

## BOOK REVIEWS.

**CRIMINAL SOCIOLOGY.** By Enrico Ferri. Translated by J. J. Kelly and John Lisle, and Edited by W. W. Smithers. Pp. XLV, 577. Boston: Little, Brown & Company, 1917.

The publication of the translation of the latest edition of the most important work of the most distinguished representative of the Positive School of Criminology calls for more than merely perfunctory notice, even though the work has long been known to students. Originally published in 1884, it had undergone several revisions down to the last in 1905 (French), from which this translation is made. Save for a partial translation of the first edition, it has not been hitherto available to English readers.

The author since 1904 has been Professor of Criminal Law at the Royal University in Rome. He was born in 1856. While a student at Paris (1878-79) he wrote "Studies of Criminality in France from 1826-1878." Returning to Italy, he became a pupil of Lombroso at the University of Turin. Since 1880 he has spent most of his time as a teacher at the Universities of Bologna, Siena, and Piesia, and later, as noted, at Rome. In 1886 he was elected to the Italian Parliament on the Socialist ticket, where he gained a reputation as an orator and became the leader of his party. In 1896 he founded and edited the Socialist paper "*Avanti*." He is the author of a number of books on criminality, widely known in Europe, of which but one and that one of the smallest has been put into English (The Positive School of Criminology, 1906). Inasmuch as the present volume is probably known by name only to bench and bar as well as laity, I will seek to sketch its contents largely in the words of the author rather than to discuss the positions taken. The best brief critical summary of Ferri's ideas that I have seen is in the introduction to this translation contributed by Professor Ellwood.

In the opening chapter, Ferri traces the development of criminology from Beccaria to the present time. The change in attitude he thus summarizes:

"Among the fundamental bases of criminal and penal law as heretofore understood are these three postulates:

1. The criminal has the same ideas, the same sentiments as any other man.
2. The principal effect of punishment is to arrest the excess and the increase of crime.
3. Man is endowed with free will or moral liberty; and for that reason is morally guilty and legally responsible for his crime.

On the other hand, one has only to go out of the scholastic circle of juridical studies and '*a priori*' affirmations to find in opposition to the preceding assertions, these conclusions of the experimental sciences.

1. Anthropology shows by facts that the delinquent is not a normal man, that on the contrary he represents a special class, a variation of the human race through organic and physical abnormalities, either hereditary or acquired.
2. Statistics prove that the appearance, increase or disappearance of

crime depends upon other reasons than the punishments prescribed by the codes and applied by the courts.

3. Positive psychology has demonstrated that the pretended free will is a purely subjective illusion."

The main argument of the book is presented under four heads:

Part I. Criminal Anthropology.

Part II. Criminal Statistics.

Part III. Positive Theory of Criminal Responsibility.

Part IV. Practical Reforms.

The first chapter in Part I, *Natural History of Criminal Man*, sketches very briefly the development of the positive school, and emphasizes the author's belief that the real criminal results from the survival of primitive or childish instincts. No detailed outlines of the physical stigmata characteristic of degeneracy are given and some of his biological ideas are open to question.

Much more important is the second chapter in which Fundamental Objections to Data of Anthropology are considered in great detail, the discussion covering over 70 pages. Here most of the criticisms raised against the positive school are frankly met. For instance, someone says that the features of the criminal are the result of life not of his bones. Surely, says Ferri, each profession develops its own earmarks, but how can you explain the enormous jaws of murderers or the receding foreheads of thieves on this basis? There is no one criminal type, anthropologically speaking, nor is the criminal always true to type. The honest man may have some of the characteristics of the criminal, while a man of the criminal type may be kept "from crime by the favorable circumstances in which he finds himself." "Crime in general is the resultant of combined biological and social factors."

Ferri then believes that there are criminal types marked off from the normal "which cannot be explained as solely produced in the individual by habits of life or by social condition." "While in the born criminal the origin is almost exclusively biological, in occasional criminals who have become habitual criminals, the origin is largely social."

There are then five classes of criminals:

1. Criminal Insane, including epileptics and maddoids, together with Class IV, forming 5 to 10 per cent. of total criminals.

2. The Born Criminal. "These are the types of men, either savage and brutal or polished and idle, who are unable to distinguish murder, robbing and crime in general from honest industry." Forming 40 to 50 per cent. of the total.

3. Habitual criminals—showing few if any physical stigmata of Class II. Principally thieves. They are weaklings almost certain to fall back into crime.

4. Criminals through passion. Relatively very few in number—certainly not over 5 per cent. of total—do not show "physical" degeneration. They are likely to show remorse for their crimes and not to fall again.

5. The Occasional Criminal. "These chance criminals have not received from nature an active tendency towards crime, but have fallen into it, goaded by the temptation incident to their personal condition or physical or social

environment and do not repeat their offense if these temptations are removed." Perhaps 40 per cent. of all criminals are of this type.

Part II. Data of Criminal Statistics (pages 168-287) deals with much more than figures about crime. We are told—and America needs to be told—of the importance of knowing what is taking place and of the function of statistics. Then Ferri seeks to trace the evolution of crime in modern society under the chapter heads of "Civilization and Crime," "Periodic Movement of Crime," "The Law of Criminal Saturation," "Equivalent for Punishment."

There has been an epidemic of crime during the last half century, the author thinks, due in large measure to an excessive desire to accumulate property. The causes of crime are anthropological, physical, social and the three causes always play a real though varying part. Inasmuch as the first two elements have not appreciably changed—and because the sorts of crimes which have increased are due to social conditions,—the author holds that the increase in crime is due to social factors. These, luckily, are the very ones over which man has chief control. The evidence on these points is presented at length and deserves careful attention.

