

BOOK REVIEWS

A History of French Private Law. By Jean Brissaud, late Professor of Legal History in the University of Toulouse. Translated from the second French Edition by Rapelje Howell of the New York Bar. With Introductions by W. S. Holdsworth, Reader in English Law, St. John's College, Oxford, and John H. Wigmore, Professor of Law, Northwestern University. The Continental Legal Series, III, Little, Brown & Co. Boston, 1912. pp. xlvii, 921.

Great praise should be given the Editorial Committee of the Association of American Law Schools for making available in English Professor Brissaud's brilliant masterpiece of legal history. And it is good news that his entire history of French law, public as well as private, will ultimately be published in English; for there is no work in any language which surpasses it in richness of material and scope of historical knowledge.

Not only is Brissaud's breadth of learning most cosmopolitan, but it is displayed with true Gallic lucidity, conciseness, felicity of illustration, and charm of style.

He reveals, as perhaps no one has so successfully done since Savigny, the profound necessity and value of legal history. He furnishes abundant evidence that the office of historical research in law is what Maitland defined it, "as that of explaining, and therefore lightening the pressure that the past must exercise upon the present and the present upon the future".

No American lawyer who deeply loves his profession can read Brissaud's monumental work without a sigh of regret that the history of our own law is not yet written. There is a dearth of Anglo-American legal histories. We have only portions, like Pollock's and Maitland's and Holdsworth's history, and some monographs. Anglo-American legal history in its entirety has yet to be written, and can never be written as the history of French or German law has been written, until the isolation of our own law has been transformed into full connection with the world-current of jurisprudence. In other words American law must cease to

be provincial and must become cosmopolitan. The revivifying influence of Roman law—now rapidly increasing in America—cannot fail to expedite this transformation.

To the legal historian breadth of learning is essential. As Dr. Holdsworth says in his excellent *Introduction*, "The writer who would tell the tale of the legal development of any of the States of Western Europe must be able to compare and to contrast." Brissaud, as Prof. Wigmore points out in his *Editorial Prefatory Note*, makes a "catholic and cosmopolitan use of every source of authority wherever found". There is nothing provincial in Brissaud. In his treatment of the various topics of private law Brissaud does not confine himself exclusively to French sources: classical and Justinianic Roman law, medieval Roman law, Canon law, legal authorities from Italian, German, Austrian, Swiss, Dutch, and even English sources receive consideration.

Right here is Brissaud's work especially valuable to the student of Anglo-American law, for Brissaud frequently notices—often at length—features and rules of our own law as to personal and real property, contracts, wills and domestic relations.

Brissaud's method of writing legal history has been eminently successful in results. He employs the "vertical" or "topical" plan of separately tracing the development of each existing institution from early to modern times.

The Editorial Committee of the Association of American Law Schools took an unwarranted liberty with the text of Brissaud, when they prefixed as a preliminary chapter to this English translation of his private law history a chapter which in the French original served as an introduction to Brissaud's history of public law; such action is very censurable as evidencing a great lack of respect for an author's judgment in arranging his own book and material.

Mr. Howell, the translator, should be commended for his excellent work. His English version follows the French with scrupulous exactitude. It is also typographically a close counterpart of the French original.

The valuable map of the "Customary law in old France", which accompanies the present English translation, is taken from another

part of Brissaud's work, "The Sources of French Law" (not yet translated). Voltaire's gibe that in travelling through France one changed laws oftener than he did horses can be substantiated by a glance at this map. At one time prior to the Code Napoleon some 300 customs (*coutumes*) prevailed in France. But the fact that all this chaos of law was at last transformed into *one* uniform and *codified* law for all France should impart strength and encouragement to the advocates of the movement for one single uniform and codified private law for the United States—a gigantic but not impossible task.

C. P. S.

The Essentials of International Public Law. By Amos S. Hershey, Ph.D., Professor of Political Science and International Law in Indiana University. New York. The Macmillan Co. 1912. \$3.00 net. pp. vi, 558.

