

BOOK REVIEWS

Bracton De Legibus et Consuetudinibus Angliae. Edited by George E. Woodbine. Volume Two. With a Preface by the Editor. New Haven, Yale University Press; London, Humphrey Milford, Oxford University Press, 1922. pp. xi, 449.

The first volume of this work appeared in 1915. It comprised the apparatus of the Editor and was of minute learning and consummate mastery of the many manuscripts. It gave the learned world its first adequate knowledge of what the manuscripts of Bracton really contain, with the relations between the manuscripts. Now after seven years comes this first half of Bracton's Latin text with the almost incalculable labor of the various readings at the bottoms of the pages.

The general plan of the work is to devote the first volume to the manuscripts, then two volumes to the Latin text alone, and two volumes to the translation. The usual plan followed by the Selden Society and by the Rolls edition of Bracton is to put text and translation on opposite pages. But Bracton without a translation is useless and with a translation the great mass of readers will not consult the Latin, and it is much better to have the translation more usable by placing it in separate volumes, although Mr. Woodbine doubtless would say, as Bracton says as to his own arrangement, that it is *sine praejudicio melioris sententiae*.

A law book that has been awaited through hundreds of years is entitled to something more than perfunctory notice and we shall not apologize for the length of this review. Bracton's *Summa* deserves the adjectives which he applies to *donatio* in the law, it is *magna, celebris, et famosa*. All things considered, Bracton's book is the greatest achievement in the history of English law. Written roughly between 1240 and 1260, with additions later by the author, it would have been at any prior time impossible. It was made in a great age, a time of great rulers, great soldiers, great statesmen, writers, and historians. It was especially a great age in the law. But there was then no English language, only three barbarous dialects, where even a hundred years later "the Mercii that beeth men of myddel Englande understondeth betre the syde longages Northeron and Southeron than Northern and Southern understondeth oither other." All court proceedings were in Latin, but the speech of all people of the better classes was Anglo-French, described a few years later as "*le plus bel et le plus gracious language, et plus noble parler, après latin d' escole, qui soit au monde.*"

This Anglo-French was within fifty years wholly to supersede Latin for all legal purposes except the court roll. This explains why Bracton, although the treatise was reproduced in many manuscripts and although many lawyers had copies, was translated and shortened into Britton's law French, when lawyers had become so ignorant as to think that Bracton's statement as to the Roman *actio de familia herciscunda* (partition of an inheritance) was an action concerning the estate of the Lady of Hertiscombe who had lands in Devonshire. For three hundred years Bracton was forgotten.

In the great expansion of the human spirit in the Renaissance, lawyers benefited probably most of all, and justices like Catline and Saunders (*vide* Plowden *passim*) resuscitated Bracton. Richard Tottell, the prince of law publishers, caused T. N. (otherwise unknown) to print the manuscript. In 1569 the handsome folio, in specially cut, clear Roman type, not the black letter beloved of lawyers, appeared, a wonderful piece of work for the time. T. N. tells

the reader his difficulties with his "*exemplaria*" (MSS.) which, he says, were often the work of men unlearned and ignorant of Latin and in a barbarous age, and not without difficulty and expense too, the book had been gotten out "with the assistance of many good men, some of them illustrious and most highly honored," who freely loaned their *libros* (MSS.). We would give much to know what those manuscripts were and who were the men who assisted. One must have been that fine lawyer Roger Manwood, Lord Chief Baron, who discourses so splendidly in Moore's Reports (not yet translated) and who gave a Bracton manuscript to his son.

