# BOOK REVIEWS

CONSTITUTIONAL ISSUES IN CANADA, 1900-1931. Edited by Robert MacGregor Dawson. Oxford University Press, New York, 1933. Pp. xvi, 482. Price: $4.00.

Two features of the Canadian constitutional system are commonplace, namely, (1) that to a preponderating extent the system under which Canada is governed is an unwritten one, and (2) that both the unwritten and written parts of that system abound in ancient modes of expression and forms of procedure which are far from corresponding with the actual operation of the system. The book under review illustrates both these features in a varied collection of articles from magazines and newspapers, extracts from parliamentary debates and other public speeches, official reports, newspaper editorials and other sources.

Relatively little of the book is devoted to the construction of the British North America Act, 1867, the only Canadian state document which bears even a general resemblance to what in the United States would be called a constitution. Chapter IX, *Dominion-Provincial Relations,* contains a small selection of leading cases relating to the distribution of legislative power between the Dominion and the provinces—one phase of constitutional law which in any federal system obviously must be defined by a written instrument. Whether a particular statute is *intra vires* or *ultra vires* (the words "constitutional" and "unconstitutional" are not used in Canada in this connection) is decided by the courts as the occasion arises. Generally speaking, however, other questions dealt with in the book do not turn upon any express provision of the British North America Act or of any other document, and nevertheless some account is given of most of the constitutional issues (in the sense of questions relating to the conventions or usages of the constitution) which arose in the first thirty-one years of the present century. The book affords an exceedingly useful record and reminder of controversies and developments of which Canadians have been interested spectators, even when they have not participated in them or studied them as experts.

Even citizens of the United States live with apparent equanimity under a constitution which is not always construed to mean what it says. One has only to think of the system of election of the President of the United States by a college of electors as contemplated by the constitution, transformed in practice so that the members of the electoral college have become mere automata for giving effect to the popular vote in each state; and that popular vote has in turn been in effect limited to a choice between two candidates chosen by the representatives of the two great political parties respectively. At least it may be said that the actual system under which citizens of the United States live is less at variance with the letter of the constitution than the actual system under which Canadian citizens live is at variance with the letter of the constitution (if one may speak of the "letter" of an unwritten constitution).

Every statute of the Parliament of Canada is enacted by His Majesty "by and with the consent" of the Senate and House of Commons. Executive authority in Canada, and the command of the naval and military forces of Canada, are alike vested in His Majesty; and His Majesty's representative, the Governor-General, may appoint senators and judges, may summon and call together the House of Commons, and may dissolve it. These and many other things we learn from the British North America Act, and the forms continue to be faithfully observed. In fact legislation is enacted by the Senate and the House of Commons, and the personal views of His Majesty or his representative are never pub-

licly asserted to the extent of the refusal of the royal assent. In fact the executive government is carried on by the King's Prime Minister for Canada and a "cabinet" of ministers chosen by the Prime Minister, who must at all times when Parliament is in session be able to secure a favourable vote of the House of Commons. Similar observations might be made as to the exercise of legislative power and executive authority in each province. Of all this the British North America Act says nothing.

Each chapter of the book under review begins with an appropriate quotation from *Alice's Adventures in Wonderland* or from *Through the Looking-Glass* and a short introduction by the editor.

Chapter I is entitled *The Constitution,* and is subdivided under the headings *The Unwritten Constitution* and *Constitutional Amendment and Development.* An interesting example of the subjects discussed in this chapter is the question of the amendment of the British North America Act. Being an Act of the British Parliament, the statute did not need to provide for its own amendment and contains no provision for that purpose. It could of course be amended by the British Parliament, as a matter of law, without any one else's consent, but as a matter of constitutional usage the British Parliament has amended the statute only at the request of Canada. In 1876 objection was taken in the Canadian House of Commons to any amendment of the British North America Act being made by the British Parliament, even at the request of the Canadian government, without the previous assent of the Parliament of Canada, and it was suggested that the individual provinces might have to be consulted. More recently the "compact theory" of confederation has been advocated and elaborated in support of the view that the assent of the provinces should be obtained before the statute is further amended. In these circumstances, when by the Statute of Westminster, 1931, the power of the Parliament of Canada to enact legislation repugnant to legislation of the Parliament of the United Kingdom was recognized, the repeal or amendment of the British North America Act was, at Canada's request, expressly excepted, so as, in effect, to leave this particular matter in *statu quo.* The importance of the matter at the present moment is emphasized by the statements made by the Prime Minister in the House of Commons on the 11th and 13th of April, 1934, suggesting (1) that some rearrangement of the distribution of powers between Dominion and provinces is essential to enable the Dominion adequately to legislate with regard to social services of nation-wide scope, and (2) that while from the legal standpoint the request of the Parliament of Canada would be sufficient to procure an amendment of the British North America Act, from the political standpoint any change which might infringe upon the rights of the provinces which were parties to the confederation compact would require careful consideration.

