BOOK REVIEWS

The Elements of Crime. A Psycho-Social Interpretation. By Boris Brasol. With Introductions by John H. Wigmore and William A. White. New York, Oxford University Press, American Branch, 1927. pp. xvii, 433.

Mr. Brasol was extraordinarily well prepared by study and practical experience for the execution of a general work on criminology. He has had a notable career as a brilliant young public prosecutor in Russia before and during the World War, has studied criminology under some of the greatest European masters, has read widely in European and less thoroughly in American criminological literature, and recently, as a resident of the United States, he has come into active contact with criminal conditions and criminological doctrines in our own country. He is quite evidently a man of great learning and a logical mind, and is remarkably free, for a practising lawyer, from formal legalism and archaic metaphysics. The book falls midway between the old dogmatic and schematic works of the classical school of criminologists and the highly individualized and empirical investigations of the criminal personality by Dr. William Healy and others who have accepted his approach to the study of criminal behavior. There is little doubt that such detailed studies of individual delinquents as those by Healy and the like should ultimately be exploited in the service of constructing generalized deductions from these clinical inquiries, but it may be doubted as to whether the time has yet come to do this, and certainly Dr. Brasol has not mastered such evidence to a sufficient degree to enable him to carry out such a task of synthesis. We must, then, regard him as a modernized classicist rather than as a synthetic modernist in the field of criminology.

The book is divided into two parts. The first is entitled "Crime as a Social Phenomenon." This considers such questions as the scientific conception of crime and the criminal, the nature of the criminal personality, and the relation to criminal causation of: economic factors, religious and family conditions, education and the press, and legislation and criminal procedure. The second part of the book is entitled "The Psycho-physical Nature of Crime." This deals with the question of the relative influence of heredity and environment in the causation of crime, with the contrast between legal and medical conceptions of criminal responsibility, and with the leading forms of mental diseases, having special reference to the relation between the specific behavior patterns of each of these diseases and potential criminality.

Mr. Brasol insists upon a broad sociological approach to crime and rejects the older single-track dogmas explaining criminality, whether anthropological, socialistic or judicial. He definitely repudiates the older thesis that there is such a thing as a born criminal. He contends that one may be born with certain psycho-physical traits which will render him more than usually susceptible to external influences making for criminality, but he denies that one can inherit traits which inevitably lead to criminal behavior. With this position most sane criminologists will be likely to agree. He is also inclined to reject the older cut-and-dried classification of criminal types, though he admits the existence of the professional criminal and agrees that sub-classes within this group often approach a discernible uniformity of type due to similar methods, interest and conduct.

In dealing with the problem of the causation of criminal behavior Mr. Brasol emphasizes the necessity of allowing for a great complexity of

factors, including hereditary predisposition to degeneracy and a vast number of influences in the social environment which condition the individual in the direction of criminality. He endeavors to formulate the calculus of criminal causation (pp. 103-4), and while we may not concede the necessity or validity of any such schematic, mechanical or mathematical formulation of the problem, nevertheless, one cannot but agree with the conception of the complexity of the issue which the equation is designed to imply. Mr. Brasol sharply criticizes the theory of the economic determination of crime as set forth by Bonger and other socialistic writers. While the reviewer agrees with this scepticism, nevertheless it is difficult not to feel that in this section the author has departed to some degree from his usual scientific detachment on account of his hatred of the Bolsheviks. As author of *Socialism versus Civilization*, it could scarcely be expected that he would deal calmly with the socialistic hypothesis of criminality. Yet he is not to be regarded as an unqualified or unthinking euologist of the theory of business enterprise or of the pecuniary standards and obsessions of our age. He holds that the great majority of criminals of all types are drawn from the unproductive classes. In his summary of the social causes of crime he sets forth the following indictment of the exaggerated pecuniary evaluations and interests of the contemporary period:

"When we begin to conceive that all moral foundations have been gradually destroyed, men, women and children alike, clamoring for nothing but material gain and self-gratification; when we think that people today, like the Roman mobs in the days of the decay of their Empire, are striving for nothing but '*panem et circenses*'; when our families are found in a state of complete dissociation, fathers and mothers having lost all ethical conceptions, and children morally neglected and abandoned by their parents; when we see supposedly civilized nations madly engaged in nothing but money-making enabling them to make mad expenditures for hideously vulgar and intrinsically immoral purposes; when all this is realized,—then, indeed, we begin to be drawing nearer to the scientific interpretation of the problem of crime."

