BOOK REVIEWS.


This admirable monograph had its origin in the professional brief prepared by a distinguished trial lawyer in defending a recent impeachment of a Federal Judge. It has qualities lacking in text books written by men of no actual forensic knowledge, and perishing by the wayside, because compiled without a practical sense of the relative values of authorities. It may be many years before it will be opened by any but diligent students of Anglo-American Institutions, but it is sure to be sought for and read from cover to cover by prosecuting managers' and defending counsel the very moment the next impeachment trial arises. It will then prove itself to be an indispensable book. Few lawyers of the present day read Fearne on Contingent Remainders or Smith's Executory Interests, but the moment the Rule in Shelley's Case comes into discussion in those states where the Rule is still in force, Fearne and Smith assert their pristine ascendency.

The primary claim of Mr. Simpson's book to notice lies in the fact that it is the first real Treatise upon the subject. It is true that as far back as 1867 Professor Dwight, of the Columbia Law School, published in the American Law Register for March of that year an article on Trial by Impeachment, consisting of about twenty-five pages, but the conclusions which he reached have been superseded by an impressive growth of doctrine at variance with his views.

The second claim to notice lies in clear and skillful analysis, and a third, and, from some points of view, the most important, lies in the completeness and accuracy of the abstracts of impeachment proceedings from the year 1283 to 1866 in England, and from 1797 to 1912 in the United States, based upon the most exhaustive and painstaking examination of the original authorities.

After a brief historical review of what had been accomplished in England prior to 1787 (which the reader should supplement by turning to the Appendix containing the English cases), the work of the framers of our Federal Constitution is considered step by step through the debates until embodied in the Articles and Sections of the Constitution of the United States relating to the subject, and the 5th, 6th and 10th Amendments.

An interesting review is given of the capacity in which the Senate sits upon the trial of an impeachment, and the conclusion is fairly reached that the Senate sits as a Court, and that the defendant is entitled to all the rights and safeguards of a judicial proceeding.

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Then comes the all important question: What were the offences embraced within the language “Treason, Bribery, or other High Crimes and Misdemeanors?” Can a public official be impeached for other than an indictable offence? Here Mr. Simpson grapples with his subject with the vigor of the trained athlete at the bar, and the candor of one faithful to the law, irrespective of the interests of clients. However reluctant counsel have been in the past, or may be in the future, to concede that an impeachment will lie for other than criminal misdemeanors, there will be little doubt in the minds of careful readers of the accuracy of Mr. Simpson’s conclusion that “the House in prosecuting and the Senate in trying impeachments are not limited to offences which are indictable.” It is here that Mr. Simpson joins issue with Professor Dwight. The latter had asserted: “The decided weight of authority is that no impeachment will lie except for a true crime, or, in other words, for a breach of the common law, or statute, which if committed within any county of England, would be the subject of indictment or information,” and followed this by writing: “A basis for a very important conclusion has now been laid. It is this: as there are under the laws of the United States no common law crimes, but only those which are contrary to some positive statutory rule, there can be no impeachment except for a violation of a law of Congress or for the commission of a crime named in the Constitution. . . . The result is, that unless the crime is specifically named in the Constitution, impeachments like indictments can only be instituted for crimes committed against the statutory law of the United States.”

Mr. Simpson sharply questions the accuracy of the scales by which Professor Dwight’s “decided weight of authority” was determined. “It may be safely said,” he asserts, “that there is no authority whatsoever so deciding unless it be the case of Lord Melville,” decided by the Lords in 1806. He then reviews that case, and points out that the record does not disclose an acquittal because the offence charged was not indictable, and scots the proposition, that, under English practice, impeachment will not lie for other than indictable offences. He contends that the true construction of Article II, Section 4, standing alone compels the conclusion that the word “misdemeanor” does not mean criminal misdemeanors only, and that there is nothing elsewhere in the Constitution, nor in the English practice which limits that construction, and hence it must be held to mean other than criminal misdemeanors. Finally, he points out significantly that the House of Representatives has asserted the right to impeach for other than indictable offences in every impeachment, except those of Blount and Bellmap, wherein no such question arose; that in the impeachments of Chase, Peck, Johnson and Swayne a majority of the Senate, though not a two-thirds thereof, declared the respondents guilty of offences not indictable; that in the Pickering, Humphreys and Archbald cases more than two-thirds of the Senate convicted the respondents and punished them for offences not indictable.

Nowhere in the debates upon the Federal Constitution, whether in the Federal Convention or the State Conventions, was it even suggested that
indictability had any connection with impeachability; nor has any commentator upon the Constitution said that impeachment was limited to indictable offences. The authorities are fully referred to, and all antagonistic arguments or expressions are reported.

It is a substantial achievement to have established a conclusion so definite and vital. The Dwight heresy may be snatched at by counsel who flounder, but there can be no hope of its survival under the sturdy blows of Mr. Simpson.

