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## Book Reviews

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## Book Reviews

### Authors

John R. Rood, John B. Waite, Joseph H. Drake, Henry F. Adams, Edson R. Sunderland, Robert T. Crane, and A S. Whitney

## BOOK REVIEWS

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CASES ON FUTURE INTERESTS AND ILLEGAL CONDITIONS AND RESTRAINTS. Selected from Decisions of English and American Courts, by Albert M. Kales of the Chicago Bar. St. Paul: West Publishing Co., 1917; pp. xxvi, 1456.

If there is a living American qualified to prepare material for the student of future interests probably law teachers would agree that Professor Kales is the man. He has written a book on Future Estates in Illinois which has made a distinct impression on the law of that state and is recognized elsewhere as a sound and scholarly treatise. He has taught the course on future interests and illegal restraints at Northwestern University Law School for many years, and last year gave the same course at Harvard.

Having led classes through all the six volumes of Gray's Cases on Property a number of times, it has always been the impression of the reviewer that volume five is the masterpiece of that matchless collection. It deals with the topics to which Professor Gray's attention before and after publication of the set seems to have been mainly addressed; as indicated by his published articles and treatises. In this, as in other parts of his collection of cases Professor Gray followed the policy of giving a number of cases on any topic touched, rather than attempting to cover all branches of the subject; and of laying emphasis on the leading cases, often to the exclusion on the later ones. The result of this policy was that many topics went untouched, though of large practical importance; and, also, the students often persist in assuming from the absence of late American cases that the matter is only of historic interest. No doubt Professor Kales and all teachers of the subject have felt the reflection of this student sentiment.

Professor Kales has taken volume five of Gray's Cases and so much of volume six as relates to illegal restraints as the basis of the present collection. He has avowedly made no departure from the matter and form adopted by Professor Gray unless he had some object to gain thereby which he deemed worth the change; and for the reason that Gray's collection is known and in use by teachers in several schools who might object to radical changes and also because he is a great admirer of Professor Gray, he has followed the original collection in many cases where others might have desired a change.

The changes made by Professor Kales which seem most significant in glancing through the present collection, are in giving greater attention to the later American cases, often, as it seems, to the unwarranted exclusion of leading cases, the addition of very extensive annotations throughout the work referring to many American decisions on kindred collateral points, the introduction of cases on several topics not touched by Professor Gray at all, and the rearrangement of the matter included in the original into smaller subdivisions or a different connection. Many of these changes seem to be decided improvements; in other instances some may prefer the original.

To speak in detail, it has often seemed that Professor Gray asked a good deal of teachers of the subject, if he intended his books to be used by others, (as no doubt he did), when he introduced such cases as *Rice v. Boston & W. R. Corp.*, 12 Allen 141, without even a hint that there is not another decision, English or American, agreeing with it. It has seemed that if he designed to arouse the student to alertness by giving him an occasional jolt, he might take notice that the knowledge of teachers is not encyclopedic and give us a hint; for if we too go wrong there is no one to set us right. But Kales goes farther than Gray by including the same case with notes to other cases that the student might take to support it, if he did not read them; and few students in the present strenuous law courses find much time to read beyond the daily assignment; indeed the teacher who reads all the cases cited by Professor Kales in these notes will require more time than most of us have. Moreover, the conflict, if noticed in reading the cases cited, simply challenges the reader to further search to find which is right.

Again, one may perhaps think the student might be better employed than in reading the English cases on whether a gift to the "survivors" of the share of one dying without issue enabled the representatives of one of the class dying with issue at an earlier date to participate; since the rule of the American courts that such expressions are not divesting provisions but provisions to avoid lapse, prevents the question arising here. Yet Professor Kales has thought it worth while to follow Professor Gray in this respect.

As to the advantage of using late American decisions as the basis of instruction, it seems that, while the student is thereby disabused of his notion that the matter is archaic, they are not as good as the leading cases for class discussion, by reason of the fact that these late cases usually are reported at much greater length than the old, requiring more space and reading, and often reciting the very matter in detail which we would prefer to save for class-room discussion prejudiced by endorsement or condemnation by the court, or knowledge of how other courts have regarded it.

