

BOOK REVIEWS.

THE AMERICAN DIGEST. (Annual. 1896.) Prepared and Edited by the Editorial Staff of the National Reporter System. St. Paul, Minn. : West Publishing Co. 1896.

The profession is under great obligations to the editors and publishers of this Annual. The new Digest is constructed on the same admirable lines as its predecessors. About one-sixth larger than the '95 Annual, it begins to assume Brobdignagian proportions.

FEDERAL JURISDICTION AND PROCEDURE as modified by Acts of Congress of March 3, 1891, and March 3, 1887. Corrected by the Act of August 13, 1888. WILLIAM A. MAURY, LL.D. Washington, D. C. : W. H. Lowdermilk & Co. 1896.

As indicated by the title, this pamphlet treats of the jurisdiction of the Federal courts as affected by recent legislation. It was prepared for use in the Law School of Columbian University with the object of collecting in a convenient form the above-mentioned acts, together with such portions of the constitution and revised statutes as are necessary to a full understanding of the purpose with which Congress acted, and the scope within which its powers were exercised.

As the work does not aim at a general discussion of Federal jurisdiction but simply at a reproduction of the results which have been reached, the author's province has been limited to the field of compilation, but the orderly and logical arrangement make the book useful for purposes of reference.

M. L., Jr.

COMMENTARIES ON AMERICAN LAW. By JAMES KENT. Fourteenth Edition. Edited by JOHN M. GOULD, Ph.D. Boston : Little, Brown & Co. 1896.

Though seventy years have passed since the first of these great Commentaries appeared, they still rank as the first of American classics. In that period there have been many changes in our growing jurisprudence, but there is, notwithstanding, extraordinary harmony between Chancellor Kent's views and the decisions of the highest courts at the present time. It goes without saying, however, that the works have needed an annotator. Twenty-three years ago Judge Holmes, in his celebrated Twelfth Edition, for the time being, supplied this need. His notes were able and elaborate. Ten years later Mr. Barnes edited a Thirteenth Edition, not covering quite so thoroughly the intervening developments in the law. Since these editions there has been a sufficient growth in the law to justify as careful a piece of work as that of Dr. Gould. Inter-

national law, in particular, has of late acquired a new importance, and on this subject Dr. Gould furnishes some valuable notes. Other parts of the work which have received particular attention are those relating to equity, judgments, taxation, master and servant, aliens, the domestic relations, patents, copyrights and trademarks. Judge Holmes's notes are preserved in full, and together with those of Mr. Barnes, preserved in large part, are readily distinguishable by their arrangement from the notes by Dr. Gould. To the twenty-three thousand cases cited in the previous edition, the present editor has added nine thousand, many of which he makes the basis of useful comment. Foreign judgments receive careful attention in an excellent note. Dr. Gould's work is well done, and adds appreciably to the value of the commentaries.

W. C. D., Jr.

THE QUESTION OF COPYRIGHT. Compiled by GEORGE HAVEN PUTNAM, A. M., Secretary American Publishers' Copyright League. Second Edition. New York and London: G. P. Putnam's Sons. 1896.

In justice and morality it has never been a disputable question that the property right in the products of man's inventive or literary faculties is as absolute as in articles manufactured or developed by manual skill and labor. The law, following these footsteps, but, as usual, lagging somewhat behind, has to an extent recognized the right, but has not advanced as far with respect to copyright as it has in the case of patents.

By the provisions of the Berne convention, which went into effect in 1887, and which have been accepted by all the literature-producing and literature-consuming nations of the world, the United States alone excepted, it is now easy for authors in any country, with the above exception, by fulfilling the requirements of these domestic copyright laws, to secure without further condition or formalities copyright for their productions in all the states comprising the International Union. But as regards our own country, it is still true, as Mr. Putnam remarks, that "the patentee of an improved toothpick is able to secure to-day a wider recognition of his right than has been accorded to the author of 'Uncle Tom's Cabin' or of 'Adam Bede.'"

Mr. Putnam presents the reader with a vivid contrast between our copyright laws and those of other civilized countries, and he reminds us that, although the act of 1891 was a considerable advance, it yet leaves us far behind the rest of the world in the recognition of literary property. As is pointed out in the preface, the provision that America's *manufacture* of a book shall be a pre-requisite to its American copyright, represents a stage of policy which was reached in England, France, and Germany in the early years of the century, and the requirement of simultaneous publication constitutes an insuperable obstacle to the copyrighting of books

requiring translation. The book presents in addition, in convenient form, interestingly written, much valuable data on the whole subject of international copyright, embracing the full text of the United States law, the regulations for obtaining copyrights, and a list of the countries with which we have reciprocal agreements. There is also a summary of American legislation, by R. R. Bowker; an abstract and digest of the English law, by Sir James Stephen; an analysis of the Monkswell bill of 1890, by Sir Frederick Pollock; a history of the contest in the United States for international copyright, etc., etc. The editor contributes several valuable papers, and there are others by Prof. Beard Matthews and R. R. Bowker on the "Evolution of Copyright," "Literary Property," and "Copyright and the Prices of Books."

Altogether the volume constitutes a useful and important utterance on a subject of ever-increasing interest, and whether regarded from the purely technical standpoint or from that of literature in the broad sense and contemporary history, deserves a place in every library.

W. S. Ellis.

THE NATURE OF THE STATE. A Study in Political Philosophy.

By WESTEL WOODBURY WILLOUGHBY, Ph.D. Lecturer in Johns Hopkins University. New York: MacMillan & Co. 1896.

