

BOOK REVIEWS

A HISTORY OF FRENCH PRIVATE LAW. By Jean Brissaud, late Professor of Legal History at the University of Toulouse, being the Introductory Chapter of Part II and the whole of Part III of his work entitled "Manuel d'histoire du droit français." Translated from the second French edition by Rapelje Howell, of the New York City Bar. Editorial Prefatory Note by John H. Wigmore, Professor of Law, Northwestern University, and Introduction by William S. Holdsworth, Reader in English Law, St. John's College, Oxford. Vol. III, Continental Legal History Series. Boston: Little, Brown & Co., 1912.

This is the third volume in numerical designation, but second in order of actual publication of this series, which was conceived by an Editorial Committee appointed by the Association of American Law Schools. The eleven volumes of translations as planned will consist of the works of acknowledged leaders in legal literature and together will constitute a comprehensive and erudite presentation of the sources and development of European law not otherwise obtainable in the English language. The undertaking is an outgrowth of the inauguration of the *Comparative Law Bureau* by the American Bar Association in 1907. The need of comparative law study by the American lawyer was then distinctly and formally avowed and the stimulus thus given its pursuit has resulted in attracting the attention not only of lawyers, but legal teachers, general scholars and legislators. The influence of that Bureau has been fruitful and diversified. The *Criminal Science Series* was begun under the direction of the *American Institute of Criminal Law and Criminology* and consists of translations of the leading Continental works on criminal law, such as those of de Quiros, of Spain; Gross, of Austria; Lombroso, of Italy, and Saleilles, of France. The *Modern Legal Philosophy Series* comprising the translations of the works of such eminent Continental scholars as Gareis, of Germany; Korunkov, of Russia; Miraglia, of Italy and Fouleé, of France, and the series of which this work forms a part were arranged by the Association of American Law Schools. The Comparative Law Bureau itself has also published some volumes of a *Foreign Civil Codes Series* intended to embrace English translations of every modern civil code and such earlier basic codes as may seem historically desirable. Upon the completion of these four monumental undertakings the legal student will be amply able to study in the English tongue every phase of the sources, historical development, philosophy and modern expression of the jurisprudence and laws of the world.

The necessity for such study was never greater in this country than it is today. There is a widespread belief that many features of the Common Law retard progress and baffle bench and bar in their efforts to administer the substantial justice demanded by existing social and industrial conditions. Despite its boasted elasticity the Common Law frequently offers a truly aggrieved litigant but a taunting wraith of outgrown traditions. There is need for, and a more general trend is perceptible toward, a purely American System of Law, in which our jurisprudence shall be readjusted to express and apply practical legal precepts demanded by the new and extraordinary conditions evolved from our phenomenal national advancement. The more men study the laws of the world historically and comparatively the sooner will the needed readjustment be accomplished. What the law makers following the Revolution did for France and what Jhering did for Germany can be done for this country.

While the first volume of this series, published under the title of "A General Survey of Continental Legal History," is a most interesting and valuable work for perceiving briefly the many phases of European law, the volume now before us is not only an elaboration in respect of one of the most interesting peoples of the earth, but also a presentation of phases of the law's development which had a very material effect upon the English Common Law. Brissaud