Already fault has been found with Professor Kales's work beyond its deserts. On the whole it is very commendable. The publishers announce that an abridged edition will soon appear, intended to cover the same matter in less space; and perhaps that will seem better adapted to our use.

JOHN R. ROOD.

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THE PUBLIC DEFENDER, A NECESSARY FACTOR IN THE ADMINISTRATION OF JUSTICE, by Mayer C. Goldman, New York: G. P. Putnam's Sons, 1917; pp. 96.

After a casual reading of this argument, one rather favors a publicly paid defender for poverty-stricken unfortunates accused of crime. After a study of it, one suspects that its author is a bit of a cynic; that he knows the art of politics to be in creating opinion not by reason but by appeal to the subconscious and irrational emotions, and is aware that irrefutable logic attractively enough phrased may successfully screen an unsupportable premise.

Mr. Goldman demonstrates his conclusions well, but he assumes premises which the average practicing lawyer will not concede.

It is the practice throughout the union to give every person accused of crime an opportunity to be represented and advised by an attorney. If an accused person is unable to hire counsel for himself, an attorney is appointed to defend him free of charge. The appointee is in some jurisdictions expected to render his service without any compensation, and in others is paid by the state. Mr. Goldman's proposition is to substitute a permanently appointed public defender for these individual assignments. His presentation of the proposition is forceful and clever, but he supports the premises from which the desired conclusion undeniably follows only by irrefutable statement of conditions quite unconnected with the argument. It is a powerful picture of existing evil, that, "The defendant of financial means—is released on bail, pending trial. The indigent accused—perhaps a foreigner—often ignorant—generally helpless—languishes in jail, utterly incapable of coping with the great forces of the state arrayed against him". It is undeniable, as Mr. Goldman says, that wealthy malefactors sometimes quibble their way to acquittal by the scandalously dilatory and unscrupulous brilliance of venal lawyers, while the poor man suffers prompt conviction. And it is true, perhaps, that an unskillfully advised defendant may be unjustly convicted as the result of the prejudiced "impetuosity" and "improprieties" of a prosecuting attorney. All this is immensely effective in pointing the need of a change of some sort, but has it really aught to do with the office of public defender? Shall he quibble the poor man to unjust liberty as hired brilliance does for the wealthy one; or can he provide bail for the indigent languishing in jail? Will he be more potent to expedite trial of an unbailed unfortunate or more skillful in countering the prejudice of the official prosecutor? These questions Mr. Goldman quite neglects to answer. Judged by the reviewer's own empirical knowledge, there is little probability that a public defender would even be ready for trial as promptly as individually assigned counsel, and his superior ability in general is most debatable. If the office of public defender would "reduce the number of manufactured defenses" and would "decrease the expense" of the system of assigned counsel, and would "improve the criminal courts" and would effect various other reforms as Mr. Goldman asseverates, its undeniable desirability follows as logically as result does cause. But would it do all this? There is no evidence offered but the proponent's own assertions. The reviewer's experience leads to a contrary belief; his only knowledge of fact is that it would materially *increase* the expense of the present system of state paid assignments. In one county, populous enough to have four common pleas judges in residence, in which every person arraigned is asked if he wishes counsel, paid by the state, assigned to him, the total sum paid to assigned counsel in the last year was \$140 less than the salary of the prosecuting attorney, without considering his several assistants.

What Mr. Goldman asserts may be quite correct, but while it is unsupported except by suspiciously obvious appeal to irrational sentiment the book must be condemned as wholly unconvincing.

JOHN B. WAITE.

ROMAN LAW IN THE MODERN WORLD, by Charles Phineas Sherman, D. C. L. (Yale), Assistant Professor of Roman Law in Yale University; Member of the Bar of Connecticut, of Massachusetts, and of the United States Supreme Court; Curator of the Yale-Wheeler Library of Roman, Continental European, and Latin-American Law; ex-Instructor of French and Spanish Law in Yale University; ex-Librarian of the Yale Law School Library. In three volumes: Vol. I. History, pp. xxvii, 413; Vol. II. Manual, pp. xxxii, 496; Vol. III. Guides, pp. vii, 315. Boston: Boston Book Co., 1917.

