December, 1933

BOOK REVIEWS


Alberico Gentili was born on January 14, 1552, at San Ginesio (or Genesio), March of Ancona, in northeastern Italy. He studied law at the University of Perugia, where he was graduated Doctor of Civil Law at the age of twenty. He became a prætor or judge at Ascoli, then practiced law, but having, with his father, embraced Protestantism, he was harassed by the Inquisition, and obliged to leave his native country. He finally emigrated to England in 1580, and was there warmly received. In 1581 he received the degree of D. C. L at Oxford, where he taught the Civil Law, and in 1587 was appointed Regius Professor of Civil Law. In 1600 he became a member of Gray's Inn, and practiced law in London, especially in maritime cases. In 1605 he became counsel for the King of Spain and represented the Spanish Embassy. He married in England a lady of French origin, and there died in 1608, having had by her five children, one of whom, Robert, wrote several books on historical and political subjects.

Further details of the life of Gentili may be found in articles by Professor Sir Thomas E. Holland in the Encyclopaedia Britannica, and the Dictionary of National Biography; and in Professor Holland's Inaugural address at All Souls College, contained in his Studies in International Law; in the Introduction by Ernest Nys to Gentili's De Legationibus (published in the present series); in the very admirable Introduction to this present publication by Dr. Coleman Phillipson, of the Inner Temple, and in Dr. Phillipson's essay on Gentili in Great Jurists of the World (Continental Legal History Series).

Gentili was a voluminous writer, and his works, as scheduled by Professor Holland, include a great variety of legal, political and moral subjects. In addition to those there mentioned, Fontana, in his Bibliotheca Legalis, generally quite accurate, mentions Libri duo in quibus tractantur diverse illustres Questiones Maritimae secundum Jus Gentium et hodiernam praxim, Amsterdam, 1661, but this is probably a reprint of the Hispanica Advocationis libri duo (as the first book of the Hispanica Advocatio is chiefly concerned with maritime cases), the second edition of which, Amsterdam, 1661, was translated by the late Professor Frank Frost Abbott of Princeton University, and published in the present series. In addition to the Hispanica Advocatio, the most important work of Gentili is that De Legationibus, also included in the present series translated by Gordon J. Laing, with an introduction by Ernest Nys, above mentioned. All the works of Gentili were placed in the Index Librorum Prohibitorum on August 7, 1603, and remain there in the latest edition accessible to the writer. They are very scarce, and these reprints and translations are therefore especially important to students who can now consult them at first hand.

Gentili was so cordially welcomed in England that he regarded that country as his home. He contracted many important friendships. In 1600, as stated above, he was called to the Bar by Gray's Inn, of which Francis Bacon was a member in 1579, and Bacon was there called to the Bar in 1582. It is more than probable that they were acquainted, as they certainly had many common friends. Indeed, Shakespeare is stated to have resided in St. Helen's parish in 1597-99, when Gentili was there resident. Gentili died on June 19, 1608, and was buried
beside his father in the churchyard of St. Helen's. His book *De Legationibus* was dedicated to Sir Philip Sidney, *De Jure Belli* and several others to Robert Devereux, Earl of Essex, and his six Dialogues *de Juris Interpretibus* to Robert Dudley, Earl of Leicester. These Dialogues are accessibly reprinted in the collection of Guido Panzirolus, or (Pancirollus), *De Claris Legum Interpretibus* (Leipsic, 1721). In his dedicatory preface dated at Oxford, 1582, Gentili alludes pathetically to his cruel exile, his persecution "propter justitiam Christi" and the solace afforded him at Oxford "magnificentissimis studiosorum Collegiis procul-dubio augustissimam in toto orbe".

The first of these dialogues is intended to show the greater benefit to be derived from the study of the older jurists, Bartolus, Accursius and others "ejusdem farinae", rather than the newer school of writers, such as Alciatus, Gentili preferring as a conservative to base his writings on legal principles and the *jus gentium* rather than to depend on theology, philosophy and the newer learning of the humanists. And yet he says in this first dialogue, "*Et veteres et novi interpretes possunt tibi adjumento esse; utrosque sequi potes." In other words, Gentili drew freely from every source with characteristic independence and intellectual honesty, and did not hesitate to approve of the opinions of Alciatus and others of his school when he believed them to be correct. Thus we find from actual count that he follows Alciatus at least fifty times. He calls Alciatus "eminent" and "a great jurist", joining him with Baldus. He says "Alciatus well puts it", "thus says Alciatus with dignity and learning", and highly praises him on pages 262 and 321, and in several instances accepts the views of Alciatus in preference to those of others. On the other hand, he mentions an argument of Alciatus as "unworthy of so great a man", styles other opinions as "without reason" and "ridiculous", "a false decision", "quibbles", "certainly in error", and so on. We cite these instances to show that Gentili exercised an unprejudiced judgment in his use of authorities, and so, while he criticized other writers in their reliance upon philosophical and theological arguments "let the theologians keep silence about a matter which is outside their province", he did not hesitate to use similar arguments as on page 254. And so, while he cites his "learned preceptor, Marcus Antonius Eugenius", he disagrees with the latter on page 264.

