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Book Reviews

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Orba F. Traylor, Ralph W. Skeels Jr., W. Lewis Roberts, Amry Vandenbosch, E. G. Trimble, and John L. Young

BOOK REVIEWS

JURISPRUDENCE. Francis P. LeBuffe, S. J., and James V. Hayes. Fordham University Press, New York, 1938, pp. xxiii-286, \$3.00.

In this work the authors professedly continue the one-sided religious and political objectives of Father LeBuffe's original edition (*Outlines of Jurisprudence*, 1924). God is the center of the universe who supersedes law (p. 54). The result is stratified ethical conceptualism. The totalitarian philosophy of law is considered to be absolutely disruptive (p. v). However, the annihilation is not a complete victory. The authors presume on the use of the term unnatural (lack of any substantial evidence) to denounce such forms of positive law.

Jurisprudence is defined as "practical science which investigates the natural origin and development of law." Positive law is depreciated with natural law constituting the nucleus of proper jurisprudence (stability and practicality). Jurisprudence is classified confusedly into Historical and Analytical. The chapter on American Jurisprudence neglects inaccurately the scholastic thought of Brendan Brown and Walter B. Kennedy. Actually, jurisprudence is divisible among the Realist, Sociological, and Scholastic Schools. Obering's *The Philosophy of Law of James Wilson—A Study in Comparative Jurisprudence* is missing. Reward is optimistically regarded as the true sanction of law—oughtness of law. The chapter on justice is really a development of the two preceding chapters on conflict of rights and duties and vindication of rights, but the continuity is not made evident. Justice itself is regarded as adjustment of the individual to the individual, the individual to the state, and the state to the individual without informing one what its substance is.

The method of the authors is dictatorial, preacher-style, and too much a study of words, words in a vacuum. Perhaps one already trained in jurisprudence could understand the authors' convictions, but to the practicing attorney the study is definitional only without scrupulous regard to facts, either historical or analytical. When the common law is referred to there is no indication whether it is the majority, minority, or the exclusive position of the common law. The book is a hodgepodge of quotations which at their best are too abbreviated. The result is similar to attempting a definition of gross negligence apart from the facts of gross negligence. The lackadaisical and indiscriminate sampling of excerpts of the masters reminds one of a persistent attempt to scan the authors without having digested them impartially. The diction is intolerant, and there is no literary style (e. g. pp. 73, 153). The authors continually raise problems in a way that implies finality.

Those of us who have learned humility in the use of language will

be disappointed in the unconvincing evidence given to support the positions taken. An analytical approach with results put provisionally would paradoxically have had more finality. The authors have not realized the truth in the maxim that he who talks the loudest is the one to be the most distrusted. Why not let the facts of jurisprudence speak instead of being squelched? However, the need for a book such as the authors have attempted is tersely put by President Hutchins of the University of Chicago: ". . . the truth is not what suits our convenience or prejudices; that the good is not a matter of taste. He will know that man is not the measure of all things, but that man is measured by the truth, which is the conformity of his intellect to reality, and by goodness, which is the conformity of his will to objective moral standards."¹

As a beginning course in the study of law the book can serve only as a biased outline. The book may have some cultural value (reference to the masterpieces of jurisprudence) and certainly can best serve for indoctrination purposes in law curricula (the church's position and criticism of totalitarian theories of law). Its chief value will lie in its thought-provokingness despite its alleged finality. The book is attractively bound and printed. The bibliography is selected, and there is a usable index.

ORBA F. TRAYLOR

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LAWYERS AND THE PROMOTION OF JUSTICE. By Esther Lucile Brown. New York: Russell Sage Foundation, 1938, pp. 302, \$1.00.

This study is the fifth in a series published by the Russell Sage Foundation dealing with the status and possible future development of certain of our American professions. The historical method is used for the most part. The tone of the books is impartial.

The discussion is centered around the historical development of the legal profession and the indications of future development which can be discerned in its organizations. The author's point of view is a functional one, being that the law, as a social institution, derives its meaning and utility for society in the promotion of justice. The bar's social responsibility, says the author, is the administration of justice. The materials that make up the book are interpreted from this point of view.