Because of the author's belief in the "law of criminal saturation," that is, that under given conditions a certain amount of crime will occur, it follows that punishment has none of its advertised effects in limiting crime. He does not deny all value to punishment. "Punishment, as a means of repression, has rather a negative than a positive efficacy." "Punishment should not be a gratuitous and inhuman torment: but we are opposed to this upheaval of every principle of social justice which would have prisons more convenient and comfortable than dwellings of poor and honest folk." Those who fear that the newer penology is sentimental will find comfort in Ferri. Society needs other protection than punishment.

Part III (pages 288-435) will to many be one of the most interesting sections of the book, for here Ferri is seeking to show the breakdown of the old idea of free will and to state the newer attitudes. This is an important matter. Ferri is a determinist in philosophy—not a fatalist. "Penal justice is founded either upon the idea of free will . . . open at most to a few partial reforms; or else penal justice is founded upon the natural determinism of human acts, and consequently upon the data of anthropology and criminal sociology." Our task is to complete the long process of development recorded in history until "punishment will no longer be retribution for a moral fault by a proportional chastisement (ethico-legal phase) but a sum of preventive and repressive social measures, which, more efficaciously and humanely, corresponding to the nature and origin of crime, will protect society from its assaults." The dominant attitude has made social defense purely penal and repressive. This is unsatisfactory. The positive school would co-ordinate the civil and the criminal, the preventive and repressive, the degenerate and the punitive means and use them all. The social accountability of the individual is the thing to consider.

Part IV (pages 436-569) deals with Practical Reforms. The specific reforms advocated cannot be discussed, but here will be found a very thoughtful and critical consideration of such matters as the "presumption of innocence" which has strayed far from primitive reality; "reparation to a man unjustly convicted." The whole process of the trial of the criminal receives searching treatment and a separate chapter is devoted to the jury. The sys-

tem has its merits, but they are greatly outweighed by its defects, the chief of which is that it "elevates incapacity to the height of a principle." The jury system must go.

Our present penal system is bankrupt. To substitute something really efficient in its place we must adopt "(a) segregation for an indeterminate period, (b) reparation in damages, (c) the choice of defensive means for different classes of delinquents." In other terms, the indeterminate sentence; the exaction of financial reparation by the criminal for harm done. The individualization of punishment. Prisons must be workshops. We must have institutions for the criminally insane. The absurd short sentence must be abandoned.

Even this rather lengthy outline does not enable me to indicate all the contents or describe all the viewpoints of the author. It so happens that I have known and used in my classes this book for many years. I have not always agreed with the author, but I have always found him: informing and stimulating. I commend it, therefore, to lawyers and judges as well as others. Is it not significant that of hundreds of writers mentioned by Ferri not one (I believe) is an American? Yet in practical reforms no country, as Ferri says, has done more in reconstructing its penal system and Ferri as leader of the positive school put his approval upon them.

Much credit is due the translators, Joseph J. Kelly and John Lisle, neither of whom lived to see the task completed. The volume is the latest of the series of translations published under the auspices of the American Institute of Criminal Law and Criminology. The work of editing the volume was done by W. W. Smithers, of the Philadelphia Bar.

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THE ARGENTINE CIVIL CODE TOGETHER WITH CONSTITUTION AND LAW OF CIVIL REGISTRY. Translated from the Original Spanish Text, as Officially Promulgated. By Frank L. Joannini. 1 Vol. 8vo. Boston Book Company, 1917.

With the exception of Brazil, whose first civil code became law on January 1, 1916, the states of Latin America, important from an economic and cultural point of view, have produced no codifications of civil law for the past half century. Most Spanish American codifications antedate the present codes of the mother country and have received surprisingly little revision. Of these codes, one of the best as a judicial synthesis, and also one of the earliest is the Chilean Code. The Brazilian Code is as yet too untried and unstudied to hazard more than the merest opinion.

The Argentine Civil Code, chosen as the latest subject of translation by the Comparative Law Bureau of the American Bar Association (Foreign Civil Code Series), has been in force since January 1, 1871. Its importance lies in the greatness of the young republic over which it governs rather than its scientific value, as compared, for example, with the Code of Germany (1900), and the Swiss Civil Code (effective January 1, 1912).

The Argentine Civil Code was the work of a single jurist, Delmacio

Velez Sarsfield, who, after six years, presented his draft to the legislative bodies, which adopted it without discussion. It is a strikingly eclectic code. Lisandro Segovia, in his introduction to his "*Explicación y Crítica del Código Civil*" traces the origins of the 4051 articles composing the code to various foreign codes and legal writers in the following proportion: to Freita's Draft of a Civil Code for Brazil (begun in 1859), 1495 articles; to the French Civil Code, 1100 articles; to the Chilean Civil Code, 170 articles; to the Code of Louisiana, 52 articles; to the Uruguayan Code of Acevedo, 27 articles; and to various authors, predominatingly French, 1228 articles. The scarcity of Spanish sources is remarkable, though explainable perhaps by reason of the multiplication and survival of old codes in Spain at that time and also from a not unnatural want of sympathy towards Castilian law on the part of the Republic that had won her independence in the memory of men then living. It is also interesting to note that the more energetic Argentina produced a code based principally on the Brazilian (Portuguese) work of Freita's forty-five years before that author's labors finally brought forth their intended fruit in the form of the Brazilian Civil Code of 1916.

