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## Book Reviews

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## BOOK REVIEWS

THE PROVINCE OF THE LAW OF TORT. Percy H. Winfield. The Macmillan Company, New York City. 1931.

One would go a long way before he would find an exhibition of keener analytical powers coupled with great historical knowledge, than is to be found in this little book.

Professor Winfield starts with a definition of tort by saying "*Tortious liability arises from the breach of a duty primarily fixed by law; such duty is towards persons generally and its breach is redressable by an action for unliquidated damages.*" He defends this thesis throughout the book though admitting it is not "canonical" (page 216). In the last chapter other definitions are discussed. He admits that his definition owes much to the analysis of Sir Frederick Pollock.

All the chapters are alive with interest but the one most alive to this reviewer is the chapter distinguishing between tort and crime. Where can one find a discussion of the essentials of crime equal to this? He concludes that the most characteristic thing about crime as distinguished from tort is an inevitable punishment.

Equally keen, however, is his discussion of quasi-delict and he rather has the better of the argument as he takes issue with Professor Isaacs whose article on quasi-delict appeared in 31 Yale Law Journal. The argument is too condensed to summarize and the curious should by all means read the book. He will also receive a flood of light on waiving of the tort and suing in contract. The author seems to imply, as this reviewer reads him, that at least in this situation the action in quasi-contract must be for a liquidated sum. This proposition does not seem to accord with Mansfield in *Hambly v. Trott*,<sup>1</sup> who said that if A takes B's horse and brings him back again an action would lie for the use and hire of the horse. In many cases attachments cannot be had as ancillary to tort actions but may be had when the action is in contract. Neither Winfield nor Keener<sup>2</sup> quite say that in cases generally where an unjust benefit arises to the tort-feasor, the injured party may waive tort and sue in contract but they give no clear reason why such a rule should not be applicable.

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<sup>1</sup> Cowper, 171 (1776).

<sup>2</sup> Quasi-Contracts, Chap. III.

ALVIN E. EVANS.

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MY UNITED STATES. By Frederic J. Stimson. Scribners 1931, pp. xiv, 478.

This is an interesting autobiography of a man who has been diplomat, lawyer, college professor, author and friend of several Presidents. The book is written in a rambling, controversial style and that

fact adds to its charm. There are two points that interested the reviewer especially. The one relates to the appointment of Justice Holmes to the Supreme Court of the United States. Many of Roosevelt's advisors thought Holmes was too theoretical but Roosevelt told Stimson that he was going to appoint Holmes because he was "right" on the Insular Cases. The country under McKinley had committed itself to an imperial policy in the Far East. Wisely or unwisely, we had taken the Philippines, and rightly or wrongly, it would not do to let them have jury trial or the local freedom guaranteed by our national Bill of Rights. So Holmes was appointed, and on that point Roosevelt was not disappointed. But Holmes disappointed Roosevelt soon thereafter in the Northern Securities Case. Roosevelt had also appointed Moody to the highest bench and he (Moody) was "right" in his decision both in the Insular Cases and in the Northern Securities Case. At a banquet, Roosevelt declared "When I appointed Moody to the bench I made a home run, but Holmes made a one base hit and was out at second." This incident is an interesting commentary on the attempt of a President to pack the Supreme Court.

The other point of special interest touches on a bit of unrevealed history. Stimson was Ambassador to Argentina in 1916 at the time the Sussex was sunk. Wilson's son-in-law McAdoo was in Buenos Aires at the time, and thus it happened that Stimson was made the confidant of the President's intention to enter the war in 1916. This intention remained undisclosed to Mr. Page in London, because Mr. Wilson feared a premature disclosure before our country was mentally prepared. It would seem as though the later campaign slogan of the 1916 Presidential campaign, "He kept us out of War," did not prepare the country mentally for the holocaust that was soon to follow. Although a personal narrative, the book is of permanent value in that it throws much light on our country's history during the last three decades.

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CONSTITUTIONAL LAW OF THE UNITED STATES. 2nd Students' Edition.  
By Westel W. Willoughby, New York, 1930. Baker, Voorhis & Co.  
1 vol., pp. lxxxvii, 884.

Dr. Willoughby has succeeded in condensing his large three-volume 1929 second edition of 1,284 sections and some 2,022 pages, into a single book of less than 900 pages without appreciable injury to the subject. The work is typical of the author's painstaking and scholarly treatment of material. It is written chiefly with an emphasis on the court's ruling but not unmindful of the general development of our constitutional system as reflected in the given case that is cited. Much less space is devoted to the reasoning of the court than is usually found in studies on this subject. In a clear and concise manner each topic is dealt with as regards its constitutional basis, its past, present,

and probable future legal status, its larger economic and social implications, and its general relation to government and law.

The volume contains in the following order: a well-indexed, sub-titled table of contents; an adequate table of cases; Constitution and amendments; a short introduction on the adoption of the Constitution; some preliminary definitions and principles of constitutional construction; the division of power in the federal system and the supremacy of federal law; citizenship, territories, etc.; foreign relation and the treaty power, the powers of Congress and relations of the states to commerce, taxation, etc.; crime, contracts, religious liberty, freedom of press and speech; the Federal Judiciary and the state courts; the executive power and military law; impeachment, appointment, and removal power; administrative powers—due process of law—delegation of legislative power to administrative bodies as concerns the police power, contracts, taxation, etc.; and the equal protection of the laws.