The topics discussed at length are: Legal Education, Admission to the Bar, National Association, Number of and Demand for Lawyers, Weaknesses in the Administration of Justice, and New Trends in the Promotion of Justice.

The question of what "justice" is is not discussed. The author has gathered together a great deal of material from many scattered sources, summarized it and presented what she conceives to be the consensus of opinion on each of the topics mentioned above. The book amounts to

¹"The Bar and Legal Education," 23 Am. Bar Ass. Jr. 926 ().

a summary of thought of members of the legal profession on these topics. Little of the interpretation seems to be the author's own.

From the lawyer's point of view this monograph is of value in that it brings together in one place a vast amount of material relating to the growth and development of the legal profession. Obviously, most of this material would be unavailable to the person interested in the changes that are occurring in the lawyer's role and status in society. From this standpoint such a service is invaluable.

The principle criticism that can be made of the book is that it appears brief in spots, specifically the sections referring to changes in techniques of teaching in law schools, and the section referring to the place of the law night school in the preparation of lawyers. Some of this brevity or scantiness of treatment seems due, however, to a paucity of material.

The final conclusion is of interest to anyone who is concerned with social change as it will affect the lawyer. Since change in any institution is effected, in part at least, by outsiders, the author's conclusion that "Gradually there is evolving the realization that the services of both the legal profession and the laity are needed, and that only through their working together can there be broad and continued progress in the promotion of justice", is particularly pointed.¹

For any intelligent discussion of what the legal profession is, and what, if any, changes should be made in it in the interest of the promotion of justice this volume should be required reading.

RALPH W. SKEELS, JR.

Western Kentucky State Teachers College

INSURANCE. By S. B. Ackerman. Revised edition. The Ronald Press Company, New York, pp. xiii-599.

The title insurance suggests a treatise on the law of insurance, but this is not the case with Mr. Ackerman's work, although Mr. Ackerman is a lawyer. He is, also a professor of insurance at New York University and consultant on insurance and it is his vocation as a teacher that has determined the nature of his book. It is a treatise for college and university classes covering all types of insurance with exception of social insurance. The author has not dealt with the latter form as he says it is still in process of development and subject to change.

The author indicates that the book is written more from the viewpoint of the buyer of insurance than the professional insurance man. It is instructive, brief in its statement of the various kinds of insurance, elementary. It gives such information on the subject of insurance as everybody should know. It should, therefore, have as wide a circulation as possible, and should prove a valuable book.

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W. LEWIS ROBERTS

¹ Lawyers and the Promotion of Justice, p. 292.

CASES ON INTERNATIONAL LAW. By James Brown Scott and Walter H. E. Jaeger. St. Paul: West Publishing Co., 1937, pp. lxi-1062.

The teaching of international law in American colleges and universities received its great impetus from the World War. Before the World War very few schools offered courses in international law, and where courses were given the text-book method was used exclusively. Casebooks were a rarity.

Since the World War the number of courses in international law has increased tremendously, with a shift to the casebook method of instruction, at least in part. In response to this shift there have appeared a considerable number of casebooks, and their end apparently is not yet. One of the first casebooks on international law was edited by Dr. Scott, one of the editors of the present casebook. Most of the decisions included in the earlier casebooks were English and American. The recent tendency has been in the direction of including more decisions by the courts of other countries and from international tribunals. The inclusion of a very large number of non-American and non-English decisions constitutes an excellent feature of the casebook under review.

Another feature of this casebook is the division of the material into substantive and procedural law. Procedural law is covered in three chapters: "In Time of Peace," "In Time of War," and "Neutrals and Belligerents." Now if belligerent rights against neutrals are precedential and not substantive rights then the neutral state can recognize them only if the belligerent state is engaged in a just war. But if belligerent rights were made dependent upon the justness of the war neutrality would be a thing of the past. The reviewer does not quarrel with the logic of this arrangement of material. Indeed he finds the logic inescapable. But it does seem that the premises behind a classification so out of the ordinary should be supported by some illustrative material.

This excellent casebook would be more suitable if the editors had included material other than the decisions of courts. The problem notes at the end of each chapter should be a great aid to teaching.

