BOOK REVIEWS

The Evolution of Penology in Pennsylvania. By Harry Elmer Barnes. Indianapolis, Bobbs-Merrill Co., 1927. pp. 414.

Professor Barnes, in this admirable book, gives an extremely detailed account of the history of penology in Pennsylvania from pre-Penn days to 1927. The method is informative rather than critical. Only occasionally does the author rise in righteous wrath at some particularly shocking or dense phenomenon. Thus he repeatedly refers to the act of 1897 which practically destroyed prison labor, as the "abominable" or "notorious" Muehlbronner Act, and to the veto of an act passed in 1917 re-establishing indeterminate sentences as "singularly opaque." But aside from these and a few other critical excursions, which incidentally are always acute, the book maintains an even tone of information. And this to the reviewer is as it should be.

Pennsylvania is almost unique in the breadth of its penological experiences. Prior to the enlightened Quaker Code of 1681 all the traditional repressive penal barbarisms of England bloomed with vigor in Pennsylvania—many capital offenses, severe corporal punishment, and the promiscuous dumping of hardened criminals, the insane, young, old, male, female, suspects, debtors, etc. in horrible jails. In 1682 the enlightened Quaker Code was enacted, which, "excepting only the closely related colony of West Jersey . . . unquestionably marked the first instance in the history of criminal jurisprudence in which imprisonment at hard labor was prescribed as a punishment for a majority of the acts which were branded as crimes by the community." But this era of light lasted only until 1718. In that year the Quakers reverted to the severe English code, thus practically destroying the reforms that they had created, in order to retain the right of affirmation. From that time to 1786 Pennsylvania experienced its black penological age. In 1786 "hard labor, publicly and disgracefully imposed" was substituted for the death penalty. In 1787 the Philadelphia Society for Alleviating the Miseries of Public Prisons was organized and unto this day has been the greatest experimental force in Pennsylvania. Its long record of achievements is continuously stressed by the author and properly so. In 1788 the Society after investigation, recommended (1) more private labor, (2) separation of hardened criminals from first offenders, (3) separation of sexes, (4) prohibition of liquors. The legislature asked for further details and the Society's reply is the first recorded recommendation of solitary confinement at hard labor. In 1789 the major recommendations were adopted by the legislature and in 1790 an act was passed which marks the legal origin of the Pennsylvania system. *Inter alia,* it ordered the erection of cells for the solitary confinement of the more hardened offenders. In 1794, the Society, after accomplishing many intermediate reforms, succeeded in having the legislature abolish capital punishment for all crimes except murder in the first degree.

Conditions in the Walnut Street Jail were frightful. It is recorded that in 1795 thirty to forty men were housed at night in a room 18 feet square. In 1801 the society strongly recommended the erection of a new prison, and in 1803 the legislature appropriated money for the Arch Street prison which was finally built in 1817, and then used only for debtors. Its life was short for it was found to be unsafe. Fraud was charged in its construction. The Society continued its agitations and in 1818, $60,000 was appropriated for the Western Penitentiary at Allegheny,

and in 1821, $100,000 for the Eastern Penitentiary at Philadelphia. In 1828 through the efforts of the Society, the Philadelphia House of Refuge for juveniles was built. The Western and Eastern penitentiaries were built respectively in 1826 and 1835.

The Western Penitentiary was built along lines to carry into effect the principle of solitary confinement but not at hard labor. Consequently the individual cells were small and very dark. Soon after its completion it became evident that the principle of solitary confinement alone, even without labor, could not be executed since it was necessary to exercise the prisoners in groups. In 1829 the famous act was passed directing that the prisons be conducted on the principle of solitary confinement at hard labor. This necessitated practically an entire reconstruction of the gloomy and fortress-like Western Penitentiary so as to provide adequate working facilities in the single cells. Like Lao Tze, the prison authorities had an abiding faith in the remedial powers of leisurely reflection.

In regard to prison labor, the author says of the Walnut Street jail that "it was not less of an industrial failure than an administrative fiasco." There was practically no prison labor in the Western Penitentiary until its reconstruction. An industrial system was promptly established in the Eastern Penitentiary. The inspectors were exuberant. Contemporary investigations showed flagrant abuses.

The remainder of the book is devoted to developments from 1835 to 1927. The discussion centers around the disintegration of the Pennsylvania system and progress along lines of commutation, progressive classification, indeterminate sentence and parole, and segregation.

