

BOOK REVIEWS.

THE STATE: THE OBJECTIVE LAW AND THE POSITIVE LAW.
(L'ÉTAT: LE DROIT OBJECTIF ET LA LOI POSITIVE.) By
LEON DUGUIT, Professor of Law at the University of Bordeaux.
Paris. Ancienne librairie Thorin et fils. Albert Fontemoing,
editeur. 1901. 12 francs, pp. 623.

This book is undoubtedly one of the most important if not itself the most important, that has been written on topics of jurisprudence for many years. Our author's purpose can, perhaps, be best stated in his own words: ". . . We wish, above all, to perform a negative work; to show that the State is not that collective person, invested with sovereign power, imagined by the inventive minds of the publicists; that the law is not that edifice built of patchwork by the hands of the jurists on the unstable foundation of individual law or the omnipotence of the State; that all this assemblage of fictions and abstractions vanishes at the mere observation of reality. In a word, our object is not to say what the State is and what the Law is, but rather to say what they are not."

M. Duguit has, however, not restricted himself to destructive criticism alone. Useful as such treatment sometimes is it is often barren of results, since it is of no special value to be told that one number which we are seeking in a million is not among ten of the million. Our author, while combatting what he believes to be erroneous views of the subject, gives us his own ideas, which he founds on what he calls facts. The ultimate facts of human existence are, he says, individual consciousness and individual will. Man is a social being. The ultimate fact of social existence is the effort by all men to achieve the greatest amount of happiness or, as he cynically puts it, the greatest amelioration of pain. This leads to certain results in which, theoretically at least, the efforts of all men coincide. From this spring "solidarity by similitudes" and "solidarity by division of labor"—which seems to be another name for the former. Fundamentally, then, his philosophy is hedonistic. But our author rejects an ethical basis for his work. He says the formula is not the Kantian one. It is not "obey the rule of law because it is right," but "obey the rule of law or perish, since men can live only in and by this law." The *règle de droit*, as he calls it, is thus objectively established and is incumbent on all. He rejects the current conceptions of State and of Sovereignty.

pointing out the difficulty of their adherents who admit that the state must be, in some measure restricted. The view of Jellinek and others who endeavor by the principle of auto-limitation to reconcile the all-powerful State with a duty incumbent upon it, nevertheless, to refrain from wrong, he attacks with vigor. Our author then proceeds to show how this transcendent rule of law is translated into rules binding on the community. This is done by the depositories of power (*detenteurs de la force*) whether parliaments or kings, enacting positive laws. But such laws are binding only when in conformity to the rule of law (*droit*). Otherwise according to our author and Thomas Aquinas, the State (understood in the colloquial sense) becomes rebellious and any individual has the right to punish it. This is the philosophical justification for revolution.

The positive law consists of two parts, the "normative" and the constructive. The former comprises that part which is dependent for its validity upon its approach to the *norm* established by the rule of law. The latter, upon its mere enactment, if the former be within the rule. In other words every law in its last analysis assumes this form: "Thou shalt not steal" and a penalty prescribed for the violation of this commandment. If the first part be in conformity to the *règle de droit* then the latter assumes the form of a categorical imperative. But here our author makes the qualification that if the punishment be unnecessarily cruel, then the State has infringed the objective law, the penalty for the violation of which is its ultimate destruction.

Whatever one may think of our author's views they seem to embody a truly scientific basis for the law. In its last analysis it comes to this; that a community and an individual must equally obey the law or perish.

If anyone should think this an unsatisfactory basis upon which to develop a theory of jurisprudence, let him consider the tremendous difficulties which confront any other view. These difficulties are clearly shown and strongly pressed by our author.

His own views are worked out with great elaboration of detail. But he sums them up concisely as follows: (*L'Etat* p. 617).

"Individual consciousnesses and individual wills mutually bound by the tie of solidarity; a rule founded upon this solidarity, a law arising from individually conscious existences and individual wills; individuals stronger than others, who by reason of this rule, should place their power at the service of solidarity; enunciation of this rule by the governors and organization of the means devised to sanction it; these constitute the State, the objective law and the positive law. The notions of a State-personality, of sovereignty, of a subject of law do not answer to reality and should be finally banished."

We have devoted some little space to the discussion of *L'Etat*

since the book is in French and for that reason not generally available. We regret that the nature of the subject precludes further discussion within the limits allotted to us. We can only say in conclusion that anyone interested in the study of the law in its broader aspects will derive much profit and pleasure from M. Duguit's work.

E. B. S., Jr.

THE NEGOTIABLE INSTRUMENTS LAW. The full text of the Law as enacted, with Annotations by JOHN J. CRAWFORD, of the New York Bar. Second edition. New York: Baker, Voorhis & Co., 1902.

This is the second edition of a useful book. We can say this without fear of doing the author injustice, for we are familiar with his first edition of 1897 from actual use—surely, the best way of testing a book's usefulness. The writer cites the full text of the act, as drafted for the Commissioners on Uniformity of Laws and enacted in New York. Each section is annotated by Mr. Crawford, who explains the object of his notes: "I have endeavored to point out the changes made by the law in the different states, and have added citations to the decisions of all the states where the statute is now in force." Such a scientific commentary aids greatly in the clear understanding of the statutory provisions; especially since the act was drafted for the Commissioners by the annotator himself. We may then hope to gather from the notes the author's view of the law as it was, and consequently the true object, remedial or otherwise of each section.

The second edition has its additional value, since in the intervening four years twelve states as well as the District of Columbia have adopted the act. Any changes thus made in the course of its adoption, are found in the notes, as are the few decisions made under the statute. The book is conveniently arranged with a table of cases and an index.

We recommend this annotated edition of the Negotiable Instruments Act to the law student and the practitioner.

W. L.