What then are impeachable offences? Although difficult to define, it is clear that there must be some limitations. The word “high” imports a serious offence. “The heaviest artillery in the congressional arsenal . . . is ill adapted for the punishment of small transgressions.” Clearly too, the offence must be against the United States. It must be an offence in some way affecting the administration of the office, from which it is sought to exclude the offender. All efforts to frame a definition by making it fit the facts of particular cases must fail, but still misdemeanor, misconduct in office, abuse or usurpation of authority might be so broadened as to include offences of so weighty a character, and so injurious to the office that every official would be bound to know that they are of the same general character as crimes, and might well be made criminal by statute. In the Archbald case a judge was successfully impeached for doing that which was governed by no law except the universal law of good conduct which every judge is supposed to know and give heed to, and although technically no judge could be impeached for a mere breach of a code of judicial ethics, yet that case does stand as a determination that a judge ought not only to be impartial, but he ought to so demean himself, both in and out of court, that litigants will have no reason to suspect his impartiality, and that repeated failings in that respect constitute a “high misdemeanor” in office.

This is the present high water mark of the cases.

The next question is: Can an officer be impeached for offences committed before his induction into office? The answer, although beset with difficulties, all of which are interestingly displayed, is placed sensibly close to the line that where the offence is connected with the office, or is so near in point of time to the acceptance of the office, and it is found that the incumbent has shown no “fruits meet for repentance,” that the public good—the vital thing—requires the impeachment.

Lastly, Can one be impeached after he has ceased to be an officer? Some authorities hold that the answer should be in the negative. Historically there are several cases the other way. In England, Lord Somers, the Earl of Maclesfield, Warren Hastings, Lord Melville, and perhaps some others were out of office before their impeachments were begun; but in England there were no constitutional provisions on the subject. With us, under Article I, Section 3, and Article II, Section 4, an argument would seem to countenance a negative answer. Mr. Simpson shows that the argument is illusory, that the constitutional provisions taken together simply mean that if still holding office, the offender must be removed on conviction, that
if out of office, the limit of punishment is disqualification for the future. The Blount and the Belknap cases exhaust the arguments, pro and con.

Then follows a brief discussion of the Rules of Evidence relating to impeachments and the Competency of Witnesses. In practice, it appears that the Senate has invariably received all the evidence which it deemed relevant, from any witness who had personal knowledge of the facts, no matter by whom it was to be proved, and left its weight to be determined upon final consideration.

The Sixth Amendment to the effect that one accused shall enjoy the right of trial by jury has never been held to be applicable to impeachments. While in one sense an impeachment is a criminal prosecution, yet since Blount's case (A. D. 1797), no one has seriously contended that the Senate was compelled to send an issue of fact to a jury for determination.

After pointing out the difficulty of securing the constant attendance upon the trial of the actual presence of a quorum of Senators, Mr. Simpson makes certain suggestions as to methods of obtaining evidence, and as to changes in procedure which he embodies in a Table of 50 Rules, printed in the final part of the Appendix. These ought at some time to receive careful consideration by the Senate. They are entitled to thorough attention, because the fruit of experience on the part of one who during a long and unusually active and varied career at the bar has been frequently called on to draft statutes and rules of court in aid of procedural reform.

Mr. Simpson brings no "prentice hand" to his work.

In summing up, the author impressively remarks that of the nine cases of Federal Impeachment, one was of a President, one of a Senator, one of a cabinet officer, and six were of judges, and hence, forecasting the future from the past, impeachment as a practical remedy will apply mainly to judges. The necessity for some Act defining "good behavior," and regulating control of the judiciary by a competent and efficient tribunal, while avoiding anything which would undermine the independence of the bench, is thoughtfully stated.

The book has been written by a strong man with a strong hand.

Hampton L. Carson.


"The legal science of legislation means the knowledge of how to translate a given policy into the terms of a statute." That this is no easy task, our recent history reveals: for instance, our present revenue law. If, in this connection, we recall the dominant position of lawyers in our legislatures and drafting rooms, it is clear that a book on this topic should fill a real need.

The author's plan is simple. He begins by sketching recent developments in the field of social interests and standards and the accompanying
attitude of the courts. Then he traces public policy to its roots in common law. He then considers the degree of success attained by our laws under the suggestive title, The Tasks and Hazards of Legislation. The effect of constitutional provisions is considered, followed by a discussion of Judicial Doctrines. Then he treats of The Meaning of Principle in Legislation. In the last chapter he deals with Constructive Factors.

The last decade produced great changes in the attitude of the courts toward social legislation. The opposition reached its maximum in the Bakeshop case in New York in 1905, and the Ives case of 1911 (the amendment of the workmen's compensation law) in which latter the court intimated that such policies must come from the people by constitutional amendment. This case was, in large measure, responsible for the demand for the recall of judicial decisions. In other words the people object to having any policy fixed upon the State by judicial interpretation of constitutional provisions. The most serious objection is that policies thus fixed are indefinite. For instance, take the emphasis placed by the courts on Freedom of Contract. The courts have not made clear its boundaries, and have only suggested that "reasonableness" is the criterion. "To oppose legislative discretion by undefined judicial standards of reasonableness is to oppose legislation by judicial discretion, and constitutional doctrines so vaguely formulated cannot be expected to command confidence."

