

BOOK REVIEWS

FOLKLORE IN THE OLD TESTAMENT. STUDIES IN COMPARATIVE RELIGION, LEGEND AND LAW. By Sir James George Frazer. Macmillan & Co., London, New York, 1919. 3 Volumes. Price, \$15.

The method applied by Sir James Frazer with such brilliant success in the "Golden Bough" and other works on folk-lore is now brought to bear on the study of biblical antiquities with equally remarkable results. The author explains much of the mythology and primitive custom of the early Hebrew records by comparison with the folk-lore of many other peoples drawn from a wide range of sources. Even though it may be doubtful whether all mankind has sprung from one original Adam and Eve, human groups throughout the world bear testimony to their common humanity through the fact that under similar conditions they have reacted in pretty much the same way, developing similar customs and practices, superstitions and rules. The volume of illustrative material gathered by the painstaking author and arrayed with scholarly accuracy and scientific skill throws a veritable blaze of light upon Hebrew antiquities. It is with that portion of the work that purports to deal with legal matters that we are at present concerned. It is very difficult, if not impossible, to separate the legal from the non-legal portions of this work for the author is not dealing with laws but rather with practices and customs enforced mainly through the respect paid to established taboos, a sanction stronger than any fear of punishment which a law might impose. In the 6th chapter of the second volume, dealing with Jacob's marriage, the author discusses the marriage of cousins, the sororate, the levirate, age grades in marriage, and serving for a wife. The lines separating the legal and non-legal parts are here so blurred that the subject matter may be considered either under the one or the other heading. If this be law, it is law created neither by code nor statute nor judicial decision, but purely by custom, sanctioned by religion and enforced by public opinion. The greater part of the third volume is taken up with the consideration of what the author calls "the law." It is submitted that this is a misnomer, for there is practically no difference between the material gathered under this head and the material found in the other volumes. Only six of the biblical "laws" are considered: 1. Not to seethe the kid in its mother's milk. 2. Boring the servant's ear. 3. Cuttings for the dead. 4. The ordeal of the bitter water. 5. The ox that gored. 6. The golden bells. The author's contribution to the understanding of these curious rules, especially to the first two, is noteworthy. The lawyer cannot help regretting that Frazer's genius for comparative study had not been applied to the strictly legal portions of the Bible, the little codes imbedded here and there in its text, the scattered commandments to be found in nearly every part of the Pentateuch, the Ten Commandments and, generally speaking, the property and inheritance laws, the laws of marriage and divorce, the poor laws, the laws of damages and crimes. Excellent work in this field has been done by scholars of Continental Europe, but English-speaking scholars have as yet unfortunately neglected this field. Perhaps it is unjust to Sir James Frazer to criticise him for not having done such work and we should rather

accept with thankful appreciation his enormously valuable contribution to the study of comparative folklore. His work and his method will appeal especially to lawyers who will appreciate his objectivity of treatment. He makes no attempt at edification or at moralizing but marshals the evidence with great skill and lets it point to conclusions the correctness of which may be tested by each reader, for the entire volume of evidence, at times overwhelmingly solid, is laid before him. The work appeals also to our interest in the remote, the strange, the bizarre in human relations and to that higher sense which is able to correlate and coordinate all of these curious elements and find in them points of connection with the most modern rules and customs in life. It is a work that makes for breadth of vision and sympathy, and enlarges the horizon of thought. It is most cordially recommended as a book for the lawyer's leisure hour. He will find in it at one and the same time both mental relaxation and stimulus.

David Werner Amram.

IFUGAO LAW, by R. F. Barton. University of California Press, Berkeley, 1919. Pp. 127, plates 33. Price, \$2.