The arrangement of the material of these two codes is markedly different and in the reviewer's opinion the superiority lies in the Brazilian Code, which shows allegiance to the more scientifically constructed Civil Code of Germany. Both have adopted the usual method of incorporating a Preliminary Title on the application of laws in general and the governing principles of conflict of laws. The Argentine Code then divides into four books: I, Persons; II, Rights with respect to persons; III, Rights with respect to things; IV, Rights affecting both persons and things (chiefly rights of succession). The Brazilian Code is divided into a First Part containing general rules, and a Second Part containing particular rules. In the First Part are brought together all the general principles of civil law relating to I, Persons; II, Things; III, Facts (which are productive of juridical alterations in persons and things). In the Second Part have been brought together the special rules governing I, The Family; II, Rights Over Things; III, Obligations (including consensual obligations), and IV, Rights of Succession (i. e., inheritance).

Another point of superiority in the Brazilian Code, if brevity in the statement of the law may be regarded as such, is that the Brazilian Code, while incorporating considerable new matter over the Argentine Code, is complete in 1828 articles as against 4051 in the Argentine legislation. The Swiss Code is still more compact, but it must be remembered that the whole body of the Swiss law of obligations, including contracts, is contained in the separate "Federal Code of Obligations." That there has been a steady advance in method in all the codes that have been mentioned over the Napoleonic Code, the first of the great collections of civil law, there can be no doubt at all.

The translation of the Argentine Civil Code appears in the now well-known and attractive green cloth bindings adopted by the Comparative Law Bureau of the American Bar Association. In a volume containing, as this does, more than seven hundred pages, a lighter paper might have been used, as it would have been more convenient to handle and more durable.

The volume contains a translation of the tables of contents of the official edition of the Code, a short Translator's Note regarding terminology, a valuable "Introduction" (based on the "Introduction" to Machado's Com-

mentaries), by Phanor James Eder, who, with Robert S. Kerr and Joseph Wheless, formed the Revision Committee; translations of the Constitution of the Argentine Nation, and the Civil Code (into which the translator has, we think wrongly, incorporated the later Marriage Law); in an Appendix, the Law of Civil Registry of October 31, 1884; an Act of August 24, 1898, extending the applications of the latter law to the National Territories; and the Law of June 3, 1901, extending the Civil Registry Act to marriages; finally a copious alphabetical index of one hundred pages.

That the translation will be useful to the Anglo-American Bar there can be no doubt. The work was entrusted to one who had had experience in translating legal Spanish, having been engaged by this Government to translate important bodies of law of our Spanish-speaking possessions. The reviewer cannot, however, refrain from expressing his disappointment that the work was not better done.

The translator had to face the old problem of expressing the contents of one system of law in terms of another system. He decided to avoid a search for English equivalents and to take over bodily the terminology of modern Roman law. Against this method of itself we make no criticism beyond the inartistic invention or taking over of such words as "mandate," "benefit of inventory," "prestation," "discussion," "dative," "dolous," "resolatory conditions," "solidary obligations," "onerous contract of life annuity" (there is almost humor in this), "disinherison," "cautious juratory," and many other terms that might be enumerated.

We think that the translator would have avoided a defect, which strikes directly at the usefulness of the book, had he considered how such a book would be used by the Anglo-American lawyer, unacquainted with the Roman system. A civil code is not read from the first to the last article, but consulted here and there; articles are consulted without relationship to those that precede or succeed. One of the great aims of the translator should be to facilitate orientation and understanding. In two ways the translator has endeavored to do this—first by providing an alphabetical index in which are found the terminology of both the English law and the Roman law; and, secondly, scattered footnotes explanatory of the Roman terminology. But the notes might well have been more frequent and full, and for this work the translator had at hand the very full notes of the official editions of the Code. The common law lawyer would have been greatly aided by a gloss of the terms used, which would have avoided the necessity of constant reference back to the articles where the term was first used and defined.

Moreover we do not at all admit that it is necessary to invent a terminology for words of Roman origin used to describe legal institutions having a broad equivalent in the common law system. Any work on general jurisprudence would have enlightened the translator on the universalities of such categories as "agency," "bailment," "wrong," "lien," "defect." There need not be rendered by "mandate," "commodatum," "offense," "privilege," "vice"; and of course in using the word "mortgage" for "hypothec" the translator has in a most important instance, fallen into the very ambush he aimed to avoid, since the cruder form of the "mortgage," which only gives a pledge by reason of the passage of title of the property is the mark of the English

law differentiating it from the Roman *lien*, which required neither passage of title nor possession.

The translation of the Constitution is markedly superior to that of the Civil Code. Unfortunately this is the least needed part, for we already had an English version of the Constitution, parallel to the Spanish, in "American Constitutions," by Rodriguez (International Bureau of the American Republics, Government Printing Office, Washington, 1906).

The translation of the Code contains such samples of muddy thinking and bad English as the following definition of actions for the enforcement of rights over things. Article 2790 (2756), "Real actions are the means of enforcing the declaration in court of the existence, plenitude and liberty of real rights, with the accessory effect, if it lie, of indemnity for the damage caused"; or, again, Article 2275 (2241), "The thing delivered by the lender to the borrower must be consumable, or fungible, even though not consumable."

The passage of a subsequent law, November 2, 1888, governing civil marriage, intended to be incorporated into the Code in the place of Articles 159 to 239, inclusive, has resulted in confusion in the proper numeration of the articles of the Code. We think that the translator has only added to it by placing two sets of figures opposite each article. Whatever may have been the legislative intent as to changing the numeration of the articles upon incorporating the law of civil marriage, it was found that the coexistence of an old and new style numeration lead to uncertainty and error in references. In the latest editions (Lajouane, 1914) the original numeration is retained and the Law of Civil Marriage is printed separately as an appendix. In the decisions of the courts, the old numeration alone is referred to, so that in Joannini's translation only the lighter type figures in brackets should be heeded.