The inspectors of the Eastern Penitentiary were oblivious of the Industrial Revolution. Until the sixties, labor was conducted on the solitary confinement principle, and so, of necessity machinery could not be used in any appreciable way. After the sixties, congestion made solitary confinement impossible. Still the inspectors steadfastly and fanatically preached the virtues of the Pennsylvania system though it had ceased to exist except in their own imaginations. The abolition of contract convict labor in 1883 and the requirement that goods be stamped "convict made" had no great effect on conditions in the Eastern Penitentiary.

History of convict labor in the Western Penitentiary is quite different. The inspectors there regarded solitary confinement as a necessary evil. In 1860 the industrial revolution dawned on them and soon they began to demand congregate workshops. In 1869 an act was passed allowing congregation for work and in 1873 a shop was installed. By 1880 the industrial revolution was complete in the Western Penitentiary. Until 1869 the public account system was used, and after that, the contract system. Its abolition in 1883 was therefore a much greater blow to the Western Penitentiary than to the Eastern.

In 1897 the above-mentioned "abominable and notorious" Muehlbronner Act was passed. Prison labor in Pennsylvania became a farce until about 1915. In that year an act was passed providing that prison labor be conducted on the state-use system. Improvement in conditions was slow since there was no provision directing that other state institutions buy only from the prisons. In 1918 only 30 out of 720 convicts at Riverside were employed under the state-use system. This defect was indirectly remedied by the creation in 1921 of the centralized Department of Public Welfare.

Professor Barnes traces also the architectual changes since 1835. The Eastern Penitentiary has been continually added to, seemingly only after additions became absolutely imperative. It finally became apparent that,

because of the growth of the city around the penitentiary, the site would sooner or later have to be abandoned. In 1925, $750,000 was appropriated for the erection of the new Eastern Penitentiary at Gratesford in Montgomery County.

Architectural developments in the west have been more dramatic. In 1873 an act was passed providing that a commission report to the legislature a suitable site for a new prison. This was necessitated by the congestion in the Western Penitentiary. Then comes what to the reviewer is the most disgusting chapter in the history of penology in Pennsylvania. It was decided to locate the plant on the site of the old Western House of Refuge on the Ohio River in the City of Allegheny. The site has been abandoned by the House of Refuge because it had been found to be damp, foggy and generally unhealthy. Although the inspectors well knew this, it was due to their vigorous efforts that the site was selected. The plant cost $2,000,000. It has been decided ultimately to abandon the site. Just what "ultimately" means is not apparent. "There have been few instances, where the interests of a commonwealth and the welfare of a considerable group of mankind have been more unfortunately sacrificed to personal convenience and immediate opportunism . . ." Warden Francis in 1909 strenuously pressed for a new site and finally secured the passage of an act directing the selection of a rural site. The Rockview plant was the result. It "is a magnificent example of the discredited type of conventional penal cage designed safely to jail convicts rather than to promote their reformation. . . . The Rockview Penitentiary is veritably a penological 'white elephant'."

The reviewer has attempted to sketch briefly only those parts of the book devoted to developments in the Eastern and Western Penitentiaries. Professor Barnes also discusses the development of the Criminal Code, advances along the lines of probation, parole, segregation, classification, etc. The book is a beautifully constructed storehouse of penological information. It cannot be overlooked by anyone interested in the subject. Since a reviewer must criticize, this one would suggest that the book is a trifle repetitious and that a more detailed account of developments in the other institutions of Pennsylvania would have been desirable.

Throughout the book, the author's penal philosophy is apparent. He is not a panaceist even of the mildest type. He regards no reform as a cure. Reform is experiment, trial and error. In chemistry, if one combines a certain amount of hydrogen with a certain amount of oxygen he gets water. In the treatment of what is really an abstraction called "the criminal" the specific ascertainment of the effect of certain "reforms" or "advances" is impossible. We must know more about what makes people behave queerly. Until we do know more, however, we should not resort to the treadmill.

L. A. TULIN.

The Insurance Commissioner in the United States. By Edwin Wilhite Patterson. With a Foreword by Felix Frankfurter. Cambridge, Harvard University Press, 1927. pp. xviii, 589.