Mr. Brasol deplores "the utter neglect of religious, ethical and aesthetical elements in modern education, both in the family and in the school." He especially condemns the emphasis upon the pecuniary incentive and motivation which is inculcated in our schools. These things not only produce an "almost intolerable vulgarity of the public taste," but also destroy those moral controls so essential in our society which is becoming ever more complex and baffling to the individual. He feels that while "an individual crime seldom can be traced to the influence of any single news item," nevertheless contemporary journalism "unquestionably occupies a prominent place among the factors which either cause or encourage the growth of the criminal propensity." The sceptical reader will be more likely to concede the above contention than he will Mr. Brasol's optimistic observation that the press is "steadily growing more serious, also, perhaps, less biased." One may, in spite of the author's continental derivation, detect a strain of Comstockery in his observations on the growing freedom in reference to sex in the drama, literature and art. In one place he says: "The literary behavior of the pleiad of sexual writers, indeed, is *collective exhibitionism* constituting an offense against public morality, and inciting the mentally underdeveloped to participate in the orgiastic feast." He further contends that although it is very rare that one can detect any direct connection between an "immoral" book and any particular crime, "still, the criminogenetic character of sexual literature and art is beyond doubt." As might be expected from his professional antecedents, Mr. Brasol's analysis

of the relation of defective and unwise legislation and of our unscientific legal procedure to criminality is one of the best sections in the book, and he presents an excellent outline of a proposed institute of scientific criminology (pp. 220-23).

In discussing the relative importance of heredity and environment in the production of crime, Mr. Brasol is distinctly an environmentalist, even though he frankly admits the frequently hereditary nature of predisposition to mental and moral weakness which makes one succumb to criminal temptation much more easily than the normal types. He must certainly be regarded as a moderate social determinist. The following paragraphs well summarize his general views upon the social determination of crime and upon the complexity of these contributing social factors:—

"Generally speaking, the criminologist, in the course of his analysis, must dissect and scrutinize every socio-economic factor in the same way as a histologist in his laboratory, examines under a microscope the delicate make of vegetable tissues determining their chemical composition. The deeper we dig into the layers of the social order, tracing the mutual correlation,—the more it is likely that some day—perhaps in the remote future—science shall reach the very root of the criminal propensity. Above all, the student has to be guarded against the tendency to interpret the complicated phenomenon of crime by any single cause, no matter whether social or psychological.

"Neither logic nor philosophy can justify such an attempt. Only simplified science—but is it science after all?—can hope to make progress by mechanically reducing the number of ingredients entering into the structure of society. The elimination of some constituent elements of a phenomenon never serves to explain its nature; it narrows the scope of human knowledge, and ultimately destroys the pioneering faculty of the mind which prompts us to extend scientific inquiry to the vast fields of things knowable, but still unexplored. . . .

"Here, then, criminology touches upon the *real*—not the imaginary—causes of criminality in its present-day militant aspect. It is not the mode of production, nor poverty, *in se*, nor prosperity, nor the shape of the nose, nor the brachycephalic symptom, nor any other incidental factor, that generates the phenomenon of crime, but those fundamental destructive changes which take place in the composition of society itself, assuming the form of dangerous gangrenous processes and threatening the very existence of social order."

Mr. Brasol's chapter on the nature of criminal responsibility is excellent, particularly his discussion of the difficulties in the way of using expert psychiatric testimony under the conditions imposed by the present legal duel in the courtroom. He suggests the following commendable innovations.

a. Prohibiting the contending parties to hire their own expert alienists, who should be appointed by a neutral body standing above and outside of the inevitable conflict between prosecution and defense.

b. Requiring the psychiatrist to present an all-embracing study of the mental constitution of the defendant, in the light of the latest discoveries in the fields of psycho-neurology, bio-chemistry, biology and psychology.

c. Taking, as it were, judicial notice of the expert's opinion on the mental state of the defendant, making it a constituent part of the juror's verdict.

The author's classification and summary description of mental defect and of mental disorders in their relation to criminality are reasonably satisfactory and up-to-date. He accords a discriminating acceptance to the Freudian psychopathology. The reviewer does not know of a better brief sketch of this field in a work on criminology.

