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Book Reviews

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BOOK REVIEWS

ATOMIC ENERGY AND CONGRESS. BY MORGAN THOMAS, IN COLLABORATION WITH ROBERT M. NORTHROP. Ann Arbor: The University of Michigan Press, 1956. Pp. vi, 301. \$4.75.

GOVERNMENT CONTRACTING IN ATOMIC ENERGY. BY RICHARD A. TYBOUT. Ann Arbor: The University of Michigan Press, 1956. Pp. x, 226. \$4.50.

The growth of the Atomic Energy Commission within the framework of our constitutional government is most assuredly unparalleled in the history of our efforts to regulate and control a segment of American endeavor. After the first acquaintance with the terrible destructive powers of atomic energy, the lawmakers in 1946 established, under the Atomic Energy Act of 1946, the Atomic Energy Commission and the Joint Congressional Committee on Atomic Energy.

The foresight of this legislation must be appreciated if the then existing secrecy and the only partial understanding are considered; added thereto are the distinct factors of progress in the competitive atomic cold war race and the protection of human life from potentially dangerous new scientific development.

To explain the policies and the success of their enactment, these two books have been written. The first, *Atomic Energy and Congress*, obviously deals not so much with committees or commissions, but with people. The author, who made this study under the famed Michigan Memorial-Phoenix Project, has shown with some success that the relations developed by these two important governmental bodies charged with the policy making—The Joint Congressional Committee on Atomic Energy and The Atomic Energy Commission—are not so much dictated by necessity, or knowledge, or rank, or law, but by human relations; depending upon the cooperation, or the lack of it, received by either group, the program expanded or suffered.

The stresses and strains of the growth period of 1946-1955 covered in this book mirror the many personalities who contributed to the awe inspiring atomic industrial and military build-up, with their varying talents—such men as Chairmen Lilienthal, Smyth, Dean and Strauss, and Committee Chairmen McMahan, Hickenlooper, Cole and Anderson.

In addition to the relationships of governmental authorities, the means used to operate the vast installations owned by the Commis-

sion—or rather, the public—are analyzed in the second book *Government Contracting in Atomic Energy*, written also by a member of the faculty of the University of Michigan. The author evaluates the varying types of contracts utilized by different governmental agencies in the exercise of their functions through private business organizations, and discusses in detail the emphasis placed in the field of atomic energy on cost-reimbursement contracts since there are involved many novel and little recognized characteristics. The author reasons that cost-plus-fixed-fee contracts are consistent with government ownership, cost minimization and government risk assumption.

Since the 1946 Act established a virtual monopoly over atomic energy in this country and with the realization that government spending by the Commission grew from 565 million in 1947 to a total of 12 billion up to and including 1955, the formative years of atomic energy as discussed in both books will remain of greatest interest to those who come in contact with the varied applications of the atom.

The 1954 Act which was designed to transform the wholly monopolistic industry to one popularly called "business-government partnership" does not remove the need to know the early experiences and trial and tribulations as discussed in these books. However, it should be recognized that had it been possible to let atomic knowledge and application grow by natural means, rather than under pressure of our hot and cold war commitments, the need for such elaborate governmental, developmental and control machinery might not have been necessary for many years.

*Frank Norton**

THE CALVO CLAUSE: A PROBLEM OF INTER-AMERICAN AND INTERNATIONAL LAW AND DIPLOMACY. BY DONALD R. SHEA. Minneapolis: University of Minnesota Press, 1955. Pp. 323. \$5.50.

It is highly recommended that both the experienced foreign business enterpriser and he who may be placing a tentative toe into the unknown waters of private investment in Latin America read *The Calvo Clause* by Donald R. Shea, a lucid and challenging volume of nine chapters in which the author has conducted an inquiry into the

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status of the Calvo Clause as it is related to the diplomatic protection of commercial interests in Latin America.

The author points out that the Calvo Clause has existed as a legal and diplomatic problem for about eighty years. Because the unsettled social and economic conditions in Latin American nations at times placed the lives and property of aliens in jeopardy during the latter part of the nineteenth century and the early part of the twentieth, diplomatic interposition on behalf of citizens abroad, ranging from notes of protest to armed intervention, was often directed at certain Latin American nations.