Chapter II is entitled *The Governor-General.* After some account of *The Governor-General before the War* ("Once," said the Mock Turtle at last, with a deep sigh, "I was a real Turtle"), nearly twenty pages are devoted to the constitutional crisis of 1926, arising out of Lord Byng's refusal to grant a dissolution to the Liberal Prime Minister (as to which the editor uses language which is perhaps not in keeping with the impartiality of his observations on other controversial topics), and the chapter ends with *The Governor-General Today,* acting under new forms of letters patent, instructions and commission prepared in accordance with the report of the Imperial Conference of 1930. The present incumbent of the office was appointed in 1931 by His Majesty on the advice of his Prime Minister for Canada.

It is of course the responsibility of the executive branch of the government to the elected legislative chamber which is usually regarded as the chief distinguishing feature of the constitutions of all the republican kingdoms which are

members of the British Empire (as well as the constitution of the French Republic), and which affords such a striking contrast with the constitution of the monarchical republic of the United States and the constitutions of the Central and South American republics. While the contrast just mentioned remains broadly true, yet in actual practice the situation is of course not so simple. In Canada the House of Commons may in theory compel the resignation of the cabinet at any time, but in practice if any party is in a substantial majority in the House of Commons, party cohesion is sufficiently strong to prevent a vote adverse to the cabinet, and it is the cabinet which in effect dominates the House, and not the House the cabinet. General statements are, however, likely to give a misleading impression of a complex situation, and a useful corrective is afforded by the contents of Chapters III and VIII. The former, entitled *The Cabinet* (the Lion and the Unicorn fighting for the Crown—"and the best of the joke," said the King, "is that it's *my* crown all the while") deals with topics such as cabinet unity and joint responsibility, the functions of the prime minister and the relations of the cabinet and Parliament. Chapter VIII, entitled *Political Parties,* is a long chapter which begins with a reference to Tweedledum and Tweedledee, and is devoted to such topics as party platforms, the lack of distinguishing features in Canadian political parties, the selection of a party leader, relation of party leaders to party platform or party policy, and revolts against the old parties.

There are also chapters, which can only be mentioned here, on *The House of Commons, The Senate, The Civil Service,* and *The Judiciary.*

Altogether the book is an admirable collection of documents, official and unofficial. On some topics a reader would have been glad to have more material, but that is only saying that the book is not exhaustive. It would be difficult to make a better selection within the space of less than 500 pages. We cannot properly complain, though we may regret, that the book is not a bigger one.

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CASES ON CRIMINAL LAW (Third Edition). By William E. Mikell. West Publishing Co., St. Paul, 1933. Pp. 736. Price: $5.00.

Professor Mikell's first casebook on Criminal Law was published in 1903. In 1908 he published the first edition of his *Cases on Criminal Law* in the American Casebook Series, containing 597 pages of case materials. The second edition, grown to 788 pages of cases, appeared in 1925. Apparently unwilling to make his casebook uncoverable in the traditional time allotted to Criminal Law, he now gives us the third edition, contracted to 736 pages of text and notes, an editorial accomplishment seldom achieved in new editions of casebooks. The number of chapters in his analysis has remained almost constant throughout the three editions, with twenty-one in the first, twenty in the second, and twenty-one in the third. Some forty-five cases in the second edition are omitted in the third, as compared with about thirty new cases added in the latter. Twenty-two of the thirty added cases were decided after publication of the former edition in 1925, and all of the thirty are American cases except four, which are English. The text of the book contains some four hundred cases in all. About eighty of these, or twenty *per cent.* of the total, have been decided since 1900, thirty-four since 1920. A half dozen are as recent as 1932, and one was decided in 1933, the year of publication. These new cases are embellished with adequate notes.