Professor Patterson's new book *The Insurance Commissioner in the United States* is, as the author states, a study in the administrative law and practice of insurance. As the first of a new series of Harvard studies in administrative law it sets a high standard. It is thorough-going, replete with organized accurate information valuable not only to public officials charged with the administration of the insurance business but also to attorneys, insurance officials and students of law and political science. The

author has a grasp of the legal phases of this subject and no small insight into many of the practical phases of the insurance business.

Unlike many modern legal text books it is rich in both citations and cogitation. It is constructively critical of the present system of insurance laws and especially of their method of administration. There is much merit in the criticisms.

The first chapter is in fact a summary of what follows. The author says:

"I hope that this summary will indicate what is on the menu and at the same time provide cafeteria service for those who have not the time or digestion for the larger meal."

The author sells by sample and it is the reviewer's guess that one who reads the first chapter will read the entire volume with great interest. We read it all twice.

The author discusses the position of the insurance commissioner in the field of administrative law. That officer, at his best, is one versed in the principles and practices of insurance and is charged with supervision of the creation, licensing, operation and liquidation of insurance companies including control of insurance rates, forms of insurance contracts, licensing of agents and various other incidents. He is tax collector, examiner of insurance financial statements, investigator, inquisitor and judge, all in one.

Both in theory and in practice the insurance commissioner applies the fundamental principles of regulation laid down by the legislature to the specific facts and situations as they arise and decides whether the thing or act done or neglected to be done accords with or violates the statutory provision applicable. In theory there may be no delegation of legislative power to the insurance commissioner. The author very logically points out that in practice, legislative authority has in no small measure been delegated to the insurance commissioner and that the courts on one or another species of reasoning find ways of sustaining the action of the commissioner especially with reference to his findings of fact. The insurance world knows this to be true. The legislature is partly responsible for the exercise of legislative powers by the administrative. This is because the laws laying down norms or rules of action for the guidance of the insurance commissioner are very vague and indefinite. In some states this officer is charged with maintaining "reasonable rates" for insurance but the legislature does not define what is meant by this term. Companies may not be licensed in various states unless in "sound financial condition." Companies and agents are forbidden "to misrepresent the terms of any insurance policy." It is obvious in such cases and many more cited by the author that the insurance commissioner is confronted with a large responsibility and little or no legislative assistance in applying the rule of action. Nor have judicial decisions been frequent enough to aid materially in construing such vague terms. Insurance companies and the public do not resort to the courts except in extreme cases. It is perhaps a credit to both the insurance commissioners and the insurance fraternity that such is the case. It shows a disposition and ability to co-operate in settling technical questions of fact and policy. This record indicates rather clearly that the present policy of supervision is well conceived in principle; that there is big room for improvement is not open to doubt. Professor Patterson refers to the administrative tribunals of Europe which have reduced administration to a much better organized and definite system than we yet have in this country. As time goes on the administration of insurance will no doubt more closely approach the continental system in these respects.

Your reviewer believes that administrative law and practice in dealing with public utilities is considerably more orderly than in the case of insurance.

The author minutely classifies and describes the various subjects over which the insurance commissioner has control. He tells in detail of those duties such as audit of financial statements of insurance companies and examination into conditions of such companies by his deputies and assistants.

He considers fully the administrative procedure and the method of administrative determinations of the insurance commissioner. He points out that in most states the procedure is very informal and mainly lacking as to any well organized method of framing issues. The statutes are mainly silent as to a hearing by the official before action is taken by him. Very meager provision is made for the preparation and filing of clear cut decisions or rulings even after a hearing is held. In general, no machinery or method is provided for a review of the official acts of the insurance commissioner by any other superior administrative official. Where court review is possible the method of procedure is too often vague and uncertain. One cannot but fail to be impressed with the weaknesses of our present system in these respects.

It is inevitable that much discretion must be left to the insurance commissioner. Because of rapidly changing conditions, it is not practicable for the legislature to define in ultimate detail rules of action to guide the administrative official. Matters would be much improved if the administrative procedure were more definite and certain with a clear right of review in nearly all cases, especially where construction of a statute is involved. Review of technical questions having to do primarily with facts might better be reviewed by a semi-judicial court of review made up of judges skilled in the technique of insurance.

The latter part of the book deals with the control of the insurance commissioner by the executive, legislative and judicial departments of government. It also considers the indefinite control exercised over this official by the force of public opinion even when the official is not elective. The author also points out practical control by co-operation between the insurance commissioner and professional or semi-professional organizations, possessing technical knowledge and engaged in the insurance business, such as the National Board of Fire Underwriters and the National Fraternal Congress and also discusses the constructive activities of the National Convention of Insurance Commissioners resulting in considerable uniform legislation and the solution of technical problems common to the various states.