We also find the amendments to Articles 1032 (998), 1035 (1001) and 1037 (1003) have not been incorporated. It would seem that some Argentine text prior to the official text printed in New York had been used, since in Article 555 (521) the translator retains the negative suppressed in the later texts, thus of course reversing the sense of the article.

The task of the translator is surely not an easy one, and, though we have pointed out some weak points, the volume is certainly to be welcomed as one of the best of the Comparative Law Bureau's publications.

*Layton B. Register.*

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"WAIVER" DISTRIBUTED AMONG THE DEPARTMENTS, ELECTION, ESTOPPEL, CONTRACT AND RELEASE. By John S. Ewart. Pp. XX, 304. Cambridge: Harvard University Press; London: Oxford University Press, 1917.

Most of the books which come to the reviewer's desk are works intended for the use of the practical lawyer to assist him in finding the law as written and decided. Occasionally a real law book reaches him, one which makes a distinct contribution to the science and philosophy of jurisprudence.

The book before us confines itself to an examination of the meaning of a technical term most familiar to the profession through daily use in several

different branches of the law and the writer presents a really startling conclusion that "waiver," a word so glibly used as representing a distinct legal category, is in fact not a true legal conception at all. He examines the history and evolution of the doctrines which are supposed to be embodied in and represented by "waiver" and comes to the conclusion that all so-called "waivers" may be distributed among the four departments or titles of the law, Election, Estoppel, Contract and Release, and that therefore, the use of the word "waiver" should be abandoned. That this is not merely a question of nomenclature, but one of real practical significance is amply illustrated by citations from the authorities. To select only one illustration, from the relation between "waiver" and estoppel, the courts reached the following impossible conclusions:

1. "Waiver" rests upon estoppel. But estoppel is not the basis of "waiver."

2. "Waiver" and estoppel may be used indiscriminately and interchangeably; the one is only another name for the other. But "waiver" and estoppel are not convertible terms.

3. "Waiver" must have some of the elements of estoppel. But "waiver" need not combine the elements of estoppel.

4. There ought to be something in the nature of an estoppel in order to constitute a "waiver." But there is not.

5. Where "waiver" is proved "the party will be estopped." But the distinction between them "is not in all respects clearly defined."

The value of works such as this cannot be overestimated. Words are labels, more or less accurate, and mischief follows immediately when these labels are used as though they connoted definite ideas. Illustrations might be drawn from politics, religion, sociology and law, in fact from every department of human thought. He who pricks these bubbles by pointing out the limitations in the use of large words performs a most useful service in the interest of clear thought.

This book of Mr. Ewart's is cordially recommended to the bench and bar. It is a keen incisive analysis of numerous adjudicated cases and the conclusions reached by the writer as to the fallacies arising from the use of the word "waiver" are irresistible. Would that all law books were of this character, instead of being mere index-digests of the decisions which overburden our shelves and ourselves, so that the average lawyer may in the words of an ancient Rabbi be said to be "an ass carrying a burden of books."

The history of Mr. Ewart's work in this field is interesting and instructive for the purpose of showing how misconceptions flourish long after they have been exposed. In 1905 Mr. Ewart published an article entitled "Waiver in Insurance Cases" in 18 *Harvard Law Review*, 364-378, in which he outlines the theory which he has very fully developed in his book. In 1912 Mr. George Richards published an article entitled "Parol Waiver under the New York Fire Policy" in 12 *Columbia Law Review*, 134-144. If this writer had been familiar with Mr. Ewart's earlier work the difficulties with which he wrestles would have disappeared.

In the same volume of the *Columbia Law Review* Mr. Ewart publishes another article on pages 619-624, entitled "Election in Insurance Companies"



in which he restates the principles of the earlier article. The courts, with one notable exception, paid no attention to Mr. Ewart's work and continued to use the word "waiver" which Mr. Ewart had pointed out in his articles as not only useless, but misleading and promoting injustice. In one court, however, namely, the Supreme Court of Indiana in the case of *Modern Woodmen v. Vincent*, 40 Ind. App. 741, 80 N. E. 427 (1907), note was made of his article and of his conclusions. In 1914 Mr. R. D. Bowers, of the New Mexico Bar, published a book on the "Law of Waiver." If he had been familiar with Mr. Ewart's work, much of his book, valuable though it is, would either not have been written or would have been entirely different in reasoning and conclusion. Mr. Bowers has just published a book on the "Law of Conversion" in which he has a chapter entitled "Waiver of Conversion," virtually a branch of the law of Election of Remedies. The same old fallacies are here re-stated, although it is admitted in Section 56a "it has been thought that the expression 'waiving the tort and suing on the contract' is misleading." It is submitted that Mr. Ewart's work demonstrates beyond doubt that the use of the phrase "waiver" is not only misleading but harmful.

One word more. At the end of his article "Waiver of Election" in 29 *Harvard Law Review*, 724-730, Mr. Ewart states: "I have prepared for the press a dissertation with the title 'Waiver distributed into Election, Estoppel, Contract and Release,' but four publishing firms have declined it. It is said to be 'highly meritorious' and so on, but it is only 350 pages, and a small book is as bothersome as one yielding larger returns. The encyclopedias and the stenographers are rapidly depriving lawyers of any claim to be members of the learned professions."

