

BOOK REVIEWS

CITIZENSHIP. By Charles Hartshorn Maxson. New York: Oxford University Press, 1930. Pp. viii, 483.

This is a compendium prepared from lectures for college students on American citizenship as a status and on the constitutional privileges and immunities of citizens and other inhabitants of the United States. It thus combines a discussion of the law of citizenship, naturalization, and expatriation with the constitutional law of the first eight Amendments and the 14th, taking in under the latter a discussion of the police power, eminent domain, zoning, and, even beyond, the so-called federal police power—constitutional law as it affects the individual.

One is inclined to be alarmed at the statement in the preface that "the author does not expect the student or reader to agree with him always, for he sometimes is not in agreement with American doctrine, but presents the world doctrine instead. But he believes mightily in law, a growing thing, not static, and in its enforcement. He believes in property and insists upon its protection. He believes in human beings and sees a vision of their progress." The author correctly speaks of the Expatriation Act of 1868 as sophomoric, so that he seems able to recognize rotarian philosophy. The book, while occasionally racy and journalistic, is more solid than the preface might indicate. Fortunately, "world doctrine", whatever that is, seems to have been neglected. Dealing with so vast a body of material, political and legal, the author has culled the more important facts and presents them succinctly under topical heads. He is on treacherous ground when he suggests (p. 13), "When an American goes abroad on a legal errand, he should know that a hundred million are back of him to give him and his property protection." This reminds one of President Coolidge's remark that the property of a citizen abroad is a part of the national domain. It is dangerous and misleading doctrine, because it is inaccurate and, in most of its implications, false.

Twice after the *Slaughter-House Case*, in 1874¹ and in 1884,² the Supreme Court gave utterance to *dicta* that a child born in the United States of foreign parents was not a citizen; and lawyers doubtless so advised their clients, until the Supreme Court clearly decided the issue to the contrary in 1898 in the *Wong Kim Ark Case*. The conflicting cases on pages 76-77 are partly explainable by the fact that between 1860 and 1907 the Department of State itself exhibited considerable confusion between citizenship, the right to protection and the right to a passport. It is believed that the Department of State does now, contrary to the text (p. 83), admit the heritability of citizenship through an unmarried American mother abroad. In 32 Opinions of the Attorney General 162 (1920), further light is thrown on the effect of legitimation on the citizenship of children born out of wedlock to an American father abroad. The author does not appear to mention the conflicting decisions in the matter of the effort to cancel the naturalization certificates of Hindus after the *Thind* case (p. 96). The statement of Secretary Fish in 1873 (p. 109) that American women who married foreigners and resided abroad with their husbands lose their American citizenship, comes after a sentence, reading, "If then to this act of voluntary submission of himself to the sovereignty of another power *he added a formal renunciation of American citizenship*", expatriation would seem to follow; it is

¹ *Minor v. Happersett*, 21 Wall. 162, 167 (U. S. 1874).

² *Elk v. Wilkins*, 112 U. S. 94, 102, 5 Sup. Ct. 45 (1884).

hard to conceive that mere marriage and removal could be regarded as a "formal renunciation of American citizenship", so that the conclusion as to married women is, therefore, a *non-sequitur* and is, indeed, in conflict with Secretary Fish's own view, expressed in 1871 and on later occasions, that the Act of 1855 applied only to foreign women marrying American citizens, and not to American women marrying foreigners,³ and cited with approval by subsequent Secretaries of State. Aside from the case of Nellie Grant Sartoris, whom Congress readmitted to citizenship after the death of her British husband—a circumstance explainable on particular grounds—the great weight of authority, especially in the light of the subsequent action of Congress on July 3, 1930, and March 3, 1931 (after this book was closed), indicates that a native American woman marrying a foreigner before 1907, even though residing abroad, did not lose her American citizenship thereby. The information is not always up-to-date (p. 143). The Departmental Circular of July 26, 1910, expressly holds that mere long residence abroad is not expatriation, and that whether or not protection is lost depends upon the purpose and occasion of the foreign residence. There are at least three other grounds than those mentioned (p. 144) for overcoming the presumption of expatriation. The author may not have seen the Departmental Circular Instructions of 1925.

On the whole, this book is a useful companion to F. A. Cleveland's textbook on American Citizenship.

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THE INNS OF COURT AND EARLY ENGLISH DRAMA. By A. Wigfall Green. Yale University Press, New Haven, 1931. Pp. xii, 199.

Exquisitely composed, but more important for its suggestiveness than for comprehensiveness, this beautifully printed book supplies a long-needed chapter on one phase of pre-Shakesperean drama; the contribution made by the four English Inns of Court to the development of the masque and the emergent classical forms of tragedy and comedy. Within its limits, strictly imposed, it is precise and accurate (qualities which appeal to the scholar) while its choice and fastidious diction and genial tone make it especially attractive to general readers of cultivated and leisurely tastes. Because it is an enlightening brochure on the social and recreational aspects of English lawyers during one of the most alluring periods in the history of British law, it has a professional appeal to modern lawyers.

A touch or two of philosophy relates it to that humanistic restoral of the study of law for which Dean Pound has been an apostle. Dean Pound's preface completes the arc suggested by the drift of the book: "The Middle Ages, the era of relational organization of society, became significant, not merely as showing us institutions in embryo, as we used to think, but as showing us a society in many ways analogous to what seems to be developing in a new economic and social order." In Dr. Green's text, what lawyer can fail to rise to that limited height of excitement of which lawyers are capable when he reads these words: "The law has ever been the shadow of man's philosophy. As philosophy changes, its shadow, the law, is reflected behind it; sometimes, of course, the servile shadow assumes such grotesque shapes that it seems to be caricaturing its master. But real changes in law can be accomplished only by mutation in the concepts of life. As man introduces new gods into the state, his law tends to conform. Man's religion, then, underlies his law." As one reads these and similar paragraphs, there rises in his mind's eye, the outlines of

³ 3 MOORE'S DIGEST (1906) 450.