Gentili was very humane; he was opposed to war, which he attributed to the thirst for power and riches. He concludes his first book with an ardent prayer for peace: "Do Thou, O God, Father of justice, do away with all war. Grant, O Lord, peace in our days, give us peace," and a similar prayer concludes the whole work. And so he declares in favor of discussion and arbitration before war is begun, which ought to be preceded by a formal declaration, and approves of an interval of thirty-three days before beginning hostilities. When, however, war is begun, it should be conducted in a sportsmanlike manner according to the rules of the game, and he distinguishes between craft (*dolus*) and strategy; stratagem, he says, is one thing, treachery (*perfidia*) another; in short, he advocates the "plain, simple and magnanimous conduct of war" and strongly condemns the violation of a truce or of a parole by a captured soldier.
Treaties with infidels should be observed as discussed in Book III, c. 19. Difference of religion is not a just ground for war; religion ought to be free; no man is to be forced to believe against his will. That might makes right, he says, is the argument of the unjust. Gentili strongly condemns the use of poisoned weapons, poisoning wells, the devastation of the enemy's country, the destruction of public buildings, etc. This he says is the act of one who is mad and utterly raving; "to lay waste the crops, burn farmhouses and commit other outrages of that kind is a mark of extreme hatred", and only permissible as retaliation in extreme cases. He admits the justice of slavery, if tempered with humanity, and of reparations, and the exaction of tribute, provided that justice and equity are observed. He discusses the freedom of the seas, open to all by nature, but condones the furnishing of munitions of war to a belligerent by the citizens of a neutral state. This, however, he says is a difficult question.

A peace being made by treaty, old causes for war should not be revived, it cannot be alleged by the conquered that the treaty was made under duress, for this might always be said.

Gentili drew freely from the history of ancient wars and contemporary events. He came to England in the middle of Good Queen Bess's glorious reign, when all Europe was in a turmoil. War was conducted with the utmost barbarity and Gentili was far in advance of his age and of his century.

The indebtedness of Grotius to Gentili is a matter of much dispute, and some unnecessary feeling has been manifested especially by the adherents of the former, and this has been fully discussed by Dr. Phillipson and Professor Nys. Perhaps we may say that Gentili planted and Grotius watered, and add, "May God give the increase"; and yet after three centuries we have seen the humane injunctions of Gentili violated in the most shocking manner during the late war.

The style and diction of Gentili are not unattended with difficulty in the translation. The general editor of this series was fortunate in his selection of Professor John C. Rolfe of the University of Pennsylvania as the translator of this work. All who have read his translations in the Loeb Library of Sallust, Suetonius and Aulus Gellius know his unusual qualifications for the task. It is comparatively easy to make a literal translation, and comparatively easy to make a paraphrase, but Professor Rolfe has given us a translation which is not only accurate, but reproduces, in idiomatic English, the idiomatic characteristics of the original. He adds a few notes, which might have been more numerous, and an excellent index of the authorities cited, together with a full general index of the subject matters. The index of authorities was attended with special difficulty, as many of the references are obscure and baffling. In a number of cases Gentili appears to have relied upon his memory, and in several instances he states that the books are not accessible to him.

The typography and format of the book are most excellent, and the proof-reading carefully done. We have detected so few errors that it would be ungracious to call attention to them.

John Marshall Gest.

Orphans' Court, Philadelphia, Pennsylvania.

\[20 \text{ At 40.} \]
\[21 \text{ At 38, 123.} \]
\[22 \text{ At 80.} \]
\[23 \text{ At 155.} \]
\[24 \text{ At 270 et seq.} \]
\[25 \text{ At 328.} \]
\[26 \text{ At 298.} \]
\[27 \text{ At 305.} \]
\[28 \text{ At 91.} \]
\[29 \text{ At 105.} \]
\[30 \text{ At 363.} \]
I commence a review of this casebook with misgivings amounting almost to certainty that I should not write it. Having completed last spring a casebook on Agency, the subject with which this volume is concerned, I am disqualified. According to convention, I should keep very still. But the difficulty is that there are now so many who have put out Agency casebooks, as witness Wambaugh, Powell, Goddard, Keedy, Mechem, with a second edition by Seavey, and Huffcut, with an edition by Whiteside, not to mention Douglas and the several others interested in a combination of business materials including Agency, that there is danger of there being no one familiar with the situation not similarly disqualified to do the job. Besides, and perhaps most compelling, there is the temptation to see what happens if convention is disregarded.

Probably, however, this is mere rationalization, for I take it my real reason for writing is to have one more word concerning the general plan of organization of teaching materials in the business and commercial fields. In the last few years there has been a considerable drive— the most articulate probably at the Columbia Law School—to throw all Agency, Partnership and Corporation materials into one pot and then to dish them out again according to some entirely different plan—according to function rather than legal category. The forces impelling to this end have been various. In some cases the purpose appears to have been to emasculate Agency, a subject regarded as too attenuated to survive longer. As the saying is, students may pick up what they need of the subject in other courses. In others one detects an urge by the younger less prominent faculty member teaching Agency or Partnership to smoke out the older vested interest in charge of Corporations—and certainly that course has been in need of renovation. But generally there has been a conviction that student time could be saved and a more realistic presentation of the whole material given by such a realignment.