Two of the new cases are inserted in the chapter on *Conspiracy,* and introduce modern problems not illustrated in the former edition, *viz.,* white slave

traffic under the Mann Act,[1] and the matter of smuggling Chinese into the United States in violation of the Immigration Laws.[2] Two 1932 cases introduce problems under Prohibition,—one[3] the matter of entrapment under the Eighteenth Amendment, occupying eleven pages, and garnished with the citation of many kindred cases and some law review articles, the other[4] being a case of murder by a national prohibition officer in the State of Virginia. Four of the new cases concern the now ubiquitous automobile, presenting the problems of aggravated assault with an automobile,[5] using a motor vehicle without authority,[6] larceny of automobile license plates,[7] and the automobile stealing racket.[8] The one 1933 case[9] is an indictment for attempting to secure money by false pretenses against a fake physician treating patients *in absentia.*

Although Professor Mikell does not divide the book into parts, the contents lend themselves logically to division into four parts. Part I would include Chapters 1, 2 and 3, dealing respectively with *Sources of the Criminal Law,* state and federal, *The Nature of Crime,* showing what kinds of acts were regarded as punishable at common law, and the *Elements of Crime,* or act and intent. Part II would include specific crimes, Chapters 4 to 17, inclusive. Part III would contain Chapters 18, 19 and 20, entitled, respectively, *Defenses Involving the Mens Rea, Defenses in Justification or Excuse of the Act,* and *Privileged Acts.* Part IV would have only the one remaining Chapter, entitled *Combinations of Persons in Crime.* Specific crimes claim the lion's share of attention in this casebook, fourteen of the twenty-one chapters, and nearly 500 of the 763 pages, being devoted to illustration of *Assault, Battery and Mayhem, Rape, Homicide, Larceny, Embezzlement, Cheats and False Pretenses. Receiving Stolen Property, Burglary, Arson, Forgery, Libel, Perjury, Attempts,* and *Conspiracy,* in order.

There are no cases on Criminal Procedure in the book.[10]

The most noteworthy change in this edition is not the addition of the new cases, or the omission of certain old ones, nor even the modernization of the notes, but rather the new arrangement of chapters, and of cases within the chapters. Perhaps more of the old cases should have been omitted. Certainly more of the recent cases might well have been included. Certainly, also, the amplification of the old notes with new case citations and law review articles might well have been more extensive. But the writer has only praise for what he regards as Professor Mikell's prime achievement in the new edition—the new ordering of his materials throughout the book.

In the first place the treatment of specific crimes, including logically, it would seem, *Attempts,* and *Conspiracy,* is placed well over toward the first of the book, beginning within the first 100 pages, and following only the three introductory chapters dealing with *Sources of the Criminal Law, The Nature of Crime,* and *The Elements of Crime*—act and intent. Specific crimes thus precede such matters as *Defenses, Parties, etc.* In the previous edition specific

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[1] At page 557. Gebardi v. United States, 287 U. S. 112, 53 Sup. Ct. 35 (1932).

[2] At page 560. Woo Wai v. United States, 223 Fed. 412 (C. C. A. 9th, 1915).

[3] At page 666. Sorrells v. United States, 287 U. S. 435, 53 Sup. Ct. 210 (1932).

[4] At page 678. Stinnett v. Commonwealth, 55 F. (2d) 644 (C. C. A. 4th, 1932).

[5] At page 102. Brimhall v. State, 31 Ariz. 522, 255 Pac. 165 (1927).

[6] At page 82. Commonwealth v. Coleman, 252 Mass. 241, 147 N. E. 552 (1925).

[7] At page 384. Cowan v. State, 171 Ark. 1018, 287 S. W. 201 (1926).

[8] At page 276. Jarrott v. State, 108 Tex. Cr. 427, 1 S. W. (2d) 619 (1928).

[9] At page 527. Commonwealth v. Johnson, 167 Atl. 344 (Pa. 1933).

[10] Professor Mikell published some years ago a casebook on Criminal Procedure, and also an abridged edition of the same, both in the American Casebook Series.

crimes made up the final chapters of the book. The editor points out in his preface that "most defenses are valid when, and only when, they negative some element of the crime charged", and that it does not seem logical in the study of cases, at least, to have the student "study the defense in connection with a crime before he knows what the elements of the crime itself are". The writer agrees with Professor Mikell when he says he "believes . . . that the student will get a more orderly and clearer knowledge of the subject by mastering the elements of the various crimes before studying matters of defense".