The modest title of this work scarcely prepares the reader for the singularly complete treatment of a great subject contained in its closely-packed pages. By means of a carefully carried out plan of relegating illustrative and explanatory matter to a series of voluminous notes, the author has admirably succeeded in the preparation of a text which is, in itself, a trustworthy statement of present-day international principles of action, while a student finds at the bottom of each page, as well as in the Table of Cases and List of Authorities placed at the beginning of the book, a guide to detailed study quite sufficient for the most exacting demands of the class-room or of private study. Such a plan necessarily excludes appendices which are often undeniably useful to have readily at hand, but which could not have been given here without an undue expansion of the volume's size. Some omissions of a few words in explanation of cited cases are, perhaps, inevitable in a book whose scope is distinctly limited. We miss, too, some familiar friends, such as *de Langchamps Case* (1 Dallas, 111), *Talbot v. Seeman* (1 Cranch, 1, etc.), *Triquet v. Bath* (3 Burrow, 1478), and in the difficult subject of *Real Unions* (pp. 102-103) something might be gained by a reference to Rivier, whose definition is singularly clear. But these are minor defects and cannot detract from the work's pronounced capacity for usefulness. Prof. Hershey is already favorably known to many through his

volume on The International Law and Diplomacy of the Russo-Japanese War, as well as articles in the *American Journal of International Law* on the Calvo and Diago doctrines. "The Essentials" will add to his reputation and make for him many new friends.

G. E. S.

The Inheritance Tax Law; Containing All American Decisions and Existing Statutes. By Arthur W. Blakemore, of the Boston Bar, and Hugh Bancroft, formerly District Attorney, Northern District of Massachusetts. Boston. The Boston Book Co. 1912. pp. 1376.

Inheritance taxes, though imposed by the Emperor Augustus in ancient Rome, and even by the Egyptians in the seventh century before Christ, are a comparatively recent development in our country. Pennsylvania in 1826, so our authors tell us, was the first of our States to impose such a tax; while there was no general movement in this direction until about 1891, when Connecticut and Massachusetts, among others, passed their first succession tax statutes; and many of our States have yet to adopt this most commendable method of paying our debts to our government. Hence, the authorities on this subject are few, and there is room for a careful review, like the volume under consideration, of just what has been accomplished by courts and legislatures in creating a law governing inheritance taxation. The authors do not attempt to state what the law should be, or even to formulate a comprehensive system of correlated parts and expound that as the present law. That is left to some future writer, but the present work accomplishes well the pioneer task of setting forth, as our authors tell us, "all the American decisions and existing statutes". Consequently, when read as a treatise on the law it is a little confusing, for cases seem to come tumbling one after the other in wild abandon. But as a work of reference, especially to the probate lawyer, it is of well-nigh invaluable assistance, for here he has all the material on the entire subject at his very fingertips. And it is designed, as the preface says, not only for the lawyer, but also for the banker and the investor. To this end are printed all the existing statutes of the States, tables of the more important corporations, and other matter of material aid to lawyers and laymen, among which a chapter on "Methods of Avoiding the Tax" must not be overlooked.

The first part of the book contains a general treatise on the subject, while the second part, which comprises three-fourths of the whole volume, contains the statutes annotated of each State. The history of each State statute is traced from its original form down to the law as it stands after the legislation of 1911, together with the judicial decisions thereon. This part is most valuable, for one discovers here at hand without the trouble and expense of an extended search all the law of a particular State on the subject. The book is printed in an attractive form with varied type; but it may be questioned whether the plan of placing the notes after each section instead of at the foot of the page is not confusing; and one may search in vain for a table of the cases cited. An excellent index adds materially to the value of the book. We may safely predict that its usefulness as a saver of time and labor in a realm which is becoming of more importance every year will make this volume an important addition to the lawyer's library.

C. E. C.

A Short History of English Law from the Earliest Times to the End of the Year 1911. By Edward Jenks, M.A., B.C.L. Little, Brown and Company. Boston. 8 vo., pp. 390.

Mental recognition has been accorded to the lasting effects of Pollock and Maitland in their interpretation of the history of English law. Others before them have entered the same field with varying degrees of success and there is consequently no scarcity of works which aim to exhaust the material of English legal history on a basis of philosophical research.

The complex details of English law are quite enough to prove serious obstacles to those writers who may proceed without limitation. But the difficulties of the task are quite obviously heightened when it is necessary to place the story of legal progress within a restricted compass. This has been done with unquestioned success by Professor Jenks.

The book possesses the rather uncommon quality of being concise and readable, without slighting the paramount necessity for scientific accuracy in explaining the technicalities of the law's development. The student will find particular assistance in the section dealing with the intention and ultimate effect of the

Statute of Uses, and a clearness of expression generally on intricate points that prove baffling to the beginner.

Four periods are chosen for the purposes of arrangement, the Conquest, the reign of Edward I, and the Restoration of Charles II, the final period being devoted to modern development and reform.

P. R. B.

A Comparative Study of the Law of Corporations. By Arthur K. Kulin, Ph.D., LL.B., Columbia University. Longmans, Green and Company, Agents. pp. 173.

The historical development surrounding the theory of corporate existence is certainly a field from which stimulating analogies may be found for modern application. The vital importance of the corporate element in the complexities of modern life makes a comparative study of its development and adoption of particular interest and value.