The interesting thing, therefore, about the present casebook appears in the preface. The authors say that in their experience, though Agency may be regarded as a form of organization, the materials do not teach satisfactorily with Partnership and Corporations. Indeed, when one stops to consider the matter, no other outcome would appear to have been probable. To start a course with large and seemingly important problems of corporate control, voting rights, stockholders' suits and such matters, and then to drop into a consideration of employment problems or of the authority of an agent must result in too much shifting of gears and creaking of machinery to be useful, however interesting the theoretical view that Agency is a form of business organization. Courses so organized seem bound to lose momentum and sacrifice student interest.

The trouble seems to have come from an ill considered and somewhat hasty adoption of the business school categories of Management, Risk, and Finance as sufficient guides for the redistribution of the entire mass of legal materials. The difference between the business school objective—more and bigger profits—and that of the leading law schools should perhaps have warned against too prompt adoption. But putting that aside, the serious trouble lay in the complete disregard of the principle of beginning with simple and usually older problems and progressing through to the more complex, and usually more recent ones. By tracing the evolution of ideas, the growth of institutions, the student for the first time gets some sense of order and direction in his work.

Accordingly, I heartily approve the authors' decision to devote their first casebook to the agency materials. But I seriously question whether it was necessary or at all desirable to drop back into the conception of the subject current in
the 1890's when Wambaugh brought out the first Agency casebook, as the authors seem to me to have done. The underlying business structure has changed too markedly since that time. Vast organizations of agents, officers, employees and what not exist today where the individual agent once operated almost alone. Agency should give a picture of this. But more important, or so it seems to me, the course should carry on to picture the various forms of associations today acting as principal or employer. This not solely to complete the picture of the whole sweep of business and personnel organization, but to see the underlying factors brought to light in the simple respondeat superior and apparent authority cases given application to determine the responsibility of the members of the more complicated forms of associations. Both are necessary to make a well integrated study.

As it is, the king's men have been marched up the hill and then back down again. The most obvious tangible result is that there is no longer much danger of Agency being omitted from the curriculum. It has been taken up in select company and blessed with a new name, Business Organizations. The aurora about the corporation material may now extend in the student mind to cover Agency as well. While this is perhaps some gain, I am not clear upon the ethics of the matter, since little of organization is treated in the present volume. Nor, for that matter does it seem quite right to appear to take the subject wholly away from the scholars laboring in the commercial fields. Perhaps the Sales people also should develop a sequence making use of Agency. My point is that not only are the materials important but they should be developed broadly to constitute a basic course in both fields—preferably for first year use.

I hope this discourse on organization will not be taken as criticism of the careful work done by the authors in putting the material together according to their plan. It is not so intended. The book has been well done. I miss some matters such as the notice problem, the position of sub-agents, the liability of the agent to third persons and others usual to Agency. Insufficient recognition has been given to Workmen's Compensation and to legislation generally and, as I see it, a disproportionate space, 128 pages out of a total of only 521, has been devoted to tort problems. Possibly this last was thought necessary in view of the dispute as to the fatherhood of the entrepreneur doctrine. But these, and similar matters, are points on which I must recognize convention and have no comment.

Roscoe Steffen.

Yale University School of Law.


Your reviewer once had the pleasure of sitting in on a symposium conducted by Professor Beale, at Harvard. The agenda of the symposium was the curricula of present day law schools. Professor Beale began the discussion with a showing of the meager offering of courses by the Harvard Law School, seventy or eighty years ago. It is safe to say that no courses on: "Oil and Gas", "Water Rights", "Mining Law", "The Law of the Press", "Insurance Law", or even "Damages" were offered then, yet all of these were incipient in the courses that were offered and it has been frequently remarked, that men received good sound training in

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1 See casebook at 185.

2 Held in Kendall House, Cambridge, 1931.
law and practice at Harvard, even in that ancient day. In other words, *all* law used to be taught in comparatively few courses and was pretty well taught, too. However, from time to time, as the master teachers felt that they had collected together cases and materials enough for a substantial or respectable course in a more limited field, new courses appeared in the curricula: so Story began to teach Constitutional Law; Langdell tore Equity from the bosom of the larger body of Procedure and Remedies generally; Trusts sprang, almost fully grown, from the forehead of Ames, having theretofore been a member only, of his great head of Equity Jurisdiction; Gray carved out Future Interests, from his realm of Property Law. Of course, these giants had other reasons for narrowing their fields of action; they thought that by taking a smaller sector they could work and develop it better. There is some merit in the idea and would be more if law were, as it is not, a subject like descriptive Botany or Zoology. There the object probably would be to get a perfect picture of some form or forms of life, but in the case of law, we are vastly more interested in the articulation of the various phases of law, in the life and activities of mankind, as for instance in the distribution and preservation of wealth.

Our students have tamely submitted for years to our flimsy excuses for our own shortsightedness or downright laziness, namely that we cannot teach *all* law at once but must of necessity limit our consideration, at the time, to some subject like Trusts, probably a very small fragment of Trusts. The student sometimes leaves the well cut cases found in his casebook; he looks up the cases cited by the instructor, or those found in the footnotes and picture his dismay when he finds in most every case, not alone Trusts, but Future Interests, Wills and possibly other subjects indigenous to this field. In fact, he finds very few Simon-pure cases of Trusts, Wills, or Titles, and so he is inclined to believe that we are not giving him the *real thing*, in our courses, but rather an expurgated, innocuous substitute. Much criticism of the impractical nature of our law teaching is well founded.