The Spanish-American War with its unexpected and—in some respects—unwelcome result of adding to our territory a number of countries whose basic law was a derivative of the old Roman law, has stimulated our interest in the study of that system and the past twenty years shows a very considerable increase in the literature of the subject. The present work is apparently an attempt to get into convenient and accessible form for the use of students the results of the study of the contact of Roman Law and the Common Law of England in our modern world.

The author addresses himself to the "general reader, the non-professional student, the law student and the law teacher." It may be assumed that Volumes I and II will appeal particularly to the first two classes while the professional student and scholar will find the last volume more useful. The work is arranged on the scheme of the French Civil Code with some modifications suggested by other Continental European codes. The first two volumes are arranged in the usual form of the institutional treatises, giving first the history, then the systematic treatment of fundamental principles. The volume on the history begins with the pre-Roman period and gives a sketch of the growth of the Roman Law in all the European nations and in America, Asia and Africa down to the present time, showing also the many points of contact of Roman Law with English Law in various parts of the world. As this is all crowded into one moderate sized volume the treatment of many themes is necessarily somewhat cursory and the pages are so crowded with bare statements of facts that their appeal to the "general reader" may not be very strong. But the full citation of authorities make this volume useful to those who may wish to go more deeply into the subject, especially if it be used along with the "Subject Guide to Volume I" which forms the first chapter of the third volume.

In the opening chapters of the first volume the author argues the value of Roman Law and of legal history to the present day American lawyer and although he states his case with great perspicacity and cogency, one may wonder whether he has not been betrayed at times by his enthusiasm for his subject into over statements that might be misleading. One who knew nothing of the long discussion concerning the nature of the indebtedness of English law to Roman law might after reading §§ 1-15 and §§ 368-378 readily come to the conclusion that the misleading statement of Sir William Jones [quoted with approval on p. 361] to the effect that the Roman law "is the source of nearly all our English laws \* \* \* not of feudal origin", is a statement of an unchallenged

historical fact. The author's statement (§ 536) that, "Every system of modern corporation law is indeed modern Roman Law" might be interpreted as meaning that there is a proved historical connection between the Roman *universitas* and the modern corporation, with no intimation that the concept may have developed independently in the two systems. The author's combination of Roman-Spanish law with Roman-French law into a "common" law of the Territory of Orleans as a "Roman-French-Spanish law" [cf. § 263] may be due to effort at conciseness of expression but it ignores the influence of the picturesque O'Reilly, Spanish Governor General, upon the history of Louisiana law, and disregards the finding of the Louisiana Supreme Court in *Pecquet v. Pecquet's Ex'r*, 17 La. An. 228, to the effect that, "The laws of Spain are judicially noticed" but "The laws of France must be proved" in that jurisdiction. The statement of the author in Volume II, p. 14, that "Roman law, as found in French law, is the source of any unwritten Louisiana civil law" would seem to be out of harmony with this pronouncement of the Louisiana Supreme Court.

Volume II, arranged on the usual plan of the Continental treatises on "Institutes", has the advantage for an American student of bringing the treatment down to date by the addition of references to the modern Roman Law codes and to cases decided in English jurisdictions in which Roman Law principles are discussed. There is also in Volume III a "Subject Guide to Volume II".

The most valuable part of the work for scholars and teachers of law is Volume III. In addition to the "Subject Guides" for the first two volumes, already mentioned, this contains a "Bibliography of Roman Law" which contains, besides the titles, short characterizations and explanations of the nature of the works cited. The bibliographical features of the entire work are admirable as may well be expected from the author's long service as Librarian of the Yale Law School and Curator of the Yale-Wheeler Library of Roman Law.

J. H. DRAKE.

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THE PSYCHOLOGY OF SPECIAL ABILITIES AND DISABILITIES, by Augusta F. Bronner, Assistant Director, Juvenile Psychopathic Institute, Chicago: Little, Brown, and Co., 1917; pp. vi, 269.

In these times, when so many persons are advocating particular "mental tests" in relation to education, vocational guidance and military fitness, it is refreshing to find a book which does not suggest the addition of a single new test but which uncovers the vast field of information still to be gleaned by the methods already in vogue.