The author emphasizes the significance of the historical development which has so nearly equalized the legal rights of persons. The American law inherited the principle of equality from the English, and has found its chief difficulty in the presence of the negro. Indications of this process are:

1. The Right of Personality. (a) Slavery has gone; (b) legal class distinctions have disappeared; (c) legal rights of aliens are recognized. In spite of the fourteenth amendment land law is still under state control; (d) emancipation from domestic subjection.

2. Freedom of Thought. Until the middle of the seventeenth century, it was taken for granted that the safety of the state demanded the control of opinion. Of our colonies, only Rhode Island proclaimed the principle of toleration. As a matter of course, the state controlled printing. At first, nothing could be printed without previous license. This provision was removed in 1694, and the result was "Freedom of the Press." As regards sedition and libel laws, there has been a "complete reversal of older policies." "That immediate political advantage is so readily sacrificed to the conviction that free expression of political opinion is in the long run more wholesome to the constitution of the body politic is one of the most remarkable achievements of democracy and of education in public affairs." In this field the change has been in the removal of old restraints; the positive function of legislation has been small.

3. Repression of Unthrift and Dissipation. Gambling, drink and vice are viewed through new eyes. In older Europe, public morality was largely left to the church, as in England, where the church controlled marriage as well as incest. There is also marked development in the field of public health and safety. Sanitary laws are real laws—a new legislative function—in advance of public sentiment, yet educative.
As a result of these changes, the emphasis in the state has shifted from security to welfare.

The term social legislation arose in Germany in connection with workmen's insurance. In this connection it is significant that the stigma has dropped out of relief. It is no longer alms, but a right, dovetailed with industry. Pensions become rights. In America we are mainly on the old basis, though in the case of children we have really shifted to the new, both in factory laws and education. In America the control of hours of women's labor has been the chief battleground of conflicting constitutional theories. The old defense on basis of police power is becoming untenable.

The attitude of the courts towards changes which threatened the overthrow of old principles—and whose further development was very uncertain, can be understood. The attempt by the courts to check social legislation "can be properly estimated only if we recognize in it the exercise of a political, and not a strictly judicial function."

Our law has a dual source in the old unwritten common law and in the royal prerogative which underlies equity and which enters into property relations only. "It is hardly possible to overestimate the theory that corporate existence depends on positive sanction as a factor in public and legislative policy." Common law is "a system of justice rather than policy, and its policy is not always easy to discover." Freund thinks that class bias has played far less part in law than is generally assumed.

Changed conditions of industry have caused a gradual modification of the concept of freedom of contract. In Prussia soon after the introduction of railroads, liability regardless of negligence was imposed. In the United States this was extended to passengers only and our law of negligence is very unsatisfactory. Common law has failed to keep pace with changing ideals. Our system of rights and obligations is too abstract and undifferentiated. Protection is not secured in matters of social concern. The spirit of common law is too neutral for effective offensive against injuries to the weaker members of society.

Welfare legislation has sought to define more thoroughly and to strike bad conditions at their source; to make effective changed concepts of right and wrong. The attempt has not always been successful. It has failed to correct combinations in restraint of trade. It has not brought about high standards in trade.

New conditions have been faced in dealing with gambling. The attempt to outlaw legitimate business, like the stock exchange, because in certain aspects it promoted gambling, has failed. Much trouble has been caused by legislation discriminating against such products as oleomargarine, and by court decisions thereon. "The courts tell us that valuable interests may be sacrificed to conjectural reasons, but the practical needs of the community reject and finally overthrow the conclusion."

It has sometimes happened that desirable ends could be reached by indirection only, i.e., by the use of the taxing power to suppress some
dangerous trade, such as the white phosphorus match industry. However, legislative policies must not sail under false colors.

There is always a danger in the survival of old standards under new conditions. In Massachusetts all amusement licenses may be revoked at the will of local authorities, "so that valuable and perfectly legitimate interests are subjected to an arbitrary and unregulated power, totally at variance with the spirit of our institutions or even with the idea of government by law."

The contents of our state constitutions have been grossly neglected by students. There is in them an excess of detail. There is much emphasis on forms of organization, but little on efficiency of administration. This always causes trouble when unforeseen changes come. It is significant that everywhere the public is dissatisfied with the machinery of democracy. As a result there is a marked tendency toward direct legislation. Many of the suggested changes are good—others useless. For illustration, the provision that all bills must be read three times defeats itself, for the legislature will find some way to avoid the rereading of long bills. In fact, "guarantees of right and justice are not the deliberate creation of a constitution-making democracy, nor its chief or even serious concern." The emphasis should be on principles, not on details.

The theory of constitutional supremacy is an outgrowth of American conditions. The courts gradually asserted the right to control the abuse of legislature, but not until 1857 were there decisions declaring laws unconstitutional as being in violation of vested rights. Gradually business of public interest is declared subject to regulation. We pass then from an era of economic individualism to one of control. Much of the new legislation was defective. The public demanded a judicial check and this was forthcoming. Though the attitude of the courts is open to debate, the author does not believe they will seriously block desired changes, and he suggests that "perhaps a somewhat more constructive influence might be exercised by the courts upon legislation."