Of course, we cannot teach *all* law at once, but does that excuse us from making some effort to teach relationally, subjects that naturally associate themselves together? Until quite recently, the tendency was strongly in the direction of disintegration of courses—new fragments were flying off with the frequency of meteors, but of late the tendency has changed. We see the attempt to teach parts of Equity with Procedure again; numerous courses on Bankruptcy, Insolvent Estates, Receivers, etc., combined in a more comprehensive course on Creditors' Rights; and the synthesizing of Trusts, Wills and Future Interests in this compendious work on Trusts and Estates by Professor Powell. Mr. Powell justifies the combination that he has effected in these words: "Future interests are seldom created save in an instrument which simultaneously generates a trust. Still less frequently is a trust created without accompanying future interests." If these concepts and tools are found so inextricably associated in practice, this would seem to be one of the places where interacting forces should be emphasized in teaching. Mr. Powell declares that the idea he has capitalized is not new but old and generously gives credit to Jarman, citing his notable work on Wills.

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2 Smaller men have started new courses, too, but no names are here mentioned.
3 *Clark, Cases on Pleading and Procedure* (1930-33).
4 *Hannah, Cases on Creditors' Rights* (1932).
5 Preface, at vi.
6 Professor W. Barton Leach considers the statement a little overdrawn. Remarks made before Property and Status Section, December, 1932.
7 Preface, at vi.
This is only one of several of Professor Powell's works. The central thought running through these two volumes is "The methods now functioning in the United States for the distribution of wealth." Your reviewer feels that a course should prove vastly more valuable to students, if woven about some big objective idea like the above. He remembers, also, that the only effective teaching is relational teaching and considers the efforts of such men as Clark, Hannah and Powell to be a movement in the right direction. With these ideas in view and further the resolve that he would like to use this related material, if found complete enough, your reviewer has gone through the principal casebooks on Trusts, Wills and Future Interests, carefully, and finds nothing that is of major importance in any of the courses has been omitted, or greatly slighted in treatment. But better still, he finds several situations not usually considered in the traditional Trusts and Future Interests courses, here treated in relation to the stereotyped problems, in such a way as to not only add interest to the work but greatly to enrich the content of the course.

Frequently, for pages and pages, one might readily conclude that he was pursuing a traditional course in Trusts, Wills, or Future Interests. At such times, the editor has deemed it desirable and has taken out time to develop: the trust concept, the creation of trusts, the formalities of will making, the future interests concept, etc. During these occasional lapses, there is little of relational thinking, the editor merely utilizes such periods to prepare tools for future construction. But no time or effort is wasted, a reasonable minimum only is devoted to each of these necessary acquisitions, and then the relational development goes on apace.

Undoubtedly, some will not like the arrangement of the action in this drama and will insist that the hero "rush in" and save the girl in the first act, quite contrary to the way that good dramas have consistently ended. Those malcontents may, of course, use these materials in any order that they please; the only point the present writer is here making is that no essential to an adequate and sound course, in these related subjects, has been omitted. Nay, more, the editor has even incorporated in his course Dr. Dewey's Social Planning and Dean Pound's Social Engineering. He does not make it transparently clear how lawyers, in the future, will be enabled to bring tight-fisted testators, trustors, etc., to consider the social good, but he evidently expects that lawyers trained as our students now are, in ethics, morals and the social trends, will exert a greater influence upon such unsocial beings, in futuro, or else they will advise the legislators how to capture more of this wealth through ad valorem, income and succession taxes.

The editor has furnished us with an amazing wealth of material in cut cases, digested cases, statutes, excerpts from legal articles and notes representing his own views upon numerous situations. While it must be admitted that these volumes are top-heavy with New York cases and statutes, we can like this feature, if we reflect that we thus get the rather complete views, on these questions, of the most authoritative of our state courts. We can feel satisfied, too, that cases and numerous statutes are included from the various sections, not omitting the corn and hog belt, or the cane and cotton sector. It must be admitted, too, that these materials, from widespread sections, present with sufficient completeness the situation of the so-called sole trader, who is much the same, whether he lives in

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8 For distinction between Professor Powell's work and works, see Jacobs, Trusts, Future Interests and All That (1932) 18 CORN. L. Q. 351, at 358.
9 Preface, at v.
21 C. 3, at 58-94.
22 C. 6, at 141-233.
23 C. 7, at 234-321.
24 C. 4, at 94-141.
25 C. 8, §§ 2 and 3.
26 Jacobs, supra note 8, at 368.
Texas or in Indiana. The attitude of these volumes toward the more modern trust uses and problems is to be commended. The traditional books have been content, like the law, to lag along at a safe distance behind economic and social demands. Professor Powell, on the other hand, comes right up to "taw" and shows how the concept is being used in insurance trusts, by trust companies and other business organizations. These exist in Iowa City and Birmingham, as well as in Philadelphia and New York. Mr. Powell has included few English cases and although he has retained some of the older and well-remembered cases, his case material, for the most part, is rather modern, and much of it is "brand new".

