

## BOOK REVIEWS

LYCURGUS OR THE FUTURE OF LAW, by E. S. P. Haynes, New York, E. P. Dutton & Co., 1926, pp. 82.

The To-day and To-morrow series is supposed to be the quintessence of cleverness. The publishers so hint on the paper wrappers. Readers are invited to listen to the wits discoursing as they would at Oxford and Cambridge and to pick up quotable bits for suburban table talk. But Lycurgus does not try to be witty. It is a serious little book; a tract that a good young man might slip into the hand of a debased legislator with a view to improving him, if the chosen of the people could be considered improvable. The author is preoccupied with the law of domestic relations and would make divorce as cheap and easy as it is in the U. S. A. where the dominant Puritanism requires that even adultery shall be respectable and law-abiding. Saving this idiosyncrasy, where expert knowledge has bred misgivings as to the sanctity of the Aryan household, the tone is that of discontent tempered with professional caution. The author hopes that the world is learning some kind of wisdom and will in the future reform its laws in accordance with common sense but points out that: "The future of law in every State depends very much on political developments. If democracy proceeds on its present lines all law is likely to be brought into contempt." This may be a hard saying for an Englishman but is no news in America. For one hundred and fifty years there was law without lawyers, and for the last one hundred and fifty years a majority of the bar, especially that portion which drifts into politics, has been self-educated, if educated at all. Without the aid of expert advice and without the tonic corrective of resolute, sound and authoritative professional opinion, absurd laws have been enacted since Colonial days, and those of today are only more absurd because the country is larger and the follies of the settlers have become more highly concentrated in their descendants. Statutory tyranny has been the rule against which the old stock has acquired a semi-immunity by hypocritical devices so ingenious as to be almost ingenuous. However, too much must not be expected of the United States which is, fundamentally, a new country of pioneers with patent faults and rather annoying virtues. It will take another half millenium to civilize it. Great Britain's case is different; an old and sorely tried civilization has been subjected to an almost unbearable strain. It would be tragic indeed for the world if the sanity and moderation of its legal and political institutions should suffer eclipse. Mr. Haynes is low in his mind, especially as he notes "a tendency to dragoon citizens when it is easier to employ force than to determine rights." And his concluding words are: "The Victorian ideal of liberty is dead and no other ideal has come to life. 'Quis custodiet custodes?'" A few lines will be added beyond the proper limits of this review to offer a word of cheer. In spite of conquest and revolution the British stock has always shown, in the long run, remarkable powers of resistance to the professional busybody. Chaucer's arch-deacon was one, and he went, not to return. Such were the civilian bureaucrats of the Tudor despotism and their day was short, as was also the reign of the Saints in Cromwell's time. The war has

ensconced a new crop of business-minders in every nook and cranny of London and Washington preaching and practising what the publicists euphoniously call administrative law, which is not law in the Anglo-American sense, but a political system, an inheritance from the half oriental late Roman Empire, and which, however congenial to Continental Europe, is likely to prove unpalatable to a race with rooted traditions of freedom and self-government, and heads hard enough to last one hundred thousand years in the Piltdown gravels. For Piltdown man—good old boy—was the first Briton we know of; and we hope he ate the foreign witch-doctors when they crossed over to tell him how to run his rock shelter.

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THE BRITISH YEAR BOOK OF INTERNATIONAL LAW—1925. New York, Oxford University Press, American Branch.

Anyone interested in the development of international thought as it seeks to find expression in the rules of international law will look forward each year with real interest to the publication of the British Year Book of International Law. The present series started in July, 1920 so that the volume under review represents the sixth year of issue. The late Professor Oppenheim was deeply interested in the plan for the establishment of this series but died before the first volume was published. The editorial work, however, has been ably supervised by Sir Cecil Hurst and Professor A. Pearce Higgins. They have been assisted by a carefully chosen Editorial Committee and a group of correspondents among whom one notes Dr. Baty, legal adviser of the Japanese Foreign Office and Professor J. W. Garner of the University of Illinois.

The Year Book for 1925 seems to the reviewer the least interesting of those published. This purely personal impression arises from the character of the questions discussed and not because of any departure from the high standards of scholarship which have characterized the entire series.

The present volume contains thirteen articles: an obituary notice of Sir John Salmond of the Supreme Court of New Zealand who died on September 20th, 1924; suggestive notes on contemporary international events; some significant opinions and decisions of international tribunals; and eight book reviews of rare distinction. To the reviewer the most suggestive articles are: "Matters of Domestic Jurisdiction" by Professor Brierly, "The Sources of the Law of Nations," by Professor Corbett, and the Review by one "C" of the treatise on International Law, by Professor Fenwick, of Bryn Mawr. Professor Brierly points out with that realism so characteristic of sound British thinking that "the great majority of really dangerous international disputes arise out of matters which indisputably fall within the category of domestic jurisdiction and the problem of how to deal with them is the most crucial and unfortunately the most intractable of all international problems." While thus recognizing the very real difficulties of the practical situation he describes, Professor Brierly closes his study with a note of hopefulness. "Every State," he says, "would be a gainer if gradually and with proper consideration of each

step these interferences with domestic jurisdiction, which will certainly continue, were regularized, and the matters themselves converted into matters of international law. This process has in fact begun under the machinery of the Covenant (of the League of Nations); it offers no sensational success, but it is one of the most promising features of the international outlook today, and it calls not only for our willing co-operation, but above all for the exercise of a wise patience."

