

BOOK REVIEWS.

EVOLUTION OF LAW. SELECT READINGS ON THE ORIGIN AND DEVELOPMENT OF LEGAL INSTITUTIONS. VOLUME I, SOURCES OF ANCIENT AND PRIMITIVE LAW. VOLUME II, PRIMITIVE AND ANCIENT LEGAL INSTITUTIONS. Compiled by Albert Kocourek and John H. Wigmore. Pp. xvii and 702; xii and 704. Boston: Little, Brown & Co., 1915.

When our anthropoid ancestors climbed down from the trees and established homes and institutions on terra firma they could hardly have imagined that their crude efforts at organization would interest some of their remote descendants, who, in their tenements at least, are displaying an atavistic tendency once more to ascend to the heavens. Since, however, the spade of the archaeologist has disclosed the potsherds of the past, and the industry of the anthropologist has collected curious information concerning the habits of those primitive peoples who are described as non-progressive, the data is at hand, or at least some of the data, for the study of the juristic side of the earlier phases of civilization. That many of the conclusions are, in a measure, speculative does not detract from the value of such work to those who consult books not as oracles but as food for thought. For in difficult waters one must cast a fly into many dark pools and if the catch is, sometimes but a stump, one's fellow-anglers should be the last to deride.

In the evolution of law series the editors have wisely begun with a source book, the first volume. Part one comprises selected readings from Greek and Roman literature containing references to ancient legal institutions, the invaluable Germania of Tacitus, and that glorious story of a primitive lawsuit, Njal's saga. Part two is made up of selections from ethnological treatises and reports upon the life and customs of savages in Africa, Australasia and America, and if to the reader some of this material seems but remotely connected with jurisprudence, he who has lived observingly in the courts will be less inclined to fix the definite point where habit ends and thought begins. Part three contains translations of ancient codes including, among others, the laws of Hammurabi, of Manu, of Howel Dda, the Twelve Tables and the Lex Salica, all available, it is true, in other publications, but none the less valuable when placed in juxtaposition for comparison and contrast. The same may be said of part four, a collection of typical documents, Egyptian, Babylonian, Grecian, Roman and Germanic, relating to both contentious and non-contentious transactions at law.

The second volume consists of selected chapters from the works of modern scholars which describe the origin, growth, and development of law and the state, followed by more intensive studies of the origin of specific institutions such as the family, marriage, property, contract, succession, and procedure. It is needless to mention the names of those from whose books the selections have been taken as nearly all who have distinguished themselves in this field are represented. If some of the essays and excerpts are too brief, it must be remembered that the task of the editors was one of heroic compression and that it is part of their purpose to stimulate further reading in a field commonly avoided by the legal Philistine. If some of the contributors contradict each other on important points, if a learned specialist does occasionally push his pet theories to an extreme, it must also be recalled that where all is doubtful and obscure, a brilliant conjecture has intrinsic value as an inspiration and guide to further research and that the scholar must be permitted to display the hobby that he rides since it is the good beast that carried him so far on his tedious journey. Indeed, in the realm of the little known the probable is potentially the demonstrable.

It would be difficult to estimate the value of these collections to the aspiring student either of history or of the law. What a stimulus they should be to that broader and more philosophical pursuit of the science of jurisprudence so sadly neglected in our country! One whose legal training was obtained largely through the arid lectures and text-books of the 1890's may mournfully wonder what books such as these and the historical and philosophical publications of the Association of American Law Schools would have meant to him in the days of his apprenticeship.

In the words of the compilers: "Historical knowledge must and will always remain the one certain test of present expediency, and the scientific tool for measuring the paths of the ages to come." The tough-grained empiricism of our case law is that which gives it its strength, and it is from this source only that the student of our law, in the present, as in the past, can obtain that mental discipline, that insight into the methods and vagaries of legal reasoning essential to the advocate. But there is room for vision as well. Cases inevitably become obsolete, their very language a strange dialect, reports called "Modern" recede to a position of relative agedness, whole topics of the law disappear from the world of the practical. But through all runs the struggle for justice, for security of rights, and the stability of society. And if the great story can be carried back still further—back to forest and cave—the better will be the opportunity for rational deductions.