By means of the digested cases, the editor has managed to give the student more than triple the number of actual and practical problem situations, without a proportional expenditure of time. This puts before the student, as he works, practically all the material of the course. This saving of time is more than offset, no doubt, by the appended questions, which, if well used, will require literally hours of time in the answering. However, Professor Powell assures us that if students work over the materials and answer the questions, they will enter the lecture room as well off, as ordinarily, they leave it. They will then have, with their instructor, the full class hour for going on further and deeper. That result seems probable and would surely be worth while, notwithstanding inferiority complexes and wounded vanities of instructors.

The writer has never seen such a wealth of statutory material given in a casebook before. Along with the United States and the District of Columbia, no state jurisdiction seems to have been left out; several sections from each are cited, or set forth at length. We are pleased, too, to find statutory material from Alaska, Hawaii, Panama Canal Zone, Philippine Islands, Puerto Rico and the Virgin Islands included. We naturally expect to find many English statutes included in a work of this nature, and are not disappointed. It is quite a surprise to find considered, also, statutes of France, Germany, Japan and Russia. Short shrift is given these materials, however, their use being limited to a comparison of the theories as to succession. All in all, the statutory material should prove adequate and very satisfactory.

Mr. Powell, following the Columbia idea, has included a mass of materials in the form of excerpts from books, law review articles, etc. This material has been especially well selected and nothing has been included that does not have real value. Nor has a long article been used when a short one would do. The editor has not hesitated to cut down and even paraphrase articles. There is positively no "loss of motion". Keen appreciation of values has reduced this material to a minimum.

The plan of the course and the materials impress the writer as being most worth-while. He contemplates using them in the near future. Perhaps we should induce Professor Powell to get up some books for our other courses. He has ability, inclination to work, time, and it is doubtful if any one else could induce so many others to help him.18

J. V. Masters.

University of Alabama School of Law.


Professor Handler's new work excites the interest of teachers and students of law primarily because it is a part of the new series of Property casebooks

17 C. 7, at 248-249.
18 Note acknowledgments of indebtedness, preface, at ix.
which have been developed at Columbia and which modify radically the teaching
of Property and Equity at the Columbia Law School. It must be reviewed,
therefore, as a part of that series, and the changes sought to be accomplished by
it as part of the new plan at Columbia must be considered in their effect on legal
education generally.

The first volume of the new Property series, *Possessory Estates*, by Pro-
fessor Powell, is an admirable work giving in the brief space of 560 pages the
historical background and the fundamentals of the law of possessory estates in
land, including uses and the operation and effect of the Statute of Uses. Supple-
mented with collateral study of legal history, this volume should give the student
a thorough grasp of the fundamentals in the law of Real Property. There is no
valid reason or excuse for not including the law of Personal Property in this
foundation course, making it a course on Property generally. Title by possession
and the many problems arising in that connection go to the roots of the property
concept and are just as important in the law of land as in the law of property
not land. Distinctions between real and personal property, fixtures, crops, etc.,
fall naturally into such a course. They do not belong to a separate course on
personal property.

The second volume of this series is Professor Jacob's *Cases on Landlord
and Tenant*, an intensive and exhaustive treatment of this highly important branch
of the law of Property. From almost complete neglect of this subject in the
typical property casebooks in general use heretofore, this book swings to the other
extreme, with 903 pages as compared with 560 pages in Professor Powell's
volume on *Possessory Estates* covering the general field of property law.

Professor Handler's book comes next in this series, followed by the two-
volume work by Professor Powell on *Trusts and Estates* which covers the ground
included in the usual courses on Future Estates, Trusts and Wills, with special
emphasis on spendthrift or non-assignable trusts whether created by deed or will.
Here also the work is intensive and detailed, the purpose being to deal with fact
situations as a whole as they arise in modern life rather than with separate treat-
ments of different phases thereof called for by a logical development of legal
principles. The purpose is to describe as briefly as possible the general character
and plan of these other volumes of the series, so that Professor Handler's work
as part of that series may be more adequately understood.

Professor Handler's work takes the vendor-purchaser relation arising out
of a contract for the sale of land and the conveyance which usually follows,
making the subject-matter of his book all the law applying to that factual situation,
including the law of Contract, Equity, and Property as heretofore taught in the
schools, just as Professor Powell takes a will usually involving present vested
trusts to be followed by future estates and applies to that factual situation all the
law involved therein, including the law of wills, of future estates, and of trusts.
The effort is breath-taking, with something of the effect on the onlooker of a
three-ring circus, or of a juggler keeping several balls in the air at the same time.
Of course, a lawyer in actual practice must apply all this law at the same time in
dealing with these factual situations, but he has learned his law and is applying
the results of his legal study. The student approaching a legal subject for the
first time is in an entirely different position. First of all he must have an under-
standing of the historical development of the law on the subject. Nearly every
phase of the law of Property has been evolved very slowly and laboriously with
roots that go far back in the development of our civilization. No student can
get anything like an adequate conception of equity as part of our legal system
without an understanding of how equity developed and of its relation to the
common law. He must next acquire a grasp of the fundamental principles in
each branch of the law. The attempt to teach him all the law applying to a given
factual situation, combining divergent and possibly conflicting principles of law and equity, or of Property and Contract, is to invite confusion, lack of continuity of legal thought and analysis, a vague idea of the law applying to the entire situation instead of the sharp, clear appreciation and understanding of the principles involved. The only way to prevent this is to cover laboriously the basic ground work of each of the different branches of the law applying to the case, which means duplication of effort, loss of time and the confusion necessarily involved in trying to do too many things at once. In other words, the law should be taught, as in the past, by a study of separate topics which are selected so that the development and application of fundamental principles may be treated in the field to which they apply, even though the principles contained in another division of the law may be involved in many of the cases which the student is called on to study. He studies these in other courses, and their relation and coördination in the actual cases may readily be grasped by the student in the traditional study by topics based on rational and orderly development of principles rather than upon the study of fact situations. Of course those who follow Mr. Frank's doctrine that the law is a kind of wilderness of single instances based on the judge's idea of what rule will work best as a practical matter will deny that fundamental legal principles actually exist. The law, however, will go on as it has during the centuries, developing stumblingly along the lines of fundamental concepts which go back in a slow evolution from the early origins, and legal educators should act accordingly.