In conclusion, it may be said that the book is a valuable contribution to the literature of the field. It should be useful either to the serious general reader or to the student. Though scarcely designed as a college textbook,

it could be used for this purpose. No effort is made to deal in any sense with the field of penology and those modes of repressing crime outside of prison walls. It is preëminently an introduction to the nature and causes of crime and to the nature of procedure in ascertaining guilt. Apprehension and repression are scarcely touched upon.

HARRY ELMER BARNES.

The History of Contempt of Court. The Form of Trial and the Mode of Punishment. By Sir John C. Fox. New York, Oxford University, American Branch, 1927. pp. xxiv, 252.

It is an odd thing to reflect that the power of both English and American courts to punish summarily for constructive contempt rests in the main upon an undelivered opinion of the Court of King's Bench. The prepared but unuttered opinion of Mr. Justice Wilmot in this case of *Rex v. Almon* has, however, had a vitality that greater and better considered judgments might well envy. Though written in 1765, it was unknown to the profession until the papers of the great Chief Justice were published by his son in 1802. With an eloquence that in itself carries conviction, Wilmot there stated that "the power which the courts in Westminster Hall have of vindicating their own authority is coeval with their first foundation and institution," and "stands upon the same immemorial usage as supports the whole fabric of the common law."[1] Judges of a later era saw little reason to question the magisterial accuracy of such an utterance. That the Chief Justice, as perhaps other and later Chief Justices,[2] could have misread and thus made history seemed hardly credible. In England *Rex v. Almon* by frequent citation gained the force of binding precedent; in America it was to the light shed therein by Wilmot upon the ancient institutions of the common law that judges turned to discover the inalienable prerogatives of courts of justice. Upon the rock of Wilmot's judgment many an American statute designed to curb what the people considered a much abused power was shattered. The power "inheres" in courts from their very institution; it cannot constitutionally be abridged.

In 1883, however, during the debate in the House of Lords upon the Contempt of Courts Bill, Lords Fitzgerald and Bramwell termed the power to punish summarily for constructive contempt as an institution "contrary to the genius of English law." The challenge thus voiced was not ignored. In 1885 Mr. Solly-Flood took sharp issue with Wilmot's historical accuracy in a study made of the origins of summary commitment for contempt.[3] But the full case against Wilmot and incidentally the case in behalf of the patriot Wilkes was presented in a series of brilliant and painstaking essays in the Law Quarterly Review from 1908 to 1924 by Sir John Fox. It is this material in elaborated form that the late Senior Master of the Supreme Court Chancery Division has embodied in this volume.

It is a romantic thing to trace the origins of an institution into the dim past and to free our present conceptions from such errors as those in which others, less wise, have tempted us to indulge. It is also a long and burdensome task. Twenty years bespeak the effort that Sir John Fox has put into this volume and its quality reveals a genius for infinite patience. Sir John goes deeply into the origins of contempt, attachment and trial by examination. He shows us how in Britton's day attachment was but a

[1] Wilmot's Notes, 243, 254.

[2] See Corwin, *Tenure of Office and the Removal Power under the Constitution* (1927) 27 COL. L. REV. 353.

[3] Solly-Flood, *The Story of Prince Henry of Monmouth and Chief Justice Gascoign* (1885) 3 TRANS. ROYAL HIST. SOC. (N. S.) 47, 147.

mesne process to bring the body of the defendant into court for trial in the customary way; that for libels the course of proceeding at common law under Coke was by indictment; that the attempt of Chief Justice Scroggs to cause a rule to be served upon the author of an alleged libel was one of the articles in his subsequent impeachment; and that the earliest instance of the summary punishment of a libel on the court by a stranger occurred in 1721 when the courts were tempted to follow the practice of summary jurisdiction set by the House of Commons in the Stuart period.[4] It is thus upon the insecure basis of a few scattered decisions from 1721 to 1765 that Wilmot's claim of "immemorial usage" must rest. Instead the exercise of summary powers over punishments for libel on the Court had more mundane origins and Wilmot baldly, though perhaps unconsciously, clothed a desire for summary power with the mantle of antiquity. It is only since the eighteenth century that the press assumed any pretensions to power. It was during this century that the pamphleteer became a political figure and made more acute the contest for freedom of utterance. The assertion of summary jurisdiction comes thus at a time when both court and Commons realized that the printed page made libel a powerful instrument. Moreover, it is shortly after the defeat administered to courts in 1792 by Fox's Libel Act, that *Rex v. Almon* gains its ascendancy. *Rex v. Clement* in 1821,[5] that firmly wrote *Rex v. Almon* into the texture of English law, prevented a defendant, as Sir John puts it, by its "rule of summary procedure from claiming a right [to the trial of the libel by a jury] which Almon could not have established, in any case." Truly the liberties of the Englishman had narrowed since the days of Scroggs!