Almost a century passed and again an edition of Bracton, smaller and cheaper, was demanded for public consumption in 1640, when the words of Bracton were grimly cited for rectifying the King's misrule, when the royal head rolled from the block. At the beginning of the next century the learned Holt in *Coggs v. Bernard* (1703) 2 Ld. Rayd. 909, to the wonder of his stupid puisnes, vouched Bracton to show the Roman law of bailment to be a part of the law of England. Sir William Jones in his treatise on *Bailments* even restored a lost line in Bracton to account for Bracton's confusion between *mutuum*, bailment for use and consumption, and *commodatum*, bailment for use. But if a man today were to attempt to classify under the Roman heads, a loan of stock for settlement day or a so-called lease of a flock of sheep, he would probably find that Bracton's mistake properly stated the English law. In *Gaines v. Hennen* (1860, U. S.) 24 How. 553, and in *Cope v. Cope* (1891) 137 U. S. 682, 11 Sup. Ct. 222, Bracton could properly have been cited on the law as to adulterine bastards. Even today the rule that good will of a business or brands upon goods can be conveyed only as an appurtenant to property can be traced *in ascendente linea* to Bracton's rule that an advowson can be conveyed only with the land or a part thereof. The reasons given for the present rule are as foolish as Blackstone's reason for wager of law in the action of detinue. A curious misuse of Bracton can be found in *U. S. v. Lee* (1882) 106 U. S. 196, 228, 1 Sup. Ct. 240, 267, in Judge Gray's dissenting opinion. Not less curious is it to know that the true philosophy of law, of its source and of its reasons for existence, after wandering for so many centuries in the wilderness of Bodin, Hobbes, Althusius, Kant, Hegel, and Austin—that true theory which has lately been so well shown in Krabbe's *Modern Theory of the State*—can nowhere be found stated so thoroughly, as in the opening chapters of Bracton and nowhere so well illustrated, as in that development of law prior to the legislation of Edward I, which Bracton so fully understood.

The reign of Blackstone, whose smug optimism is a contrast to Bracton, completely obscured Bracton for many years, until Reeves' *History of English Law* brought him again to the light. At length Sir Travers Twiss for the Rolls series got out an edition marked by every possible fault, where the text, through pure laziness, is an affront, and the translation, through ignorance, is an atrocity. A man, who thinks Bracton's *legittima exceptio* (a plea in abatement or a special plea in bar) is a "legal demurrer" and so translates it, when in fact such a demurrer was unheard of for centuries after Bracton, is irredeemably hopeless. After this travesty on Bracton, a fortunate discovery of the manuscript of Bracton's collection of cases for his treatise, published as *Bracton's Note Book* by the lamented Maitland, and Pollock and Maitland's *History of English Law* prior to Edward I, based almost wholly on Bracton, restored him to his true place.

Maitland, in his Introduction to *Bracton's Note Book*, dwelt upon the necessity for a proper examination of the Bracton manuscripts, and said many true things as to what a proper edition of Bracton would require. After all these years it is astonishing to find that the one task of supreme importance in the history of English law, should be financed by private munificence and

be undertaken by an adequate scholar in our own country. Mr. Woodbine's first volume showed that he had the industry and perseverance for the infinite drudgery, the meticulous care as to minute detail, which we have hitherto ascribed to the dogged patience of the German scholars. We cannot be mistaken in thinking that here is another instance of those coming of late to show that the aegis of legal scholarship will gradually be shifted to this, our native land.

Something should now be said as to Bracton, the man, whom we see by self-revealing touches here and there in his work to be animated by a true love of justice and of his fellow-men, merciful, honest, just, humane. The terrors of the orthodox hell which Bracton invokes against all judges who judge unjustly were a vivid thing to him. When the stirrings of that great age spurred him to the task of stating the English law, the stoutest heart might well have been appalled at its magnitude. Scattered through the great accumulation of court rolls, whose examination could not be finished in a lifetime, the difficulty was where to start with the law. Whatever had been accepted by the *commune sponsione* of the realm was the law. No *lex scriptum*, no enactments, no *corpus juris* existed, but only *quod usus comprobavit*. But these customary laws, asserts Bracton, were being drawn into abuse at the command of greater men, by judges who, assailed by doubts and varying opinions, were deciding according to their own unrestrained discretion rather than by the authority of the laws. "Therefore I, Henry de Bracton, for the purpose of informing the great mass of lesser men, have devoted my mind *ad vetera judicia justorum* (proof positive that he then had made up his collection of old cases of those eminently just and great judges, Pateshull and Raleigh) and by diligent and thorough scrutiny of their rulings, conclusions, and decisions, not without labor by day and toil by night (for he, while his companions slept, was toiling upward in the night) have reduced what I found worthy of note to a compendious compilation to be held in perpetual memory." Thus Bracton became one of the immortals and true it has been of him that

"The light he leaves behind him lies
Upon the paths of men."

