

BOOK REVIEWS

American Democracy versus Prussian Marxism. A Study in the Nature and Results of Purposive or Beneficial Government. By Clarence F. Birdseye. New York, Fleming H. Revell Co. 1920. pp. 371.

There is reason for welcoming the critical study of socialism at the present time. What we need especially is a calm inquiry into the forms which the radical movement is most likely to take in this country. The first, however, to rush to the typewriter for our enlightenment is pretty certain to be the frantic patriot who has just discovered that there is a radical movement in our midst. In all probability only the high cost of print paper can stay the flood of books and pamphlets that would summon us to awake and to smite the foreign devil of Social Revolution.

Mr. Birdseye has contributed 351 pages to save America from "Prussian Marxism." His method is to contrast American Democracy, as its excellencies appear revealed in the historical literature from which he has drawn copious notes, with the subversiveness of Marxism as he imagines it to be. His historical chapters are not without interest. Unfortunately they treat of our political institutions only, and the Marxian could argue that the really relevant matter is the development and character of our *economic* system.

When he comes to Marxism our author's method is that of calling names. Marxism is Prussian. The proof is that Karl Marx was born in Prussia and educated in a Prussian university. But why not note that it was before the era of Bismarck and hundred-per-cent Prussian militarism? And that it was in Rhenish Prussia that he was born, a region upon whose social and intellectual life the Prussian Junker had had little influence? Marx's conception of the state, our author continues, was Prussian. But why not tell the reader that Marx was expelled from Prussia because of his agitation against the Prussian political system? Why not look into the sources of Marx's ideas? Such an inquiry would reveal as the important factors in the development of Marx the socialist, (1) French socialism, (2) English political economy and blue books from which during his long exile in London he drew the material for his analysis of the capitalist system, and (3) the aftermath of Hegelian philosophy. Hegelianism is, indeed, something that has been called Prussian. But what Marx embraced was not the Hegelianism of the Right, or of Hegel himself, which at one time almost became the official philosophy of Prussia, but that of the Left, the antithesis of everything held sacred at the Prussian court and by the Prussian church. So much for Marx's Prussianism.

Marxism is denounced by the author as aiming at "establishing through a social revolution, the dictatorship of the lowest class over all other classes." Would it not be fair to point out that the Marxian thinks of the "dictatorship of the proletariat" as something transitional only, and as means to an end, the end being the abolition of classes and class control? And is it fair to deny all idealism to the Marxian socialist? Is it true that there "is a distinct tendency for all socialists to sink to the level of the lowest members"? Does the socialistic proletariat consist of the "lower two-tenths of society, who have been the dead load which the others have been attempting for centuries to lift to a higher level?" And does this class-conscious proletariat include "also the criminals and the very scum of the earth"? Has Mr. Birdseye never attended a socialist meeting and looked about him at the audience?

In the face of many socialist protestations to the contrary, Mr. Birdseye charges all Marxians with advocating "violence and terrorism." Then he calls

upon Congress and the state legislative bodies to pass sweeping laws "forbidding Marxism and its offspring." That would, of course, leave Marxism no means but those of violence. Throughout most of the book, the author gives the impression that our salvation lies in knowledge of the excellence of our political system. But when he calls for a leader with "an Ole Hansen kind of fearlessness" (p. 342) and quotes violent utterances of General Leonard Wood, we are not surprised to be told that Marxism is to be fought by suppression rather than by argument.

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Cases on the Law of Evidence, selected from decisions of English and American Courts. By Edward W. Hinton. St. Paul, West Publishing Co. 1919. pp. xxiii, 1098.