exhibits the most cosmopolitan breadth of view and conveys the impression that he is drawing upon an inexhaustible intellectual reservoir. The extent of his researches must have been enormous and his perfect mental assimilation of the material is wonderful. The whole constantly changing drama of European law seems ever present as he depicts the elements of primitive institutions with their juristic germs and explains every phase of their extinction, modification or growth. This largeness of view leads him to gather material from the Dutch, German, Swiss, Italian, Spanish, English and even our own New England archives and he not infrequently cites the works of foreign savants such as Glanville, Littleton, Blackstone, Huesler, Köhler, Pertile and Salvioli. So master is he of his subject that no event chronicle stands out unattached: the relation of facts *inter se* and the underlying co-operative principles of the formative currents of change are constantly used to exemplify a growth as opposed to an arbitrary result. This chronological appreciation of the subject enables him to present events in their proper proportion. Thus there is no confusion when he employs mediæval Roman law, Germanic law or English law to indicate a source or illustrate a modification of those earlier principles that persistently survived and became the later French jurisprudence. In treating each subject separately, such as in the Introductory Chapter, "Origin of the Family, of Ownership and of the State" and later on under the heads of "The Family," "Ownership and Real Rights," "Obligations" and "Intestate Succession," he presents a chronologically complete work on each topic. Notwithstanding this method, however, at the final chapter the reader has a sense of having read a well rounded-out work in which the division into subjects has served merely to produce the historical *tout ensemble* of French private law. This arises from his marvelous power to treat events in proper proportion and weight growing out of his perfect mastery of the materials. Professor Rudolph Hübner, of the University of Rostock, said a few years ago: "Brissaud possessed a virtually inexhaustible familiarity with this enormous mass of literature—an accomplishment far surpassing in this respect anything found in German works on legal history." Only such a devotee to legal research could produce a work so satisfying to the reader, whether lawyer or layman. Mr. Howell, the translator, has cause to be proud of his labors in reproducing the mentality, the industry and the spirit of the author. The English is smooth and the rendering of the French technical terms is exceedingly careful, apt and scientific, showing a high sense of responsibility. He induces a feeling of reliability and one experiences in consequence a greater pleasure in being able for the first time to read in our own language a master's narrative of the troubled growth of French private law.

To attempt even an outline of either the institutional development or the changing phases of jurisprudence embodied in the work would here be impossible. The period of time is too great; the potent events too varied; the theme too tragic. It would indeed soon grow into an "Epic of the Law" for none can peruse these pages untouched by the revealed drama of the centuries during which the classic jurisprudence of Rome was buffeted and at times extinguished by the overwhelming savage force of the Germanic invasion. No writer has ever depicted this struggle as Brissaud has done it nor has he been excelled in making real to the modern mind the later structure of the Feudal System resulting from the barbarian domination of all Europe. He shows us that so strong was the tribal tradition that even after the fourteenth century, when a sort of French nationality was achieved under Philip le Bel, the ancient Celtic and later Germanic *coutumes* embodied the jurisprudence of the greater part and that even in the south, the so-called *pays du droit écrit*, the surviving Roman law was administered as a "customary law." Extracting the basic truths from the thousands of conflicting provincial customs and local regulations, he shows their abuse and their survival along the centuries until arrayed before the iconoclasts of the Revolutionary period when all law was thrown into the melting pot anew. With a calm mastery he delineates the new birth of rational jurisprudence and the crystallization of French private law in the Code Napoléon, so replete with customary law and containing so little Roman law. Nor does he stop there, for no doctrinal development of French law in the last century has been omitted. From the very curtain of historical obscurity

the reader has been led along until finally, filled with a knowledge of the past he is shown every phase of the actual private law of France today. In the final paragraph of the chapter entitled "History of Private Law," the author says: "Roman legislation now harmonized with the spirit of modern law, the canon law and Christian ideas, the conception of equity and national right, are mingled with old Germanic bases in customs, laws, jurisprudence and doctrine, in order to complete the extensive structure of our old private law."

This book lucidly and authentically tells how all this has come about and no lawyer can fail to reap both pleasure and profit from its perusal.

W. W. Smithers.

THE LEGAL POSITION OF TRADE UNIONS. By Henry H. Schloesser & W. Smith Clark. London: P. S. King & Son, 1912.