Sufficient material for the preparation of the student for the study of the specific crimes seems to be incorporated in the first three chapters. And one should find little fault with the order of presentation of these specific crimes, the space devoted to each, or with the selection of cases in illustration of each one. The various grades of assault are presented first, *Assault, Battery and Mayhem,* then *Rape,* and finally *Homicide.* After the assaults comes *Larceny,* followed immediately by the related crimes of *Embezzlement, False Pretenses,* and *Receiving Stolen Property.* Then come *Burglary, Arson, Forgery, Libel,* and *Perjury,* and finally *Attempts,* and *Conspiracy,* both of which were treated in the second edition as illustrations of *The Sufficiency of the Act.* Specific crimes included in that edition but not retained in the third, are *False Imprisment and Kidnapping,* and *Abortion,* the three cases thereunder being omitted entirely.

It would be tedious to trace all the other interesting changes in arrangement of the chapters. As a type we may notice what happened to Chapter II of the second edition on *The Nature of Crime.* There were three divisions of this chapter: 1, *The Public Injury,* consisting of seven sections; 2, *Effect of Consent, Condonation, etc.,* consisting of five sections; and 3, *Effect of Coercion,* not sectionized. Division 1 with its seven sections remains intact both in text and notes, being Chapter 2 of the third edition. Divisions 2 and 3 disappear as such, and of the section topics *Consent, Negligence of the Person Injured, Guilt of the Person Injured, Condonation, Custom, Coercion,* all except *Consent* reappear as section topics in Chapter 19, entitled *Defenses in Justification or Excuse of the Act,* with a new section, *Entrapment,* added to complete the chapter. The 21 pages of cases under *Consent* are distributed among various chapters. *State v. Beck,*[11] *Bartell v. State,*[12] and *State v. Allison,*[13] are placed under *Assault, Battery and Mayhem. Speiden v. State,*[14] and *State v. Abley,*[15] are added to the *Burglary* cases, *etc.,* six of the cases being among those omitted entirely.

A glance at the chapter on *Larceny,* the longest in the book, shows how little the materials generally have been altered in the third edition. Two 1928 cases, one from Florida,[16] and one from Texas,[17] are inserted under *Caption and Asportation.* A 1919 Missouri case[18] and a 1932 Connecticut case[19] are inserted under *The Trespass,* while a 1927 New York case[20] ousts one of the vintage of 1898 under the same topic. Finally a 1932 Pennsylvania Superior

[11] At page 108. 1 Hill 363 (S. C. 1833).
[12] At page 109. 106 Wis. 342, 82 N. W. 142 (1900).
[13] At page 110. 24 S. D. 622, 124 N. W. 747 (1910).
[14] At page 468. 3 Tex. App. 156 (1877).
[15] At page 470. 109 Iowa 61, 80 N. W. 225 (1899).
[16] At page 274. Driggers v. State, 96 Fla. 232, 118 So. 20 (1928).
[17] At page 276. Jarrott v. State, 108 Tex. Cr. 427, 1 S. W. (2d) 619 (1928).
[18] At page 319. State v. Britt, 278 Mo. 510, 213 S. W. 425 (1919).
[19] At page 324. State v. Rapsey, 115 Conn. 540, 162 Atl. 262 (1932).
[20] At page 353. People v. Noblett, 244 N. Y. 355, 155 N. E. 670 (1927).

Court case [21] is added under *The Animus Furandi.* Thus it is seen that in the *Larceny* chapter only six cases have been added and one omitted.

Judged by the standard of other recent Criminal Law casebooks, Professor Mikell appears rather niggardly with his notes. They are now numbered consecutively throughout a chapter instead of case by case as before. The new notes are mostly on the new cases, with now and then an addition, or even subtraction, made in an old note. Legal periodicals were not cited in the former editions, and are all too sparsely added in the third. Somewhat extended instances of such new citations will be found in the notes under *Homicide* [22] on the "causal relation in general", under *Attempts,* [23] and under *Insanity.* [24] There are no citations to books and articles generally in the notes, nor is there a table of cited articles, such as one commonly finds in recent casebooks in this and other fields.