Statesmen and jurists of Latin America registered protests against interventions claiming that a dual standard of international treatment was followed by world powers whereby the nations of Latin America were regarded as inferior and therefore proper subjects of diplomatic interposition, which placed them in an unequal position in relation to other nations. In reply, the intervening States declared that principles of general international law established a minimum standard for the treatment of aliens. That is, in general a State is under no responsibility to grant greater protection to foreigners than to its own citizens, with the exception that if a State's standard of justice with respect to its own nationals is so low that it fails to measure up to a general norm governing the members of the family of nations, the alien is granted the right to appeal to the average norm rather than to accept the lower norm ruling within the State. To secure this minimum standard established by international law, a nation has a right to protect the lives and property of its citizens abroad through such measures of interposition as it deems necessary, including armed intervention.

In an effort to eliminate such interventions, the Latin American nations attempted, by considerable ingenuity, to devise schemes to avoid liability for injuries to aliens, foremost among which was the use of the Calvo Clause in contracts concluded with aliens. The Calvo Clause is a stipulation utilized in contracts entered into between the State and foreign investors whereby the alien agrees that disputes which may arise out of the contract are to be submitted to local courts and are to give rise to no international claims. By such a clause it is contended that the alien has waived all his right of diplomatic protection from the State of his nationality.

As Mr. Shea points out, an internal constitutional or statutory provision cannot modify the right of another State to grant protection to one of its citizens abroad, but the Calvo Clause is another

matter, for here the question arises as to whether the voluntary surrender of right of protection by the interested citizen can affect or modify the right of diplomatic interposition which international law grants to all nations.

Mr. Shea's book is a thorough piece of research into past and present approaches to this question. He writes easily, briefly and forthrightly, and substantiates his conclusion that at present the Calvo Clause may actually serve to bar a claim, and that at present the Calvo Clause may play an important role in the life of a private investor abroad. In the concluding chapter, the author faces the problem of the future of the Clause, and points out that its present status is somewhere between the two extreme views of complete validity of the Clause and complete invalidity thereof, and he predicts that eventually the Calvo Clause will be incorporated as an essential part of inter-American public law.

A word of praise must be bestowed upon the University of Minnesota Press for its service in publishing such an important study for all who labor in the field of inter-American affairs, whether such work be of a financial, diplomatic or scholastic nature.

*Ann Van Wynen Thomas**

FEDERAL ESTATE AND GIFT TAXES. BY CHARLES L. B. LOWNDES AND ROBERT KRAMER. Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1956. Pp. xxii, 1028. \$25.00.

The advent of a comprehensive treatise on a major subject is always welcome. This is particularly true when the subject has altered considerably since the last previous general commentary. If the new book contains exhaustive analyses as well as useful syntheses, there is real cause for rejoicing. Professors Lowndes and Kramer, of Duke Law School, have given us all of these in their text on federal estate and gift taxes.

The book is tripartite: I, estate tax (620 pages); II, gift tax (205 pages); III, tax planning for estates (146 pages). The first two parts contain most of the analysis, the third has the synthesis.

Part I begins with a short background discourse on death taxes: their character, types and use, and arguments pro and con. The litigative history of the federal estate tax is then briefly considered. Most of the rest of Part I is in the traditional, functional pattern

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used in treatises and casebooks: detailed examination of gross estate, exemption, deduction, valuation, computation, credit and procedure.

One interpolation is the droll story, devotedly told, of lighthouse cases like *Northern Trust*,¹ *May*,² *Klein*,³ *St. Louis Union Trust*,⁴ *Hallock*,⁵ *Church*,⁶ and *Spiegel*.⁷ These demonstrate, among other things, that Treasury and Taxpayer wage war as relentlessly and deviously over the estate tax (which is not basically a revenue measure) as over the income tax (which is). The authors recount the tale of early Supreme Court hostility to transfers "intended to take effect in possession or enjoyment at or after" death.⁸ The Court ignored "intended" and read "possession or enjoyment" as though it were "title." Congressional responses to the Court's decisions form one of the best narratives in our political-judicial history. Highly fascinating is the reversal of positions in the late 1940's when the legislators chose to curtail the judges' broadening concept of taxability. Although much of this learning is obsolete, the authors sagely note its significance for those who would understand the evolution of the law or divine its future course.⁹

Part II deals with gift taxes. The background chapters are followed by consideration of types of transfer, exclusion, deduction, exemption, splitting and procedure. Although Part II is a complete treatment of gift tax, and Part I of estate tax, each has some parallel material on the other's subject.