The chief methods of judicial review are by mandamus and injunction. One cannot be but impressed with the confusion of the law as to what acts of the insurance commissioner are subject to review. Discretionary powers are theoretically not subject to review. There is a strong disposition on the part of the courts not to disturb findings of fact but the courts readily take jurisdiction where the construction or interpretation of a statute is involved.

The volume contains valuable appendices which are very interesting. One of these contains a very illuminating and concise history of the growth and development of administrative supervision of insurance. There is a complete table of cases, bibliography and topical index.

Professor Patterson has done a thorough job of it. His book is the best on the subject and will not be easily equalled. It is a distinct contribution to legal literature on the subject of insurance. The reviewer hopes that in the reprint of this book the index will be amplified by the use of "catch words." This would greatly facilitate its use for ready reference by those of us who must find our law quickly. ERWIN A. MEYERS.

Cases on the Law of Persons and Domestic Relations. By William Edward McCurdy. Chicago, Callaghan and Company, 1927. pp. xxi, 1246.

Some six years ago, Francis B. Sayre's *Cases on Labor Law* was pointed out as evidence of the trend of legal instruction away from the historical categories. That was an initial signpost of a tendency to consider law from the angle of its applications rather than of its sources—of its application to existing social conditions. And now we find in Professor McCurdy's *Cases on the Law of Persons and Domestic Relations* a further sign on this highroad toward socialization.

Mr. McCurdy is not open to attack on the grounds of any real radicalism in the legal curriculum. He cuts no new diagonal shaft through the strata of law school courses in the direction of "functionalism." The book concerns Persons and Domestic Relations—not Family Law. It includes the subjects of marriage, separation and divorce; the subjects of husband and wife and married women; of parent and child, guardian and ward and infancy. Few of the corners which fit historically into other subjects have been clipped to assemble the jig-saw picture which social forces have been making of the family's legal relations. The one marked exception to this is the culling from the subject of Conflict of Laws a chapter on International Jurisdiction over the marriage contract and status. An infant's contracts and the torts of a child have been considered before this to be an appendage to this branch of the law. But no mention do we find of heretical inclusions: criminal law as it relates to desertion or non-support, to offenses by and against children; no direct mention of decedent's estates or of trusts for the provision of the family. In a tactful way Mr. McCurdy does include cases on legislative divorce. Within this long-latent seed lies the potential fruit of a scientific approach to marital diffulties that is, a system of administrative divorce.

To suggest as adverse criticisms Mr. McCurdy's omissions is to disregard his purpose. The casebook was prepared for teaching in the Harvard Law School, and in consequence must harmonize with the curriculum. If he has cut no really new shafts, he has distinctly broadened the old. The emphasis in the subject is completely shifted, and shifted not because of historical but because of social conditions. There is a most fortunate combination of the usually distinct subjects of Parent and Child, Guardian and Ward and Infancy. And between one-third and one-half of the volume concerns Marriage, Separation and Divorce. This departure is the more startling because the formation and dissolution of the marriage contract are regulated largely by statute. But statutory content can never be all-inclusive; statutes are always to be interpreted in the light of pre-existing law. If the legislators had known more of this background before attempting to change it by statute and if the common-law judges and chancellors had been somewhat less ignorant of the ecclesiastical-law basis of our matrimonial institutions, the legal status of the family might not be in its present state of confusion. And, unfortunately, there is still the tendency to change the situation by haphazard legislation rather than by a careful research into the foundations of these institutions.

In demonstrating that the subjects of domestic relations are basically matters of decisional law, Mr. McCurdy may have gone a step too far. It would occasionally be of help to the student to find stated in a footnote the statute which the court is interpreting. The footnote citations of cases are more inclusive than informative; the casual student may glean from a compilor's brief analysis of groups of cases a breadth of understanding which, if left to his own resources, he will never acquire. But that is a

question of teaching method. To review a casebook without knowledge of the direction of classroom discussion and supplementation is akin to describing a human being from a view of his skeleton.