In this book far more than in Professor Jacob's work on Landlord and Tenant we see the practical workings of the plan to abolish Equity as a separate course and, instead, to teach equity as part of the law of contract, torts, property, etc. Professor Handler starts with the Statute of Frauds in its application to the vendor-purchaser situation, and, of course, most of the cases treat of so-called partial performance. If the purpose was to start the students off with definite proof that the courts decided what seemed expedient first and then proceeded to invent reasons for their decision, no better topic could have been selected. But how can the students understand this problem except as they have an understanding of how and why equitable relief in Chancery developed, how far and why equity may modify the law, how the principles of estoppel and of implied trust apply? The relation of equity to the law is involved in this situation with particular vividness. This book gives only a cross-section of the law of specific performance. In attempting to combine the common law of contract with specific performance and to answer most of the questions which arise as to whether the vendor has a marketable title or not so much space is consumed that there is no room for the doctrine of mutuality, except incidentally. The extension of specific performance to many situations other than sales of land falls outside the scope of this work. About 138 pages are devoted to Marketable Title. By far the larger part of this space is taken up with cases which turn on questions of evidence or of the construction of deeds, of the effect of infancy or incompetency of persons in the chain of title, or outstanding claims of dower, of the effect of outstanding incumbrances, of tax liens, party walls, and restrictive covenants. The general principles of the doctrine of marketable title are adequately covered in the first thirty pages. Over 100 pages are taken up with cases, therefore, which properly belong elsewhere, though there can be no doubt that they add very much to the treatment of marketable title by bringing together so many situations of practical importance in which the question arises.

The first part of the book containing 513 pages has a fairly adequate and very interesting treatment of specific performance of contracts for the sale of land, a very good treatment of the vendor-purchaser relation in equity arising
out of such contracts, a smattering of contract at law applying to such contracts, but practically no law of real property. Why include all of this in a real property series?

The attempt to separate this important part of specific relief in equity from other cases of specific performance of contract and from specific relief in tort cases, as well as from other forms of equitable relief involves an abandonment of the historical approach. Equity developed and is still applied on principles quite distinct from the common law. The merger of law and equity under modern codes has not changed law or changed equity in the slightest, except to bring the two systems together and to eliminate rules of law which are contrary to rules of equity. To attempt to apply a broad cross-section of equity as part of the law of Property, out of its natural setting and without reference to the historical development of specific relief by injunction as well as by specific performance in many other cases seems to me to be a very serious error from every standpoint of legal education.

The second part of the book covers the general field of deeds and conveyances. Here a great deal is left to the student to work out for himself by reading texts and examining cases cited in answer to questions put in the notes. Lines of inquiry are indicated but with little help to the student, even though he looks up all the cases—an impossible task to the average student, and destructive of the books in the library if a considerable part of the students should perform it. The third part of the book, 177 pages, treats of Easements, Licenses, Covenants Running with the Land, and Equitable Servitudes. Just why these topics should be included under Vendor and Purchaser is not explained. No doubt the reason is that they couldn't be treated elsewhere in the other volumes of the series. It has always seemed to me that the practical work usually included under Deeds and Conveyances should come last in any course on Property. It is the practice side of the law which should follow the study of the substantive side, and if not actually reached in the course it may most readily be acquired by the student by practical experience and independent study. The treatment of Easements is very meager, but every topic cannot be fully treated, and the time devoted to Easements, I have always felt, could be cut down in class better than most other topics in Property because of the relative simplicity and settled character of this branch of the law.

In the selection of his cases, the painstaking care in covering the law in the preparation of his notes, and the clear thought and fine scholarship in the questions raised in his notes, Professor Handler has done an excellent piece of work. My criticisms are not directed against this work of his, but rather against the general plan of the series of injecting equity in segments into the subject of Property and into other courses to the exclusion of a separate course in equity, and against making a course on Vendor and Purchaser masquerade under the guise of a course on Property. As a matter of fact, attempts to divide the subject of Property into different separate courses with appropriate names have failed to describe accurately the subject matter in the names or headings selected.