This is one of the publications of the University of California in American Archaeology and Ethnology, the work of one who lived for eight years among the Ifugaos of Northern Luzon, a tribe of barbarian head hunters. As a result of his experiences, the author doubts whether any society in existence affords as much happiness and true freedom as that of the Ifugaos. The experience of other primitive peoples is here repeated. As soon as they come into contact with what we fondly call our "higher" civilization, their ancient rules and customs, which produced harmony and stability, are broken down, and under the influence of our "higher" religion and law they become a degenerate people. It seems that if civilization has any purpose at all, it is not to promote peace and happiness among mankind, for everywhere civilization breeds discontent, unhappiness and strife.

The book before us is a volume of rich material covering the family law, property law, penal law and procedure in force among the Ifugaos. All is regulated through ancient custom developed precisely like our common law as the result of centuries of experience under which old rules are modified and superseded and new rules better adapted come into being. The Ifugao has not even the suggestion of political organization, yet he has a well developed system of laws under which he lives in comparative happiness without involving himself in serious trouble with his fellows. Tradition takes the place of records and not only is the entire body of law well known and preserved but even the pedigree of many of the people is known back to the tenth generation and even further, not only in the direct line but even among the collateral kinfolk. The author considers the Ifugao law to rank fairly with the biblical Hebrew law or with the Mohammedan law of a century ago. The marriage laws are quite elaborate, the divorce laws equally so. In addition to divorce by mutual agreement, the author cites fourteen grounds upon which either party may demand divorce from the other, some of which are worthy of our consideration, for example, insanity, continued laziness or shiftless conduct on the part of one of the spouses, unreasonable or insane jealousy, squandering of the family resources. The

Ifugao distinguishes family property and personal property, the former consisting principally of lands and heirlooms, the latter of articles acquired by the individual. The family property is alienable with solemnities of transfer of such complexity as to make our real estate transfers appear simplicity itself, whereas the personal property, which includes dwellings, trees, even standing timber and sweet potato fields is freely alienable. A study of the laws relating to tenures, sales, borrowing and lending, contracts and irrigation is of exceeding interest. The penal law recognizes a long list of offenses with two punishments, death and fines. Moral turpitude does not seem to exist or rather the Ifugao's sense of moral turpitude is quite different from our own. The idea of intent in relation to responsibility for crime is highly developed. The law of retaliation survives only in matters of homicide, a life must be paid by a life. There are no courts of law and the procedure is almost entirely in the hands of a go-between who is a priest or wise man. He hears the testimony of the parties and uses it, together with his knowledge of human nature and his force of persuasion, to bring them to an understanding as to their respective rights and obligations. Sometimes the ordeal is used for the purpose of determining the issue. Execution is virtually a system of self-help. If damages are refused after having been fairly assessed, the matter is left to the injured party to seek such redress as he can obtain by force.

The work has all the characteristics that should mark a scientific production and it is a valuable contribution to our knowledge of primitive and comparative law.

David Werner Amram.

PRINCIPLES OF THE LAW OF CONTRACT WITH A CHAPTER ON THE LAW OF AGENCY. By Sir William R. Anson, edited with American Notes by Arthur L. Corbin. New York, Oxford University Press, 1919, pp. lvii. Price, \$4.

Yale University is to be congratulated on the publication of this book, for although it is issued by the Oxford University Press it is the fruit of Yale scholarship. Professor Corbin, of the Yale Law School, deeply influenced by his late colleague, Prof. W. N. Hohfeld, and inspired by the philosophy of which the late Professor Sumner and his successor, Professor A. G. Keller, are most distinguished exponents, has given us an edition of the classical work of Sir William Anson which should be read by every law student and practitioner. The contributions of Professors E. W. Huffcut, of Cornell, and J. C. Knowlton, of Michigan, must not be overlooked, for they did pioneer work in their editions of Anson, and, of course, the contributions made by many minds in articles in the Law Reviews have been freely drawn upon and are constantly cited by the present editor. Professor Corbin's work is something more than a new edition. He has given us a new book, retaining the form and much of the text of the old. Not only has he added 46 new sections to the text but he has greatly amplified the notes of his predecessors and has added much new and valuable material in his own notes. He has used all the later important cases and has enriched the entire mass of material with critical comment and suggestion the result of the free play of a well trained and informed mind in a field in which the law is so well settled that the normal tendency to follow the beaten path is

especially hard to overcome. This is due not a little to the brilliant work of Professor Hohfeld, to whom Professor Corbin gives ample credit. In the opinion of the reviewer this book is easily the most distinguished and important that has appeared on this subject during the past decade.