The content of the book is far more incisive than these remarks suggest. Everywhere there is evident the product of deep thought, careful scrutiny and scholarly collation of statutes, rulings and decisions. The blending of history and dialectic, so essential to an understanding of the two taxes, is skillfully accomplished.

Deep analysis is to be found in a series of comparative or cross-sectional passages. For example, two chapters (I:13 and II:9) deal with "consideration" in all situations where a transfer may provoke

¹ *Reinecke v. Northern Trust Co.*, 278 U.S. 339 (1929). These cases are discussed at pp. 84-105 of the book.

² *May v. Heiner*, 281 U.S. 238 (1930).

³ *Klein v. United States*, 283 U.S. 231 (1931).

⁴ *Helvering v. St. Louis Union Trust Co.*, 296 U.S. 39 (1935).

⁵ *Helvering v. Hallock*, 309 U.S. 106 (1940).

⁶ *Comm'r v. Church's Estate*, 335 U.S. 632 (1949).

⁷ *Spiegel's Estate v. Comm'r*, 335 U.S. 701 (1949).

⁸ Int. Rev. Code of 1939, §811(c)(1)(C), 53 STAT. 120, derived from Revenue Act of 1916, §202(b), 39 STAT. 778. This provision, supplanted by its own ramified progeny, was deleted in 1954.

⁹ Author Lowndes once chided casebook editors for abstracting these cases instead of letting students taste their "subtle flavor" from the full opinions. Lowndes, *Book Review*, 3 J. LEGAL ED. 658 (1951). Lowndes and Kramer manage to transmit a great deal of the flavor in their own distillation.

a tax because it is made for less than "adequate and full consideration in money or money's worth."¹⁰ Chapter I:20 embraces all aspects of valuation. In the Internal Revenue Code of 1954, the gross estate is defined by a general section 2033 (property in which the decedent had an "interest") and the specific sections which follow it (property transferred by the decedent subject to life estate, reversion, power to revoke, etc.). The overlap and interrelation of these sections are lucidly outlined on pages 42-52. The relation between sections 2036(a)(2) (retained power to designate income or possession) and 2038 (retained power to alter, amend or revoke) receives equally careful delineation on pages 170-73.

Varied insights are offered into the wonderful complexity of annuity problems (commercial as well as private), the ill-defined nature of "incidents of ownership" in a life insurance policy (particularly the possibility of inheritance by the insured from his policy assignee), and the differences in the definition of charity for estate, gift and income tax deductions.

Although the volume is eminently dispassionate, the authors do not hesitate to flog a few dead horses (*Bull*,¹¹ *May*,¹² *St. Louis Union Trust*¹³) and an occasional live one (*Harris*,¹⁴ *Kohl*¹⁵).

Parts I and II, the estate and gift tax exegesis, will be widely used by students and teachers. (Some adventurous instructor may even essay this end of the tax course with Kramer, Lowndes and Code, but no casebook.) The lawyer litigating an estate or gift tax will find here an armory of arguments. The tax specialist will regard the whole book as a part of his general culture. But what has this versatile volume for the attorney without a Treasury Card? Confident of his wills, trusts and experience, he is unlikely to read Parts I and II. Part III is mainly for him, and it is to be hoped that he will read it with apprehension.

Part III is entitled "Tax Planning for Estates." This phrase is carefully distinguished from "estate planning." Tax planning is "arranging one's affairs so as to reach a desired end at the minimum

¹⁰ INT. REV. CODE OF 1954, §§2035-2038, 2043, 2512, 2516.

¹¹ *Bull v. U.S.*, 295 U.S. 247 (1935) (limited right to share in partnership profits after death not includible in gross estate).

¹² See note 2 *supra* (reserved life estate not includible in gross estate).

¹³ See note 4 *supra* (possibility of reverter extinguished at death not includible in gross estate).

¹⁴ *Harris v. Comm'r*, 340 U.S. 106 (1950) (no gift by transfer pursuant to agreement later incorporated in divorce decree, even though in settlement of marital rights).

¹⁵ *Kohl v. United States*, 226 F.2d 381 (7th Cir. 1955) (life insurance premium payment test unconstitutional).

tax cost."¹⁶ Tax planning is only a phase of the highly individual process of estate planning; the latter includes all aspects of acquiring, conserving and distributing property. The authors deliberately eschew sample plans and form clauses. They warn that tax considerations are always to be reviewed but must never dominate. Equally vital are precise draftsmanship, anticipation of all possible contingencies, and due regard for state law. The client's dispositive desires are paramount.