The author shows the growing importance of the administrative agencies in their relation to constitutional practice. Admiralty and maritime law are dealt with quite as fully in this work as in the larger edition, a very helpful thing for the student who may never have a course in admiralty. Another commendable feature of the student edition is the manner in which Federal Regulation of Commerce is dealt with so as to make the varying phases of the subject clear to the beginner.

Taken in its entirety the work appears to be an excellent text or reference work on constitutional law which will give the user some adequate knowledge concerning the rule of law involved as well as the interpretation of cases in their relationship to the Constitution both in theory and in practice.

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Simons, Walter. *THE EVOLUTION OF INTERNATIONAL PUBLIC LAW IN EUROPE SINCE GROTIUS*. Yale University Press, New Haven, 1931; pp. 146. \$2.50.

This little book contains six lectures on different phases of international law by the former Chief Justice of the Supreme Federal Court and former Minister of Foreign Affairs of Germany. The important subjects of "The State and State Sovereignty," "Rights of War," "Rights of Neutrality," "State Responsibility and Intervention," "Nationality and Minorities" and "International Cooperation and International Jurisdiction" are traced from the time of Grotius until the present.

It is needless to state that six subjects as important as the above cannot be thoroughly treated in the compass of a small book. The treatment is cursory but it is enlivened throughout by trenchant observations and intimate views from behind the scenes of significant situations of the last decade as seen from the German angle. For

example, the account of the events that led up to the Wimbledon case and Simon's views on the incorrectness of the decision of the World Court are very illuminating.

The tone is generally liberal and in line with the newer conceptions of international law based upon closer world juridical integration. The only disturbing note is found in the chapter on "Nationality and Minorities." "The nationalist feeling in Germany is especially roused by the extent of German minorities in Europe," declares the author and he sorrowfully confesses that he sees "no greater possibility of a good and durable understanding between Germany and Poland than there was between France and Germany during the time when the question of Alsace and Lorraine was open because France could not forget that Germany had taken these provinces by a victorious war and without asking the population."

AMBY VANDENBOSCH.

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CASES ON CRIMINAL LAW AND PROCEDURE. By John Barker Waite. Commerce Clearing House, Inc., Chicago. Pp. xvii, 818. 1931.

This new casebook by Professor Waite of Michigan is one in a series published as CCH University Casebook Series by Commerce Clearing House, Inc. This venture into an additional field by this company is under the editorial guidance of Professors Morgan of Harvard, Fraser of Minnesota, Kirkwood of Stanford, and Sunderland of Michigan.

To an extent the Table of Contents indicates a novel classification of material. The study of the substantive law is divided into three parts—Part 1, Nature of the Liability; Part 2, Sources of the Liability; Part 3, Elements of Liability. Part 2 is further divided into four chapters—Chapter 1, The Act; Chapter 2, The Mental State; Chapter 3, Mitigating and Exonerating Circumstances, and Chapter 4, The Causal Relation.

It has been the aim of the compiler as stated in a memorandum furnished the reviewer to present the fundamentals of criminal law rather than the detailed and peculiar requirements of particular crimes. Whether or not one knows the precise differentiation between larceny and embezzlement, he must understand those requisites which underlie any criminality. He must know when he can rely on common law and when he should look to statute. With this attitude the reviewer is in complete accord. Mr. Sayre seems to have had the same plan in mind when he selected the material for his casebook on Crimes.

It is difficult to appraise a book without having had an opportunity to teach it. It appears to this reviewer though that Professor Waite's book, attempting to give a fundamental knowledge of both substantive and procedural law in eight hundred pages, has fallen short of the task. There is doubt that the substantive law has been adequately covered. There is more doubt that criminal procedure has

been properly presented. The fact that the material ends with the accusation of the defendant is pretty good indication of that.

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PROGRESS OF THE LAW IN THE UNITED STATES SUPREME COURT 1930-1931. By Gregory Hankin and Charlotte Hankin. The Macmillan Co. and Legal Research Service, 1931. Pp. xv, 525.

This volume constitutes the third annual review of the work of the Supreme Court of the United States prepared by the Legal Research Service. The first and second volumes in the series published two years ago and last year were received favorably by lawyers and laymen. It is to be hoped that this service will become permanent. The editors, Gregory and Charlotte Hankin, are attempting to present an impartial description of the work of our highest court. The cases are reviewed and discussed in a non-technical manner. The book is of special interest to the layman but it is also valuable to the busy lawyer in that it provides a convenient means of keeping abreast of the times. The reader will not acquire a thorough knowledge of any case from reading this book, but his interest may be aroused and he may thereby be led to the original report.

This volume is dedicated to Chief Justice Hughes, Protector of Human Rights. The first two chapters are introductory and deal with the problems (1) as to the balance of liberalism and conservatism in the present personnel of the court, and (2) with the practical administration of the court and the disposition of cases coming before it.

As to the first the authors show that in the 1930 term, instead of one group of dissenters consisting of Justices Holmes, Brandeis and Stone there are now two groups, the second consisting of Justices Van Devanter, Sutherland, Butler and McReynolds, while Chief Justice Hughes and Justice Roberts hold the balance of power. When it comes to the administration of the court, Chief Justice Hughes has made an admirable record in the disposition of cases. During the 1930 term the court decided 900 cases and only carried over 139. It is also interesting to note that there are five types of cases coming to the highest court for decision that are more numerous than those involving prohibition offenses; to wit: Taxation, Labor Problems, Public Utilities, Patents, Trademarks and Copyrights and Criminal Cases other than prohibition cases. The Legal Research Service is to be congratulated in preparing this book of reference. It deserves a wide circulation.

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