Fortunately Mr. Ewart was able to find two University Presses willing to publish his book for the greater glory of the Law and benefit of the Bar.

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**UNFAIR COMPETITION.** By William H. S. Stevens, Ph.D. Pp. 265. Chicago: University of Chicago Press, 1917.

Perhaps few federal legislative enactments in recent years will prove of such far-reaching effect as section five of the Federal Trade Commission Act, which declares unlawful "unfair methods of competition in commerce" and empowers and directs the commission to prevent the employment of such methods. It would be difficult to imagine a phrase of more general potential application, or one permitting a wider discretion in its definition and construction, than the term "unfair competition."

It was clearly the purpose of Congress not to restrict the judgment of the Federal Trade Commission and to allow a wide range of discretion in the administration of this provision. The question with which the commission is confronted under this section of the act is one that in its essence is economic rather than legal.

The common law has heretofore concerned itself with certain restraints

upon trade and considered their reasonableness, and has taken cognizance of certain cases where fraud or deceit were involved. But in most of that broad class of situations which the term "unfair competition" comprehends, the common law either provided a dubious and ineffective remedy or denied all redress. The act opens an entirely new and unexplored field of law, wherein the principles of trade which are economically sound are to be administered and enforced by a federal commission; a function not unlike that of the Interstate Commerce Commission in determining what is or is not an "unjust discrimination" or a "reasonable" rate under the Interstate Commerce Act; a duty which comprehends, in substance, wide legislative powers, though technically all the rulings may be administrative.

Starting with the premise that competition is economically desirable and that practices designed solely to eliminate competition are *prima facie* unfair, a maze of situations and complex conditions immediately suggest themselves under which the application of the test "unfair competition" promises to prove bewilderingly difficult. At the same time this test, wisely administered, should produce pronounced beneficial results.

In view of the breadth of the unexplored field which this section contemplates, the advent of a treatise on the subject at this time is particularly opportune. The book is an expansion and an elaboration of two articles by its author which appeared in the *Political Science Quarterly* in June and September, 1914.

Numerous competitive methods in vogue at the present which are of dubious legality under this section are successively considered, attention being given to their nature, their purpose, their effect, their economic soundness and, finally, to their probable legal status under the recent Trade Commission Act. Where such questions have been the subject of judicial determination in other countries, such as Australia or New Zealand, under similar statutes, these decisions are noted.

A general idea of the broad scope of the twelve chapters dealing with various questionable methods of competition may be gleaned from their enumeration: Local Price-Cutting, Operation of Bogus "Independent" Concerns, Fighting Instruments, Conditional Requirements ("Tying Clauses"), Exclusive Arrangements, Black Lists, Boycotts, White Lists, Rebates and Preferential Arrangements, Engrossing Machinery or Goods Used in the Manufacturing Process, Espionage, Coercion, Threats, Intimidation, Interference, and Manipulation.

There is little discussion of hypothetical conditions, the practices considered in nearly every case being those employed by well-known corporations, the narration of incidents actually occurring in trade adding greatly to the interest and practical value of the work. It represents, apparently, the fruit of considerable investigation. The narration of specific examples of competitive methods that have been employed will prove of absorbing interest both to the layman and to the lawyer. Chapter IV, dealing with "tying" clauses, is particularly interesting.

The author's style is clear and easily readable, and the material is made accessible by a rather complete index. The work makes no pretense of being a legal treatise, concerning itself merely with the economics of unfair com-

petition. With many of the author's conclusions upon the propriety of certain methods and practices of competition and their status under this recent legislation, a great number of his readers will doubtlessly disagree. But however this may be, the work, by suggesting the various situations which possibly come within the purview of section five of the act, fulfills a present need and performs an important service; and the author's discussions of these practices have an immediate practical interest.

*Benjamin M. Kline.*

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THE PUBLIC DEFENDER. By Mayer C. Goldman. Pp. XI, 96. New York: G. P. Putnam's Sons, 1917.

At this time when the foundations of liberty and justice in democracy are being re-examined, this little volume is especially timely. It is the immediate outgrowth of that specific interest in the criminal, popularized on the one hand by the new science of criminality, and on the other by the popular demand for the humanizing of criminal treatment. Dissatisfaction with our criminal procedure is not found alone among students of social institutions, but among the leaders in the legal profession as well. Among the remedies proposed, one of the most important is that of the "Public Defender," and the author has rendered a public service by his clear and forceful presentation of the subject.

Justice Wesley O. Howard, Appellate Division of the Supreme Court of New York, in a foreword, indicts the present system as unjust to the poor in language which a layman would hardly venture to use.

The function of the Public Defender is primarily to represent indigent accused, who merely because of their poverty are at the double disadvantage of having to go to jail and having to appear in court without competent counsel. The idea is based, according to the writer, upon two important principles that (1) it is as much the function of the state to shield the innocent as to convict the guilty, and (2) the "presumption of innocence" ("the pleasant fiction" as Train calls it) requires the state to defend as well as prosecute accused persons. Our makeshift method of satisfying the constitutional right of the accused to counsel by the "assigned counsel system" is obviously inadequate and unjust because of the type of lawyer who can afford to serve such clients. State compensation for such service would make it possible to appoint competent counsel, but would be more expensive than the method of the Public Defender and at the same time would lack in dignity.