A. VANDENBOSCH
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THE LAW OF NATIONS. By Marcellus Donald A. R. von Redlich. World League for Permanent Peace, 1937.

The title of this book is very misleading. It is not a treatise on the Law of Nations in a strict sense at all. Rather it is a combination of a history of that subject and a history of international relations, with considerable constitutional law of the United States and other subjects also included.

The first chapter is entitled "Law of Nations", the second is devoted to "Recognition", and the third and fourth to "International Relations

and Diplomacy". Then follow chapters five to ten on the Government of the United States. The fifth is entitled "Special Inherent Powers of Sovereignty" and is devoted to a discussion of the police power of the States pointing out that it was not surrendered to the National Government when the Constitution was adopted. The sixth is devoted to the "Powers of Congress" under the Constitution; the seventh to an explanation of the various amendments to the Constitution. Chapters eight, nine and ten, take up the power of the President and Congress over foreign relations. These are followed by chapters on the "History of the Evolution of the Status of Diplomatic Officers", "Rank of Diplomatic Representatives", "Modern Status of Diplomatic Officers", "Consuls", "Arbitration", "Pan-Americanism", "Admiralty", "Prize Courts", and the last entitled "Warfare, Diplomacy and International Law".

The great variety of subjects covered necessarily require that they be covered rather sketchily. The book, therefore, is not a very thorough treatment of the subjects included. It is true, of course, as Dr. Redlich points out in the preface that an author "is privileged to present his subject matter in such arrangement as he may deem most advisable and to include such phases of the subject treated as he thinks will serve the purpose for which the book is intended." He goes on to say that that he "has earnestly endeavored to compile into one volume some of the most vital phases properly belonging under the 'Law of Nations'." With his decision as to what properly belongs under the subject one can quarrel.

The reviewer feels that the author has included subjects, for example, the amendments to the Constitution of the United States, the police power of the States, the detailed powers conferred on Congress by the Constitution, and Pan-Americanism, which do not properly come under the Law of Nations. Some of these could quite easily be tied up with the subject, to be sure. The fact that the police power does belong to the States has more than once embarrassed the Government of the United States in its dealings with foreign nations. However, the author does not tie the subjects together. For instance chapter four ends with a comment on the Peace Conference of 1919 and chapter five plunges right into a statement about the powers delegated to the Federal Government by the Constitution. This statement is followed by a discussion of the police powers of the States. The international significance of the States having the police power is not even mentioned.

The book will no doubt be of value to people interested in the subjects covered who have not had opportunity to study them first hand. If however, they want to get even a general knowledge of the Law of Nations they will have to look beyond the covers of this book.

E. G. TREMBLE
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VALIDITY OF FOREIGN DIVORCES—A STUDY CONCERNING THE EXTRATERRITORIAL RECOGNITION OF DIVORCE DECREES. By Hamilton Vreeland, Jr. Chicago: Callaghan & Company, 1938, pp. liv-355.

Professor Vreeland's brief treatise on the validity of foreign divorces is timely and should be well received by those members of the bar who have problems arising in this unsettled branch of the law. In fact, the average practitioner should have a place for such a book in his library, as no one, if he or she be wise, should marry a person who has been divorced or who has secured a divorce, without first consulting a lawyer as to whether such prior divorce was wholly legal.

After briefly covering the English law on the subject of foreign divorces, the author devotes eighteen or twenty pages to a consideration of the cases under the Constitution of the United States. Over a hundred and fifty pages are then given over to a study of the holdings in the various states of the Union. This space is largely used for giving a digest of the state court holdings, that is, the bulk of the subject-matter of the book consists of digests of decisions by state courts. About forty pages are given to a consideration of the European law under the Hague Treaty of 1902, and twenty pages to European law aside from treaty.