What have Messrs. Lowndes and Kramer to add to the torrent of estate plan wisdom that has lately streamed forth from life underwriters, trust officers, accountants and attorneys? For one thing, the authors have a keen eye for mathematical demonstration and a righteous ethic for tax avoidance. But mainly they bring mature reflection and impartial scholarship.

The authors have an admirable talent for saying complicated things in simple ways. They are perhaps at their best in the planning chapters. They point out effortlessly that estate taxes are saved primarily by inter vivos transfers to keep property out of the transferor's estate and by creation of successive estates to keep property out of the transferee's estate. They relate this to the marital deduction, showing how it usually is alternative to successive estates. They then illustrate the possibilities by numerical examples of various dispositions of various estates. Among their conclusions is this: "Maximum estate-gift tax savings are usually achieved by giving away a substantially larger part of the taxpayer's estate during his life than will produce maximum income tax savings."¹⁷

Integration of income tax planning with estate tax planning is a lengthier task than the authors try to complete. They do, however, include a primer of income tax characteristics: progressive rates, annual periods, preferential treatment of capital gain, tax recognition of artificial legal entities, net income base for tax, and types of exclusions. From these they derive cardinal principles of income tax avoidance: distribute income to low brackets, take capital gains rather than ordinary income where possible, avoid realization of income, and exploit deductions.

The chapters on planning naturally repeat much of the material of the expository chapters in Parts I and II, but the emphasis is on construction rather than dissection. The redundancy may be tire-

¹⁶ P. 830. The distinction between tax and estate planning is found in a widely read article, Lowndes, *Introduction to Tax Planning for Estates*, 27 N.C.L. REV. 2 (1948). The article forms the foundation for Chapters 1-3 of Part III of the book.

¹⁷ P. 842.

some for the cover-to-cover reader, but it is clearly desirable for the rushed researcher who wants all his reading in one place.

Because of their meticulous survey, the authors will command great attention to their remarks on tax planning devices. They favor the limited power of appointment as a flexible means of devolution without successive taxes, especially since a beneficiary may take corpus according to a standard as well as under a fixed formula. They display less enthusiasm for the marital deduction than do some other writers; after a careful consideration of the mathematics involved, the authors conclude that the deduction is often used more from habit than from understanding.

Life insurance receives a good recommendation. It provides desirable liquidity at death and is essentially testamentary. By low-gift-tax transfers inter vivos it can be removed from the estate yet kept in force and increased in value. Any reinstatement of the premium payment test is not likely to be retroactive; wise counsellors, the authors conclude, will take quick advantage of its absence.¹⁸

Words of caution on two other matters deserve particular heed from practitioners. Buy-and-sell agreements do not always fix property values for tax purposes. Section 2503(c) (permitting "present interest" trusts for minors) has too many uncertainties to permit exploration for its exact limits.

Each reviewer is privileged to tell his authors what they should have done differently. Here is my list of topics which I think were presented insufficiently if at all. More should have been said about the tactics and techniques of choosing between estate and income tax deduction for administrative expenses.¹⁹ This extensive a book should give some warning about the local fiduciary consequences of estate tax actions, e.g. use of the optional valuation date.²⁰ Widespread interest in executives' deferred compensation contracts warrants analysis of their estate tax consequences, particularly in terms of the contingencies that they contain.²¹ How efficacious is the widely used

¹⁸ P. 838. This interesting observation, like many others, is not accessible to the reader who approaches via the index.

¹⁹ Some mention will be found on p. 337. There are questions about the types of expenses for which a choice is available; see, for example, Rev. Rul. 56-449, 1956 INT. REV. BULL. No. 37, at 13, as corrected by Special Announcement, 1957 INT. REV. BULL., No. 8, at 8, reflecting the Internal Revenue Service's own confusion about the matter. There is a dilemma under Income Tax Regs., §1.642(g)-1 which construes the statement required for income tax deduction as a relinquishment of the right to estate tax deduction, apparently even if the income tax deduction is subsequently disallowed.

²⁰ For some of the questions raised, see BITTKER, FEDERAL INCOME, ESTATE AND GIFT TAXATION 968, n. 6 (1955).