The claim of district attorneys that they exercise the functions of public defender reflects much credit upon them, revealing a desire to be judicial rather than partisan. Nevertheless, the system of procedure renders this practically impossible. The number of petitions for new trials granted by appellate tribunals on the ground of over-zealous activities of prosecutors testifies to the inadequacy of the present method. In Chapter III on Public Prosecution and Prosecutors, the author quotes numerous judges in their condemnation of abuses growing out of the over-exertions of prosecutors in securing convictions that are a reproach to the administration of justice.

The following benefits accruing to the system of procedure through the

application of the principle of public defense are discussed at length by the author: 1. The "theoretical safeguards" surrounding the accused will be rendered more effective. 2. Cases will be more honestly and ably presented. 3. Manufactured defenses will be reduced. 4. Unfair discrimination will be eliminated. 5. Disreputable attorneys will be unable to prolong cases. 6. Pleas of "guilty" will be minimized. 7. The truth will be more available. 8. Expenses will be decreased. 9. The criminal courts will be improved. 10. Guilty persons will not receive excessive punishment. 11. Confidence in and respect for the law will be increased.

That the general utilization of the office of public defender will mean the democracy of justice, and that it will fulfill all the expectation of the author when he says: "After this long and costly denial of human rights, comes a tangible antidote in the form of a public defense, which gives every man, regardless of his race, creed or purse, an actual equality before the law" is not to be expected, but it cannot fail to bring about some much needed reforms. Harmonizing as it does with the modern science of penology it is destined to inspire greater confidence and respect for criminal procedure, and that will be a distinct gain.

The method is in the experimental stage and the experience of numerous cities throughout the country which have adopted it should be watched with interest. Since 1912 bills for the establishment of the office of public defender have been introduced in the legislature of fifteen states.

The book is propagandist rather than critical, but deserves the consideration of all those who regard criminal procedure not as a perfect organ of static society, but as a process continuously to be modified by the changing needs of a progressive society, and guided by the wisdom of experience and of scientific achievement in the treatment of the criminal.

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**CASES ON THE LAW OF PERSONAL PROPERTY.** By Harry A. Bigelow. Pp. XX, 404. St. Paul: West Publishing Co., 1917.

This excellent volume of cases by Professor Bigelow is the first of five volumes in the American Case Book Series on the Law of Property and since the law of personal property is taught to first year students, it justifiably departs from the tradition, established by Gray and continued by Warren, of including the law relating to personal and real property in the same volume. Professor Bigelow seems to have been in doubt as to whether the cases dealing with rights of property based on possession should precede or follow those dealing with rights based on acquisition, and although like Professor Warren he prefers the former, he has arranged his case book so that those differing with him may first take up the topic of acquisition, following the method established by Gray.

A new feature is the inclusion of the topics of fixtures and emblements under the law of personal property. This is an arrangement that is justified

by the law peculiar to these legal categories and forms a stepping stone, as it were, leading into the law of real property.

Considering more particularly the arrangement of the subject matter of Professor Bigelow's book, it must be premised that any arrangement of cases is within certain limitations a reflection of the personal equation of the compiler. It is difficult to say that his arrangement which treats of rights acquired by adverse possession before rights acquired by judgment is better than Professor Warren's arrangement in which purchase at judicial sale precedes the statute of limitations. The old distinction clearly stated in Gray, between lawful and tortious confusion and indicated in Warren by the use of the title "Tortious Confusion" should have been retained instead of being eliminated in Professor Bigelow's collection under the general title of "Confusion." But after all such distinctions, as before stated, are based upon so purely personal a view that they are hardly open to criticism. It can only be said that one teacher prefers one arrangement and another teacher prefers another.

It is to be noted that Professor Bigelow's collection contains all the cases that have become well-known landmarks in the law of property, and although his book is published two years after Professor Warren's, it shows how little has been added to the law of personal property in latter years since most of the cases antedate the twentieth century. What might be termed the newer law relating to the subject of fixtures is illustrated by much more recent cases than that of other branches of the subject.

The book contains the admirable typography and broad margins that make the American Case Book Series such pleasant texts for the reader. The index is, as customary in case-books intended for students, suggestive rather than comprehensive. The practice of indicating by different typography in the table of cases, those that are printed as the text, cited in the foot notes and referred to in the text, is a commendable feature of this case book series.

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THE LAW OF WILLS AND THE MANNER OF THEIR DRAFTING, EXECUTION, PROBATE AND CONTEST TOGETHER WITH TESTAMENTARY FORMS. By George W. Thompson. Pp. LXXXV, 1039. Indianapolis: The Bobbs-Merrill Company, 1916.

Provision ought to be made in every jurisdiction for judicial interpretation of a will before the testator's death, so that he would have an opportunity to explain what he meant by the all too frequent ambiguous language employed. But since that cannot be done in most states, the profession welcomes a good treatise on wills. In his preface, Mr. Thompson states that the aim of his book is to assist the busy lawyer; and the work contains many valuable and practical suggestions in the planning and drafting of wills.

The author has included a set of forms covering not only the common but also the unusual testamentary provisions, many of which are taken

from wills that have been judicially approved. As the work is not local, its value would perhaps have been increased by a fuller citation of authorities in support of the forms. In the text-book part of the work the annotations are very full and include cases for all the states, parallel citations being given to the National Reporter and other sets of cases.

The principal part of the treatise is a careful and thorough treatment of the drafting, execution, probate and contest of wills; the legal propositions being clearly stated and the text amply annotated to date. Intended as a general work, detailed treatment of all topics cannot be expected; thus the reader looked in vain for a discussion of the doctrine of dependent relative revocation.

The collection of wills of noted people is of more interest than value; but the brief digest of the statute law of each state and of Great Britain and her colonies, and the treaties and covenants on wills between the United States and all foreign countries have considerable value for quick reference.