In his article on the "Sources of the Law of Nations", Professor Corbett offers suggestions for a fixed use of the terms "cause," "basis," "origins," and "records" or "evidence" of the law of nations to replace the broader term "sources." His point of view is that of a convinced positivist. If one admits the assumptions of this school of legal thought the definitions which he submits would seem adequate. He thus states them:

"1. The cause of international law is the desire of states to have the mutual relations which their social nature renders indispensable regulated with the greatest possible rationality and uniformity.

"2. The basis of international law as a system and of the rules of which it is composed is the consent of states.

"3. The origins of the rules of international law, which may also be called 'the sources' of that law—though the word 'source' has such a history of confusion behind it that it might well be abandoned—are the opinions, decisions or acts constituting the starting point from which their more or less gradual establishment can be traced.

"4. The records or evidence of international law are the documents or acts proving the consent of states to its rules. Among such records or evidence, treaties and practice play an essential part, though recourse must also be had to unilateral declarations, instructions to diplomatic agents, laws and ordinances and, in a lesser degree, to the writings of authoritative jurists. Custom is merely that general practice which affords conclusive proof of a rule."

The battle of the future in the field of legal thought will not center on such definitions as these but on the fundamental assumptions from which they are deduced. Already these assumptions are being seriously challenged. Only recently in an exceedingly clever and thought provoking treatise on what he calls "The Lawless Law of Nations," Dr. Sterling F. Edmunds of the St. Louis University Law School, has launched a brilliant attack on the entire positivist position. Within the next decade we may expect many other such attacks. The idea of a standard deep rooted in the conscience of mankind of a categorical imperative which claims allegiance even from sovereign states and which refuses to accord a necessary moral validity to mere consent, still survives in spite of the prevailing positivist philosophy. We may well repeat the penetrating question of the late Viscount Bryce, "Who can say that an idea so ancient, in itself simple, yet capable of taking many aspects, an idea which has had so varied a history and so wide a range of influence may not have a career reserved for it in the long future which still lies before the human race?"

The review of Professor Fenwick's treatise on International Law, signed by the letter "C" is worthy of careful reading. In the discussion of the conventional arrangement of such treaties—an arrangement which Professor Fenwick religiously follows—appears this pregnant sentence, "there seems to be far too little stress laid on the *duties* of a state as a state and it is a question whether much that seems unsatisfactory and abnormal in world conditions to-day would not fall into better perspective if looked at from the aspect of state duties instead of state rights." This is a suggestion which the student of world affairs may well ponder.

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CASES ON PRIVATE CORPORATIONS. Second Edition. By George F. Canfield and I. Maurice Wormser, Indianapolis, The Bobbs-Merrill Company, 1925, pp. xiii, 933.

The second edition of this well-known case-book is published not merely as a reprint of the first edition but as a new and revised edition. The first edition appeared early in 1913; during the intervening thirteen years the opinions of those interested as to the worth of this earlier edition must have crystallized so definitely that any review of its substance would be a work of supererogation. Obviously the contributions of the edition in hand are to be sought in its points of departure from the first edition, and accordingly the present edition may be best evaluated by comparing it with the earlier one.

Judged from this standpoint the volume under review seems scarcely to justify its publication. The essence of any case-book must be deemed to be the cases in its text: this, after all, is the principal material with which the student deals, however ample the notes may be. The text contains two hundred and fourteen cases; of these there are only nineteen cases which were not reported in the first edition, and of these nineteen, four were decided prior to 1913—a net total of only fifteen new cases in almost thirteen years! And this in one of the most prolific and mobile fields of law.

Nor do these facts reveal the full extent to which this edition has failed to tap the years intervening since the first edition appeared; of these fifteen cases, six were decided in New York and four in the Federal courts, leaving an aggregate of five new cases in thirteen years from forty-seven states! The present volume contains no new English cases, and no cases at all from twenty of the states, including some of the favorite fields of corporate promoters, such as Maine and Delaware. Furthermore, the text contains no new material concerning the corporate entity theory, subscriptions to shares, by-laws, dividends, power of shareholders to subscribe to new issues of shares, watered stock, over-issued shares, transfer of shares, promoters, and other major topics, and with respect to the entire subject of corporate creditors it presents only two new cases. Decisions of the Federal, New York and English courts comprise exactly half of the reported cases.