²¹ Cf. Goodman v. Granger, 56-1 U.S.T.C. Para. 11,595 (CCH); 1956 P-H Para. 140,253 (W.D. Pa. 1956), *rev'd*, 4-A P-H 1957 FED. TAX SERV. Para. 140,396 (3d Cir. Apr. 12, 1957).

draftsman's device of including general powers to release powers? There is an income tax deduction for estate tax paid on items of income in respect of a decedent. It would be desirable for the authors to examine this as critically as they have the estate tax credits for prior gift taxes, prior estate taxes and foreign death taxes. Like all educators and most practitioners in the field, the authors must feel the need for coordination of the income, estate and gift tax statutes.²² They have not campaigned directly for this in their book, but perhaps they may be forgiven in view of the vast energy and intelligence already lavished on this worthy project without much success.

One last encomium is due Professors Lowndes and Kramer. By writing gracefully as well as soundly in most places, they show that clumsiness is merely characteristic, not essential, for legal prose.

Finally, a few objections need to be registered. (1) The price of the volume puts it beyond the reach of many general practitioners and virtually all students. (2) The sleeve on the back cover hints broadly that pocket parts will be forthcoming. The sleeve is too delicate and the binding too tight to accommodate even a commentary on the Proposed Regulations, much less periodic reviews of other aspects of the law. (3) The index is, of course, not as detailed or complete as it should be. The table of cases is infuriating. Its references are not to pages, but to Parts, Chapters and Sections; Sections are newly numbered in each of 45 Chapters, and Chapters are newly numbered in each of three Parts, and only page designations appear in the margins. This means that the seeker after wisdom on a particular case must look from the case table to the table of contents, then to the first page of the section cited, and, finally, through the text and notes of the entire section. The frequent cross references require the same irritating process.

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²² This is implicit in the authors' ingenious but labored effort to classify the three taxes as mutually inclusive or exclusive in respect of incomplete transfers; see pp. 688-89, 724-35.

MATRIMONIAL PROPERTY LAW, UNIVERSITY OF TORONTO SCHOOL OF LAW COMPARATIVE LAW SERIES, VOLUME 2. W. FRIEDMANN, ED. Toronto, Ontario: The Carswell Company, Limited, 1955. Pp. v, 472. \$8.50.

COMPARATIVE STUDIES IN COMMUNITY PROPERTY LAW. JAN P. CHARMATZ AND HARRIET S. DAGGETT, ED. Baton Rouge, Louisiana: Louisiana State University Press, 1955. Pp. iv, 190. \$6.00.

CASES ON COMMUNITY PROPERTY, 4TH ED. BY WILLIAM E. BURBY. St. Paul, Minnesota: West Publishing Co., 1955. Pp. xviii, 342. \$8.00.

TEXAS CASES AND MATERIALS ON THE LAW OF MARITAL RIGHTS. BY WILLIAM O. HUIE. St. Paul, Minnesota: West Publishing Co., 1955. Pp. xxi, 781. \$12.00.

Any student or practitioner in the field of matrimonial property law, as well as any legislator who may be called on to change the prevailing rules in that field, should find the work of Professor Friedmann and his contributors immensely valuable. It is a collection of eleven essays on the matrimonial property systems of (i) France, Louisiana, New Mexico and the southwestern United States, Quebec, South Africa and the Soviet Union, exemplifying various sorts of community property regimes,¹ (ii) England, New York and the common law provinces of Canada, as examples of the modern common law separate property systems, and (iii) Germany (a synthesis of the Reform Bill of 1953 not yet enacted)² and Sweden, as representatives of intermediate systems. To all this is appended a comparative analysis by the editor. Some of the essays on the law of particular jurisdictions are themselves comparative studies in part and some give space to discussion of suggested reforms; the rest are purely summaries. But all are very competently done.

Certain reforms are discussed with respect to the laws of Louisiana, New Mexico, France and Germany. Those of the German Reform Bill, which would take Germany out of the community property orbit, are criticized in turn by the editor.³ The French have been less enamoured of changes which, though proposed in the name of the equality of the sexes, are in some degree contrary to the principle of

¹ The Texas reader will be a little disappointed that there is no essay on the law of one of the Hispanic-American states.

² See Mosheim, *The Legal Effect of Equal Marital Rights for Women in Germany*, 2 INT'L & COMP. L. Q. 430 (1953); N. Y. Times, April 1, 1953, p. 36, col. 6; Dec. 13, 1953, p. 11, col. 1; and Dec. 19, 1953, p. 2, col. 6.

unity of the family. The editor's view is that a system on the lines of Texas matrimonial property law—community of acquests with certain property subject to individual control of the spouses—is ideal from the point of view of “equality between the spouses” and “the partnership idea . . . of marriage.” Professor Kahn-Freund sensibly points out that the doctrine of equality of the sexes does not necessarily demand separation of property.