In this instance the skeleton is admirably constructed. The cases do illustrate the material within the outline of the work. As illustrations of his points Mr. McCurdy has chosen, where possible, cases which are factually as well as legally interesting. That the cases are long is caused by the nature of the subject: the more closely is a case related to human factors, the more carefully balanced must be the social evidence and the more inclusive the picture of the entire situation. Most important of the book's virtues is its absence of partnership. Casebooks as well as texts can be so constructed as to attempt the proof of the editor's theories. In the field of the domestic relations theories are as diverse as the emotions. In leaving sociological theories entirely to classroom discussion, Mr. McCurdy has made his book the more universally of service.

In the practice of the law in this country the domestic relations have largely been looked at askance by the bar. That the subjects are of vast consequence is obvious. That there is a need of instruction in their legal elements, and a need to inculcate a social point of view, can be seen from the unfortunate diversity in our statute and case law. Toward this end Professor McCurdy's volume, with its avowed purpose of modernizing the subjects of domestic relations and its consequent popularizing of them in the law schools, is a distinct step in advance in its potential influence on the law of the coming generation. GEOFFREY MAY.

Les Gouvernements de fait devant le juge. By Noel-Henry. Preface by Prof. J. Basdevant. Paris, Libraire R. Guillon, 1927. pp. xxxii, 260.

This is an interesting study of an increasingly important problem of constitutional and international law. The *de facto* Government, the unrecognized administrator of a particular area, local or national, enters into factual and legal relations with citizens and aliens, resident in the territory controlled, and to some extent with foreign governments. The effect that is to be given to such acts of *de facto* Governments (a) by the courts of the parent State or *de jure* Government, (b) by the courts of third States which have not recognized the *de facto* Government, and (c) by international courts, is the special problem with which the author is concerned. He has drawn, as sources, upon the decisions of municipal courts in France, Germany, Italy, England and the United States and upon certain decisions of international tribunals.

In his approach to the problem from the three distinct points of view mentioned, the author has thrown light upon it. Briefly, his thesis is that the term *de facto* Government is one of constitutional, not international law. Before (a) domestic judges, who are bound by the views of the political department, the matter presents a simple constitutional question. Before (b) judges of third states, the issue turns on the recognition or refusal thereof by the political department, the courts deducing the necessary legal consequences. The author criticizes some of the recent decisions of the New York Court of Appeals in dealing with the acts of the Soviet Government and challenges the views of certain authors by asserting that precedents from group (a) are drawn upon for the solution of problems in group (b) and by characterizing as improper the independent investigation by the courts of political facts and the drawing of conclusions therefrom. Possibly the peculiar anomaly presented by the relations of the United States to Soviet Russia, the impossibility of disregarding obvious

facts and the desire to do justice in particular cases account for some of the decisions of our courts, even if they depart from scientific theory. Besides, it is doubtful if the author's postulated thesis is as general or politic as he assumes. Before (c) the international judge, the author maintains, the problem is not one of governments *de facto*, but of the recognition of insurrectionary governments, and the extent to which they may validly bind the State. These matters are, he says, to be judged by international law exclusively; so that he imposes on the international judge the duty and function of determining whether recognition was properly granted or withheld, and thence deduces legal consequences. Thus, he concludes that Judge Taft, as Sole Arbitrator of the claim of Great Britain against Costa Rica arising out of the acts of the unrecognized Tinoco government, should have dismissed the British claim because Britain had failed to perform its "international duty" to recognize the Tinoco government. (1924) 18 AM. J. OF INTER. LAW 155. Presumably, he would also, on the same ground, consider the United States estopped from pressing claims against Mexico arising out of acts of the Huerta government. But the Mixed Claims Commission did not so decide and was probably correct. *Hopkins v. Mexico*, Opinions of the Commissioners 42, 50 (Mixed Claims Comm., 1927). The author's view is interesting and not without merit *de lege ferenda*, but it can hardly be deemed an existing rule of international law. Recognition is still a national political act, not yet subject to criteria set by international law. Incidentally, it may be said that the work of Spiropoulos, *Die de facto-regierung im Völkerrecht* (1926) has dealt more thoroughly with the international law aspects of the problem.

EDWIN BORCHARD.

The Social Sciences and Their Interrelations. Edited by William F. Ogburn and Alexander Goldenweiser. Boston, Houghton Mifflin Co., 1927. pp. viii, 506.