This new series convinces me that it has always been a mistake to split up the subject of Property into several different courses. It has led to a very definite lack of balance as between different topics. For instance, the law of Landlord and Tenant is very inadequately treated in most of the casebooks which divide up the subject of Property in this way. This last series goes to the opposite extreme on that topic. The topics "Easements" and "Deeds and Conveyances" get too much space in most of the other casebooks. They probably get too little in this series. Property, real and personal, involving the law of ownership, possession
and enjoyment of all things real and personal and the incidents thereof, is a single cohesive subject, and should be treated as such. Giving separate titles to different coördinated courses in Property would do no harm if a single well-balanced plan has been worked out. The necessary result of such division into separate courses, however, seems to be to give undue emphasis to some branches of Property, such as Future Estates, resulting necessarily in a corresponding neglect of other divisions of the subject. Nevertheless no teacher of Property can afford to ignore this series. These books emphasize modern problems which demand solution. They challenge the best efforts of legal educators of the traditional school to bring their courses more in line with modern conditions.

William F. Walsh.

New York University School of Law.


It is as trite as it is true to observe that few developments in the law of England and these United States have been as important, as dramatic and as far-flung as the growth in the field of administrative law. The viewpoints of writers in this field may well be, indeed they have been, as numerous and probably more varied than the fabled leaves that strewed the brooks of Vallombrosa. It is believed that the volume under review more than lives up to the high standard set by its predecessors in the Harvard Studies in Administrative Law.

According to the publisher's jacket, this is "A study partly historical, partly critical, of the present relation of the English government departments to Parliament in the field of legislation. American readers will find the book of much practical value because we are faced with much the same problems in slightly different form and are solving them in a different manner." The word "slightly" here suggests to this reviewer the story of an American tourist who stood with an English friend on the flat sands of an English coast resort. Remarked the American: "It is so suggestive of Switzerland." "Quite so", replied the impassive Englishman; "there they have mountains and no sea, here we have sea and no mountains." On this point a few quotations from the author's excellent Introduction appear in order. "In England . . . the legislature is omnipotent and its commands are conclusively binding on the subject in all matters; . . . in the United States a legislature must first ask itself whether constitutionally it has the power to act, and if so, in what manner it may act." 1 " . . . in England today a theoretically supreme Parliament is in practice swayed by the will of the Cabinet, itself profoundly influenced by the permanent Civil Service, while in the United States the judiciary have gathered into their own hands the power to direct the streams of legislation." 2 " . . . while in the United States delegation is intimately concerned with questions of judicial review and constitutionality, the English problem is one of control—by Parliament, the courts, or any other feasible method—an issue which is clearly one of practical politics rather than of law." 3 "There is, then, little to be gained for any attempt to compare the extraordinary powers discussed in this essay with American practice, there being nothing in the United States to set alongside of them." 4 The schematology, the whole analysis, even the nomenclature, of the author are distinctively English.

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1 At 6.
2 At 7.
3 At 9.
4 Id.
This, however, if the reader's approach is intelligent, should add to, rather than detract from, the interest and value of the book.

The author first (and, it seems, quite properly) discusses the historical growth of the delegation of legislative power by Parliament, particularly stressing the early part of this century down to the beginning of the World War, for "during this period the State had changed its character, had ceased to be soldier and policeman, and was rapidly becoming protector and nurse". Then follows a brief (too brief, in the opinion of this reviewer) discussion (fifteen pages) of "Delegated Legislation Today". Altogether technical are the final three chapters. There is an Epilogue to which far more than three pages should have been devoted. Here are suggested two solutions to the whole knotty problem: (1) Administrative Courts; (2) "... giving conclusive effect to all rules issued by the departments after review by a Committee of Parliament, subject perhaps to revocation by that committee if at any time subsequently they are found to work more injustice to individuals than they produce in benefit to the community at large." A postscript deals with the exceedingly important report of the Committee on Ministers' Powers. The book contains a six-page index, and an excellent analytical appendix consisting of a very complete classified list of statutes beginning with the year 1850, followed by a brief bibliography.

In general, the author's style is clear, forceful and attractive, lightened at intervals by rather dramatic sentences and flashes of mordant wit. Accordingly, it is easy to forgive a few instances in which the style, in the more technical parts of the book, bogs down a bit to become slightly dull and turgid. Again, it is believed, the style would have been more effective in places had the author adopted an expository rather than a controversial tone. But the book was probably written largely as a reply to Lord Hewart's quite bitter The New Despotism and, judged as such a reply, it seems quite adequate. Probably many readers will wish, after extended controversial discussions, for more summaries or résumés such as the author's excellent summary on pages 81-82. These would have cleared the air considerably. All throughout the book is ample evidence of meticulous care in the handling of details, of acute power of accurate analysis. Mr. John Willis has done a difficult job in workmanlike manner. His book is strongly recommended alike to statesmen, to students of political science, to judges and to scholars.

Armistead M. Dobie.

University of Virginia Law School.