To the practitioner it gives not only statements of principles but critical analysis; to the law student it furnishes the much needed background that the case system requires; and to both it serves constant notice of the need for careful and accurate thought and precise use of legal technical terminology, and of the futility of mere adherence to the words of the authorities. Text-books are usually mere digests. This book is one of the small class of works that not only is informative but critically stimulating. One feels, on reading anywhere in this volume, that the great book of the law of contract is not closed and that legal concepts are not only in process of being more accurately defined but that new connotations are manifesting themselves, as we pass from the era of legal fiction to that of equitable or common sense interpretation or what the legal philosophers call sociological jurisprudence. Perhaps the next great work on the subject will be not a new edition but a new book restating the law of contract in the light of the newer insight made possible by two decades of academic research and analysis and a recognition of the point of view that there are three parties to every contract, the parties and the public. In the meantime, this is the book which should be the *vade mecum* of every student of the subject.

David Werner Amram.

INTERNATIONAL LAW CODIFIED AND ITS LEGAL SANCTION OR THE LEGAL ORGANIZATION OF THE SOCIETY OF STATES, by Pasquale Fiore. Translated from the fifth Italian Edition, with an introduction by Edwin M. Borchard. New York, Baker, Voorhis & Co., 1918. Pp. XIX-750.

Professor Fiore approaches the subject of the League of Nations from an entirely different angle than the other writers whose books have been above referred to. He is the greatest Italian authority upon international law and his book is an attempt to present a code of international law based to some extent upon the law as it exists but for the most part consisting of rules expressive of Professor Fiore's ideas of the need for reform in international legal relations. Professor Borchard, the brilliant translator of Professor Fiore's book, has pointed out in his introduction that the admitted defects of the existing system of international law might be remedied, first, by the periodical meeting of a congress with power to legislate and to provide means for enforcing the rules of law established by authorizing collective action by states; second, by the convening of a conference at the request of any state to settle political controversies, interpret ambiguous rules of law and insure execution of the rulings of the congress by referring the case to arbitration or to the congress for executive action. Professor Fiore contends that every individual has international rights as a human being and that no state should be permitted to limit these rights. His congress, conference and court of arbitration represent the three functions of government, legislative, executive and judicial.

The great virtue of the book lies in the fact that it is the result of profound, scholarly and sober realization of practical necessity interpenetrated by

an idealistic faith in the future and in the value of ideas as a contribution to social and political betterment. A number of his ideas have already been transformed into legislation through the Hague Conferences. The book is published by the Division of International Law of the Carnegie Endowment. Professor Borchard deserves the thanks of his legal brethren for having undertaken the difficult task of translation and annotation, a task performed with brilliant success.

David Werner Amram.

THE FREEDOM OF THE SEAS. By Hugo Grotius. Translated with a revision of the Latin Text of 1633 by Ralph Van Deman Magoffin. Edited with an Introductory note by James Brown Scott. New York. Oxford University Press, 1916. Pp. XV-79. Price, \$2 net.

Within recent years it was hoped that the phrase "freedom of the seas" would attain a satisfactory definition in the Grotian sense that there can be no proprietary right in the sea. The question is still an open one and international jurists will again and again refer to and quote the great work of Grotius in seeking a final decision. The Carnegie Endowment has added to its list of valuable works in the field of international law this edition of Grotius's Freedom of the Sea, giving on opposite pages the Latin text and an admirable, scholarly and idiomatic translation by Professor Magoffin. There is an illuminating introductory note by Dr. Scott and Grotius's valuable footnotes. The book is printed in beautiful, bold type, which, as in the Incunabulac, intensifies the pleasure in the text through the pleasure in the reading. It is a delight to handle books of this kind which tempt to study through the beauty of their form.