The editors in a rapid survey in the introduction show the "one becoming many" as points of view develop into sciences. The efficacy of these points of view in bringing new hypotheses to light obscures the fact that the separate techniques are fundamentally different ways of attacking the same problems. The separation becomes the more pronounced because each discipline requires a life time to master, and because one inevitably leans toward what one has worked long and hard to acquire, and what one has found to be useful. It becomes complete when complicated technical vocabularies make communication all but impossible. The aim of the present volume is to make a new "one" by coordinating the many sciences, so that each will cast its own particular illumination on every problem.

The essays that make up the body of the book are restatements of the general aim with regard to specific sciences. The importance of combining, for instance, economic and anthropological methodology in studies of primitive societies; of anthropology and law in studying modern society; of psychology and political science; sociology and law; history and economics etc., through the whole series of permutations and combinations of the various social sciences. The need which the editors point out is emphasized by the succeeding papers; the thesis is strengthened but not clarified by the cumulative evidence presented. Only occasionally, as in Allport's article on Political Science and Psychology (p. 259) is there any indication of the development of a new method.

Omniscience being rare, the problems of social science will not be solved by single persons who are necessarily expert in only one field of learning, and who must therefore depend upon hearsay when they stray outside

of that field. There have already been enough attempts of that sort pretty well to discredit a more genuine one at discovering interrelation. Lawyers, in particular, have sinned by hastily acquiring a vocabulary from secondary sources and using it indiscriminately in their own fields. They effect not interrelation, but merely translation, and a free one at that. The result of the use of an inadequately learned terminology of a lower science as "explanation" is at best a specious clarification. What, for instance, is the net gain to either law or psychology of calling an act a willed muscular contraction or intent subvocal speech? Clearly none, unless the author is being paid by the word for his article.

The hope of the future lies in joint attack, the method, for example, of the Massachusetts Crime Survey; in the growth of sociological jurisprudence by studies made by lawyers and sociologists, or an anthropological psychology by combining the efforts of anthropologists and psychologists. How little of this has been done is apparent from the list of essays in this volume, and the references appended to each one. No paper in the book (save the introduction by the editor) and almost no study referred to is the joint product of two or more individuals with different scientific backgrounds. In each case omniscience is the aim—in no case is it achieved. The result is argument, not science—ingenious argument sometimes, but not the painstaking labor that each scientist is willing to expend in his own field. Instead of clarifying a minute point, the attempt is to cover a whole field.

Joint studies are, of course, not the least bit popular; they are not spectacular; they combine different technical vocabularies; they do not cover whole sciences with a few generous strokes of the brush; they do not have an immediate practical value. Yet they are of more significance than the cultivation of a popular attitude of expectancy before there are any results to offer; and they do not encourage easy cliches. If it is suggested that this is a popular, not a technical book, the answer is that the time is not yet ripe. Popularization should succeed, not precede scientific work. Otherwise it is too likely to set the fashion. Presenting one or two joint studies in this book would have gone a great way toward discouraging the idea that here was a simple task, readily accomplished by every histrionic teacher of the young idea. DONALD SLESINGER.

Handbook of Roman Law. By Max Radin. St. Paul, Minn., West Publishing Co., 1927. pp. xiv, 516.

The writing of a book on Roman Law for the American public is a matter of extraordinary difficulty, and no two persons will agree as to the nature of such a book. To bring a handbook of Roman Law within the form of a Hornbook is a task impossible of successful accomplishment. Roman Law is too vast and complicated a subject to be handled in such a manner. Within the brief space of 485 pages, Professor Radin deals not only with the vast body of Roman Private Law, but he devotes 104 pages thereof to the History of Roman Law, one chapter to Roman Criminal Law, and one chapter to the Study of Roman Law. The subject of criminal law is disposed of in ten pages, and the complicated rules growing out of the Roman family law in sixteen pages.

Although the book is called a *Handbook of Roman Law*, it was intended in fact to be but "a brief and simple introduction" to Roman Law, written primarily for American lawyers and law students. The author's main concern, it is apparent throughout, was to produce a book that would hold the reader's interest. Hence the slight consideration given to the Roman family law. Hence the lack of all details and the omission of all difficult and intricate problems. Hence the mere touching upon the high spots of

Roman Law, with an occasional comparison with Anglo-American Law. Hence, also, the omission of all notes of an amplifying nature.

In the attainment of the above objective the author has been eminently successful. He has produced a very readable book, which doubtless will encourage many to get a bowing acquaintance with Roman Law, who would have been frightened off by a more pretentious work.