In many of the much disputed questions no settled principles can be used. Legislation must be determined by policy, and many experiments will be necessary. "The bulk of constitutional provisions crystallize historic or modern policies and not permanent principles." As it now stands, "due process of law" is "the main, if not the sole, guarantee of principle in legislation." "Against judicial opinions which fail to state clear issues, which are hesitating in their expressions, and which are qualified in subsequent cases, we set the striking consensus of widely separated jurisdictions in abandoning policies which were imprudently adopted and which experience proved to be intolerable, and we cannot doubt on which side we should find the true principle of legislation." Our laws are often so vague and lacking in correlation that they constitute a serious problem in jurisprudence. Attention should be paid to this question of correlation. This point is emphasized by a survey of the Abilene case; the Pipe Line cases; Illinois Warehouse legislation, etc. This lack of correlation is very evident in labor legislation, and accounts for some of the questionable pronouncements by the courts.
There must come then greater standardization. "The principle of standardization has four main applications or phases in the making of statute law: conformity to undisputed scientific data and conclusions: the working out of juristic principles, the observance of an intelligible method in making determinations, and the avoidance of excessive or purposeless instability of policy."

The author seeks to prove that there exist "principles of legislation apart from recognized doctrines of constitutional law."

The construction of law by the courts is "essentially supplemental legislation." Such construction is necessary and desirable, and "there has been on the whole a very well defined judicial attitude towards questions of construction." Faulty as our court decisions may have been at times, "the courts represent our best in government while our legislatures do not."

European legislation is superior to ours, largely, the author believes, because "under every system, except the American, the executive government has a practical monopoly of the legislative initiative." We would do well to modify our practices. We are making some attempts by "(1) the preparation of bills by special commissions; (2) the delegation of power to administrative commissions; (3) the organization of drafting bureaus, and (4) the codification of standing clauses."

Some of our trouble comes from the fact that the teaching of law is on the case method which is professionally advantageous but socially disastrous. The problems to be met by law are social, and the teaching should be modified. The determination of policies is a political matter. It will be advantageous to the people as well as to the government when the drawing of legislation receives more attention.

In this cursory and unsatisfactory fashion I have sought to sketch the contents of the book. Professor Freund is exceedingly careful and eminently fair. Though he has criticized the courts at times, he has sought to understand their attitude, and all his criticism is based on specific cases. In each topic treated there is constant citation of cases. Personally I am greatly indebted to the author for some of his suggestions, and I shall have opportunity to discuss his ideas in the classroom. The reviewer is not a lawyer, but for many years he has been in close contact with problems of legislation, and has ever tried his hand at drafting laws. He feels qualified (in a measure) to judge the author's work. It will be read with profit by lawyers and I hope by many legislators who are not lawyers. The latter will not find the reading easy—it will be profitable.

Carl Kelsey.

Wharton School,
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The three well-printed and well-bound volumes in which Professor Sherman has presented his work raise expectations that are not satisfied.
He has undertaken in the first volume to present a history of the Roman law from its origins to its codification in Justinian's time, then through its post-Justinian phases and finally in its ramification throughout the laws of the modern world. It purports to be written for "the general reader, the non-professional student, the law student, and the law teacher." It would require genius of the highest order to acceptably complete such an undertaking. Professor Sherman's purpose is obvious. He is a devotee of the Roman Law; he believes with a firm faith that it is the fount and origin of most of what is good in the law of the world, and that it has supplanted or should supplant all other systems of law because of its wonderful perfection. One may admit much of Professor Sherman's contention without subscribing to all of his doctrine. It is generally conceded that Roman Law should be studied, and that its influence and scientific formulation and excellence are great. But the scientific investigator must hold his enthusiasm in check lest his judgment be too much influenced by his feelings. Objectivity of treatment is prime-essential in the work of the scholar and teacher, and what shall one say to the statement on the very first page that "from Rome we have inherited our conceptions of law, the State and the family," more especially when it is supported by no other reference than to Chamberlain's "Foundations of the Nineteenth Century," a work which Professor Sherman's footnote tells us "has already gone through eight editions," and presumably therefore is worth quoting as authoritative. Chamberlain is a brilliant, untrustworthy polemical writer, whose unfounded and unprovable theories and embittered partisanship do not entitle him to be cited as an authority by a scientific scholar, more especially when his statement is as sweeping as the one cited. If we have inherited these three conceptions from Rome, Professor Sherman should have cited the opinions of scholars of established reputation.