In a concluding chapter Sir John reviews the history of *Almon's Case* in the United States. It was the acquittal of Judge Peck on the impeachment charges brought against him in the United States Senate in 1831 that had the effect of upholding the doctrine that a libel upon the Court could be dealt with summarily, whereas in *Toledo Newspaper Company v. United States*,[6] the Supreme Court, through a misleading argument by counsel for the government, wrote off the statute books the curb that Buchanan had tried to impose upon courts in their exercise of summary powers. Since then the Supreme Court has been more lenient to statutory enactments restricting contempt powers[7] and more anxious to see that arbitrariness in their exercise should be checked.[8] State courts have not hesitated to adopt *Almon's Case* wholeheartedly and on occasion hold unconstitutional the exercise of powers that the common law never deemed "inherent" in the courts nor necessary to their existence. It is, indeed, only by assuming to themselves the power to make history as well as law that judges can continue their exercise of prerogatives, whose "inherent" character rests only upon the pronouncements of their later and less learned brethren. Sir John Fox has made the use of the term "inherent" as applied to the power to summary punishment for constructive contempt an empty and ignorant phrase.

J. M. LANDIS.

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[4] Rex v. Clement, 4 B. & Ald. 218 (1721).

[5] *Ibid.*

[6] 247 U. S. 402, 38 Sup. Ct. 560 (1918).

[7] Michaelson v. United States, 266 U. S. 42, 45 Sup. Ct. 18 (1924).

[8] Cooke v. United States, 267 U. S. 517, 45 Sup. Ct. 390 (1925).

A Treatise on the Law of Oil and Gas. By Walter L. Summers. Kansas City, Vernon Law Book Co., 1927. pp. xviii, 863.

It is impossible to portray the difficulties Professor Summers had in his way, to indicate in any detail how well he met them, or to criticise intelligibly any of his more important conclusions in a brief review of his book. Doubtless, there is no other highly specialized subject of the law which has presented so many hard problems, and to handle which requires so comprehensive a grasp of the larger subjects, as does the law relating to oil and gas. Here are found all the hard knots of contracts, property and equity, to say nothing of constitutional law and damages, and many of them are not infrequently found in the same case.

The story is practically the same in every jurisdiction. The lawyers and judges of a district or state awoke to find themselves in an oil field. Those who did not surrender their profession and become "oil men" were immediately submerged in problems and litigation having as their subject matter every sort of instrument, agreement, and act, which highly excited farmers, barbers, jitney drivers, dentists, real estate men, and all the other quickly convertible members of a community, could draw, make and do. Few lawyers had ever heard of the very difficult problems presented. For the first ten to twenty years, cases were decided principally on false analogies, fireside equities and euphonious and ambiguous phrases. Every lawyer and every court had its own theory on every important question. Large amounts were involved; able lawyers were massed usually on both sides of every case. There was no end of effort and expense. The courts were hard pressed. Until very recently, therefore, there was an abundance of variety and flux and a minimum of crystallization. In brief, oil and gas law has been equally feverish, fluctuating, and hazardous as the oil business in other respects. The present day oil and gas lease, for instance, tells the story of a thousand hard fought cases, and in some states, its evolution is still in process.

Professor Summers undertook to write the law of this volatile subject for fifteen or more jarring courts of final jurisdiction, to say nothing of courts of intermediate appellate jurisdiction. He found chaos. It would be too much to say he has reduced it to order, that is, to an order which will be accepted. He has, however, met the larger problems squarely and has for the first time subjected them to a thorough-going analysis. He has refused to be led astray by the bulging terminology of the courts. He has rather analyzed in terms of functions; he has inquired what the respective parties can and cannot do under varying situations. Instead of talking in terms of ownership, title, property, mutuality and the like, he has talked in terms of relations, interests, rights, privileges, powers, immunities, liabilities, duties, etc. He has looked at what the parties were permitted or required to do by the courts. Needless to say, his capacity to employ the analysis of Hohfeld stands him in good stead, and the remarkable thing is that he has discovered the courts are reaching unbelievably similar results, though employing startling differences in terminology. For instance, an estate of the dignity of a defeasible fee in Texas, in so far as the interests and protection given thereto, is in the end about the same as a license in Pennsylvania, or a *profit a prendre* in some other state. The lessee in Louisiana under a no-ownership theory can do about as much and have as much protection as he can in Texas under an absolute ownership theory. In other words, the author indicates that our most serious difficulties here, as elsewhere, are with terminology, analysis and classification.