The table of cases seems complete and more free from omissions and errors than that in the preceding edition. The index in the back of the book is carefully compiled.

No functional approacher, Professor Mikell has here pursued the even tenor of the plan mapped out in the former editions so far as concerns the nature and general quality of the materials chosen for treatment. He continues primarily to develop the topics historically, presenting a sort of moving picture of the evolution from its common law sources of the criminal law of today. This he has done admirably. A better selection of cases for the purpose would be difficult to make and one can find little to criticize in either the ordering or editing of the cases and of the excerpts from Bracton, Britton, Coke, Hale, Blackstone, *et al.* For the teacher who wishes to present the Law of Crimes of today in its historical setting, not caring to delve deeply into criminology or penology, or who is willing to gather his own materials therefor, Professor Mikell's third edition should prove an excellent medium of instruction. He would likely provoke no quarrel with the editor except perhaps as to the meagerness of the notes, which has already been pointed out. Certainly the writer knows of no collection of cases on Criminal Law which is more interesting and more generally satisfactory for purposes of instruction.

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ESSAYS ON TORT AND CRIME. By Nicholas St. John Green. George Banta Publishing Co., Menasha, 1933. Pp. vii, 220.

In the compilation of the writings of Mr. Green, the publishers have made little effort toward any grouping of such writings into related subjects. In fact, the nature of the articles which go to make up the volume renders such grouping a practical impossibility. Such articles might well be divided into four classifications: law review articles, of which there are three; law review articles commenting upon treatises and texts of various writers, of which there are five; text notes to the eighth edition of Story on *Agency,* of which there are five; and notes to cases of current interest, of which there are fourteen.

Upon examination of the writings of this author, the reader is immediately impressed with his simplicity of style, with the total absence of words of ambiguous meaning and of technical phraseology. His language is clear, simple and direct.

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[21] At page 376. Commonwealth v. Deibert, 106 Pa. Super. 497, 163 Atl. 68 (1932).
[22] At page 168.
[23] At page 537.
[24] At page 611.

In the treatment of the various subjects upon which he has written, the author has confined himself to a discussion of the general state of the law as of the time when he wrote, and has made no effort at foisting his own theories upon his readers, nor has he attempted any involved discussion of the subjects at hand. It may be said that, insofar as he has purported to go, the writer has done a very excellent piece of work in each of his articles and notes. In *Proximate and Remote Cause,* for example, there is no attempt at citation of cases, the involved factual situations of which render the application of the doctrine difficult, but he has confined his entire discussion to the one thought that there must be a clear conception of the meaning of proximate as distinguished from remote, in the legal sense, before there can be any clear understanding of the doctrine. Again, in the article dealing with *Married Women,* the writer has made no effort to discuss in any detail the doctrines prevailing with reference to the rights, duties, privileges and disabilities of such, but has confined himself to an explanation of the historical reasons for the present state of the law. He concludes with the prophecy that in the married women property acts, recently enacted, the first step toward legal recognition of married women may be seen, but confines himself to that simple statement, and makes no prediction as to the probable course which future acts of similar nature will take.

In dealing with *Slander and Libel* and *The Three Degrees of Negligence,* the writer has again confined himself almost entirely to a discussion of those subjects from the historical viewpoint and, while pointing out the difficulties which the recognized doctrines give rise to, explains such on the basis of the historical development of those subjects. He expresses disagreement with the view that there are three degrees of negligence, explaining the origin of the doctrine on the basis that it arose from a misconception of the meaning of words used by writers of the Roman Law.

The article on *Torts Under the French Law* develops into a comparison of the common law doctrine with that of the French, particularly with reference to proximate causation, in the law of Torts. The writer has indiscriminately intermingled the common law cases with those arising in France under the French law and, for clarity of meaning, the line between the two, in the discussion of the cases, should have been more clearly drawn. The article is most comprehensive in the variety of subjects and doctrines discussed, but there is no detailed discussion of any, with the exception of those where the question of proximate cause is involved.