The editor has arranged his material in seven chapters, the first of which deals with the respective functions of the court and the jury; the second with witnesses; the third, fourth, fifth and sixth with various exclusionary rules; and the seventh with the parol evidence rule. As he points out, the cases in the first and seventh chapters have little, if anything, to do with the law of evidence proper, but for the sake of convenience are usually considered in connection with it. The first two groups of decisions in the first chapter develop the distinction between the burden of persuading the jury of the truth of a proposition and the burden of producing sufficient evidence to justify the court in submitting the question to the jury, and show the apportionment of those burdens between the parties, particularly as affected by various pertinent presumptions. The third group treat of judicial notice, and the fourth of the duty of the court to determine questions of fact preliminary to ruling upon the admissibility of offered evidence. The common law with reference to the competency of witnesses and characteristic modern statutory modifications thereof are made clear in the first section of the second chapter. The next section consists of cases demonstrating the rules of preference for attesting witnesses. Privilege is the subject of the third section. The chapter concludes with an excellent selection of decisions showing the rules governing the examination of witnesses and the methods of offering and objecting to evidence. The third chapter is devoted to the hearsay rule and its recognized exceptions; the fourth, to opinion evidence. Chapter five is entitled "Circumstantial Evidence," wherein are printed cases dealing with character evidence, evidence of similar acts, habit, similar occurrences, and like matters, and cases usually classified under the heading of real evidence. The sixth chapter shows the scope and limitations of the best evidence rule. The seventh compiles cases dealing with evidence offered to vary, contradict or avoid a written instrument and extrinsic evidence offered to aid in the construction or application of a written instrument.

The attention of the reviewer is challenged by several outstanding features of the book. First, its arrangement is, in the main, well adapted to enable the student to visualize the problems which confront the practitioner. At the outset he must comprehend the respective functions of the court and jury, and must know the nature and extent of the burdens with which he and opposing counsel will enter the trial. Inasmuch as most evidence is offered through witnesses, he must thoroughly understand the rules governing their competency and their privileges; the methods of producing testimony by direct, cross, and redirect examination; and impeachment and corroboration of witnesses. With these in mind, he will be able to give more intelligent consideration to those rules which permit or require the exclusion of logically relevant evidence for reasons of policy or in deference to precedent. Second, the classification of the cases is in

some respects unorthodox. (a) Admissions and confessions are treated as exceptions to the hearsay rule. Though considered otherwise by Thayer and Wigmore, it seems to the reviewer too clear for argument that they are extrajudicial statements offered for the purpose of proving the truth of the matter asserted, and are properly dealt with as hearsay. (b) The decisions concerning attesting witnesses are grouped with other cases on witnesses and not with those on the proof of writings. (c) The cases dealing with autoptic preference, or real evidence, are collected under the sub-heading "Physical Objects" in the chapter on Circumstantial Evidence. (d) Under the heading, "Spontaneous Exclamations" are printed decisions on declarations as to mental condition and as to physical condition as well as those statements which are made while the declarant is laboring under the stress of a nervous shock so that his reflective faculties are stilled. No doubt the editor would agree that this heading is hardly adequate. It is, of course, quite as satisfactory as the orthodox "res gestae"; but it is submitted that a more detailed classification in this respect would have been better. It is, further, submitted that this portion of the work would have been more helpful and more stimulating, had it contained more cases to demonstrate the distinction between those declarations which are hearsay and those which are not, and more cases upon the pre-testamentary and post-testamentary declarations of testators as to the execution, existence, and contents of wills. Third, the selection of cases appears to have been made with discrimination and great good judgment, so as to provoke and stimulate discussion not only of the exact question involved but also of collateral topics.

There is a complete table of cases and an adequate index, and the footnotes are suggestive and sufficient.

In short, Professor Hinton has made the most usable, helpful, and stimulating collection of cases on Evidence that has yet come to the attention of the reviewer. Those who do not know Mr. Hinton will do well not to take his prefatory note as the measure of the worth of his book. It is far too modest.

E. M. MORGAN.

American Marriage Laws in their Social Aspects. By Fred S. Hall and Elizabeth W. Brooke. New York, Russell Sage Foundation. 1919. pp. 132.

Broken Homes: A Study of Family Desertion and its Social Treatment. By Joanna C. Colcord. New York, Russell Sage Foundation. 1919. pp. 208.