It must be apparent that Bracton had a marvelous memory and a mind capacious of retaining legal rules. But as a part of his preparation he first obtained leave to withdraw the many-year-old rolls of Pateshull and Raleigh. He went over them case by case and then put into the hands of copyists the marked passages that he desired excerpted. These excerpts put together now constitute the manuscript which formed a collection of precedents. But such a collection could give him no general theory of jurisprudence or a general classification. This he had to find in the only place it could be found—the Roman law and the toil of hundreds of enlightened lawyers. From over the Alps at Bologna was streaming the light of Irnerius and Azo. Accursius was just about finishing his *Great Gloss*, but Bracton never saw it nor had he seen anything in that line but Azo. It is capable of demonstration from internal evidence that Bracton had nothing but Azo's book until after he had been working a long time. He never saw the *Institutes*. His reference to that part of the *Corpus Juris* is clearly a quotation from Azo. It is also capable of demonstration from internal evidence that Bracton began with a full plan of his book, as Mr. Woodbine shows in his first volume, and wrote steadily through from part to part. It is also capable of demonstration that during the writing, he obtained a copy of the *Roman Code* and a part of the *Roman Digest*. Singularly enough the industry of Mr. Borris Komar in the *Illinois Law Review* has found the list of Bracton's books left to the chapter at Exeter. He had a

Code; he had what is called the *Digestum Vetus*; he had a copy of the *Authenticum*, Justinian's Latin version of the *Novels*, but it is easily inferable from Bracton's chapters on succession that he never read the *Novels* to the one hundred and eighteenth, which would have shown him the original of the English law. His *Digest* was only the *Vetus*, which is so called because there was first brought from Ravenna to Bologna the first part, almost twenty-four books, of the *Digest*, which was called *Vetus*. Then was brought the latter part, called *Novum*, and the intervening part, called *Infortiatum*, was last brought. Bracton had only the *Vetus*, and that later in life.

A comparison of three passages in Bracton, not one of them an addition, will show the gradual growth of his thought. In his early chapter (folio 5b) he says that the King has no equal or superior and hence if wrong he doeth, there is no earthly power to correct him but he must await the judgment of God, who has said, "vengeance is mine, I will repay." But later he says (folio 34) the King may do evil and his justices will fall into the judgment of the living God. The King has a superior, the law, which is his bridle, and his court of earls and barons, the great council of the whole realm, can and ought to bridle him, if he slips his bridle. But by the time Bracton has written to folio 107, he has done much reading. He now knows from his *Digestum Vetus* (1, 4, 1) that the King's power comes from the people, he has read St. Isidore's *Etymologies* on the word King and he says that a King is such only so long as he rules justly. He has read the *Code* and the great *Digna Vox* (1, 4, 4), he has read the comments of the Italian doctors thereon showing the King to be bound by the laws, and now he writes the indignant passage, bitterly arraigning the misrule of the King. We can readily deduce how Bracton wrote his book, how he began only with his Azo for general theory, but it was enough. He perhaps knew the saying "*Chi non ha Azzo, non vada a palazzo*," and "what is not in the gloss, is not in the law."

After Bracton had finished his book so far as it goes, perhaps while he was writing, he made additions to his text in various places. These additions in some manuscripts have become mingled with notes by others, and the task of the editor is firmly to reject what is not Bracton, and at the same time to be absolutely sure that he rejects nothing of Bracton's own. Mr. Woodbine has shown the great differences in manuscripts and the mistake of Maitland is classing the Digby manuscript as the most reliable. In the years of work to come, he can show the errors in Pollock and Maitland's *History*, which arise from mistaking Bracton's meaning. Here we are concerned with the restored purity of the Bracton text. Mr. Woodbine goes upon the manuscripts. The noted places, for instance, of the clause on what property is common, he leaves as Bracton wrote it, and of the clause as to *mutuum* and *commodatum* he leaves the text as Bracton, we think knowingly, desired it to stand. Bracton was too keen and discriminating to make an error that a schoolboy could correct.

