

## BOOK REVIEWS.

THE HAGUE CONVENTIONS AND DECLARATIONS OF 1899 AND 1907, ACCOMPANIED BY TABLES OF SIGNATURES, RATIFICATIONS, *etc.* Edited by James Brown Scott. Pp. xxx and 303. New York: Oxford University Press, 1915.

With our traditional prejudice against foreign entanglements (except when they are proposed in the seductive form of titled marriage) even these conventions drafted at the Hague in 1899 and 1907 appear to have failed to convince us that we are one of a family of nations, sharing responsibilities with the rest, and not the lords of creation, self-sufficient, secure, predestined to greatness and unaffected by the feelings of the foreigner. How otherwise can one explain the total absence of uneasiness or restlessness of conscience at the manner in which we have calmly disregarded the existence of the Hague treaties to which we are a signatory party? The present plight of Europe testifies to the fact that the Hague treaties mean no more to a well armed brigand than do any other bits of parchment, and the present plight of the Hague treaties shows that we in this country never took them for anything but sentimental expressions of courtesy and well wishing, binding us to nothing more inconvenient than benevolent aloofness if the promises were ever broken.

Early in the great war some of our sturdy patriots, moved by a primitive sense of obligation under a formal contract and apparently seeking to explain our failure to do anything, resorted to the special pleading that the material parts of the military and naval conventions of the Hague were never ratified, and this impression was sedulously given currency by several prominent journals that ought to have known better. For this reason a definite and authoritative publication of all the ratifications and reservations to the convention is a useful public service for which the Carnegie Endowment deserves thanks.

But at the same time the publication anew of the text of the conventions arouses upon re-perusal a sense of the solemn foolery that they represent. With what grim humor must "His Excellency Baron Marschall Von Bierberstein, Minister of State, Imperial Ambassador at Constantinople," fresh from the intrigues of the Bosphorus and Bagdad, have signed his name at the very top of the list of delegates, to these words, in the Final Act of 1907: "By working together here during the past four months the collective powers not only have learnt to understand one another and to draw closer together, but have succeeded in the course of this long collaboration in evolving a very lofty conception of the common welfare of humanity."

Within a twelve month his Imperial master appeared "in shining armor" beside his vassal-ally Austria to sanctify with his mighty arm the theft of Bosnia out of which have flowed with irresistible violence the currents of war and destruction upon the whole of Europe.

*Samuel Rosenbaum.*

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GUIDE TO THE LAW AND LEGAL LITERATURE OF SPAIN. PREPARED UNDER THE DIRECTION OF EDWIN M. BORCHARD, LAW LIBRARIAN OF THE LIBRARY OF CONGRESS. By Thomas W. Palmer, Jr. Pp. 174. Washington: Government Printing Office, 1915.

This volume is worthy of its predecessors: "Guide to the Law and Legal Literature of Germany" (1912) and "Bibliography of International Law and Continental Law" (1913), the aim of which was "to make more readily ac-

cessible to the investigator of foreign and comparative law" the sources of his subject. The student, entering upon graduate work, who has his way to hew in a little explored field, and the librarian who aspires to build up a useful and well balanced section on foreign law, will welcome these guides heartily. It was sound foresight that induced the Library of Congress to undertake Spanish Bibliography before the richer fields of France and Italy. Brazil excepted, Spanish influence upon the law of Latin America has of course been paramount and this guide to Spanish legal literature "contributes the foundation for a Guide to the Law and Legal Literature of Latin America," which we learn is already in preparation. In so difficult, useful, and interesting an undertaking we wish the compiler success.

The plan of the "Guide" to Spanish law has not been altered from that of the "Guide" to German law and the slight changes in the contents are due to the unequal importance of certain institutions in the two countries.

The history of the Spanish codes which prefaces the bibliography upon each, is brief but adequate for a guide. The section on Legal History (pp. 26 *et seq.*) brings out startlingly how poor, indeed how absolutely wanting Spanish literature is in any exhaustive and comprehensive work on the subject. The truth is that the field has been but scratched. Joaquin Costa, whose work promised so brilliantly, is dead; Rafael Altamira has given us the best general history of Spanish civilization, but we can hardly hope now for a general history of Spanish law from this eminently qualified scholar.

The author's analysis of the various collections of laws and decisions is very valuable. The subject is invariably confusing, and we trust that in the difficult Latin American field this subject will be carefully and fully treated. The section of Administrative Law and Labor Legislation is particularly rich.