The ineptitude of the common law in dealing with the law of matrimonial property is in part explained, as Professor Kahn-Freund says, by the fact that English legal language has never had an equivalent for the French *regime matrimonial* or the German *Gueterstand* and therefore no notion of this as a separate concept of rules and institutions. The extremes of separation of property and equality of the spouses attained in New York would unsettle any community property lawyer. Indeed a lawyer of the Soviet Union, where community concepts have become more pronounced in recent years, might find them slightly revolutionary. But, as Professor Tucker Dean points out, New Yorkers are generally quite satisfied with their system of pronounced equality of the spouses, though in the Orwellian sense the wife may at times be “more equal” than the husband. On the other hand, those common lawyers who are willing to acknowledge the juridical nature of the community property systems—at least as a basis for argument—would be horrified to learn that in New Mexico and Nevada a married woman has no power of testamentary disposition of a share of the general community property,⁴ though those common lawyers have perhaps forgotten that at common law a married woman might make a will only with her husband's consent, which was subject to revocation after her death. But having lived in both community and separate property jurisdictions, the writer feels that a lawyer's belief—indeed addiction—to either system is a matter of environment and training, a cultural habit of mind. It is all but impossible to explain community property doctrine to a confirmed common lawyer, for one is immediately met by a mental block that is often expressed, “But the wife doesn't deserve any interest in the property. It isn't hers.” At that point one might as well leave off trying to make a convincing argument to the con-

³ For a comparison of the French, Texas and German (at least prior to April 1, 1953) law, see Purcell, *A Comparison of the Community Property Systems of France, Germany, and Texas*, 34 TEXAS L. REV. 1065 (1956).

⁴ The still incredulous will please see N. M. STAT. ANN. § 29-1-8 (1953); NEV. COMP. LAWS § 3395.01 (Supp. 1941).

⁵ See Married Women's Property Act, 1882, 45 & 46 VICT. c. 75, § 17; and *Bendall v. McWhirter*, [1952] 2 Q.B. 466, *per* Denning, L. J.

trary. It is interesting to note in this context that in England modern legislation has had the effect in all except the largest estates of giving a community-property treatment of the estate in behalf of the surviving spouse in case of dissolution of the marriage by death, and judicial interpretation has had the same effect in other instances.⁵

Two striking instances of Texas' being out-of-step with both the common law and community property jurisdictions must be noted. Texas is alone among American community property states in failing to grant permanent alimony.⁶ This state of the law is sometime popularly explained as an aspect of community property doctrine, but the true explanation would seem to be that the Texas statute empowers the divorce court to order "a division of the estate of the parties in such a way as the court shall deem just and right"⁷ and the fact that the Texas law alludes to alimony only in the sense of alimony pendente lite.⁸ Secondly, among all community property jurisdictions, Texas alone affords no means of choosing a matrimonial property regime other than the single regime prescribed by the state's Constitution.⁹ As M. Ancel points out, much of the flexibility of the French system is accomplished by the availability of alternative regimes which may be instituted by antenuptial agreement. It is of further interest to Texans that Professor Hazzard notes in his analysis of the law of Soviet Russia that "lottery winnings on a state bond owned by one of the spouses belong to the spouse in whose name the bond is registered" although such bonds are usually purchased from wages that are community property. This view may be some consolation to those who have criticized the contrary conclusion in *Dixon v. Sanderson*.¹⁰ Professor Hazzard also observes that the matrimonial

⁵ The law of Delaware is, however, somewhat similar to the law of Texas. DEL. CODE ANN. 13 § 1531. Only two other American states fail to award permanent alimony to the wife; they are North Carolina and Pennsylvania. See *Feldman v. Feldman*, 23 N.C. 731, 73 S.E.2d 865 (1953), and *Commonwealth v. Scholl*, 156 Pa. Super. 136, 39 A.2d 719 (1944), where it was pointed out that permanent alimony is awarded only to an *insane* wife in Pennsylvania.