The results of Mr. Woodbine's careful work are marvelous. The instances are so many in this volume that mention in detail is impossible. In one case of unusual care as to an *addicio* which will come in the next volume, we believe that a careful consideration of circumstances will show the weight of manuscript authority to be correct. On folio 422b Mr. Woodbine deduces that a part of an *addicio*, "*ut de W. Lungesper*" (as in the case of W. Lungespée) is not by Bracton. (See 1 Woodbine, 421.) When the passage is looked at the internal evidence shows that the *addicio* is by Bracton except those words. He was speaking of the *exceptio* (plea in abatement, although any distinction between abatement and bar was then unknown), that a defendant was a minor. He had stated that this exception does not lie when the claim is in right of the King, and had cited the case *de Wilelmo de Lungespey and*

Elena his wife. William Lungespey (Longsword) was the redoubtable warrior, bastard son of Henry II and perhaps the Fair Rosamond (*rosa mundi non rosa munda*, as the punning epitaph has it). In 1198 in the reign of his half brother, Richard the Lion Hearted, Longsword had married Ela (Isabella not Elena as Bracton thinks), in her own right Countess of Salisbury as heiress of William, Earl of Salisbury. She was then twelve years old, and this case must have been in Richard's or John's reign and is too early for the *Note Book*. The case involved the question whether the great stronghold, the castle of Salisbury and its estate and the Earldom of Salisbury, had reverted to the King as chief lord. The minority of Ela was pleaded but disallowed. An inquisition was made and the King held the castle, but it afterwards, with the dignity, held on the same tenure, went back to Ela. Her husband, *in jure uxoris*, was Earl of Salisbury. Bracton then goes on to cite other instances where the exception of minority does not prevail. Afterwards he added an *addicio* and in it said that an inquisition can be had without prejudice to the minor, as to the extent of the minor's estate, whether in fee or for life or for a term, etc., and some other person, seeing the case as to *William Longsword and Ela his wife* and the case on the next page as to *the younger William Longsword and Idonea his wife*, added "as in the case of W. Lungesper," which does not decide that point, nor would Bracton have so cited it. Mr. Woodbine says: "This passage has certainly come from Bracton; but the reference to W. Lungesper must be rejected."

On folio 28 is an *addicio* showing an important point of law as to a *donatio* by a minor in fraud of creditors, donees, or purchasers, which is rejected by the manuscript authority, and from internal evidence alone is not Bracton's. Mr. Woodbine conservatively says that it "can hardly be accepted as Bracton's" (vol. 1, p. 377). Such passages have misled writers as to Bracton's law and are the best illustration of the necessity for establishing the text. We shall now speak of a few matters in detail.

On folios 41 and 41b is an *addicio* as to which in the multitude of details there must be some mistake. Mr. Woodbine (vol. 1, p. 379) says that the *addicio* is to be divided at the words "*attornatus fuerit*" into two parts. This is certainly an error. The *addicio* cannot be so divided, for the place is in the middle of a sentence. But this error is not carried into the actual text. The *addicio* is shown (vol. 2, p. 128) as not so divided. We agree with Mr. Woodbine in thinking the passage is not by Bracton, but from internal evidence. What seems to have happened is that Bracton wrote an *addicio* (2 Woodbine, 129) after the two lines of poetry on page 128. This *addicio* is clearly by Bracton, as Mr. Woodbine says. Then some one wrote the long confused *addicio* on the margin and it in copying was put in the wrong place, just before a true *addicio* by Bracton. Bracton never wrote such Latin as is found in the *addicio* on page 128.