For those who had the good fortune to hear Lord Craigmyle's lectures on John Marshall delivered during his visit a year ago, the reading of this book will bring a double pleasure. For it will first of all recall Lord Craigmyle, his vigor, his enthusiasm, his sincerity and his charm. The second satisfaction is shared with the reader whose first acquaintance with Lord Craigmyle's lectures is through this little volume. A great satisfaction it is. The author wisely makes no attempt to parallel what was done in the excellent detailed study of Marshall by the late Senator Beveridge. Rather he has, in a four-chapter series of skillful summaries, given a competent and human portrayal of a great statesman and a
wise judge. The chapters are called, respectively, "The Making", "In Diplomacy", "The Chief Justiceship: The Trial of Aaron Burr", and "The Chief Justiceship: the Constitution". The selection of material which Lord Craigmyle has made shows that sense of dramatic value which one might rightly expect from an author whose long career in public life and legal advocacy are well known. The famous episode of the X. Y. Z. papers, the trial of Burr, the explosion of Marbury v. Madison—what a pleasure it is to read of them again—told with the skill of one who appreciates the problems and admires his hero! Lord Craigmyle has both the gift of understanding and the gift of words. One reads his Marshall with pleasure; one puts it down with regret that he has reached the end.

Herbert F. Goodrich.

University of Pennsylvania Law School.


Earlier volumes of the Fontes Juris Gentium dealing with the decisions of the Hague Permanent Court of Arbitration and of the Permanent Court of International Justice are now followed by a digest of diplomatic correspondence which must immediately impress the student with the great importance of the general task undertaken by the editors. For we have now presented to us material which has not been available to students up to this time, and which throws a new light upon the development of international law during one of the most critical periods of the nineteenth century. Hitherto the student has had to depend largely upon information at second hand for a knowledge of the attitude of governments towards an alleged rule of law, and even this information has been of the most summary kind. These new volumes of the Fontes introduce him to what may fairly be called the inner sanctum of foreign offices, and they are, to one who has been impatient with the inadequacy of available source material, little short of a revelation.

In a general way the new volumes bear comparison with Moore's Digest of International Law, which has been such a rich mine of information for American students. But they go far beyond the American Digest in the scope of the material they have analyzed. They have digested not the diplomatic archives of one government but those of some ten governments, whose combined correspondence brings upon the stage practically all of the important states of the world. Although the title might suggest that the correspondence deals exclusively with European affairs, that is not the case; the student will find, for example, numerous excerpts from the correspondence of Great Britain with the United States during the American Civil War, taken from the British archives, as well as excerpts from correspondence dealing with Mexico during the period of French occupation. The documents are not limited to the more formal "notes" presented by one government to another, but include "instructions" from governments to their diplomatic representatives in foreign countries, "reports" sent back by diplomatic representatives to their governments, letters from sovereigns to other sovereigns, and the minutes of international conferences and congresses.

In presenting this vast collection of source material the editors have no thought of setting forth material illustrating positive rules of international law. They are aware that the ex parte statements of governments are not a safe guide
for what should constitute general practice, if the latter is to be a true rule of international law. Nor have they meant to save the student the necessity of resorting to the original source material for a more careful investigation of his problem. Their purpose has rather been to offer the student material which will assist him in his own personal researches into the practices of governments, without, however, influencing his judgment as to the value of the material offered by suggesting that the alleged rule of law is actually one. The extracts are reproduced in the original language of the publication, and in the case of languages other than German, French and English translations are given where such were to be found in the source collections utilized.

The reception accorded to the earlier volumes of this series must be repeated with even greater warmth for the present volumes, which not only represent longer and more patient research but meet a far greater need on the part of the student. The continuations dealing with the period since 1871 will be eagerly awaited. As was said in the review of the earlier volumes, the undertaking as a whole is one of the most significant contributions of recent years, and it puts the science of international law upon a considerably higher plane. If the student of a generation ago was led to generalize from insufficient data, the student of the coming generation will have so much data available that he may be in danger of qualifying his statements to the point where no rule at all is discernible. In the meantime, foreign offices, if they should peruse these volumes, may come to the conclusion that what they have asserted so vigorously at times to be a rule of law may be much less generally accepted than they took it for granted to be. Perhaps at that stage it may be possible to make greater progress with the work of codification.

C. G. Fenwick.

Bryn Mawr College.


This is the second edition of the well known casebook by Mr. Costigan on Legal Ethics brought down to date. It has the usual earmarks of such later editions. The change in title is significant; in addition to the authorities in the first edition dealing with the legal profession (as opposed to its ethics) the author has included a considerable number of additional authorities along the same line. As one who has taught Legal Ethics for a number of years, I somewhat question the value to the American student of the space devoted to the legal system in England, including advocates, attorneys, solicitors and barristers. There seems to be a modern tendency to include more of such material in casebooks on Legal Ethics, but the reviewer has always felt that the time available for discussion of problems in Legal Ethics is so restricted in most courses that it is difficult to cover the legitimate field of legal ethics without taking additional time to discuss matters dealing with the legal profession, especially in England. The second edition has made free use of the large amount of new material on the general subject of Legal Ethics that has come into existence during the last few years, including not only many reported decisions by the courts of the different states, but also the opinions of the American Bar Association Committee in addition to the growing number of opinions of the New York Committee. The writer has
found the answers to questions by these committees of great practical value in teaching the subject and making it real to his classes. He inclines to the view that Costigan’s book, whether in the first or second edition, is the one that is best adapted for the purpose of teaching the subject.

Reynolds Driver Brown.

University of Pennsylvania Law School.
BOOKS RECEIVED