To be sure, the notes have been greatly amplified and contain references to many valuable cases decided since 1913, as well as to many other cases not

cited in the first edition. Some will regard this augmentation of the authorities cited in the first edition as a distinct improvement, but the reviewer must regretfully dissent—and not because of any deficiency in the selection or contents of the notes as a whole, but rather because of their very prodigiousness.

The present writer has long felt that the sole function of notes in a case-book should be to put before the student leading cases which, owing to the limitations of space and the necessity of minimizing expense, cannot be reported in the text, but which are of scarcely less importance than the text-cases in a study of the subject. A case-book is neither a treatise nor a digest, and the mere piling up of authorities would appear to be beyond its proper scope and frequently to savor of a form of self-indulgence on the part of the editor: an inability to refrain from utilizing in his compendium all of the cases which he has collected during laborious hours of research (just as a reviewer may indulge himself by gratuitously injecting some pet theory into his review!). Even as a source of material for the more ambitious student vast accumulations of references are indefensible in a case-book; if the "ambitious student" really desires to put some flesh on the skeleton, it is far better for him to acquire dexterity in the use of legal tools, and thus to find the authorities for himself rather than to have them presented to him in a note.

Furthermore, whatever inherent value may be accorded to the notes in this volume, the omission of a "table of cases cited" must seriously detract from their availability, especially as the index contains but seventeen references to the more than 350 notes. Indeed, the index is perhaps the strongest evidence of the lack of thoroughness in the preparation of this edition. Despite a considerable rearrangement of the material contained in the first edition and the addition of some cases dealing with subjects not treated in the first edition, such as shares of no par value, the index is identical, line for line, word for word, with the index of the first edition, save for the omission of about twenty-six lines referring to cases not included in the second edition. The reader will hunt in vain for any index-reference to shares of no par value or any of the other new matters contained in the second edition.

In conclusion, a warning must be uttered against any misinterpretation of the foregoing criticisms; it cannot be too strongly emphasized that they are directed not at the worth of the present volume as a case-book, but at the *prima facie* lack of justification for a second edition so remarkably similar to the first. The very fact that the publishers recognized a demand for a second edition indicates the merit of the original work. The binding and typography of the new edition are excellent. While the arrangement of the material is somewhat different from that in the first edition, nevertheless it proceeds along orthodox lines, closely resembling the presentation of the subject by other editors of similar case-books.

The present writer is not entirely convinced of the efficacy of this time-honored method. The law of private corporations, ploughing as it does a strange furrow across practically the entire field of law, perhaps lends itself with less readiness than most legal subjects to the case-book method. The grave danger in the study of the law of corporations exclusively through the medium of cases is that the student fails to glimpse the corporate scene pragmatically. Is there any legal distinction between great and small corporations?

Which group of persons actually constitutes "the corporation," shareholders or directors? What are the fundamental legal distinctions between shareholders and creditors of a corporation? Is a legal duty really imposed upon a private corporation if the only sanction is the possibility of its corporate existence being terminated by the state? Are the incorporators of modern corporation in fact contributors to a common fund? The very existence of the problems raised by these and similar questions is unknown to the average law student. Although corporations are ever-increasingly in the public eye, he enters upon a course in this subject with a few hazy notions, a confusion of glib phrases, and practically no understanding of what corporations really are or of why they are permitted to exist. And yet the *raison d'être* of corporate existence would seem to be an indispensable sign-post to that mass of legal principles constituting the law of private corporations. To enable the student to acquire a pragmatic view of this subject perhaps a source-book, not exclusively devoted to cases, would be preferable to the orthodox case-books in current use.

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INTRODUCTION TO ROMAN-DUTCH LAW. Second Edition. R. W. Lee, New York, Oxford University Press, American Branch, 1925, pp. xlviii, 424.

This book, first published in 1915, is the result of Dr. Lee's lectures at the University of London and remains the best compendium on the subject. The general principles of Roman-Dutch law forming the historical basis of all of the systems in which this law has found a place are here set forth concisely and completely, with ample reference to the original authorities. Roman-Dutch law, originating in Holland through the union of Germanic custom and Roman law, was extended to all of the Dutch Colonies and settlements. In Holland and the present Dutch Colonies it has been superseded by the Code Napoleon and by the later codes now in force. In the Dutch Colonies of Guiana, Ceylon and South Africa, which passed into British rule, this law survived until our own time. In British Guiana it was practically displaced by English common law through the legislation of 1916. In Ceylon it is threatened by supersession by the same system and it remains in real force only in South Africa.

The subject matter of Dr. Lee's lectures is divided into the classical captions of the law of persons, of property, of obligations and of succession. Under these several captions, by far the largest subdivision is that of the law of contracts. The student of Anglo-American law will find many points of difference between our system and the Roman-Dutch, particularly in the law of persons and of property. Dr. Lee's distinguished reputation and his researches in the old Latin and Dutch books give assurance of the authoritative character of his work. The book contains a very complete list of the authorities cited, a table of cases and statutes and a satisfactory index of the subject matter.

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