

BOOK REVIEWS.

DROIT ADMINISTRATIF. Par Félix Moreau. Paris, France: Thorin et Fils.

The administrative law of France is, perhaps, of more interest to the student of American law than that of any other European country except Switzerland. While there can but be many remains of her long and active legal history before the revolution, which have their subtle influence on certain portions of her constitution to-day, yet the actual beginnings of that constitution, its spirit, and much that is actually embodied within it, date from that revolution. The spirit of their day of revolution and revolt; and the spirit of ours; the date of the days themselves narrowly correspond. Founded upon ideals which, while in some respects superficially different, were yet fundamentally the same, both have developed in the nearly one hundred and fifty years of chequered civic existence since that time, a civilization similar in many respects, and with very largely the same civic ideals. Therefore, many parallels may be drawn by the American reader of a book like this of Mr. Moreau's, that gives in clear and precise phrase, which yet retains that charm of literary form which adds much to the force of even the technical or legal treatise, the status of administrative law in France as it is to-day.

In his preliminary chapter Mr. Moreau notes two characteristics of modern French administrative law. It is "Judicial", that is it is subject to the rules and restrictions applicable to the other departments of the law. He notes this as a new thing in French law, since it is not long since "Arbitrary power was claimed by audacious administrators, accepted by opinion, permitted by the law. . . . To-day things are otherwise". The second characteristic is that the administrative law is autonomous because it "constitutes a body of independent doctrine having its own principles, its procedure of interpretation and of discussion". He claims that the administrative law is and should be distinct and independent of the private law. "The juridical relations of the private law are dominated by the principle of equality between the citizens: they know no superior or inferior. In the juridical relations of the administrative law, inequality is the rule; they oppose to each other

a superior and an inferior, the public power which exercises the power of command, and a person upon whom it acts, a subject, who submits to this power of command, bound to obedience. Not that the public power commands arbitrarily, nor that the subject obeys servilely; legal conditions are imposed upon the power and upon the obedience; but within the circle traced by these conditions, the parties bound by the juridical relations occupy a position relative to that of command and subordination. . . . The difference indicated belongs to the intrinsic nature of juridical relations. The distinction between the administrative law and the private law is thus essential and fundamental; it is not the difference of an exception to a rule; it belongs to the nature of things. Administrative law constitutes in itself and by the same title as the private law, a common law. And thus it is autonomous".

In his discussion of the "general theory of administrative persons", Mr. Moreau says, "The present exposition of the French Administrative law will be found to be entirely dominated and inspired by the idea of juridic personality, by the idea that the State, the Departments, the Communes, the public establishments are, in the eyes of the French law, so many persons, distinct from each other, distinct from the individuals which compose them". Upon this point he enters into a discussion which is of interest to all who are engaged in the investigation of the question as to the "corporate entity" of corporations. His doctrine stated in his own words takes the following form:

1. There exist collective interests, distinct from individual interests, superior to them, and these collective interests have a legitimate need of being satisfied;
2. These collective interests become rights when they obtain judicial sanction, that is to say, efficacious and peaceful means of being satisfied;
3. The collectivity of rights turned toward a common end (which is the preservation and the development of the collectivity) constitutes the judicial person".

He states the question thus clearly, and then in an equally clear manner gives his reasons for the theory that he has adopted. To those who uphold the opposing theory his arguments may not be more convincing than others which have preceded them; they are not new, but they are well presented.

In each part of the book, and there are four grand divisions, there is much of interest. In the second part the chapters containing the Organization of the Commune, and the Public Establishments and those of Public Utility, are especially valua-

ble for students of civics and economics; the arrangements for the local self-government of cities in France are especially notable, and while there is no special attempt made to set forth these arrangements by Mr. Moreau, they are treated with the care he has given to all the details of his subject. It is this care, this attention both to the philosophic side of the subject and to the minute detail, which renders a book of French or German law superior to the average output of the American or English press. If the English and American publisher would also enable the purchaser of their law books to receive them in the compact and convenient form in which this book is given us, and in which the continental books usually come to us, it would seem that the busy lawyer, the student, the professional man on a journey, might get into the habit of having a good book with him at all times; he cannot load himself down with the leaded papers, the heavy bindings, the unwieldy volumes which they now inflict upon us. Mr. Moreau's volume has 640 pages, but with the thin paper, the small but perfectly clear and legible type, and the absence of heavy covers, it is a book pleasant to carry about, and would not render a lawyer's bag too heavy, or fill it to the exclusion of the inevitable papers.

THE CONTROL OF PUBLIC UTILITIES. By William M. Ivins and Herbert Delavau Mason, of the New York Bar. New York City: Baker, Voorhis & Co. 1908. Pp. xvii, 1149.

A digest that furnishes a means of interpreting one phase of the progress from the economic doctrine of *laissez faire* to that of an expanding government control, has a larger claim upon interest than that usually made by such compilations. "The Control of Public Utilities", contains an analysis of the most important American cases, relating to public service corporations in the form of annotations to the Public Service Commissions Law of New York, with the text of the Interstate Commerce Act and the Rapid Transit Act of New York. If, in addition to this, in itself, very timely matter, we find a preface of unusual interest, we shall conclude that it will repay examination.

The phenomenon that the texts given, together with their annotations, are intended to illustrate is the increasing extent to which governments interfere in what were formerly considered the private affairs of the citizens concerned. The tendency is toward national supervision of all activities that may affect the welfare of any large body of the people. The test then of

the life of the law—of the government, even, is whether or not it conforms to the economic facts. If not, it is “a survival fit only for the institutional scrap pile”.

“The failure of the State to curb predatory wealth will result in a continuous strengthening and centralization of power in the nation”. (Preface x.) “It is as preposterous that any State should be left free to create conditions which militate against the welfare of the nation as it is that any county in the State should be left free to create conditions which militate against the welfare of the State as a larger local community”. (Preface xi.)

The Public Service Commissions Law is classified into five articles, two of which deal with railroads, street railways and common carriers, and the power of the commission with reference to such corporations, one article being devoted to gas and electric corporations, and regulations of prices of gas and electricity.

The thoroughness with which the work of annotating the law and classification of the annotations has been done will appear from an examination of the cases digested and arranged under the first section of the Public Service Commissions Law. (Pages 4, *et seq.*) There are 41 headings under which are grouped an extraordinary number of decisions. The character of the classification may be seen by reference to a few of the headings. The first is “General powers to regulate property devoted to public use”, the second, “Scope of regulative power”, third, “Railroads considered as property”, fourth, “Status of railroads”, and so on progressively to the last title, which is “Classification by a State for purposes of regulation”. The cases are taken from all of the American Courts, including the Federal Courts, and embrace the numerous decisions upon the constitutional questions arising from the principles regulating Interstate Commerce, railway rate regulation and the like. There is thus afforded ready access to a mass of decisions upon the most actively debated constitutional question of the time. The cases on unjust preference alone, for example, fill sixty pages of very concise epitomizing. Since much of the value of a digest or compilation depends upon the merit of its mechanism, it will be pertinent to remark that the indexing of the various texts, the section headings and other devices intended to add to convenience, are admirably done. The work of Messrs. Ivins and Mason will commend itself to all who have occasion to use the book.