Sometimes, however, in reliance on manuscripts, *addiciones* seem to be printed in the wrong place. As to the place of *addiciones*, manuscripts will be of little value to fix the exact place. Thus on page 56 (folio 13b) is a passage certainly by Bracton, for the word "*tutor*" alone shows it, where Bracton is stating the rule that a *donatio* can be made to a minor if it be for his advantage, but nothing can be taken from the minor by any act done by or for him. The *addicio* belongs on folio 14b, where minors are being mentioned in connection with the validity of a donation. It has no connection where it is put. So also the *addicio* in Woodbine, page 110, vol. 2, as to homage belongs on page 108 at the end of the paragraph as to a *donatio* for homage and service or without homage. It seems plain that *addiciones* will often be in the wrong place in the manuscripts.

In passing we may note Bracton's definition of duress stated after a case

of that noted swashbuckler Faulks de Breauté. Bracton says (folio 16b): "I must now state what duress is. It is mental trepidation caused by present fear or peril to come, and we ought to have fear actually present, not the anticipation of danger to be incurred, nor that of a foolish and timid man, but such as can overcome a resolute man. The fear ought to be such as contains within itself peril of death or bodily injury," etc. Now there is no doubt that this is pure English law as it is yet law, but Azo on the *Code* (2, 28) states the law just this way. It is plain that such law comes only from the Roman law and no other source. Practically it could be shown, we think, that almost all the substantive law laid down by English courts as it was in Bracton's time, came from the Roman law. The passage shows, however, that Bracton had not the *Code* but Azo, when he wrote the passage. The *addicio* on folio 17b, 18, is another good instance and the law stated as to election of remedies has a strong Roman tinge and is clearly the same as Azo's text.

On page 68, vol. 2, of Woodbine is an instance of something properly added out of the manuscripts to the text as an *addicio*, which is in no former text.

On page 320, vol. 2, of Woodbine, which is on folio 113, is a reference to the *Digest* as to the *lex Julia* on public violence, which seems to show that Bracton had more than the *Vetus*, but a careful examination may show whether Bracton found it in Azo or perhaps in the Canon law. The learned *addiciones* on folios 114 and 114b show that Bracton now certainly had his *Digestum Vetus*.

With the exception of the Abbess of Barking's Rodknights, a socage tenure probably dating from before the Conquest, which shows the picturesque detail of the Knight-riders who are required, by their tenure to ride in attendance upon the Abbess, we reach nothing to indicate a large English population until the treatise on *Pleas of the Crown*. There, in Woodbine, vol. 2, page 328, we find the Anglo-Saxon word "*bane*," meaning the slayer, masquerading as a French feminine noun, "*la bane*." It is our word bane in its old meaning. I do not think Bracton wrote the words.

On page 418 of this volume, the long *addicio* which contains the law of Athelstane, the reference to the laws of Romans, Franks, and English, and the story from a French chronicle belongs, it seems, as the old text gives it, at the end of the chapter on rape. On page 346 we find the English "*hondhabbende and bacherende*," which looks unintelligible enough. It refers to a thief captured with the stolen property as a matter of private jurisdiction, along with *sac* and *soc*, *toll* and *team*, *infangethefe* and *utfangethefe*. It would have been just as well to correct "*bacherende*" to *bacberende*, as it is printed on page 425 and 436, or it may be a misprint. The phrase Bracton gives as equivalent to "*seisatus de latrocinio*," or seized of the thing stolen. What the words actually are, as we have them today, is "handhaving and back-bearing," or, as was later said, "taken with the mainour," or, in our present slang, which is about on a par with the Anglo-Saxon, "pinched with the goods on him." On page 447 (folio 159) is a reference to a case which shows Bracton working on his book as late as 1263. He died probably in 1268.

Generally in regard to the text and the *addiciones* it may be said that Mr. Woodbine exercises a conservative judgment. The marking of them, as in this book, is absolutely necessary, but he has made very sure that nothing that Bracton wrote has been left out of this text. Of the text itself the best judge is Mr. Woodbine himself and he has given anyone, who thinks he can do better, full materials in the variorum readings. This text is final and definitive. It can be changed only by the discovery of Bracton's own actual manuscript and that is so improbable as not to be a possible hypothesis.