Professor Sherman's devotion to the Roman law colors much of his thought. He strongly favors codification of our law which he considers inferior to other modern legal systems that have followed the Roman precedent. This is debatable ground. He seems to think that the study of the Roman law is needed to improve the ethical quality of our own juristic thought and practice. "There is one study," he says, "which combines ethical and intellectual advantages—Roman law." "Only one?" we ask. We may agree with him as to the practical, philosophical and professional benefit of study of the Roman law, but would not the study of other systems of jurisprudence, more particularly the study of comparative jurisprudence have a similar value? To help us escape from provincialism in thought, we must acquire knowledge of other peoples and of their systems of law. It is not because it is Roman law, but because it is not our law, that its study is valuable. Professor Sherman actually speaks of the "world mission" of the Roman law and in fact tells us what it is (Secs. 12-14). "World missions" may exist for political propagandists or for religious enthusiasts, but they have no place in the work of scientific investigators except as ascertained phenomena, which are themselves made the subject of investigation. World mission of the Roman law is a theory and not a fact—
a theory based upon no ascertainable proofs. He says (Sec. 14): “to
Rome’s influence in the modern world is due in no small measure the
acknowledged fact that Europe and America are today for intellectual and
spiritual purposes one great federation, as Matthew Arnold said.” To which
one is tempted to reply that if Matthew Arnold found Europe and America
thus federated, it was not through the cement of Romanism, but of Hellenism
and Hebraism, the two forces which to him were the august, the invaluable
contributions to human development. (M. Arnold: Culture & Anarchy, Ed.
1883, p. 120.)

Does similarity of principle or practice in law denote similarity of
origin or imply discipleship? Post hoc propter hoc is a dangerous argu-
ment. The science of comparative jurisprudence has demonstrated at least
this, that similar conditions of life, occupation, climate and civilization will
tend to develop similar legal ideas and forms. A pioneer work, such as
that of Post: Grundriss der Ethnologischen Jurisprudenz furnishes much
material for thought on this subject. It is really not at all impossible that
the English may have developed the notion of the jury without the aid
of the Roman judices, and the contrary has not yet been established with
such certainty that it can be made a dogma of juristic faith. But Professor
Sherman assures us (Sec. 403), that: “the fundamental conceptions of
Habeas Corpus and Trial by Jury, as well as many principles of the law of
torts are of Roman origin.” And then he adds: “that dearly cherished
principle and familiar palladium of English and American liberty ‘every
man’s house is his castle’ is not of Anglo-Saxon but of Roman origin.” Why
not add by way of citation Deuteronomy 24: 10, 11, as additional proof of
its Roman origin! In connection with this theory of the universal superiority
and domination of the Roman law, articles such as that of Mr. R. W. Lee on
“The Civil Law and the Common Law,” in 14 Michigan Law Review 89, are
interesting reading.

For the purpose of showing the influence of Roman law on the subject
of imprisonment for debt (abolished at Rome by Constantine—see Sec.
716), our author states that “imprisonment for debt was universally allowed,
particularly in the English common law,” and abolished during the latter
half of the nineteenth century. But does not Blackstone, our author’s favorite
authority, refute this very statement (3 Bla. 281)? Is it absolutely certain
that the common law doctrine of consideration is “an evolution of the
Roman law conception of causa?” (Sec. 750.) Is it certain that the Law
Merchant and Admiralty law are of Roman origin. It has been said that
the Jews and Moslems, especially the Moors, had some part in its creation.

If the Roman law was dominant in Britain for five hundred years
before the Saxon Conquest, how is it that it disappeared almost without a
trace during the following half millenium? And why was this disappearance
unfavorable to the development of Saxon English law? (Sec. 367.)

Is not the fault of this work the too great insistence on the theory that
the Roman is the one great system of law just as the opponents of this
view would insist that the Anglo-Saxon is the system? Most law is tough
and vital. It develops out of the natural conditions of the life of the
people, is influenced by conditions of climate, habitat and local needs and aims. These change but slowly and even foreign conquest does not materially affect them. As a rule, it is more likely that the law of the land conquers its conquerors than that the latter introduce and make dominant a new system. It is perhaps only when a virgin soil is settled by newcomers that the old law is carried over into it, and even then, without the presence of native human factors to influence its development, the mere physical conditions of the new land change the old law into conformity to a type of what it would have been if it had always been native to the new soil.

The fact that Roman law is a great system of tremendous importance in the history of the world may be conceded without making of it a fetich to be worshipped for all sorts of undemonstrated and perhaps undemonstrable perfections. Scholarship should not become the sponsor for a mythological concept of a divinely inspired Roman law which will dominate the world. In so far as the book will be read by the "general reader and non-professional student" it may lead to fundamental misconceptions. The professional student and the law teacher will probably make reasonable allowance for the author's enthusiastic devotion to his subject, and give him credit for the assistance which he has rendered to the inquirer. The impression that the reviewer received was that the work did not draw sufficiently on the available material prepared by English and Continental scholarship, although much of it is referred to in the bibliography.

Professor Sherman is working in a field in which he has unfortunately too few co-workers. His work will be valuable as an incentive to others. In spite of a certain amount of critical resentment, we must receive the book as a contribution to a field too little known, and though it may spread some error we hope that it may do much good. The second half of the first volume, pointing out in detail the spheres of influence which Roman law has acquired in the modern world through its peaceful penetration of many foreign systems, is well supplemented by the subject guides in the third volume. Professor Sherman deserves thanks for his collation of authorities under appropriate topical headings, an arrangement that commends itself as very useful to the investigator. And after all, that is what our author really set out to do, i.e., to show the pathway of "Roman Law in the Modern World." The criticism which is here offered is to the many dicta which, not being essential to the development of his thesis, might well have been omitted, thereby removing a possible source of error out of the way of the too-trustful inquirer.

