

St. John's Law Review

Volume 12
Number 1 *Volume 12, November 1937, Number*
1

Article 35

Essays in Political Science (Book Review)

Edward J. O'Toole

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

in the law elucidated, but the author points out the possibility of effecting tax savings through a judicious application of the installment sales provisions.

Considering the simplicity of the presentation throughout the book, it was rather surprising to read the author's labored explanation of the carry over of credit for dividends paid in minimizing the surtax on undistributed income. The principles are analogous to the carry over of net losses in prior revenue acts and could have been presented more simply, unless the author was slyly poking fun at our tax legislators.

In discussing the surtax on undistributed profits⁶ the author "predicts a very short and turbulent life for it." Turbulence there has been aplenty and most likely Congress will make the life of this new tax a short one.

In a book intended to make a popular appeal rather than a scholarly one, it is to be expected that inaccuracies of language, usage of words (such as the use of "several" for "many"),⁷ and English construction ("whom" for "who")⁸ will creep in. With the law constantly being changed by court decisions, it would be more helpful to tax practitioners if citations indicated the year of the decision. But one cannot always be over-sensitive, and these things fade quickly into the background in the light of a splendid popular presentation of the theory, practise and procedure in Federal Income, Gift, and Estate Tax matters. The book contains a general index and a case index, as well as an appendix consisting of 49 pages of problems and answers on income and deductions, basis for computing gain or loss, and estate tax questions.

BENJAMIN HARROW.*

ESSAYS IN POLITICAL SCIENCE. Edited by John Mabry Mathews and James Hart. Baltimore: The Johns Hopkins Press, 1937, pp. viii, 364.

In honor of the many achievements of Professor Westel Woodbury Willoughby in the field of political science, several of his former students, his distinguished brother, William Franklin Willoughby, and a few admirers have written a series of essays which have been published in this volume. The introductory essay by James W. Garner is a brilliant evaluation of the contributions of Professor Willoughby to political science. The author appropriately refers to the groundwork in this science which was done by Woodrow Wilson as Professor of Jurisprudence and Political Economy at Princeton and by Professor Burgess in the "School of Political Science" established in 1880 at Columbia University. But, as is pointed out in the essay, political science, as a study divorced from constitutional law, jurisprudence, and administrative law did not gain a foothold in this country until Westel W. Willoughby, a "reader in political science" at Johns Hopkins University, published in 1896 his treatise on "The Nature of the State". From that time on, he has been recognized as

⁶ P. 187.

⁷ P. 503.

⁸ P. 503.

* Professor of Law, St. John's University School of Law.

one of the outstanding scholars in political science and has broadened and illuminated its horizon by the volume and brilliance of his writings. Ten pages of this volume are required merely to list his published writings. The present tribute to this man who has labored so long and so well is timely and most fitting.

Under the heading of "The Scientific Method in Politics and Law" appears an essay by Walter Wheeler Cook entitled "A Scientific Approach to the Study of Law". This subject has been selected for review as typical of the scholarly essays on political science and allied subjects to be found in this volume and as one which should be of special interest to members of the legal profession.

That thing which we call "law" has according to Professor Cook a multitude of meanings. What follows are his conclusions: before a scientific study of law can be made, a meaning of law must be accepted which will serve at least for the purpose and extent of the investigation. "The phenomena can be studied from any one or more of at least four points of view. The first is that of the practicing lawyer who is attempting to forecast as best he may the probable reaction of one or more of the judicial officials to the situation which makes up what the lawyer calls his client's case. A second is that of the judge or judges or similar officials to whom the case is presented for adjudication or adjustment. A third is that of the legal historian, who may wish to write a history of, say, the law of the corporations in the state of Maryland. A fourth is that of the legal investigator, who will wish to know not only what the officials in question have done and are doing, but whether what they do, produces the desired effect on human conduct." Anyone interested in the first line of approach is labeled a "legal engineer," whereas anyone who would pursue the fourth method of inquiry is called by the author a "student of so-called 'pure' science".