The purpose of this review does not justify any examination of interesting questions outside the text.

We know that the second volume of text will be as sound work as this first one. Then will come the *corona operis*, the translation with its notes relating Bracton to the succeeding development. It will no doubt appear that this *clarum et venerabile nomen* is the *fons juris* of English law. First, however, must be settled the many points as to the law in his own day. We believe that the greater part not only of the law of actions but of the substantive law of England in Bracton's day came from the Roman law in the two hundred years prior to Bracton. The work that has been done in the last years will greatly assist this task and when it has been done, a splendid achievement well worth the labor of a lifetime will have been accomplished.

In conclusion it remains to be said that typographically these volumes are a pleasure to the sight. The words in precisely the proper type stand forth from the pages of dead white paper with clarity and distinctness. The outward garb of the great classic is perfect. American lawyers ought to feel elated that these volumes and their successors will indicate what efficient work is being done in this country for the history of English law. The bard consoled the vanquished British Queen with the words:

"Regions Caesar never knew,
Thy posterity shall sway;
Where his eagles never flew,
None invincible as they."

Certainly as to English law this prediction was true, and Pateshull, Raleigh, and Bracton were certifying laws for mighty realms, of which they, much less the Caesars, had never dreamed. Mr. Woodbine, who works upon the great history of English law, is working for still wider regions where this law by its innate excellence will come to rule.

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The League of Nations. By Sir Frederick Pollock. Second Edition. London, Stevens & Sons, 1922. pp. xvi, 266.

Historians, lawyers, and the general reader will all be grateful for this suggestive and succinct sketch, now in its second edition, which ought to be in the hands of every politician, and which, properly read, would dispel the mists of sentimentality and cynicism that have clouded the debates on the League. Sir Frederick has drawn upon his wealth of erudition to provide an admirable background for his exposition of the principles of the Covenant; his analytical powers are displayed brilliantly in his discussion of the functions of the League; and there is a healthy idealism not bereft of practical sense, which illumines his calm but very effective plea for the establishment of order in international affairs. He has divided the work into two parts, each of four chapters, the first introductory to the organization of the League; the second dealing with its functions and actual operation. The book concludes with an appendix of sixty pages, which includes pertinent documents. Admirable bibliographical references are placed at the head of each chapter.

The introductory portion begins with a brief sketch of the older European system regarded from the international point of view. It covers arbitration in the Middle Ages, mediaeval plans for a general federation, the Congress of Vienna system, its development into the Concert of Europe, and its dissolution in 1908, when, the author believes, the annexation of Bosnia by Austria dealt it a final blow.

The two succeeding chapters deal with arbitration in the nineteenth and twentieth centuries and the Hague Tribunal. The author emphasizes the distinction, not always in the mind of the reader without legal training, between mediation and arbitration. He then goes on to deal with the value of international arbitration, a passage in which his judicial qualities receive full opportunity; the excess of praise and abuse which the method of arbitration has evoked, he pitilessly condemns. Beginning with the *Alabama* case and utilizing other examples, he does not stint his praise for the system as one method of securing international peace. But his chapter on the Hague Tribunal makes plain that he fully appreciates the imperfect nature of transitory jurisdiction, and that the demand for some sort of permanent court, frequently advanced by United States delegates, had his sympathy. The final chapter of the introductory portion of the work is largely historical, dealing with the movements aroused by the war, the American, British, and continental societies formed to organize a league of nations, and especially the Smuts pamphlet. The chapter ends with an impressive catalogue of international conventions already in force in 1914, for the regulation of communications, administration of treaty provisions, collection of statistics and intelligence, and many other cosmopolitan purposes.