Without attempting any detailed discussion of each of the articles comprising the volume, it may be said generally that the writer has shown a thoroughness for detail in each of the articles. Particularly good is his historical treatment of the various topics which he has undertaken to treat from that viewpoint, and several of his articles will be of interest chiefly on account of such treatment. In none do we find the extensive collection of cases and comment thereon such as is common to the majority of the articles of similar nature written today, and his discussion is usually confined to a statement of the present state of the law, with no attempt to go into any detailed criticism or comment. Seemingly, the author has meant to confine himself to fundamentals, and to omit technicalities, ramifications and hair-splittings, in his treatment of the subject matter of the articles which comprise this book.

The collection of the articles of this author in this volume will prove of value to those who are in search of historical explanations and developments of the doctrines set forth in certain of the articles contained therein, and those who desire a general statement of the fundamental principles relative to the subjects the author of these articles has discussed.

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FUNDAMENTAL LAW AND THE AMERICAN REVOLUTION, 1760-1776. By Charles F. Mullett. Columbia University Press, New York, 1933. Pp. 216. Price: $3.00.

To many patient students it has been a matter of interest to discover what was in the minds of those who, in the decade or more of argument which preceded the Revolutionary War, supported resistance to the authority of Great Britain. As a result of such labors it has now become common knowledge that there was a progress or development in the colonial argument, which evolved from attacks on individual measures, such as the Writs of Assistance or the Stamp Act, to the deeper denial of the right, first, of any taxation and, afterward, of any legislation for the colonies, on the part of the British Parliament; and which ultimately, by denouncing the power of the Crown, prepared the way for independence. In this progress of dialectic the exponents of the colonial position, wishing to deny the plenary power of Parliament, drew very largely on English history and English law—for the most part, of an earlier day. But, apart from English legal precedents, and the early experience of the colonies, the great refuge of the colonial advocates came to be the doctrine that there was a law over and above that of Parliament, a law which they generally spoke of as the law of nature. This idea of a law superior to that of the statute-making body has been the subject of a vast literature, covering in its sweep the whole history of thought of the western world. To show how this concept of a superior or, as he calls it, "fundamental" law, was used by the writers of the Revolutionary epoch is the goal which Dr. Mullett has set for himself in the volume now under consideration.

Beginning with a discussion of the continental, English and colonial sources, Dr. Mullett when he reaches the period of the Revolution considers in three chapters fundamental law, first, in its relation to taxation and personal rights; secondly, in connection with the plea for exclusive internal legislation; and lastly, with reference to the demand for an "equality of status" in the British Empire. That these chapters follow a certain rough chronological order appears from the fact that, of the more important leaders of thought, James Otis, Samuel Adams and Daniel Dulany, the younger, are discussed in the first; John Dickinson in the second; and James Wilson and Thomas Jefferson in the third. But, as not only these worthies but many of their lesser contemporaries expressed themselves on more than one aspect of the argument, there is produced an effect of repetition which is at times confusing. As the ground has been gone over so often, there lies upon the author some necessity for justifying another treatment of this period: and this is found in his effort at inclusiveness. He has made a diligent search in the pamphlet literature of the Revolutionary period; indeed, it is, we hope, not unkind to say that the very number of persons of whom Dr. Mullett undertakes to write in the slightly more than one hundred pages of these three chapters is so large as to render inevitable in many cases an impression of tenuosity. Even when he discusses a writer so important as James Wilson, the compression is so great that the points which were distinctive in Wilson's arguments are not clearly differentiated from those which were frequently stated by others. Moreover, the endeavor to follow the work of each individual prevents any systematic constructive presentation in one place of the value of the natural rights philosophy to the statesmen of the Revolution. To the reviewer it appears that Dr. Mullett's treatise would have been greatly improved by a concluding chapter devoted to this end.

Dr. Mullett's bibliography, at first sight impressive, reveals, upon closer examination, some limitations. The continental writers seem to be somewhat overstressed, in view of the fact that their influence is summed up in just twenty pages of the text; and the citation of "Augustine, *City of God* (Edinburgh, 1919), 2 vols." would seem to need a slight elaboration. It is to be suspected

that "Scotus" in the title of George Buchanan's work, *De Jure Regni,* should be "Scotos". Thomas Burnet appears in this spelling of his name in the text and in the index, but as Burnett in the bibliography and in a footnote. One writing of the Fortescue of the eighteenth century, cited in the footnotes, is not listed in the bibliography; nor are the works of William Molyneux there to be found. Among the "Colonial Official Records, Etc." one does not find Hening, *Statutes,* and in the "Colonial Collected Writings, Pamphlets, Correspondence," the work of the elder Daniel Dulany is cited not quite correctly as to title, while the place of publication was not Baltimore, but Annapolis. The list of secondary authorities gives less occasion for criticism.