The analysis of Professor Summers is always illuminating. The best part of his book is found in chapters two to eight. Here, he is dealing with

the landowner's rights, duties, etc., as well as the interests created by oil and gas leases. Chapters nine to fifteen deal with the development and the interpretation of the lease. In these he had the pioneer work of Judge Veasey[1] which must have been reassuring. The remainder of the book deals with numerous problems of lesser size but not necessarily of less difficulty; most of these he leaves largely to a citation of the authorities. If the cases cited on many points are not determinative and satisfactory the author cannot be held responsible. He merely uses the material at hand. His lists of citations and notes are full, and frequently contain striking excerpts from the opinions. So far as I have been able to check, all the outstanding cases are cited appropriately and repeatedly. Incidentally, the author confirms the judgment of Professor Kulp as to the most noteworthy cases, in that many of those chosen by the latter for his case-book on the subject are analyzed and discussed in this text.

A survey and analysis of the cases pertaining to the oil business were badly needed; something beyond a mere catch-word classification and digest of the cases. The courts needed it and so did the profession at large. I would not say that Professor Summers finished the job; that cannot be. There are too many problems which yet remain to be fully developed before the law can be crystallized. There are two other less ambitious books which cover small parts of the subject well, but Professor Summers is the first writer who has done a dependable piece of work throughout. His book ought to aid greatly in stabilizing the law on the more important questions of this subject in all jurisdictions.

The book is beautifully done—the binding, paper, printing, format, accuracy of citations, make it an attractive piece of craftsmanship.

LEON GREEN.

The Business of the Supreme Court. A Study in the Federal Judicial System. By Felix Frankfurter and James M. Landis. New York, The Macmillan Co., 1927. pp. viii, 349.

This book is, as it was intended to be, of interest to the student of history and government, rather than of value to the lawyer in his practice. There are surprises in store for the reader who, from the title expects a detailed or technical discussion of the business that comes before the Supreme Court. More space is devoted to the inferior courts than to the Supreme Court, and there is no elaborate discussion or technical analysis of the business that comes before any of the courts.

This book is, in fact, a history of the legislation which has resulted in our present system of Federal courts. One might wonder why such a book should be called "The Business of the Supreme Court." But the reader soon finds that the authors have given, step by step, the story of the long struggle through which the courts established by the Judiciary Act of 1789 have finally come to be the Federal courts of today. And the thought running through the book is that changes in the original judicial establishment have come only when compelled by the increasing pressure of the business of the Supreme Court upon the Justices of that court.

The authors show that the seeds of controversy are found in the fact that the Act of 1789 established three tiers of courts, but only two grades of judges. There were District Courts, with only original jurisdiction, Circuit Courts, with original and limited appellate jurisdiction, and a Supreme Court with appellate and a limited original jurisdiction. But there were only District Judges and Justices of the Supreme Court. The

[1] (1920) 18 MICH. L. REV. 445, 652, 749; (1920) 19 MICH. L. REV. 161.

Circuit Courts were to be held by the District Judges and the Justices. Almost immediately the struggle began for a system under which the Justices should be relieved of all duties except as members of the Supreme Court and the Circuit Courts should have judges of their own. There were those who believed that the *nisi prius* work of the Justices would better qualify them for their appellate duties. Others took the opposite view. It was inevitable that, as the country grew and litigation increased, the latter should finally prevail. But, when the need for relief was recognized, many preferred to increase the number of Justices, rather than relieve them of *nisi prius* duties. And the tenacity with which Congress clung to circuit riding Justices is shown by the many steps taken before the idea was finally abandoned.

As the burden of litigation increased, Congress would yield little by little. This the book brings out vividly. Originally there were three Circuit Courts each to be held twice a year by two Justices and one District Judge. In 1793 the necessity for relief of the Justices was recognized to the extent of providing that only one Justice need attend each Circuit Court.