⁷ TEX. REV. CIV. STAT. ANN. art. 4638 (1951). See *Pape v. Pape*, 35 S.W. 479 (Tex. Civ. App. 1896) *error dism.* Article 4638 is derived from Section 4 of the Act of January 6, 1841. 2 GAMMEL'S LAWS OF TEXAS 485. Previously, permanent alimony was apparently available under Section 2 of the Act of December 18, 1837. 1 GAMMEL'S LAWS OF TEXAS 1437; *Cunningham v. Cunningham*, 120 Tex. 491, 40 S.W.2d 47 (1931).

⁸ TEX. REV. CIV. STAT. ANN. art. 4637 (1951).

⁹ In spite of Articles 4610-4612, TEX. REV. CIV. STAT. ANN. (1951); *Gorman v. Gause*, 56 S.W.2d 855 (Tex. Comm. App. 1933). See also *McFadden v. McFadden*, 213 S.W.2d 71 (Tex. Civ. App. 1948) *mand. overr.*; *Hartman v. Hartman*, 217 S.W.2d 872 (Tex. Civ. App. 1949) *error ref. n.r.e.*

¹⁰ 72 Tex. 359, 10 S.W. 535 (1888). One is also reminded of the United States Supreme Court's treatment of the proceeds of a National Service Life Insurance policy, the premiums of which were paid out of community funds. *Wissner v. Wissner*, 338 U.S. 655

property law of the Soviet Union is now being developed along common law lines, that is, by judicial interpretation and expansion.

In the Charmatz and Daggett book, where the law of a smaller geographical area is under consideration (the community property law of the United States), the standard of the product is regrettably very much lower. Whereas there is also an analysis of proposals for French law reform, there is no comment whatever on the law of Puerto Rico. The title is somewhat misleading. None of the essays can be called a "comparative study"¹¹; comparison is left to the reader. While some of these essays give good comprehensive summaries of the law of a particular jurisdiction,¹² others consider very specialized topics of the law of the state. Professor Charmatz in his *Foreword* excuses this failing by pointing out that general monographs are elsewhere available. But it would have been most helpful to have had a collection of general summaries in one volume. All of the essays in the Charmatz and Daggett book first appeared in the *Louisiana Law Review*. It is regretted that the editorial care of that review was not exercised in the preparation of this volume. There are, for example, four misspelled words on the upper half of page 145 and two in an even smaller area on page 143. The index is also most inadequate, but even so a practitioner in the field will find this volume useful.

Professor Burby's collection of cases is understandably directed toward the law of California and the surrounding community property states that to a great extent follow her lead. Texas cases are not numerous. Professor Huie's collection of cases and statutes (of which there is, most regrettably, no table) is clearly designed for Texas users only. Though confined principally to Texas law, the scope of Professor Huie's work is larger, including marriage, divorce and homestead law. It is unfortunate, it is submitted, that more materials concerning custody and support were not included. The volume also lacks mention of the impact of the various forms of social security on the law of matrimonial property. Each volume contains commentaries by its editor which are very useful. The indices of both case-

(1950). The Court held that the proceeds were payable wholly to the husband's named beneficiary in excluding a claim to one-half of the proceeds by the wife. One suspects that the majority opinion was largely aimed at administrative convenience of the Veterans' Administration.

¹¹ With the possible exception of Dean Lyon's essay on the law of Arizona. In his study of the rights of creditors against property of the spouses in Idaho, Professor Brocklebank offers some most informative tables of liability. Tables comparing the law of the various states would have been very interesting indeed.

¹² Notably Professor Huie's excellent essay on the Texas Law, which in many respects brings up to date his essay on the same subject in 13 *VERNON'S ANN. TEX. CIV. STATS. VII* (1951) which is also available as a separate publication, *HUIE, THE COMMUNITY PROPERTY LAW OF TEXAS*. Kansas City, Missouri: Vernon Law Book Co., 1951. \$.50.

books could be usefully expanded; the less said about the double columns of text and paucity of margins, the better. In the heading of each case the publisher has the disconcerting practice of putting its citation before the official one. This practice is not followed in the commentaries, however. Professor Burby's book is in its fourth edition and is well arranged. Though this is the first edition of Professor Huie's book in this form, it is the product of long preparation and use in mimeographed form. The result is a masterpiece, which has been given the acid test of successful classroom use. Both books would be a useful addition to the library of a lawyer practicing in the field of matrimonial property. S.M.U. students have paid Professor Huie's book the highest compliment within their power to bestow. An unusually small percentage of the books were sold back to the college bookstores at the end of the term during which the book was used.

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