David Werner Amram.


This volume is devoted to an exposition of the relation of misconduct to underlying psychological factors, the results of previous impressions (insults) to the mental system of the individual affected.
It is an attempt at explanation of why bad boys and girls are bad—why in a family of four or five, one individual becomes an offender against the law, while the others remain in the normal groove.

While the material presented follows a straight psychological analysis, the whole book is tinged by Freud. It might be said to be a simplification of the Freudian method of psycho-analysis as applied to the large amount of material in a municipal court for delinquent children. The results of the many analyses presented are more convincing from a psychological than from a corrective point of view.

The great value of the Freudian system is in just such a sphere, i.e., in explaining conduct and trains of thought that may deviate the life of an individual rather than the analysis of the thought after it occurs or while it is taking place. The principles involved in such a study are only applicable to the rather free procedure of a municipal court. They involve the doctrine of diminished responsibility as applied to crime—a doctrine that obtains in continental court procedure—in grave criminal cases.

From the standpoint of the expert of nervous and mental diseases, the acceptance of a doctrine of diminished responsibility would be of great value. It would avoid the necessity, in many cases, of a dogmatic statement of the mental status of an individual where the facts and circumstances do not justify a dogmatic opinion.

The fundamental error in all the Freudian work is evident in these analyses. There is an old principle in the practice of medicine in the relation of the curability of disease that might be applied here. This principle is "that it is not of so much importance what disease the individual has as what individual has the disease," and so we are here concerned not so much with the sexual or other insult to the amour propre of the child, that leads later to misconduct and crime as we are to the mental and physical soil on which such impressions are sown. While some attention is given to this, a greater valuation would be more consistent with the facts in the case.

The mental make-up of the criminal type is after all what determines the criminal. The normal mind in a normal body resists the temptation to violation of the law, both moral and mundane, realizing, indeed, the value of the law, both to the community and to himself. The pathological mind—the deviate type of mind—refuses to recognize the principles here involved.

Dr. Healy's book deserves consideration, because it calls attention to the value of painstaking investigation in throwing light on the nature of criminal acts, and the further value that the environment, both mental and physical, has in producing deleterious results on the growing child. From such a beginning, further studies in other fields of criminology should be of great value, both to the law and to medicine.

This book can be read with much profit by both lawyer and doctor.

D. J. McCarthy.

Mr. Blakemore, in the present edition of this work, has found it necessary to expand to a considerable degree the earlier edition by Mr. Babbitt, published in 1911, due to rapid development of this field of law during the past six years. Such subjects, for example, as "Jitneys" are of very recent origin, and yet of sufficient importance to warrant the rather extensive treatment which Mr. Blakemore gives to them. Moreover, decisions in regard to the "Law of the Road," "Pedestrians," and other branches of automobile law have multiplied so rapidly as to require the expansion of these subjects into entire chapters.

Realizing that the principles of law involved are not new, but only their application, the editor has with the utmost care compiled and classified the decisions relating to almost every conceivable situation which is likely to arise in the operation of a motor vehicle. It is in this particular that the work will especially commend itself to the practitioner, for here will be found collected cases on such modern conditions of fact as "failure to hold out hand upon coming to a stop," "driving with a rain-covered windshield," "effect of glare from approaching headlights," and such questions as "when one may speed up to avoid accidents," and the respective rights and duties of cars overtaking one another. In fact the whole field of automobile accident law is very thoroughly covered by the text and by numerous citations.

The editor has also treated very carefully the various subjects which are allied to motor vehicles. Thus there are chapters upon "Garages and Garage Keepers," "Chauffeurs and Operators," "Sales," "Selling Agents and Agencies," "Principal and Agent," "Insurance" and "Taxation."

There is also a full discussion of the law of evidence, the measure of damages, and an interesting chapter on "Gasoline."

If there be any criticism of the work, it would be in the too full discussion of some of the principles of law which are already thoroughly settled, but although this tendency materially increases the size of the work, it has the merit of making the book thoroughly complete in itself without reference to other works.

The editor devotes a chapter to the question of federal control, and is convinced that the federal government cannot, under the commerce clause, control the interstate travel of pleasure cars, though it can, of course, control the interstate travel of motor trucks carrying on an interstate business. The argument is not convincing, and we are inclined to think that under the Covington Bridge case and modern tendencies, the Supreme Court will interpret "commerce" to mean "intercourse," and will not attempt to say that if one drives a car across the state line purely for recreation, the federal government has no control, but if the driver goes on business, he may be controlled. Aside from the practical impossibility of determining the motive or purpose of the driver of the car, it does not seem necessary to limit the meaning of "commerce" to "business intercourse." The question,
however, is becoming less and less important as the states approach uniformity of legislation and mutual reciprocity.

In conclusion, it may be said that this later edition is a very complete and valuable work, and is by far the most thorough treatment of the subject which has yet appeared.