The three succeeding chapters analyze the Covenant. The first of these deals with the chief organs of the League, the Assembly, Council, and Secretariat. Sir Frederick evidently agrees with the contention that the Covenant is not the constitution of a super-state, for he quotes, without criticism, the official declaration that it is a "solemn agreement between sovereign states which consent to limit their complete freedom of action on certain points for the greater good of themselves and the world at large." There is such a strong reminiscence of Rousseau in this declaration that the reader will regret that Sir Frederick does not stop to discuss its validity. One wishes that he had directed his analytical powers towards framing a distinction between the so-called "super-state" and the organization that results from the Covenant. He is satisfied, however, merely to explain the structure of the League, with full comments upon the functions of its different organs.

In chapters six and seven the author explains the operation of these organs under the threat or in time of war. In the former he takes up the question of armament, the plans for its reduction, the problem of private manufacture, and the exchange of information. Article X is analyzed with the conclusion that its guarantee of the territorial integrity and independence of the member states cannot be construed into an attempt to create a new Holy Alliance. In the following chapter there is an illuminating discussion of judicial processes and sanctions. Beginning with the provision for the settlement of disputes through arbitral award or for inquiry by the Council, the author goes on to explain the constitution of the Permanent Court, the cases in which non-justiciable disputes may be settled by the Council, and the power of the Council to refer to the Assembly. He concludes with a discussion of the sanctions against war or breach of the Covenant, and the proceedings to be taken with regard to non-member states.

The final chapter, entitled "The League in Peace," is a brief statement of the non-political activities of the League, which in view of the loss of political influence occasioned by the abstention of the United States, are doubtless its most significant product. The final pages of this chapter, however, show plainly that even from the political point of view, the League has been far from "dead."

The book is perhaps the clearest and fairest analysis of the Covenant thus far published. The bias of the author in favor of giving the fullest opportunity to the League is apparent, and yet he is careful always to understate the conclusions which he draws from his analysis when they seem to confirm that bias. Without appearing to argue he has produced the strongest argument in favor of the League

that has appeared since the little-read speeches of President Wilson delivered in the fall of 1919. That this argument has resulted from the intellectual processes of so great a mind as that of Sir Frederick Pollock is a matter of some significance.

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The Nature and Sources of the Law. By John Chipman Gray. Second Edition. By Roland Gray. New York, The MacMillan Co., 1921. pp. xviii, 348.

This is more nearly a reprinting than a revision. The revisor tells us in his preface that prior to the distinguished author's death in 1915 he had made notes for a second edition, of which the revisor, his son, has made use. But the resulting additions to the book are trifling. We are told that the criticisms of the original edition, and subsequent writings on the same subject, had not caused the author to modify his views. In fact there is practically nothing in this edition to indicate that Professor Gray had given any attention to the publications dealing with the subject matter of the book during the six years that intervened between the date of its publication and his death. The new edition contains some translations, a few additional explanatory notes, some transpositions and additional citations and adds a useful table of cases. Some topics are transferred from the appendix to the principal text, appearing as interpolations or as footnotes, the rather forbidding section numbers are banished, the margins are wider, and the type is better. On the whole, the second edition is more pleasing to look at than the first, but the content is the same, with exactly the same merits and defects.

And the merits are many. Barring the first brief chapter on *Legal Rights and Duties*, which is not well done, and the author's laborious defense of his untenable thesis that statute law, like every other kind of law, is made by the courts, the book is not only profitable to the reader but highly entertaining as well. One wishes he might say the same of more of what we are pleased to call "the literature of the law!" Not only does it exhibit the sound sense, profound learning and clearness of presentment so characteristic of all of Professor Gray's writing, but here we find those touches of unexpected humor, those whimsically homely illustrations, that illuminated his treatment of the profoundest topics in the intimacy of the classroom. Thus he admits that analytic jurisprudence may, on its constructive side, be unfruitful, "but there is no better method for the puncture of windbags." In announcing his thesis that the "Law of The State or of any organized body of men is composed of the rules which the courts, that is, the judicial organs of that body, lay down for the determination of legal rights and duties," he quizzically notes the absurdity of saying "that the Law of a great nation means the opinions of half a dozen old gentlemen, conceivably of very limited intelligence." So, in speaking of the amazing number of civilian treatises on possession, after noting that Ihering had added a ninth to the previously discovered eight reasons for protecting possession, he adds: "Whether it is better to protect possession with nine inconsistent theories, or without any theory at all, is a question not to be answered offhand in favor of the civilian position."