The arrangement and topic grouping is good; and Mr. Thompson cannot be charged with having neglected his index. This very important part of law books is too frequently skimped, and its usefulness greatly diminished. For its full collection of forms, practical suggestions, and concise statements of fundamental principles, the work should prove useful to the profession.

*Charles L. Miller.*

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**THE LAW AND PRACTICE IN BANKRUPTCY UNDER THE NATIONAL BANKRUPTCY ACT OF 1898.** By William Miller Collier; Eleventh Edition by Frank B. Gilbert. Pp. CXXVI, 1671. Albany and New York: Matthew Bender & Co., Inc., 1917.

This edition of a well-known work on bankruptcy follows its predecessors in arrangement and method. It is, like most works of its kind, essentially practical, eschewing philosophic theory and scientific treatment, for it asserts that "the study of bankruptcy is a matter of statutory construction. The law must be considered, and applied and enforced as it appears enacted, not as general notions of equity may seem to indicate as proper." In the present edition an attempt has been made to bring the work up to date, and in part to rewrite and rearrange it. But the following instance shows the need for caution by the searcher for authority. On page 501 there is a discussion of the subject of the wife of the bankrupt as a witness. This is, word for word, a reprint of the text in the earlier editions. On the same page there is printed a footnote referring to the matter of Kessler, 35 A. B. R. 30; 225 Fed. 394. The note is written in such a way as to give the impression that it refers to some special rule applying only to the state of Pennsylvania, whereas, as a matter of fact, the decision attacks the right to call the wife of the bankrupt as a witness in all the states of the Union in which local law would prevent, and this interpretation is based upon the effect of the Act of Congress of June 29, 1906, 34 Stat. 618, which amended section 858, R. S. U. S., page 162. The subject is of such far-reaching importance and is so inadequately presented

in this footnote that most practitioners using Collier, and actually reading the text and the note, would be left in ignorance of the real purport of this decision. Although text and notes cannot go extensively into all the problems to which they refer, they should not be misleading.

The publishers have reprinted from this edition the Bankruptcy Act of 1898, together with the general orders and the official forms. It is somewhat difficult to understand how this reprint can be of much service without the balance of the text to which it is virtually an appendix.

That the publishers and editor have indicated a willingness to respond to criticism is shown by the table of cases on exemptions on pages 243 to 250. In 63 U. PA. L. REV. 701, the present reviewer called attention to the shortcoming of the tenth edition in this particular topic, and it now appears that a very earnest effort has been made to meet the criticism which was then offered.

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A TREATISE ON THE POWER OF TAXATION, STATE AND FEDERAL IN THE UNITED STATES. By Frederic N. Judson. Second Edition. Pp. XXX, 1144. St. Louis: The F. H. Thomas Law Book Company, 1917.

This is a new and enlarged edition of Mr. Judson's standard work on Taxation, the first edition of which appeared in 1902. At once complete and thorough, this new edition continues to keep the place this work has as the standard treatise on the state and federal power of taxation. In an appendix the author gives in skeleton form the salient provisions of the taxing systems of the several states. The volume is well indexed and admirably annotated.

Our states are sovereign in taxation subject to the restrictions of the Federal Constitution and the limitations growing out of our dual form of government. As the author points out in his preface the details of the state taxing systems are now so diverse, and so many are the cases involved in their construction and application, that all the accumulated case law on these systems could be included only in a publication of encyclopedic proportions. The author therefore limits his treatise to the limitations on the taxing power of the states and the federal government, so far as these limitations have been declared and expounded by the Supreme Court of the United States. Decisions of the state courts and inferior federal courts have been cited as implying or illustrating the fundamental limitation thus declared. By declaring what the state can not tax these decisions declare what it can tax.

The subject matter covered includes the limitations upon state taxation growing out of the relations of the state and federal governments, the relation of the taxing power, state and federal, to the regulation of commerce, the valuation of interstate properties for taxation, the taxation of national banks, the due process and equal protection clauses in their relation to the taxing power, the taxing power of congress, and the enforcement of federal limitations on the state and federal taxing powers.

This second edition brings the cases up to date and adds important textual matters.

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**EQUITY AND ITS REMEDIES.** By Charles Neal Barney. Pp. XXXIII, 252. Boston: G. A. Jackson, 1915.

In this treatise Mr. Barney has given to his brethren of the Massachusetts Bar a useful handbook on the subject of equitable rights and remedies. The context is confined to a statement of the rules of equity as announced in the most recent Massachusetts decisions, with a notation of the supporting authorities; but while the rule and its corollaries are stated most clearly and effectively, the treatise is devoid of that historical discussion and analytical treatment which are so essential to a student's textbook. The latest statement of a rule by the court of last resort is of much interest to the practitioner; but of far more importance to the student is a thorough discussion of the historical growth and development of the equitable doctrines in order that he may learn not alone the doctrine, but the reason thereof, so as to enable him to deal with new problems as they arise. The chief value of the treatise therefore is as a complete digest of decisions affording to the busy practitioner a concise summary of the principles of equity jurisprudence, to which ready reference may be had for citations of adjudicated cases. The citations, however, being drawn almost entirely from Massachusetts cases, the author has not succeeded in his purpose to make the book one of general application.

The author omits the subject of trusts and other kindred subjects, and also the matter of pleading and practice in equity.

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**PROCEEDINGS OF THE SIXTH NATIONAL CONFERENCE OF THE AMERICAN SOCIETY FOR THE JUDICIAL SETTLEMENT OF INTERNATIONAL DISPUTES.** Baltimore, 1917.