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BLACK'S LAW DICTIONARY. By Henry Campbell Black. Third Edition by the Publisher's Editorial Staff. West Publishing Co., St. Paul, 1933. Pp. viii, 1944. Price: $6.50.

The preceding editions of this well known law dictionary were published in 1891 and 1910. The present volume is much more than a mere reprint of the second edition: new words have been included, old definitions have been altered, and many additional citations to cases containing illustrations of uses of defined words or terms have been inserted. Despite the fact that this third edition is not the product of the original editor, the standard of the earlier editions has been preserved. The book is compact, handy, well bound and printed, and contains a minimum of typographical errors. A sampling of the definitions, *i. e.,* the first word or phrase on every tenth page, in this and other works of similar scope reveals no marked variation in the merits of the respective volumes.

A number of defects, however, common to all of the law dictionaries examined, including the one under review, did appear. In the first place they entrench far too much upon the province of the English dictionary. Law dictionaries should be limited to words or terms which are peculiar to the legal vocabulary or which have a lay definition that does not adequately describe their legal usage. A random turning of the pages of Black's *Law Dictionary* discloses scores of words such as alehouse, aristocracy, chain, double, gentlewoman, monogram, prelate, which would seem to have no proper place in a law dictionary for the reason that, judged even by the standard of the editor's own definition or discussion, they have no particular legal significance. One suspects that there may be a commercial reason behind the padding of "law" dictionaries with such words. Possibly a tome of modest dimensions such as Frederic J. Stimson's concise little dictionary of less than 350 pages cannot be sold as readily as the expansive modern one-volume law dictionaries which, while appearing to be more comprehensive, may have little additional utility to the discriminating user.

In the second place these dictionaries attempt to define many words such as title, property, possession, negligence, fraud, which defy definition because they are employed in legal terminology in a variety of senses for a variety of purposes. Such words are used sometimes to denote facts, at other times to connote legal consequences, and only when they appear as terms in propositions can one intelligently discuss whether their usage is accurate, that is, convenient or feasible for the purpose of conveying the desired thought. Accuracy of usage in this sense is a matter of feeling which comes with experience and cannot be demonstrated by an examination of such terms *in vacuo.* With respect to such words the greatest service a law dictionary could render to the student is to warn him against attempting to arrive at a concise crystallized definition for the reasons above

advanced. Deluding or encouraging the student in the belief that words of this ilk are definable in the conventional sense is to hinder rather than to advance his legal training. Perhaps it is not too much to hope that some day there may appear an honest law dictionary not replete with commonplace words, in which the editor does not hesitate to discuss where definition is fatuous.

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## BOOKS RECEIVED

BUSINESS ORGANIZATION AND COMBINATION. By Richard N. Owens. Prentice-Hall, Inc., New York, 1934. Pp. xvi, 649.

DIPLOMATIC CORRESPONDENCE OF THE UNITED STATES. INTER-AMERICAN AFFAIRS, 1831-1860 VOLUMES III and IV, CENTRAL AMERICA. Edited by William R. Manning. Carnegie Endowment for International Peace, Washington, 1933 (Vol. III), 1934 (Vol. IV). Pp. xxv, 561; xlv, 993.

A HANDBOOK OF N R A (Second Edition). By Lewis Mayers. Federal Codes, Inc., New York, 1934. Pp. xxiii, 842.

PRECEDENT IN ENGLISH AND CONTINENTAL LAW. By A. L. Goodhart. Stevens and Sons, Ltd., London, 1934. Pp. 55.

THE SPANISH ORIGIN OF INTERNATIONAL LAW, FRANCISCO DE VITORIA AND HIS LAW OF NATIONS. By James Brown Scott. Oxford University Press, New York, 1934. Pp. 19a, 288, clvii.

STATELESSNESS, WITH SPECIAL REFERENCE TO THE UNITED STATES. By Catheryn Seckler-Hudson. Digest Press, American University Graduate School, Washington, 1934. Pp. xvii, 332.

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