The author will probably find few readers that will follow him so far as to accept his contention that a lawfully enacted statute is not law until enforced by the courts, but most of them will give him the decision in his wordy combat with the late learned Professor W. G. Hammond (in his edition of Blackstone's *Commentaries*) and Mr. James C. Carter (in *Law, its Origin, Growth and Function*), both of whom contended that the courts do not make the law, but only discover it in its natural state in some supernal realm and declare it to earth-treading mortals. The author's treatment of the concept of the state, and sovereignty within the state, is notably lacking in that precision and clarity that usually

characterize his thinking and writing. At one time (p. 82) the state seems to mean to him the whole body of the nation as a personified unit greatly desiring that each member should wash himself daily, but regretfully refraining from such a requirement because it would be too much trouble to compel such ablutions. Again (pp. 69, 70) it appears a figment of the imagination for which heroes may find it sweet to die, while at another place (p. 69) he regards it as a sort of mask behind which the "real rulers" of society may hide while they subject the unconscious citizenry to their will. So far as one can determine from the text, these "real rulers" are not kings, presidents, governors, or even senators, but the political bosses, sometimes in petticoats. Sovereignty, if there is any such thing, appears to reside in these same shadowy rulers, who not only create the state, but create and control the courts as well (pp. 70, 122, 123).

But it is in the initial chapter on legal rights and duties that Professor Gray shows most clearly that jurisprudence was but an incidental diversion to America's greatest authority on the law of real estate. The distinction between the several legal relations which the late Professor Hohfeld so convincingly defined under the terms *rights*, *powers*, *privileges*, and *immunities* with their respective correlatives, the author never clearly perceived. Following the continental jurists he recognizes that legal rights and duties are mutually correlatives. He then declares it is impossible for a right to exist without its correlative duty, yet curiously enough, he states that there are many duties that get along very well without any correlative rights to support them. These are the fabled "self-regardant" duties of the jurists—a sort of solo duties which do not involve any relation whatever to other persons. The distinguished author's confusion of thought is shown amusingly in the following passage, in which he is discussing these strange duties so sadly divorced from their correlative rights: "There may be a duty to do an act to a person where we cannot say that he has a right to have the act done. Thus, it may be the duty of Jack Ketch to hang Jonathan Wild, but we do not say that Wild has a right to be hanged." Hohfeld would say that Jack Ketch owed a duty to the High Sheriff of London to execute the death warrant, and that the High Sheriff had a correlative right that Jack should execute it; and that what the unfortunate Jonathan Wild has is a painful liability, correlative to Jack's legal power to hang him. So the author often uses, the term *right* when he means *privilege* (for example, to eat shrimp salad, or to set up the statute of limitations in an action) or immunity (for example, under exemption laws) and naturally finds difficulty in discovering the correlative duties.

But however philosophers may quarrel over concepts and their names, there is no gainsaying that this is a delightful book, both entertaining and stimulating.

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Conflict of Laws. By John P. Tiernan. Chicago, Callaghan & Co., 1921. pp. vii. 122.

This work purports to deal with the following subjects in the Conflict of Laws: Comity, Torts, Death Action, Contracts, Remedies, Interest and Usury, Sales and Chattel Mortgages, Marriage, Legitimation and Adoption, Wills, Crimes, and Penal Actions, but contains only the fundamental rule and exception governing each topic, and one or two cases by way of illustration. The book is too elementary to be of real use.

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- Proceedings of the Forty-Fifth Meeting of the Alabama State Bar Association.* Montgomery, The Paragon Press, 1922. pp. 286.
- The Roman Praetors.* By Gilbert T. Sadler. London, Stevens & Sons, Ltd., 1922. pp. 70.
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