The subject of the conference was "the Supreme Court of the United States," and the following papers were presented and are published in this volume:

- Can Plaintiff State in Absence of Defendant, Properly Summoned, Conduct Case to Judgment? By Raleigh C. Minor.
- What Power Has Supreme Court of the United States to Compel Execution of Judgment Against a State? By Alpheus H. Snow.
- How Does the Supreme Court Endeavor to Obtain Presence of Defendant State?
- Can Supreme Court or can Government under our System Compel Appearance of Defendant State? By Jackson H. Ralston.
- How Does the Supreme Court Decide Whether a Suit is Between States?
- What is the Procedure of Supreme Court in Actual Trial of Suit Against State? By James Brown Scott.
- What is the Function of the Supreme Court in the American Government? By William Howard Taft.
- How Does the Supreme Court Draw the Line Between Justiciable and Non-Justiciable Questions? By William L. Marbury.



Another Supreme Court. By Wm. Renwick Riddell.

In What Classes of Subjects can a State Sue Another in the Supreme Court? By Walter S. Penfield.

How Does the Supreme Court Endeavor to Obtain Presence of Defendant States? By William I. Hull.

There are also appended (1) a report of the committee upon the duty of courts to refuse to execute statutes in contravention of the fundamental law, (2) the history of the privy council as a legal tribunal or court.

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CASES AND READINGS ON THE JURISDICTION AND PROCEDURE OF THE FEDERAL COURTS. By George W. Rightmire. Pp. XVI, 892. Cincinnati: The W. H. Anderson Co., 1917.

The case method is here applied to a field hitherto covered by lectures and text-books. The cases relate principally to jurisdiction and only incidentally to procedure. Special subjects, such as bankruptcy, admiralty and maritime jurisdiction and patents are omitted. An appendix contains the Judiciary Act of 1789, 1875, 1888 and 1891. The judicial code of 1911 is omitted on the ground that it is easily accessible, and may be obtained from the superintendent of documents of the United States. It may be questioned whether the topic warrants the case-book treatment or can be presented as well as by the old method, coupled with the now generally introduced Practice Courts. In the present glut of topics for law school work, it is doubtful whether room can properly be found for this subject in an already over-crowded curriculum. The book is quite comprehensive and well arranged, and appears well adapted as a case book for class work.

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THE CARNEGIE ENDOWMENT YEAR BOOK. 1917.

The Year Book of the Carnegie Endowment for International Peace for 1917, reveals a wide field of constantly extending activity.

The Endowment is an educational, scientific and economic research institution, working along the lines of a better understanding of the problems of international relations, and a wider diffusion of the fundamental principles of international law, upon the recognition and development of which the future peace of the civilized world may well be said to depend.

A comprehensive understanding of the wide field of activity covered by the Endowment activities is obtained from the list of its publications, varying from small pamphlets to large volumes, of which no less than sixty-nine titles are listed in the Year Book. Many of them are distributed gratuitously; those which appeal to a limited class of specialists and experts are sold at a price; but in order that everybody may have access to them, the Endowment has established a chain of Depository Libraries, widely distributed in the principal cities and in educational institutions and public libraries of the United States and other countries, where they are freely accessible. A list of these free depository libraries, 626 in number, is published in the Year Book.

**CASES ON THE LAW OF PRIVATE CORPORATIONS.** By Daniel Frederick Burnett. Pp. XXIX, 828. Boston: Little, Brown & Company, 1917.

The author realizes that the legal problems peculiar to corporate existence require practical solutions to meet the needs of modern business. Where old conceptions have been outgrown, the new are presented to the student for comparison with the old in such a manner as to bring home to him why the former rules should be discarded. This is clearly shown in the class of cases holding "when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will regard the corporation as an association of persons."

The arrangement of the case-book follows the growth of a corporation from the acquisition of its charter to its dissolution, acquainting one with its inward workings, the limits of its authorized activities, and the situation of parties dealing with it. But the notes which shed light upon points not instantly patent constitute by far the most valuable individual feature. Cases, texts and articles in legal periodicals are referred to, so that the student is never forced to take a proposition for granted, but encouraged to further research and study.

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**A TREATISE ON THE LAW OF INHERITANCE TAXATION WITH PRACTICE AND FORMS.** By Lafayette B. Gleason and Alexander Otis. Pp. LVIII, 836. Albany and New York: Matthew Bender & Co., 1917.

The book discusses inheritance tax law under six topics: (1) The nature of the tax; (2) the different transfers taxable; (3) the parties and their interests; (4) the property transferred; (5) procedure in New York; (6) general résumé of the statutes of all the states and of the United States. It also contains the Mortality Tables and much other practical information. In these days of universal taxation it will prove a valuable guide.

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**THE LAW OF THE PUBLIC SCHOOL SYSTEM OF THE UNITED STATES.** By Harvey Cortlandt Voorhees of the Boston Bar. Pp. IX, 429. Boston: Little, Brown & Co., 1916.

A comprehensive review and brief compilation of the important school laws of the various states and of the United States, supplemented by 1600 court decisions on different State statutes and a number of additional ones of the Federal courts. As the author says, the Constitution of the United States is silent on public education, and the matter is therefore left to the states. This fact, however, makes work such as this, no matter how well done, somewhat unsatisfactory; because the laws and practices differ so widely that most persons will need rather the school laws and decisions of their own states, which are usually published by the state authorities.

The book serves well for comparison of the school systems and laws. The epitome of the provisions of the school laws of Pennsylvania, although brief, is well and accurately made.