ERNEST G. LORENZEN.

Readings on the History and System of the Common Law. Compiled and edited by Roscoe Pound and Theodore F. T. Plucknett. Third edition completely revised. Rochester, Lawyers Co-operative Publishing Co., 1927. pp. xx, 731.

Teachers of law are familiar with the second edition of these readings, and will welcome the new edition. The term "completely revised" is used advisedly. All translations have been carefully re-examined, and Professor Plucknett's name assures that his newly translated Latin and French texts may be relied upon with safety.

The edition is also new in much of its material. Chapter I, dealing with "fundamental conceptions," has been increased from 25 to 42 pages, a substantial addition, after allowing for the difference in type-page. A similar increase has taken place in Chapter II on the history of the common law. Not only the bulk but the value of the volume has been increased. Notes in fine print add to its usefulness. But a new edition always partakes to some extent of the old. While the Hohfeld terminology has found recognition on page 475, the references on reformed procedure (p. 411) are not of the latest, and the reviewer has some feeling that pp. 412-460 on the elements of procedure could now be put to more effective use.

This volume was originally prepared for college students, and the second half contains much elementary material not primarily of value in the law school. But nowhere in the law school does the student now get a satisfactory notion of the law as a system and of its historical background. The first four chapters of this volume (pp. 1-349) and portions of the book following page 349 may well form the partial basis for a law school course. Nobody better than these editors could devise a volume as the basis for such a course, but a volume designed explicitly for the purpose would be more usable than this, and would do much to encourage a broader attitude in law schools toward the law as a system. We suffer now from the law school treatment of the law as a group of independent subjects.

WALTER F. DODD.

Suretyship, Its Origin and History in Outline. By T. Hewitson. Sidney, Australia, The Law Book Company of Australasia, Ltd., 1927. pp. xix, 188.

"The merit, if any, of this attempt will be found not so much in what it accomplishes, as in what it suggests as awaiting accomplishment, in this, as in other special fields of Jurisprudence."

This sentence and the title selected accurately suggest the book's scope and the author's purpose.

Its most striking characteristic is its comprehensiveness. Part I, dealing with suretyship in legal history "In the East," is divided into three chapters entitled "In the Near East", "In Greek Law" and "In other Systems." Part II deals with the history of suretyship "In the West", "Roman Law", "Mediaeval Law" and "Late Mediaeval Law" being dealt with in separate

chapters. A third part deals with the history of suretyship in Britain and Ireland. Seven of the nine chapters comprising this part are devoted to the early English Law, one to Welch and Irish Law and a final chapter deals with "The Transition from Plegiatio to Contract in English Law." "The Part of Equity in the Development of Suretyship" comprises the fourth and last part. It is dealt with under the Roman Law, "some modern systems" and finally under the English Law. The history of the surety is then considered with reference to his relation to the parties, the creditor, the principal and the co-surety. A final chapter deals with the "Bill of Exchange as a Contributory Source of Suretyship Law."

Though only an outline, this book is scholarly and distinctly worth while.

H. W. ARANT.

In the December issue of the present volume of the Journal appeared a review by Dr. Thomas Baty of Prof. A. N. Sack's book, *Les effects des transformations des États sur leur dettes publiques et autre obligations financières.* Prof. Sack, in a letter to the Journal has taken exception to certain parts of this. His letter together with Dr. Baty's reply thereto follow.

Dear Sir:

I thank you very much for the copy of your Journal. I have read with much interest Dr. Baty's able review of my book and I should like to say that I much appreciate the flattering remarks he has made upon it.

Unhappily the critical part of the review contains statements which thoroughly misrepresent my ideas. It is of great importance for me in general that such things should not happen, but I feel obliged to be especially careful in the present case having regard to the wide sphere and high qualifications of your readers and to the striking misunderstandings which some of Dr. Baty's statements unfortunately lead to. You would therefore oblige me very much by printing in your columns the following rectification.