William H. Loyd.

THE LAW OF ARREST IN CIVIL AND CRIMINAL ACTIONS. By Harvey Cortlandt Voorhees. Second Edition. Pp. xliii and 287. Boston: Little, Brown & Co., 1915.

"The Law of Arrest in Civil and Criminal Actions," by Harvey Cortlandt Voorhees, the second edition of which appeared a few months ago, discusses concisely, yet quite completely, the various phases of this subject with which laymen are usually rather unfamiliar and with which lawyers and officers are not too well acquainted.

The author has in a few instances discussed at length particular cases which might have been effectively summarized. He has also elaborated rather too fully upon certain phases of general criminal procedure not closely related to his subject. Otherwise he has given the public in this second edition a very complete and a decidedly helpful summary of the law of arrest. He discourses upon the right of personal liberty in general and its necessary restraint; the issuance and service of legal process; the persons by whom a warrant may be issued; what constitutes an arrest, with numerous interesting illustrations; effect of resistance and escape; arrests with and without warrant; breaking doors to make arrest; the use of force and when and under what circumstances it is permitted; disposition of the prisoner; arrest in extradition proceedings; exemption from arrest; false imprisonment. The discussion is concluded by a final chapter which gives various forms of complaint, warrant of arrest, and return.

The author points out that while the statutes of the jurisdiction are of course to be specifically followed, they contain only a part of the law which must guide the officer to lawful arrest, in most cases. It is believed that in general the author has accomplished his purpose, the production of "a work of such simple style that it would be intelligible to those not versed in legal lore, and that the many officers of the law who are called upon to invade the sacred right of personal liberty might do so with a full understanding of the rights of the accused, as well as their own rights."

H. A. L.

WAR OBIVIATED BY AN INTERNATIONAL POLICE. A SERIES OF ESSAYS WRITTEN IN VARIOUS COUNTRIES. Pp. iv and 223. The Hague: Martinus Nijhoff, 1915.

This collection of essays and selected writings is a timely contribution to a much discussed subject. While it contains only reprints of what has already been published, yet its convenience as a handbook of information on this topic makes it an exceedingly valuable publication. Alfred H. Fried, of Austria, takes the position that such an international organization will not spring from violence, but from a proper understanding of the advantages of association. This proposition is ably discussed in its fundamentals by Professor Van Vollenhoven, of Leyden, and President Butler, of Columbia, the latter expressing the view of both, saying: "Right is ready in this twentieth century to claim her kingdom, and she asks Force to step down from the throne it has so long occupied that it may serve from this time on, not as Right's substitute, but as Right's ally." Van Vollenhoven keenly appreciates the fact that the scheme is not ideal, but contends that the benefits derived from such a compromise are easily worth the sacrifice. His attitude is a contrast to Roosevelt's, for that writer displays such impatience and lack of sympathetic understanding with any method of meeting force save by force, as to seriously impair the value of any contribution he has made on the subject. Commander Kincaid and Rear-Admiral Goodrich, U. S. N., make thoughtful constructive comments in their works on the subject, and while they differ in detail, they bring the scheme out of the realm of mere speculation and down to practical questions of ships, men and organization.

Professor Erich, of the University of Helingsfors in Finland, takes up the other side of the question and opposes the project on the ground that to render such a police force practical and of any permanent value there must be an international government to direct that police, and that such an international government is a thing as yet but vaguely considered. To carry the doctrine of intervention beyond that of executing arbitral awards would certainly entail such a higher body and Professor Erich believes that unless the intervention can go further than the mere question of the execution of awards made by arbitration, it is an entirely insufficient solution. On the other hand, to allow such a higher power would seriously endanger the existence of nationalities and be a constant menace to small states.

The volume is by no means exhaustive, yet it is exceedingly suggestive and a valuable source of ideas.

R. G. A.