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There is place for an exhaustive and scientific treatise on the Law of Conversion. The title of Mr. Bowers's book and the reputation of its publishers gave promise that it would fill this need.

Unfortunately, the book is not in any true sense a treatise. The exposition of general principle is cursory and superficial. There is no critical examination, no analytical exposition of the obscure places of the subject. Where there is a conflict of authority, the author rarely expresses any personal view, but contents himself with giving extracts from one or more judicial opinions on each side. In a word, the book is not a treatise, but a digest, or perhaps more accurately an expansion of such treatments of legal subjects as are found in the various legal encyclopedias. As such it has its place and usefulness. Its arrangement is purely external. Nearly half of the book is taken up with three subjects: "What May Be Converted," "Who May Be Guilty of Conversion," and "What Acts Amount to Conversions." Each subject is subdivided along purely external lines. For example, the chapter on "Who May Be Guilty of Conversion" has fourteen subheads, Principals, Agents, Officers, Pledges, Bailees, Executors and Administrators, Carriers of Goods, Mortgagor or Mortgagee, Corporations, Municipal Corporations, Partners, Co-Tenants, Purchasers for Unauthorized Vendees and Infants. The liability for almost every conceivable form of conversion of each class is fully stated, and then often restated in the chapters which specify the various chattels which may be converted and the various acts which amount to conversion. For instance the liability of a bailee, and more particularly an infant bailee, for using a chattel contrary to the terms of the bailment is stated in the three chapters without variation or difference in discussion. While this arrangement unduly expands the book, it may be of service to an attorney who, without much previous theoretical knowledge of the subject, wants to find the American decisions on some given situation in that, if he misses it in one chapter, he is almost sure to stumble on it in another.

In the effort to exhaust the subject, there is a mass of matter only indirectly related to the Law of Conversion. Rules of Evidence, which have no peculiar application to actions of trover are set forth at length, and over ten pages are devoted to a statement of the peculiarly limited liability of municipal corporations for torts in general, and a whole chapter is devoted to the right to waive conversion and sue in *indebitatus assumpsit*, a subject much more appropriately and scientifically discussed in several
well-known Treatises on Quasi Contracts.* But with all its redundancy, notwithstanding its almost total omission of even the most leading British cases, notwithstanding occasional misreadings of well-known decisions, for example that of Simmons v. Lillystone (Sec. 6), the author has not only shown immense industry, but has produced a work of some value to practising lawyers. The book, though hardly of the sort which one has become accustomed to expect from the publishers, is in physical make-up fully up to their standard.

Francis H. Bohlen.

Law School,
University of Pennsylvania.


This little book is an inquiry into the nature of the distinction between law and equity; an attempt to discover whether the jurisdiction of equity was, in the main, procedural or whether it was based on substantive doctrines different from those of the common law, and growing out of a superior or more modern morality. The view taken is that equity has not been restricted, as frequently contended, to the relief of such common law defects as were due to inadequacies of procedure, but has had for its province as well the enforcement of a superior morality by relieving in the interests of good conscience against many types of defects in the substantive law. Upon this question conflicting views have been entertained. The main thesis of the work is an attack upon the procedural theory, as stated by Blackstone and supported as the author candidly admits by such authorities as Story, Adams, Maitland and Langdell. It is particularly with the exposition of Langdell in his "Brief Survey of Equity Jurisdiction" that the author takes issue. He would be a bold man who would attempt to sum up so ancient and obscure a controversy, and the author is entitled to credit for the philosophical and scholarly spirit in which he has undertaken his task. Theoretically the matter is one of interest; practically, in these days when law and equity, like the lion and the lamb have lain down together, it may be doubted whether the question is of as much importance as would appear at the first glance. Even Pomeroy, whose views are in seeming conflict with those of Langdell, concedes that equity "no longer inaugurates new attacks upon legal doctrines, and confines itself to the application of principles already settled." It may even be doubted whether the eminent jurists who have attempted to generalize upon a subject that is the product of slow growth and cross currents of opinion, were as far apart in fact as the literal acceptance of their words would lead one to believe.

William H. Loyd.

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* See Reference to Mr. Bowers's chapter on "Waiver of Conversion," 66 Univ. of Pa. L. Rev. 185.
BOOK REVIEWS


Although this volume has been but a short time in circulation, it is already the standard work on the subject. The authors aim to give a survey of the more advanced laws, both American and foreign, dealing with labor relations. They have laid greatest emphasis upon those problems which are in the foreground of public discussion to-day. So we find a full and adequate treatment of the Labor Contract, Individual Bargaining, Collective Bargaining, The Minimum Wage, Labor Hours, Unemployment, Safety and Health and Social Insurance. There are abundant and valuable references and decisions. The treatment is sympathetic with the needs of labor but is fair and scholarly. The concluding chapter lays emphasis upon the vital importance of an effective administration of labor laws. In this the authors show the steady trend towards a more enlightened judicial enforcement and a more sympathetic and effective administration of the labor acts under the pressure of organized labor.