Following this declaration of the fields of inquiry, there is the question raised as to whether the "logic so-called" which one would use in an investigation is to be trusted. The inductive process is dismissed because of "limitations of space" and the author plunges into many of the shopworn criticisms of deduction. The truth-giving qualities of deduction are challenged; there is a questioning of the logical law of identity, *i.e.* that a thing is either A or not A ; and there is a reference to Bertrand Russell as authority for this challenge: "Consider the following concrete example suggested by Bertrand Russell: In the village of V there lives a barber B . Now this barber shaves all those and only those who live in the village and do not shave themselves. The question is, Does the barber shave himself? If the answer is 'yes', then the hypothesis that he shaves only those who do not shave themselves is violated; if the answer is 'no', then the hypothesis is equally violated, for then he does not shave all those who live in the village and who do not shave themselves."

The attack on deduction proceeds in a manner which suggests the strategy if not the influence of Morris R. Cohen.¹ It is orderly, rational and significantly free from the bitterness and emotionalism that permeates a later attack by Jerome Frank.² From the reviewer's point of view, the most illumi-

¹ MORRIS R. COHEN, *LAW AND THE SOCIAL ORDER* (1933) 184-197.

² Prashker, *Book Review* (1934) 9 *ST. JOHN'S L. REV.* 285.

nating criticism on deduction is made by Cook in his discussion of the creation and workability of generalizations. He argues that all abstractions of similarity from two or more external objects must necessarily ignore the differences which these objects have and that our deductions from this generality "can never be more than tentative or provisional." Furthermore "we have no way of knowing that the differences which we have neglected are irrelevant." This striking, yet rational view is deserving of wide publicity. Were it more fully understood by a larger number of our people, it would seem that much of our loss of faith in the logical process could be salvaged. Man has always sought and is now seeking a formula for the good life. Strangely enough, he has never fully understood the weaknesses of that by which he lives. When certain laws fail, those who would destroy our society, capitalize on the ignorance of the multitude, and try to undermine their respect for law in general. What is needed is a more general understanding as to the average workability of our legal formulae plus the frank admission of their fallibility in many instances. Likewise, as the courts become more conscious of the sources of legal generalities, there will be less ruthless application of such generalities to instances which might consistently and logically be regarded as exceptions.

The "false assumption or hypothesis", a favorite topic of Professor Cook and other legal scientists, is not neglected in this essay. His view that many of our general principles emanate from a false premise is outlined in his discussion of the Langdell method of teaching law. He states that this method was founded on two questionable postulates: "(1) It is relatively easy to formulate clearly expressed propositions, *i.e.*, propositions expressed in terms which are free from ambiguity when applied to the external world. (2) It is relatively easy to formulate propositions which are not only clearly expressed but also actually do conform to experience." "The moment," says Cook, "these propositions are examined in the light of recent developments in the scientific world it is seen that neither can be defended: to do either of the things mentioned is not easy but enormously difficult, if not impossible." If we arrive at the point where we assume the assumptions of Cook about the Langdell method, there is no logical answer to his indictment. But, is it not our experience that these two postulates form a workable and in the vast majority of cases a satisfactory method of regulating the course of human affairs? With all their shortcomings, they must stand until a better choice can be discovered. Another, if not better choice is suggested, in the essay, *i.e.*, to adopt the point of view of pure science in the study of law. This is a splendid suggestion for legal scholars and philosophers intent on discovery, but hardly by itself a satisfactory undergraduate training for those who have to deal with the body of the law as it is understood and interpreted.

Throughout the essay the reader is impressed with the scientific attitude of the author toward the law and with his frank skepticism of legal universals. His insistence on a relentless check-up on our assumptions and generalities is a real inspiration to the legal profession to carry on in an everlasting search for what he so aptly describes as "pay dirt".

EDWARD J. O'TOOLE.*

* Professor of Law, St. John's University School of Law.