This work, like every other treatise on philosophy, abounds in the intricate and profound. While not a legal production, yet it is concerned with just such a mental problem as frequently confronts a lawyer, and a careful perusal of its pages cannot fail to instruct and improve. It is only necessary to read the opening chapter, which deals with the scope of the work, in order to appreciate the difficult nature of the task the author sets about to accomplish. The work he assigns himself is to justify the exercise of political power by the State, in what is the most important chapter of the book, viz: "The Origin of the State," and then to discuss in the following chapters, "The Nature of Law," "Analytical Jurisprudence," "Sovereignty," "The Composite State," "The Location of Sovereignty," "The Aims of the State," "The Classification of Governments," closing with a chapter containing a recapitulation and a brief comment on Present Political Characteristics and Tendencies.

The author starts out with a statement of the importance of a rigid adherence to the exact connotation of terms used, and for the most part he is precise in the use of them, but on page 176 falls into the error of confounding the expressions "*ex post facto* law" and retro-active law, treating the two as synonymous.

After a few definitions of terms the author defines, or rather enumerates, the requisites of a State as follows: (1) A community of people socially united; (2) a political machinery, termed a government, and administered by a corps of officials termed a magistracy; (3) a body of rules or maxims, written or unwritten,

determining the scope of this public authority and the manner of its exercise. Mr. Willoughby does not discuss Political Science from a historical standpoint, and thus review the characteristics of ancient, mediæval or modern States, but rather seeks to formulate into a theory, the essentials of an ideal State, which may be its own justification and a model for all political associations. At the threshold of the work he distinguishes between State and Government describing the latter as merely the machinery through which the purposes of the former are formulated and executed. And immediately after this distinction the statement is made and verified by quotations, that a failure by philosophers in the past, to distinguish between these two terms has led directly or indirectly to erroneous results and much confusion.

The meaning of the word State as used in this treatise is next distinguished from the terms Nation and People to which the Americans and English have given a meaning the converse of that given by the Germans; the word Nation with the Germans meaning a collection of individuals united by ethnic or other bonds, irrespective of political combination, while a People denotes a body of individuals organized under a single government, which meanings are preferred by the author.

The assertion is then made that as soon as social life begins, we find men submitting to public authority, and while the variations may be such that no two instances are entirely similar, yet we will recognize that no matter how organized, there is in all States a substantial identity of purpose, and the aim of the task undertaken is definitely to determine the requisites and limits of such public authority. States may differ, it is contended, in the qualities of their governmental machinery, but it is denied that they themselves admit of comparative degrees of excellence. In other words, there can be no such thing as an imperfect State.

After discussing briefly the theories—the Patriarchal and its opposite, that of Morgan and McClennan, holding that a common horde with absolute promiscuity in sexual relation preceded that of the rule of the head of the family—the author pertinently concludes: "Whether by original force or by voluntary recognition and establishment, whether founded upon acknowledged supremacy of personal prowess and sagacity of the leader selected, or whether springing from patriarchal authority the public authority becomes established cannot now be known and undoubtedly differed in different instances. But, however originated, a public authority once created, the State becomes an established fact."

Given the existence of the State, the various theories advanced by which such public control may be justified, viz.: The Natural or Instructive, The Utilitarian, The Divine, and the Contract, together with frequent quotations from Hobbs, Locke, and Rousseau, advocates of the latter, and after criticising and rejecting each, he reaches the following conclusion: That there is no necessity, as often contended is, of finding a moral justification for the

control of the State ; that those who hold to the Contract theory start with the assumption of complete freedom in every man to do as he likes, when in fact this is out of the question. With the social life of men, antagonism between their respective interests and spheres is an absolute necessity. Hence the restraint imposed by the State is the same as would otherwise be imposed by individuals, and far more moderately and judiciously exercised.

The basis of the State's control, then, is its utility ; not, however, that utility which presumes a natural right of freedom in each man, and then overrides it for the good of all, but a utility which, while not recognizing any such natural freedom, is justified by its manifest potency as an agent for the progress of mankind, and under the control of which he is not less free than in its absence.

Now as to when the State is born. From the standpoint of Public Law, the author admits that its beginning is at the time a political authority is instituted, but contends that from a philosophical point of view we must go back of this period to the moment when the first feeling of unity began to be felt. The discussion of the Origin of the State closes with a very fine distinction between the General Will and the will of a majority of the individuals.

The chapter on Nature of Law briefly refers to four sources, viz. : Statutes, Law Evolved from Continued Customs, Written or Unwritten Constitutions, and International Law, followed by a comment upon the Growth of Law.

After a very interesting and satisfactory discussion of the subject of the Location of Sovereignty, he concludes that "All organs through which are expressed the volitions of the State, be they parliaments, courts, constitutional assemblies, or electorates, are to be considered as exercising sovereign power, and as constituting, in the aggregate, the depository in which the State's sovereignty is located.

The chapters on The Aims of the State and The Classification of Governments are able and interesting, reviewing and criticising with intelligence the doctrine of writers of note on each subject.

The book closes with a brief but a very clear and interesting forecast of modern political tendencies, devoting its attention chiefly to the United States as the type of the democratic era which Mr. Willoughby says has been for some time past inaugurated. As a whole, the treatise, which occupies less than five hundred pages, is clear in its statement of difficult problems, intelligent in its discussion of them, fair and able in its criticism, and logical in its reasoning and results. To all who love to delve into philosophical questions of this character the book is commended as a scholarly attainment.

Benjamin F. Perkins.