"The student of social problems, who investigates them without preconceived or pet notions, finds again and again that he is brought, at the end of his analysis, face to face with this fact: it is a question of marriage, of the reproduction of the species; of parental responsibility, competency, and duty; in short, of the family." "If we are going to bring interference to bear in the hope of dealing with social evils, our interference will never be effective until it touches marriage and the family." Thus spake old Sumner, thirty years ago, driving as always, to the heart of things. The two little books now under review offer helpful and stimulating light on the practical side of such interference touching marriage and the family.

Miss Colcord's study contains little of technical legal matter. But no lawyer can read her presentation of why men desert, of when and how and how often legal recourse *has effect* to help the evil, of what its effects are and what they are not, without looking at his law of domestic relations with awakened interest and far keener insight than before. Laws are for people; remedial laws are to accomplish results; how can we make them wisely through court or legislature, without such studies as this, of the laws' actual scope and effectiveness in the life they seek to regulate? "Both man and wife feel in their inmost hearts," so long as anything of hope for a soundly rebuilt home remains, "that, no

matter what his offense 'to take him to court' is treason" (p. 53). That is a human fact worth knowing, for those who shape the law. Miss Colcord puts forth an interesting answer to the problem (p. 168).

One particular point should perhaps be mentioned, which struck the reviewer forcibly, in both books—perhaps because it ran squarely contrary to his prior notions—their flat condemnation throughout of the institution of common-law marriage. But in spite of the strength of the points made against that institution, the reviewer is still inclined to question whether the customs and background of large sections of our population—immigrant in the North, negro in the South—do not make it still desirable. Altogether, Miss Colcord's study is alive with interest, keen in analysis, well written, and free, refreshingly free, from that maudlin sentimentality which taints so many books on social problems.

American Marriage Laws partakes too much of the digest to read as well as its companion volume. Although the digesting is not by technicians, it is ably done and will be useful to the lawyer. The earlier portion of the book contains an interesting discussion of the merits and demerits of uniform legislation on marriage, and a comparative summary of the status of the present law, which is of value. The preface tells us that the digest is "preliminary merely to an inquiry into the way the laws on our statute books are actually administered." To the publication of the result of that inquiry, the reviewer looks forward with some eagerness.

K. N. L.

The Law of Arrest. By John G. Hawley. Third Edition. By James A. Scott. Chicago, T. H. Flood & Co. 1919. pp. 92.

This handbook contains a concise and accurate *résumé* of the general principles of the common law, usually denominated the "law of arrest," together with the citation of about two hundred and fifty of the important decisions. Thus the book may serve as a ready reference book to a busy practitioner; but it will doubtless circulate more widely among officers engaged in serving warrants for the arrest of persons charged with criminal offenses, to whom it should become an almost indispensable guide. Regret must be expressed that the editor limited his legal vocabulary to "rights and duties" in describing numerous legal relations which are easily demonstrable to be essentially different, viz., privileges, powers, immunities and their correlatives. Greater precision of expression would certainly have resulted in a clearer exposition of the legal relations, and at the same time have laid bare the rules of law.

Soldier-Lawyer Directory. By R. W. Shackelford, G. B. Zewadski, J. W. Cone. Tampa. 1920. pp. vii, 201.

This directory is the product of enormous labor on the part of the editors in their attempt to build a compilation of the soldier-lawyers which would make possible the exchange of practice between ex-service men; and also form a permanent record of the service rendered by the legal profession during the great war—"in the not distant future . . . the roster of our Country's greatest lawyers, statesmen and men of affairs." The first aim has been quite fully realized as the work includes names from nearly every city and town in the United States and Canada, arranged according to states and localities. In their second purpose, the editors have been only moderately successful as frankly stated: "our work is incomplete . . . many of our letters were returned unclaimed and we decided not to include these names without proof that these men survived . . . a distressingly large percentage of our communications were unanswered." Besides containing the names of the majority of the lawyers who were in the Canadian and United States military service, there is included an Honor Roll of those who "passed behind the veil." The book will doubtless receive a wide circulation among those whose interests it professes to serve.