

BOOK REVIEWS.

HISTORY OF CONTINENTAL CRIMINAL PROCEDURE. By A. Esmein, Professor in the Faculty of Law in the University of Paris, with Chapters by Francois Garrand of the University of Lyons, and C. Z. A. Mittermaier, late of the University of Heidelberg. Translated by John Simpson of the New York Bar. Little, Brown & Co., Boston, 1913, pp. xlv, 640. Index.

The complacent American mind, which regards our archaic system of criminal procedure with reverence, is likely to receive a rude shock upon the contemplation of this work. The conscientious mind, imbued with a desire for reform of practices which tend to the defeat of justice and which long ago have been eliminated from the procedure of Great Britain and the Continent, will take much comfort from the perusal of this book which outlines not only the present forms of a thoroughly modern procedure, but the course of its evolution from crude beginnings to its present state.

The book is a compilation as well as a translation of the "Histoire de la Procedure Criminelle en France." The first chapter, which contains a brief discussion of the *accusatory*, *inquisitorial* and *mixed* types of criminal procedure and which forms an excellent introduction, is translated from Francois Garrand's "Traite Théorique et pratique d' instruction criminelle et de procedure pénale," 1907. The second and third chapters are taken from "Das deutsche Straf verfahren, in der Fortbildung durch Gerichtsgelbrauch und Landesgesetzbung und genauer Vergleichung mit dem englischen und französischen Strafverfahren," 1846, by the gifted German scholar, Carl Josef Anton Mittermaier.

In these chapters the Roman background of later procedure is traced, especially with reference to accusatorial and inquisitorial forms and primitive Germanic procedure is sketched with its separation of the judicial power from the executive and ministerial power and its methods of trial by Battle, Ordeal and Compurgation.

An introductory chapter and Title I of Part I again are taken from M. Garrand. These portions trace the evolution of procedure in "Old France" from the 1200's to the 1600's, forming an excellent point of view from which to regard later developments.

Esmein's work begins with Title II, Part I, with the general caption "Procedure." First is outlined the accusatory procedure of the feudal courts, next the transition from the accusatorial to the inquisitorial procedure with its use of torture, concluding with a description of the procedure of the States General of the 1500's.

Part II is devoted in the main to a discussion of procedure under Royal Ordinances, beginning in 1498 and culminating in the great ordinance of 1670. The ordinance of 1670 was not a new system, but a codification of laws and principles which had been evolving out of the old feudal system. By royal authority the accusatory system with its oral and public forms was at last completely displaced by the written and secret type accompanied by the most inhuman tortures and punishments. Title II consists of two chapters, one devoted to procedure in Italy, Spain, Germany, The Netherlands and England, and the other to a review of the expressed opinions of thinkers like Montesquieu, Baccaria, Voltaire and D'Aguesseau, in which the spirit of humanitarianism and reform is forcefully exhibited.

Part III is concerned with the legislation of the Revolutionary period. The Edict of 1788, the Decree of 1789 and the Law of 1791 are reviewed. Revolt against the old ordinances appears in the *cahiers* of 1789 and for years the controversy over the jury raged until it finally became settled

in the Law of 1808 by the abolition of the grand jury and the retention of the petit jury.

Esmein's work is concluded in a chapter dealing with criminal procedure in France since 1808. To this another chapter is added from Professor Garrand on criminal procedure since 1800 in other countries, a survey which includes not only the principal countries of Europe, but those of Turkey, Egypt, the United States and Latin America.

Two appendices are added, both from Garrand, setting forth an analysis of the Scientific Literature of Criminal Procedure (not a bibliography) and giving a condensed history of the Continental System of Evidence.

Esmein's work appeared first in 1882 as a prize essay written for the Academy of Moral and Political Science, but has been revised by the author for this edition. Together with the additions appearing in this volume we have the most valuable summary of European legislation on this subject extant. It is a veritable mine of information, and is of incalculable value to those who seek instruction from the past as an aid in the solution of the problems of the present experience and the intelligent adjustment of laws to the social conditions and needs of our own people at the present hour must be our chief reliance in the future changes to be made in American criminal procedure, but the lessons of history cannot be disregarded if we are to secure the best results. In this particular, this volume ought to serve a valuable purpose in the formation of the programs of the constructive statesman.

J. P. L.

IMPERATORIS JUSTINIANI INSTITUTIONEM, with introductions, commentary and excursus. By J. B. Moyle, Fifth Edition, Clarendon Press, Oxford, 1912.

The scholarship that has made Dr. Moyle's edition of Justinian's Institutes famous is displayed in the new issue with that abundance and profundity which renders difficult, if not impossible, a true appreciation in the brief space that may be given to it here. It might well be supposed that at some time the last word would be said on the Institutes, but it must be held otherwise if one may judge from the new material constantly added to the accumulated mass of information by German patience, sifted by English criticism. The text followed in this edition is that published by Krueger in his and Mommsen's edition of the *Corpus Juris Civilis*, the chief difference from earlier editions consisting in the arrangement of the text, the passages taken from Gains being printed in heavy faced type, a device borrowed from Professor Holland. The press work is clear, beautiful and in keeping with the traditions of the Clarendon Press. Dr. Moyle's introductions are most valuable; that to the first book being an instructive history of Roman law and legislation in the light of the most recent investigations. Throughout are numerous brief essays (called *excursus*) on special topics packed with erudition, while the notes to the text contain exhaustive cross references to other parts of the *Corpus Juris*, as well as much valuable comment and criticism. The author's style is Latin in its conciseness and restraint and could hardly be expected to attract the non-professional reader, but unstinted praise will be conceded by those capable of appreciating such exhaustive research.

W. H. L.

MOAICARUM ET ROMANARUM LEGUM COLLATIO. By Dr. M. Hyamson, LL. D., B. A., Oxford University Press, 1913, pp. lvi, 300.

This is a careful, scholarly study of a work whose origin, purpose and authorship are buried in obscurity. The various opinions expressed by experts on these points are given by Dr. Hyamson, and his own views are set forth together with his reasons.

Dr. Hyamson undertook the study of this work in the hope that he would find it a profitable source of comparative studies between the Jewish

and the Roman law, in both of which he is an expert, but he expresses the disappointment of his hopes.

The texts of the Jewish law are merely reproductions in substance of scriptural verses in condensed form, corresponding, broadly speaking, to the subject matter of the Sixth to the Tenth Commandments of the Decalogue. These texts are used as introductions to passages from the Roman law covering the same subject matter and drawn from the works of Gaius, Modestinus, Papinian, Paulus, Ulpian, the Gregorian and the Hermogenian Codes. The work adds nothing to our knowledge of either the Jewish or the Roman law and its chief interest is in showing to what extent these laws were known to the Christian clerics of the fourth and fifth centuries, for whose benefit, Dr. Hyamson thinks, the book was prepared. It was to serve them as an introduction to the Roman law, based on their knowledge of the Biblical law, and was written, according to Dr. Hyamson, sometime between the years 390 and 438 A. D. in Italy, by some obscure clerical official practicing in the Bishop's Court.

Beside the careful summary of the earlier results of scholarship the author's contribution to the subject is a new view as to the origin and purpose of the book, a beautiful photographic facsimile of the Berlin Manuscript of the *Collatio*, an accurate transcript of the same and an English translation. A valuable critical apparatus is given, consisting of lists of orthographical errors, textual variants, chapter headings, sources, citations and a bibliography. The work being a production of the Oxford University Press needs no further commendation of its typographical excellence.

D. W. A.