A fair illustration of the thoroughly modern and up-to-date method of treatment may be seen in Chapter 6, Unemployment. Here after pointing out that this problem completely changes the meaning of all statistics on wages and the nominal wage rate, the authors show what a staggering loss arises to both workers and employers from this source. The “labor turnover” is now a matter of concern to all progressive employers and is being steadily reduced by employment managers. There follows a discussion of the regulation of private employment offices and bureaus, the abuses of private agencies, the public employment exchanges, state, municipal and national, and European national systems. Attention is also given to the systematic distribution of public work, the adjustment of regular work and the regularization of industry so as to standardize casual employment and seasonal work. Each of the problems treated in the other chapters is handled in the same broad and practical way.

The book will be particularly helpful to the attorney, the legislative draftsman and the teacher.  

J. T. Young.  

Wharton School, University of Pennsylvania.


In the public schools today, aside from the normal, the extremely bright and the extremely dull pupils, are two classes of children who have not thus far received the special attention which they require: (1) the child who is normal except for special mental defects, and (2) the child who, though in general mentality below normal, has some special ability, which, if developed, might be highly significant for his future welfare. These indi-
individuals with special aptitude or defect need adjustment to the social organism, that they may not become an economic loss or burden to society. So many differences are possible among individuals, that a really comprehensive educational diagnosis of the individual, which must precede any attempt to apply special training methods, should not only include the results of thorough psychological and physical examinations, but also the data concerning heredity, family history, developmental history and environmental conditions. The attempt should be made to grade the child up, not down; abilities should be stressed and every effort made to improve defects in as far as this is possible.

The author has formulated and outlined a problem hitherto untouched, that dealing with special defects and the enumeration of types of individual variation. All points discussed are well illustrated by case studies carefully selected from the author's own investigations. The limitations of the existing methods of dealing with these problems, due in part to the newness of the scientific study of human reactions, are frankly acknowledged but suggestions for improvement and a confidence in the future of this science make this criticism constructive rather than destructive.

L. Eloise Vest.

Iowa Child Welfare Research Station.


For a comparative study of English and American workmen's compensation statutes and decisions, these volumes are exceedingly convenient and helpful.

The first volume is a text-book dealing elaborately with the questions arising under the Compensation Acts of the various states. The footnotes are replete with citations of decisions of courts, commissions and officers charged with the duty of administering compensation law.

The second volume is devoted exclusively to the publication of the text of all of the state compensation acts, the Federal Acts, the English Act and a synopsis of the German Act.

The author's purpose in publishing in full the various acts was to enable persons using Volume I readily to refer, in Volume II, to the exact phraseology of the act under which a particular decision was rendered, so as to permit him at once to ascertain whether the decision is applicable to the interpretation of the act in which he may happen to be interested. As there is a wide difference of expression in the acts of the various states, it is this feature of the work under review which renders it peculiarly convenient and helpful.

Naturally a work which undertakes to discuss generally the interpretation of upwards of thirty widely different statutes on the same subject, cannot elaborately deal with any particular one, and it is inevitable that
in seeking for light on a question arising under that one act, the reader may fail to find either discussion or authorities to assist him. However, for comparative purposes the work is well worth having, and will prove very useful in any compensation library.


This admirable work is a revision of Volume 5 and part of Volume 6 of Gray's Cases on Property. Professor Kales, whose experience as a teacher of this subject at the Northwestern University Law School, and the Harvard Law School and as the author of "Future Estates in Illinois," well qualifies him for this work of revision, has considerably enlarged the older book by the inclusion of new subjects and of a larger number of American cases, and the expansion of other subjects already treated in Gray's work. The book deals with the subjects of property more commonly met with in litigation "about which lawyers in general know the least, and where academic knowledge and analysis are of great importance in handling cases." Professor Kales has wisely followed Professor Gray's work wherever possible, and the effectiveness of this arrangement of the cases has been tested by actual experience. The publishers announce another smaller case book on Future Interests by the same author, to be published as Volume 4 of the series of Property Case Books in the American Case Book series.


This is an enlargement and revision of a standard work on the special field of law with which it deals. New sections have been added, old sections have been revised, and the footnotes have been brought up to date by copious citations of federal, state and English cases.

The work deals with every phase of the law as it affects telegraph, telephone and electric companies, the construction, maintenance and regulation of lines, liability for injuries to persons and property caused by improper location, construction and maintenance of lines, the transmission of messages and liability for negligence therein, matters of practice, pleading and evidence in cases affecting telephone, telegraph and electric companies, the measure of damages in cases of liability, questions arising in connection with the taxation of telephone, telegraph and electric companies, and collateral subjects such as telegraph and telephone messages as evidence and as privileged communications, and contracts by telegram.

The work is thorough and, as far as is possible in any text-book, complete.
Guide to the Law and Legal Literature of Argentina, Brazil and Chile.

This is the fourth of the series of guides to foreign law published by the Library of Congress. The purpose of these guides is threefold: (1) information for the lawyer and student as to the institutions and literature of the public and private law of the countries under discussion; (2) information for the legislator and man of affairs respecting recent legislation, especially in relation to social and economic problems; (3) guidance for the jurist and historian to the literature of history, theory and philosophy of law.