This book is intended as a contribution to the work of legislative research now being conducted under the direction of Columbia University. In the opening chapter the author plans the concept of the corporation with the inclination of ancient peoples to idealize into personality groups of persons, or groups of legal rights and obligations. The author takes early issue with the statement contained in a leading work on corporations that "the Roman corporation was much the same as the corporation of modern times". He asserts that the entity idea was not consciously evolved to create new subjects of private ownership, but was, in reality, simply developed as one of the instrumentalities of government.

An important part of the book is devoted to a treatment of the forms of protection afforded to creditors and shareholders in Continental Europe, and also to corporate legislation and reform in England and the United States. On the latter subject the author finds much to commend in the English Companies Act. He declares the English statute particularly efficient and agreeable to modern business tendencies in dealing with the problem of dissolution, giving, as it does, to the creditors and particular stockholders liable for contribution a tangible control over the progress

of liquidation and the protection of assets. In this respect it is urged that the English law might well be a model for future legislative action in the United States.

P. R. B.

A General Survey of Events, Sources, Persons, and Movements in Continental Legal History. By various European authors. Little, Brown & Co., Boston. 1912. pp. li, 754. \$6.00.

The phrasing of this prolix title was apparently adopted because the work is but a partial study of Continental legal history, and wholly excludes that of Slavic, Byzantine, or Hungarian law.

In a thoughtful introduction, Mr. Justice Oliver Wendell Holmes warmly welcomes this new effort made with the particular purpose to show how much American law owes to Continental Europe. That law presented itself, he says, fifty years ago, "as a rag-bag of details," (xlvii). There was no insistence on "the universal change of emphasis that each century brings along. The importance of reported cases was exaggerated. They," he adds, "are apt to be only the small change of legal thought. They represent the compromise of the moment, between tradition and precedent, on the one side, and the free conception of the desirable, on the other."

The scheme of this volume is to piece together, occasionally after some condensation, bits of chapters, and groups of chapters, from different authors, in such manner as to make, in the main, a connected story. It is a mosaic picture. In this way, some of the best things in the best works have been brought together, as, for instance, Maitland's observation, in his Prologue to a History of English Law, that "a world without the Digest would not have been the world that we know," and Baudouin's "*Sine historia caccam esse jurisprudentiam*," (p. 254).

The varying sources to which resort has been had in different ages for ascertaining what has been called Natural Law are well discussed, (178-187, 407), particularly in the chapters taken from Calisse's History of Italian Law; and due emphasis is given to Kant's declaration of the Rights of Man, and that "law is merely the sum of those conditions which insure that the liberty of one man shall not interfere with the exercise of corresponding liberty by another man," (pp. 182, 196).

The genesis of the modern European codes receives particular attention. One of the best summaries of the spirit of those of a hundred years ago is given, in Part V, by Professor Van Hamel of Amsterdam: "No customary, no local law, no judge-made law, was to be recognized; the official codes were to provide for everything. For this ideal the legislators were ready to make two great sacrifices. They would sacrifice the close contact existing between the law system and the national, social life of the country; and they would give up the means of securing a gradual and easy evolution of the law in the future," (p. 476).

A chapter of particular value is that on the Church, abridged from a treatise by the late Professor Brissaud of the University of Toulouse. In discussing the influence of the Church on penology, he dwells on the ecclesiastical theory that criminal punishment is of two kinds: *Poena vindicativa*, an evil inflicted by society, as the servant of God, in the name of God, to restore the supernatural order of things by enforced expiation, and the other, *Poena medecinalis*, or *Censura*, a means of bettering the wrongdoer. The invention of a public prosecutor he credits to the Church of the thirteenth century. The "Holy Inquisition" was the best remembered instance of it, but the principle was that to investigate reports or rumors of criminal conduct, and, if found verified, to proceed against the offender, constituted a public duty (p. 722). This made greatly for the protection of the weak, and the lessening of private feuds.

The modern tendency to legislate for the protection of collective interests is treated as wholly inconsistent with the principles of the French revolution. These were individualistic, even to the extent of refusing liberty of association (p. 297). The State was all-embracing. Now it shares its powers, as of course, with local authorities, and is ready to extend collective franchises to groups of private individuals, with a free hand.

Such a work as this is necessarily fragmentary, and that to which reference has just been made is almost the only mention of the rise of private corporations. Municipal charters receive somewhat more, but still slight consideration (See pp. 159, 222, 327).

The editors have shown good judgment in selecting the material, and the few chapters which are original contributions add much to the cohesiveness and literary finish of the whole.

S. E. B.