In reading the digest of cases from the state reports, one cannot help being impressed by the fact that there is a very large number of divorces today that are accepted socially which are not legal under the state holdings. The lack of uniformity among holdings of the various jurisdictions, seems unfortunate. The attempt to better conditions under the Uniform Divorce Jurisdiction Act of 1930 seems to have failed. The act is not the law in a single state today and the author feels that "all in all it would seem that the unpopularity of this proposed statute is merited." The writer has given considerable attention to the possibility of bringing about a change by treaties. It may seem rather facetious that in this connection he should cite the Migratory Bird Treaty Act of 1918 in solving the problem of flighty persons who pass over state and national lines to secure freedom from marital discords (p. 346).

Unfortunately the author in his citations has not followed the style approved by the editorial staffs of four of the leading law reviews. The reviewer finds that the date of the decision is often very helpful in evaluating the holding of a court.

In the opinion of the reviewer the conclusions and suggestions of the author are sound and entitled to very careful consideration. His treatise is a very valuable contribution to the literature in this branch of the law.

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CASES AND MATERIALS ON THE CONFLICT OF LAWS. Fourth Edition. By Ernest G. Lorenzen. West Publishing Co., St. Paul, 1937, pp. xxxvi-1138.

Prof. Lorenzen in his fourth edition of *The Conflict of Laws* has definitely followed the trend of modern casebook writers to add "materials". It is difficult to maintain that the addition of "materials" to a casebook can be superfluous but teachers and students in the less cosmopolitan schools might well accuse Prof. Lorenzen of presuming too much intellectual curiosity upon the part of practical law students, when he believes some of the materials included in his casebook will be utilized. Reference is made particularly to his inclusion of materials on foreign law exhibited by his list of abbreviations of foreign law articles and codes and especially his notes on such matter on pp. 510-513.

The most valuable additions to the fourth edition are: Introductory notes to each chapter and section giving the student foresight into problems instead of a mere hindsight after study of the cases; the incorporation of sections of the Restatement of *The Conflict of Laws* into the chapters according to their pertinency; excerpts from law reviews; and dissenting opinions.

By those teachers who use the American Law Institute's Restatement of the particular subject in conjunction with the casebook, this book will be welcomed. The printing of the pertinent Restatement sections together with "*Caveats*" allows a discussion of the view of the Restatement in connection with the cases upon a moment's notice.

An excellent citation of cases and statutes as to non-resident motorist regulations is provided immediately following the case of *Hess v. Pawloski*. Such a presentation of the status of this current problem as to jurisdiction in these situations is to be commended. It seems, however, that the author would have pleased more users of his casebook by placing the cases dealing with "Domicile" in his chapter on "Jurisdiction" rather than in the introductory chapter since domicile is, in most cases, an important factor in jurisdiction.

A further aid to the instructor is embodied in "Suggestions for Omissions of Cases" on p. v. At that page there has been suggested the omission of cases on specified pages to allow a reduction of the course to a half-year schedule of three hours a week as well as suggestions for further omissions so as to allow coverage of the main phases of the subject in a half-year course of two hours a week. It is apparent that an attempt to include a study of all the principal cases in the book with materials thereon to an appreciable degree, would require a full year course of at least two hours a week.

Prof. Lorenzen in his newest completed compilation has virtually exhausted the present field of Conflicts of Law as to types of situations and one feels safe in saying that his fourth edition will command as many followers as have his preceding editions, if not more.

JOHN L. YOUNG

READINGS IN JURISPRUDENCE. By Jerome Hall. The Bobbs-Merrill Company, Indianapolis, pp. iii-1183.

All those lawyers and law students who are interested in the broader aspects of their profession, including the history and philosophy of law, will be glad to know of the Readings in Jurisprudence just off of the press, edited by Professor Jerome Hall whose work in the field of criminal law is already well known. Unfortunately among the selections on natural law one finds no reference to Pound and the same is true in several other chapters, where selections from his work might well have been expected.

A recital of chapter headings will suggest the general content such as social functionalism, idealism, utilitarianism, and transcendentalism. Part II deals with analytical jurisprudence under such heads as law and logic, the nature of law, basic concepts, classification, etc. Part III is entitled Law and Social Science, and deals with scientific method, primitive law, custom, legal institutions, means of social control, legislation, and the judicial process. No attempt is here made to evaluate the production as a whole. This selection is certainly valuable for use as source material and the selections are for the most part well made.