On page 274 Dr. Baty says:

"Professor Sack is never tired of repeating that if a change in its (population's) governments does not affect the incidence of its obligations, neither can it be affected by a change in its territory, and that therefore its obligations continue to attach to the population of the territory when it has passed under a new sovereignty, and to bolster up this conception he resorts to the extraordinary expedient of *denying that a new government can be regarded as successor to the sovereignty of the one it disposes of, if it effects to draw its sanction from a different source—God or the People* (p. 66). Such an argument demonstrates the weakness of his position. *The appeal to one occult force or another as the source of sovereignty has no bearing on the fact of sovereignty and this desperate reasoning by itself sufficient to show the doctrinaire character of his arguments.*"

In that way an opinion which is quite the opposite of mine is attributed to me. In the parts of my treatise quoted by Dr. Baty I have clearly shown (pp. 64-67) that those are the *absurd* but unavoidable conclusions which one is obliged to draw from the theory *which I reject* and which on the basis of arguments relating to the sovereign nature of the State *denies* continuity in State debts.

I have put all these conclusions in French "conditional time," (pp. 66-67: pourr*ait*, serr*ait*, resulter*ait*, trouver*ait*, aur*ait*, saur*aient*, etc., etc.) in order to show that these *absurd* conclusions *should be* (p. 66 in fine: "Il

resulterait *de cette theorie* . . .) if the above mentioned erroneous theory were accepted.

I am glad to agree with Dr. Baty that "this desperate reasoning is by itself sufficient to show the doctrinaire character" of the theory which I reject and which is quite the opposite of mine.

Some other remarks of Dr. Baty should also require substantial rectifications, but as they are of minor importance I feel obliged not to abuse of your space.

I want only to add that I should be sorry to convey an impression adverse to the whole of Dr. Baty's review, which is a very courteous and able one.

I thank you very much in advance for your kind consent to print these lines.

Very truly yours,

A. N. SACK.

Paris, France,
January 14, 1928.

Dear Sir:

Misrepresentation or garbling of an author's views is the unforgivable sin of a reviewer. It is a matter of serious concern to me that I should be supposed to have misrepresented Prof. Sack's attitude in his recent most weighty and interesting book.

There are three elements in the problem attacked by the author. There is the territory governed; there is the governing body of the moment; there is the State as an organism.

Professor Sack's thesis is that, in principle, the territory remains liable for the undertakings of the government, under whatever sovereignty it passes, in opposition to the usual view that it is the State which remains liable, whatever its increase or diminution of territory. The Professor supports this thesis by the argument *ad absurdum*, that, if the usual thesis is correct, there must be a difference in the results which follow upon a change of government (the territory remaining constant) according as the change is more or less radical: i. e. according as it is a change which involves more or less alteration in the assumed fundamental basis of power. A change from a "popular" republic to a "popular" King of the French would, he says, have to be treated differently from a change of a "popular" government to a government "by divine right." In the latter case "on pourrait affirmer" that the new power is not the successor of that which it succeeds. This I naturally took to mean—not, "it might mistakenly be said," but—it might properly be said that the new power does not exercise the sovereignty of the old one, but a new one of its own. Professor Sack now says that he did not mean that; he does not wish to deny the continuity of the sovereignty—but only to point out that it "might" be desired. If that is the meaning, it attenuates the force of his argument to zero. Anybody "might" deny anything; and I did him the credit of believing that he intended to produce a serious argument. But it would have been a fallacious argument, for all that; because it overlooks the distinction between the sovereignty of the State and the sovereignty of the governing body within its borders. Controversies regarding the constitutional basis of the latter and its continuity or discontinuity (whatever side the learned author may take in them), have nothing whatever to do with the continuity of the sovereignty of the state. It is in the exercise of this sovereignty that the government of the day makes international engagements, and the exercise of any more or less temporary internal sovereignty of its own is a matter which does not concern foreign nations.

To put the matter from a different angle. Professor Sack says that the current theory absolves the territory which has passed under a different rule, on the ground that there has been a discontinuity of sovereignty; the new ruler is there by virtue of his own sovereignty, not that of the makers of the obligation. But, he says, this cannot be the reason, because there is also a discontinuity of sovereignty if the basis of the government within its own territory is seriously altered; or (if I must not say that he denies the continuity) at any rate there may be a question about it. The answer is that there is and can be no question about it; if the new authority is actually in control, the source of its authority matters nothing.

Soviet Russia may have no continuity with Czarist Russia—but not because the theory of the State has been changed; only because the territory controlled by the new authority was never co-extensive with the Czar's dominions, nor nearly so. It is a different country. Neither the government nor the territory is what it was before.

Your obedient servant,

TH. BATY

Tokio
21 April, 1928.

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