A TREATISE ON THE LAW AND PRACTICE OF RECEIVERS, in two volumes. By Ralph E. Clark. Cincinnati, The W. H. Anderson Co., 1918. Pp. LXXXV-2176.

Clark on Receivers is the most practical book on the subject and will no doubt find its place among the works of ready reference in the library of every lawyer who has to deal with this most important subject. It is a veritable encyclopaedia and includes citations to the very latest cases. The first volume begins with a study of the origin and nature of receivers, followed by consideration of the jurisdiction in their appointment and the courts by which they may be appointed. Then follows a chapter on the purpose of receivership and a series of chapters giving the law of receivers arranged under special topical headings such as receivers of estates, receivers between partners, receivers in mortgage cases, receivers of railways and the like. Their powers and duties are followed by chapters relating to pleadings, practice and procedure. The second volume gives the various American and English statutes affecting receiverships, rules of court and equity rules relating to receivers, a special chapter on the English and American Trading with the Enemy Acts in their relation to this subject and finally, one of the most valuable features of the work, a collection of about two hundred forms gathered from actual cases pending or adjudicated. This collection will be found to be of exceptional value by the practitioner. In this work, scholarship has been subordinated to practicality. It is a book that appeals to the busy practitioner who will find it an admirable guide in his researches.

David Werner Amram.

AN ELEMENTARY TREATISE ON THE LAW OF REAL PROPERTY. By Elliott Judd Northrup. Boston, Little, Brown & Co., 1919. Pp. XXV-441.

Professor Northrup's book covers substantially the same ground as Professor Bigelow's Introduction to the Law of Real Property herein before reviewed. Its purpose is to serve as a text for a short course on the law of real property. The author has made use of some of the most modern studies in his field and has produced a work which can be used profitably by students of the case system for the same purpose as that which led Professor Bigelow to write his introduction to his case book on Rights in Land. Professor Northrup's footnotes, while not voluminous, are quite sufficient to enable the student to refer to authorities where the subject matter of the text may be further examined. We have here a modernized presentation of the subject matter of the second book of Blackstone's Commentaries which may enable students to obtain a more comprehensive view of the whole field of the law. than the mere case system of study can give.

THE LAW OF GOVERNMENT CONTRACTS. By R. Preston Shealey, New York, The Ronald Press Co., 1919. Price, \$4.00.

Lawyers and business men will find this manual of value for ready reference to statutes regulating contracts with the government, decisions interpreting these statutes and many suggestions as to the practice established by government officials. The subject of government contracts while based on the well known fundamental principles of the law of contracts is differentiated by special rules and regulations relating to almost every branch of the subject. These are of the utmost importance, and non-observance of them may lead to most disastrous consequences. It is the duty of all persons dealing with government officials to know these special rules and the book before us gives this knowledge in most compact and readable form.

AMERICAN MARRIAGE LAWS IN THEIR SOCIAL ASPECTS. By Fred S. Hall and Elisabeth W. Brooke. New York, Russell Sage Foundation, 1919. Pp. 3-132.

This compact little volume presents an enormous amount of material arranged by States on (1) common law marriages, (2) marriageable age, (3) marriage licenses, (4) solemnization, (5) marriage record, (6) interstate relations, (7) other prohibitions, with reference to the statutes and occasionally to adjudicated cases. The same subject matter is treated topically and these two parts of the book are preceded by some proposals for marriage law reform. Miss Mary E. Richman, in the preface, states that in about three-fifths of all the cases of problems of individual welfare referred to the Committee of a Society, of which she was a worker, the core of the difficulty was found to be marital maladjustment, although, she adds, that the proportion in the whole work of the society would not be nearly so large. She intimates that perhaps too much attention has been given to the effects of our divorce laws and too little to those regulating marriage. To those interested in the social problems centering about this topic, this little book will prove of great value as a point of departure for more detailed study and investigation.