They then tell how, but for the injection of partisan politics, the struggle to free the Justices of circuit riding duties would have ended in 1801. Just at the close of the Adams administration sixteen Circuit Judges were authorized and appointed to hold the Circuit Courts and the Justices were relieved of all *nisi prius* duties. The authors think this was an act well suited to the then conditions. But being regarded by the Jefferson administration as a partisan measure, it was repealed in 1802. However, some relief was imperative. And this, of necessity, had to be something different from that provided by the repealed act. Hence, the same Congress divided the country into six circuits with a Circuit Court in each to be held twice a year by one Justice and one District Judge. That impossible duties were being imposed on the Justice was recognized by providing that the court might be held by one judge.

And, of course, the struggle began anew. As the country grew, additional circuits were created and, for each additional circuit, a Justice was added to the Supreme Court. This was the extent of the relief given until 1869 when nine circuit judgeships were created. Congress was still unwilling to give up the circuit riding Justice, but provided that each Justice should be required to attend only one session of a circuit court in two years. The Justices continued to be charged with some *nisi prius* duties until the establishment of nine Circuit Courts of Appeals in 1890. This later led to the abolition of Circuit Courts. Finally the recent act, the authors think, for the first time, gave us a real judicial system. They make much of the importance of that feature of the act which provides for an annual conference of the senior judges of the Circuit Courts of Appeals presided over by the Chief Justice.

In addition to showing that all the changes thus outlined have been forced by the pressure of business on the Supreme Court, it is shown that the same cause has resulted in restrictions upon the jurisdiction of that court until the class of cases that can be taken to it as of right have been reduced to a minimum. The book gives an accurate statement of the various statutes, together with an instructive discussion of the conflicting views as each step was taken. It will be of value as a book of reference. It expresses the opinion that the work of establishing a perfect judicial system is, by no means, finished. And the authors have furnished much food for thought to those who are to carry on the work.

WILLIAM L. FRIERSON.

The Story of the Law. By John Maxcy Zane. New York, Ives Washburn, Inc., 1927. pp. xiii, 486.

One should be thankful to a man who makes a serious effort to present the story of law in five hundred pages. One should admire his courage, grant him his prejudices, and turn to seeing what he has made of them. One should not cavil at vast numbers of mistakes of fact: he works in a field too wide for any man to master the details, nor are most of his details vital to his problem. All these concessions the reviewer would gladly make, and more, if in return he could have a Story of Law. But a story, as the reviewer understands it, is a narrative with a beginning, a middle, and an end—above all, with significant outlines and proportions which remain in the memory whether details stick or not. And the difficulty with Mr. Zane's book is that it is not a story. H. G. Wells set a high level of measurement. Mr. Zane is no H. G. Wells. Yet one troublesome thing about the book is that one feels he might have come much nearer than he has; as, indeed, his other writings witness.

It all begins fascinatingly enough, with life among the ants, who, it seems, are the perfect socialists, or communists. Man, achieving something beyond mere instinctive intelligence, can never attain such perfection of law, but moves into higher realms of existence. One gathers that enough law and enough obedience to law is very good, and too much is very bad. One hopes to see the workings toward and around the golden mean in man. But this trail peters into sand.

We take a fresh start with primordial man, who by virtue of his social instinct suits his conduct to his fellows—which fact lies at the basis of all law. Shame and lynch law are the enforcing agencies. Tribes appear in the glacial age, developing tools, and a fighting instinct; tribal property in hunting grounds grows from instinctive fighting to preserve the food supply. The fighting leads to capture of females; to slavery (!); and to the necessity of restraining rules within the tribe. "But the story passes" to herders, and then to soil cultivation. Language, and the idea of "right" as that which accords with custom, are introduced. Also justice, which "requires a rule to be applied to all alike." In which connection Kant and Hegel greatly overrated their own thinking. (Throughout the book, there is no suggestion of the age-old and continuing process of classifying men and actions; or that "customs" are not all alike, but alike at best for men in like circumstance.) Hence eye-for-eye appears as a device to place the injured party or his kindred "back upon an equality with the injurer." Marriage "in the nature of things must have resulted" from the knowledge of the father's part in procreation. Trial marriages, which certain childishly minded persons now advocate, were tried in the savage state. The primitive kinship is wholly through the mother. In the matriarchal family the mother rules. The couvade is a means of acknowledging paternity and belongs to the savage state of doubtful paternity. The patriarchal family, tribal property and religion come in for mention. We stop to dismiss socialistic communism. The thinking, reasoning individual has emerged and we are about to trace his rise. Freedom of choice exists, despite some scientists; the great mass are at least imperfectly capable of choice.

