATION OF SUBVERSIVE ACTIVITIES IN CALIFORNIA* (1951); CARR, *THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES, 1945-1950* (1952); COUNTRYMAN, *UN-AMERICAN ACTIVITIES IN THE STATE OF WASHINGTON; THE WORK OF THE CANWELL COMMITTEE* (1951); GILLMORE, *FEAR,*

tendencies: the usurpation of executive power, the legislative trial, and the censorial inquest into ideas.

Into the first category fall the 1953 sessions of the McCarthy Permanent Investigations Subcommittee (of the Senate Committee on Government Operations), which Barth properly assesses as an effort to take over executive functions. Viewing them in this light, we can see the true meaning of McCarthy's "negotiations" with the Greek shipowners and of his censorship of the overseas libraries of the State Department and the manuals of the Central Intelligence Agency.

Typical of the second category are the "trials" of Owen Lattimore and Virginia Durr (sister-in-law of Justice Black) conducted by the Senate Internal Security Subcommittee. These, as Mr. Barth points out, were not attempts to expose the dimensions of the problem of internal Communism, but rather crude investigations of beliefs and affiliations for the purpose of punishing unpopular opinions or connections by holding them up to public scorn.

In the category of thought-inquisitions are the Reece Committee's investigation of the "international viewpoint" of our great educational foundations and the inquiry of the House Un-American Activities Committee into the social gospel of Protestant ministers. "These investigations," Mr. Barth writes, "cast a totalitarian shadow."²

How can we, the people, curb these abuses without emasculating the power of legislative investigations—power which, as Mr. Barth readily concedes, is essential to the functioning of a democratic legislature?

The courts will not and should not become the supervisors of a coordinate branch of government.³ The difficulty is that often Congress has the legal authority to investigate where it should not legislate.⁴ Even where a congressional committee is trespassing in areas that are apparently no proper concern of Congress, it is difficult for a court to draw hard and fast jurisdictional lines, particularly at the beginning of such an investigation. The ingenious legislator can almost always spell out some relationship, no matter how tenuous, to some imagined legislative purpose; and the determination of pertinency is a difficult matter in a legislative inquiry whose objectives may be manifold and general.⁵

THE ACCUSER (1954); RORTY & DECTER, MCCARTHY AND THE COMMUNISTS (1954); TAYLOR, GRAND INQUEST—THE STORY OF CONGRESSIONAL INVESTIGATIONS (1955).

2. P. 141.

3. See Justice Jackson, dissenting in *Eisler v. United States*, 338 U.S. 189, 196 (1949): "But I think it would be an unwarranted act of judicial usurpation to strip Congress of its investigatory power, or to assume for the courts the function of supervising congressional committees."

4. Congress could theoretically investigate the income of our churches to determine whether they truly needed to be exempt from federal taxes. But the power to investigate does not extend "to an area in which Congress is forbidden to legislate." *Quinn v. United States*, 349 U.S. 155, 161 (1955).

5. For an indication of the almost limitless bounds of relevancy, see *United States v. Bryan*, 72 F. Supp. 58 (D.D.C. 1947).

Nor do codes of fair procedures promise easier solutions. Most of these codes deal with such matters as the right to counsel or the right of reply; few concern themselves with the proper scope of legislative inquiries.⁶ But one provision embodied in some of these codes—namely, the requirement that legislative investigations be subjected to continuing scrutiny by a special supervisory congressional committee—is, as Mr. Barth points out, “an indispensable means of keeping committees responsible and of discharging the responsibility of the House and Senate for their conduct”;⁷ particularly if these supervisory committees are empowered to receive and investigate complaints from the general public.⁸

But no such codes will be enacted until a public morality is created that makes congressional abuses politically unprofitable. *Government by Investigation* will aid greatly in generating that morality.

WILL MASLOW†

THE LAW OF PRIMITIVE MAN, A STUDY IN COMPARATIVE LEGAL DYNAMICS.

By E. Adamson Hoebel. Cambridge: Harvard University Press, 1954. Pp. viii, 357. \$5.50.

PRIMITIVE law as a subject partakes of both legal science and social anthropology. While textbooks of anthropology have been appearing during the last ten or fifteen years at the rate of three or four a year, comprehensive publications on primitive law appear but seldom. This is probably due mainly to the fact that a two-fold professional qualification is required for the study of primitive law. Only a jurist with training in cultural anthropology or ethnology, or conversely, an anthropologist with additional training in legal theory and historical jurisprudence is truly competent for a discourse on primitive law. A happy solution to the problem of equipment and competence is the association of two co-authors, one with legal, the other with anthropological training. In their volume *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence*, published in 1941, E. Adamson Hoebel in collaboration with K. N. Llewellyn presented us with a work that is probably the best monograph ever

6. See Maslow, *Fair Procedure In Congressional Investigations: A Proposed Code*, 54 COLUM. L. REV. 839, 850-61 (1954). The Doyle Resolution, H.R. RES. 151, 84th Cong., 1st Sess., adopted by the House of Representatives on March 23, 1955, is a mere sop to the advocates of reform. Its only advance is the provision requiring committees to hear first in executive session matters that may defame a person, and entitling such a person to appear as a witness in his own behalf.

7. P. 202.

8. For such a provision see § 8 of S. RES. 101, 84th Cong., 1st Sess., introduced on May 17, 1955 by a bi-partisan group of eighteen Senators, headed by Senator Estes Kefauver. See also AMERICAN BAR ASSOCIATION, SPECIAL COMMITTEE ON INDIVIDUAL RIGHTS AS AFFECTED BY NATIONAL SECURITY, REPORT ON CONGRESSIONAL INVESTIGATIONS 40-43 (1954).

†Director, Commission on Law and Social Action, American Jewish Congress.