We have little adverse criticism to make. The notes in Spanish have been very carefully proof read as also the "Glossary" of Spanish legal terms. Here, however, it does not seem to the reviewer that the author has exercised sufficient care or realized the greatness of his opportunity. There are about 750 words in the glossary and yet a cursory comparison of the list with the indexes of the principal codes instantly reveals how many technical terms of importance have been omitted. Is there anything more annoying than to consult a glossary which seems to be in a conspiracy to omit the terms you desire? Without having carried out any systematic comparison with these indexes we have, on merely reading the glossary over, noted the omission of such useful terms as: "ejecutivo," "mora," "recambio," "registro mercantil," "real decreto," "sucesión," "substitución fideicomisaria," "suspensión de pagos," "usufructo." Perhaps what is yet more serious we cannot in numerous instances agree with the definition given: "Aval" is not "accommodation indorser." It is close to "irregular indorsement" (p. 76), but it need not be an indorsement at all, since the drawer's name may be guaranteed by an aval on the face of the draft or in a separate instrument. "Caución" is not only "bail" but also civil security; "cuenta de resaca recambio" generally called "cuenta de resaca" is a memorandum of cost of a redraft rather than "return account." "Derecho real" is explained at considerable length, though certainly not clearly, a simple rendering would be "right in rem." "Dotación," from "dote" (omitted in glossary) meaning marriage portion, signifies a "settlement" and not "revenue." "Lesión" means in law an injury arising out of a sale of land for an inequitable price; its meaning of "personal injury inflicted by violence" is untechnical. "Paraferuales" is the property over which a woman on marriage, retains separate control; it is not the "goods brought by the wife to husband over and above her dowry." "Solidariamente" means not "severally" but "jointly." "Uso" is in law a limited mode of the "usufructo" or "usufruct" rather than "usage."

Layton B. Register.

THE ENFORCEMENT OF DECREES IN EQUITY (Harvard Studies in Jurisprudence I). By Charles A. Huston, Professor of Law in Stanford University. Cambridge: Harvard University Press, 1915.

Although the author of this delightful essay wrote it "primarily to advocate an enlargement of the equity powers of American courts which will enable them to give real effect to their decrees; for example, to transfer title directly instead of ordering a litigant to make the transfer," nevertheless the burden of his plea seems to be to disprove Coke's famous *dictum* and to prove that equitable rights are really rights *in rem*.

The author very clearly shows the need of giving equity courts the power to enforce their decrees directly, and not dependent upon the obedience of the defendant. As the power to punish for contempt is being gradually curtailed, it is quite imperative for the just administration of law for the court which decrees that the defendant shall convey certain land to the plaintiff, to have the power by rendering its decree to transfer directly the title involved. This power can only be given by statute and the various types of statutes are explained. Most of the states have conferred this power upon their courts but Congress has never done so. This he urges Congress to do in order that the extremely doubtful question as to whether the federal courts can avail themselves of such state provisions will be removed. He next traces the development of the enforcement of such decrees in the civil law from compensation to restitution and prevention.

In Chapter IV the author cites several examples of the failure of the law for no other reason than as the defendant was without the jurisdiction equity could not grant the plaintiff adequate relief, although the subject of the controversy was before the court. He cites for his examples cases of removal of faulty trustees, conveyances of land under a binding contract, removal of a cloud upon title, equitable remedy of interpleader. His argument is clear and convincing.

From Chapter V on, the author traverses that well worn ground of equitable rights. His apology for leading again the legal readers over ground so well covered by Maitland and Lewin is that their conclusions are opposed to his. He attempts to show (and for that matter very clearly) that a *cestui que trust* has certain equitable interests which are not rights *in personam*, but rights in *in rem*. He denies that a trust is only a confidence reposed in the trustee, but an association quite analogous to that of agency. His conclusion is that the *cestui que trust* "is the real owner and the trustee merely the depository of the legal title."

While the average lawyer trained with the idea that the trustee was the all important factor in the relationship, will regard the conclusion of Professor Huston with some degree of suspicion, nevertheless he will not fail to see that there are two sides to the question. In fact this is one of the most interesting, instructive and clearly thought out essays which has appeared for some time. Only in his statement and explanation of the case of *Cave v. Cave* (pp. 145-146) does the author fail to be clear.

There is an appendix of the various statutes giving equity courts clear power in certain cases to enforce their decrees directly, thus obviating the necessity of waiting until the defendant either decides to obey or to come within the jurisdiction. The index is too meager to be useful.

Douglass D. Storey.

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THE CRIMINAL IMBECILE. By Henry Goddard, Director of Department of Research, Vineland (New Jersey) Training School. Pp. ix and 157. New York: The MacMillan Company, 1915.

This small but very readable volume contains an analysis by a psychological expert of three recent murder trials in three different states,—New

York, Pennsylvania and Washington. These cases are remarkable for the reason that they are the first in which the results of the Binet tests of the intelligence of the defendant were introduced in evidence. In each case the prisoner was of sufficient physical age to be legally responsible. In none of the cases could the defendant be said to be insane, but in each case, according to the results of the Binet tests, the defendant was a high grade imbecile or "moron" with the mentality of a child between the ages of seven and twelve years. In each case Mr. Goddard concludes that the reasonable probability was that the defendant because of mental disease, was unable to distinguish between right and wrong with reference to the act and unable to recognize the nature and the quality of his act. In other words, the contention is that these defendants of responsible age were mentally but immature children and as such irresponsible; fit subjects for a home for the feeble minded, but not for punishment. It is interesting to note that only in the New York case did the jury accept the defence's contention and acquit, although this may have been due to a failure to make the matter sufficiently clear.

The appendix contains the hypothetical questions propounded by both defense and prosecution and the points for charge in the New York case.

In this volume the author is blazing the way for the practical use by our courts of law of the knowledge gained by psychologists in the field of higher imbecility. The criminal bench and bar could profit were they to familiarize themselves with the author's "Feeble-mindedness: Its Cause and Consequences" as well as with the work under discussion.

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