The foregoing summary is bald and unfair. But it is excusable. It brings out the discontinuity of argument in the book; the amazing rashness in interpretation of material; the tendency to view institutions as good or bad *per se*, rather than as well or badly adjusted to the conditions of their existence; and the brusque introduction of the big stick on every third page to club some unwary ancient or modern soul: Hegel, Aristotle, Holmes,

Gray, the historians, the socialists, the Supreme Court, Kohler and Stammler, Coke, Bentham: these go down like ninepins. Cicero, Mansfield, Marshall, and the legal profession in general, come in for praise. Also Sir Walter Raleigh.

The chapters move through Aryan, Babylonian, Jewish, Greek, Roman, Medieval, English law, and finally to the Constitution—"The Absolute Reign of Law"—International Law, and a Conclusion. The slogan of the whole is Roman Law, Commerce and the Constitution. Roman Law appears as responsible for most of the good in private law ever since. Commerce is the universal civilization and character builder. That the age of commerce has passed into that of industry, and that of industry has begun to pass into that of investment, is overlooked; in consonance with which the treatment of the Constitution is necessarily skewed.

The whole is marred not only by unwarranted interpretation of old institutions and their origins, by occasional assertions of institutional borrowing from people to people where evidence is lacking, but by contradictory and muddy thinking. On page 236 William makes a conquest title to all England good "by law"; on page 209, "It must be plain that when rights can be decided by the event of a fight, law ceases to exist." And so on. Authorities are nowhere given.

For all this, the book is worth reading, at least for lawyers. Laymen may get lost in the technical terms here and there or in the *ex presenti* criticism of a Greek advocate's analysis of his case. Nor have laymen the background into which to fit the picture of Coke's prosecution of Raleigh, nor even the Babylonian application of sale on approval to the female slave. But for the lawyer interesting bits of information, most of which are doubtless fairly accurate, abound in the pages. The discussion of the beaver would be charming anywhere. The author has read astonishingly, if not scientifically. He wields a pen vigorous and personal. The beach is full of pretty pebbles to weight the pocket with. One can make his own pattern out of them after he gets home. And why not?

K. N. LLEWELLYN.

Minimum Wage Legislation in Massachusetts. New York, National Industrial Conference Board, Inc., 1927. pp. xiii, 243.

This is the latest of a series of studies of various phases of social legislation in the United States published by the Conference Board. There are special reasons why a detailed study of the minimum wage experience of Massachusetts is particularly timely. This state alone of the thirteen which passed minimum wage laws adopted a system which provided no penalty, except condemnation by public opinion, for non-compliance with the wage rate decrees. When the District of Columbia law was invalidated by the Supreme Court in 1923 it seemed probable that all state laws on this subject which, like that of the District of Columbia, carried penalty provisions, could be proved unconstitutional. Since that date, in fact, the laws of two states (Arkansas and Arizona) have been declared invalid, It appears, then, that those who desire an extension of this form of social legislation must rely on the Massachusetts type. Hence the importance of a careful study of the accomplishments of the law in that state.

This research report of the Conference Board examines in detail the economic problems involved in legal regulation of wages. Separate chapters are devoted to the relation of the minimum wage law to the cost of living; to the volume of employment; to the profitableness of business enterprise; and to the location of industry. Each of these special sections of the report contains a collection of statistical data carefully analyzed

to disclose the effect of legal wage regulation upon the problem under consideration. This compilation of economic data will prove of use to many students not interested primarily in the question of minimum wage laws; and to the student of social legislation may well serve as a model for further research in this field. The usefulness of the book is increased by the inclusion of an introductory chapter describing in some detail the mechanism for administering the law; and an appendix which includes the important documents, a record of all wage decrees, and a collection of statistics.

The results of the study show that the Massachusetts law has failed to accomplish its purpose of equating the wages of women workers with the cost of living; that only in special cases has it raised wage rates; and that it has had small effect upon the general welfare of industrial workers. On the other hand, the fears of those who opposed the law on the ground that it would be detrimental to business enterprise in Massachusetts have proved unfounded. These results are admittedly relative to the type of law under examination and not conclusive regarding the social utility and practicability of minimum wage laws in general.

E. S. FURNISS.

REVIEWERS IN THIS ISSUE

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