Two tendencies are traceable in both England and America as regards the solution of labor disputes: One is the gradual perfection of more effective means of preventing them through the adoption of progressive up-to-date methods in labor management, the elimination of the causes of discontent, and above all, the quick settlement of small, trifling, but exasperating differences, before they can grow into serious complications. The second tendency is the attempt of both sides in the struggle to trench themselves more thoroughly in the legislation and court decisions affecting their rights. This second tendency is one which most closely concerns the lawyer—it is a losing fight for the employer, whose main effort is now concentrated upon a rear guard fight, to prevent the repeated conquest of the field by the employee only. It is to this second side of the problem that Messrs. Schloesser and Clark have devoted their attention. British law only is considered and the book is evidently intended for the attorney rather than the layman. It describes the gradual growth of legislation favorable to the unions from the earliest common law decisions on record down to the most modern legislation of 1871, 1875, 1876, 1906, 1910 and 1911. The authors give an excellent concise summary of the powers of trade unions, and the law upon the criminal and civil liabilities arising from concerted interference with trade or employment. It is on this question and in the insurance of employers by the state that the British law has gone to a much more advanced point than our own. The problem of securing a legal status for the union as regards its contracts, its relations towards its own members and towards outsiders, has been only partially solved by the provision for "registration." Such registration is permissive not compulsory, and it is sought to induce the unions to register by giving them special facilities of ownership of land, the right to sue, etc. The position of the union is still unsatisfactory both to its members and to outsiders; it is neither a corporation, nor an individual, nor a partnership. A great proportion of the unions are still unregistered.

The authors have done a good piece of work, particularly in condensing to the last point the statement of principles under each question, while giving references for further examination by the reader who is so disposed. The book is in consequence one of value to the American legislator, and to the attorney who may be employed in the drafting of new measures.

J. T. Y.

GUIDE TO THE LAW AND LEGAL LITERATURE OF GERMANY. By Edwin M. BORCHARD. Washington: Government Printing Office, 1912.

Mr. Borchard, who is law librarian of the Library of Congress, has given us in this small volume a very valuable and timely bibliography of the law of Germany, and has shown us in a very acceptable fashion how to find the law of that country. The book is witness that a great amount of time and trouble have been spent upon it, and it will doubtless become a handbook for the increasing number of persons who are interested in the law of the European Continent.

A glossary of German legal terms is especially valuable, as the Germans have allowed their legal phraseology to fall into a most unliterary form, unnecessarily complicating the study of the German legal philosophy with the study of a new technical language.

In his introduction, Mr. Borchard allows himself to make, probably without

intention, some depreciating remarks about the lack of any system in the common law, and repeats the rather flippant remark of Pollock in regard to English case law as, "Chaos, tempered by Fisher's Digest," and Bryce's "Tangled mass of irreconcilable contrarities," capping them by characterizing American case law as "Chaos, tempered by the digests of enterprising publishing companies." He attempts to bring Maitland into line with these remarks, but Maitland merely said that he feared we did not often think of our legal system as a whole. The remarks above quoted seem to bear out Mr. Maitland's fear. Someone when speaking in a lighter vein, says something that sounds rather witty about the common law, and bewildering precedents, and immediately every one who has been bewildered by precedents agrees that there is no science of the common law; but this would seem to prove that, as Mr. Maitland says, we do not think of our legal system as a whole, rather than that we have not a legal system at all. It may be an antiquated idea, but some persons still believe that Coke had some justification for his admiration of the common law, and have not become fully convinced that there has been so great and disastrous a decline in the great system since his day as to call for its amelioration by "the digests of enterprising publishing companies." Might it not be suggested that a modern tendency to lean too heavily upon such digests has something to do with this theory (if it may be called a theory) that the great system of the common law, worked out through centuries of conscientious toil by the leaders of our legal thought, kept always in touch with the life of the common people, as no other system of law has ever been, from the days of the first Year Book to the last decision of the Supreme Court, is a mere mass of decided cases, without principles to guide it, or pathway upon which to follow it.

We have no space in which to present an argument for the common law, but would suggest that a careful reading of the decisions of our greater jurists, through the centuries since Coke, even to the present day, would show that they at least have always retained the superstition, if we must call it so, that there are principles upon which they should decide their cases, and that they have made some—pitiable perhaps, but honest—attempts to decide the cases brought before them in accordance with such principles.

M. C. K.