The book primarily calls attention to the rather extreme mental variability which exists among human beings in general. Instead of establishing norms and central tendencies, the author concerns herself with the much more fascinating study of individual differences. These differences may be considered in two ways, first, by showing that an individual is, on the average, so much above or so much below the mental level of his contemporaries; second, by pointing out the inequality of performance of a given person. She

shows, by quoting numerous cases, that a person who is below normal in general may have one or more abilities which test much higher than the rest. By the use of these he may make himself a self-supporting member of society. Likewise, those who are above the common level on the average may have their potholes of special disability. From this standpoint, it may be inferred that the usual educational methods are for the glorification of mediocrity, and the suppression of the feebler minded and of the genius. She gives detailed accounts of special defects in number work, in language ability, in memory, in perception, in visual imagery, in working with concrete material, and on through a considerable number of other special topics.

She points out also the diagnostic value of inequalities of performance, certain peculiarities being symptomatic of poor physical condition, others of defective sense organs, of hysteria, of chorea, of epilepsy, of excessive stimulation, of *Dementia praecox*, of diseases of special portions of the brain. She concludes that in order to be fair to the patient and to make an accurate diagnosis, it is necessary to use in addition to the Binet tests, a number of performance tests, reactions to common sense situations and the extent to which the person has profited by his educational opportunities.

HENRY F. ADAMS.

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THE LAW OF PUBLIC SCHOOLS, by Harvey Courtlandt Voorhees. Boston: Little, Brown & Co., 1916; pp. lvii, 429.

For many years a course in school law was a prerequisite to a teacher's certificate or diploma in our leading normal schools, colleges, and universities; but in recent times its importance as a distinct study has dwindled to the vanishing point, and that, too, notwithstanding many states still require all candidates for certification to pass an examination in the subject. Why school law has declined as a distinct study in institutions preparing teachers is not far to seek. In the first place, the great majority of candidates for teachers' certificates are women who feel little or no practical need for such study, and hence are not interested in it; second, pedagogical literature has increased so enormously in recent years that subjects which make little or no appeal to students have been eliminated; third, the pedagogical skill of teachers of today renders controversies with parents and school boards much less frequent than formerly and hence gives less occasion for legal adjudication; fourth, court decisions defining almost every phase of school relationship, as in the case of the "line fence," have become matters of general information and therefore technical legal knowledge is deemed of minor consequence. But, notwithstanding this decline of the study of school law in institutions aiming to prepare teachers for public school service, a knowledge of it is of vital importance to principals, superintendents, and school boards, and it is to this class that THE LAW OF PUBLIC SCHOOLS should prove of great service.

From the foundation of our federal government education has been construed as a state function, and therefore every state has been free to enact such school laws as best conformed to its ideals, plans, and needs. As a



result there has been little uniformity in the school laws enacted by the several states, though at the present time there is a tendency towards standardization in the main essentials. It was, therefore, no simple task which confronted the author in his attempt to collect and formulate a body of legal decisions and principles which should be sufficiently broad to embrace all states and yet specific enough to be of distinct service to school administrators in all parts of the country. He has, in part, met the problem by numerous citations to court decisions rendered in practically all of the leading states.

The author treats the Law of Public Schools under eleven distinct headings: I General Principles, II School Districts, III School Property, IV School Officers, V School Teachers, VI Pupils, VII Rules and Regulations, VIII Books and Studies, IX School Funds, X School Taxes, and XI Synopses of Principal Statutes. Of these chapters IV, V, VI, VII and III are of distinct merit and thoroughly justify the publication of the book. The facts set forth should become the common knowledge of all superintendents and principals of schools who are forced by the daily performance of their duties to sit in judgment on hundreds of cases affecting the right relations of pupils, teachers, and parents. All the other chapters are of minor importance except the final one, which should be omitted altogether. The matter treated in this chapter is too general and is subject to too frequent modification to be of real worth. If interested in the specific school provisions of another state, the school administrator would be on much safer grounds by consulting the last statutes of the state in question.

The book could be strengthened and rendered more attractive to the average lay administrator by inserting a goodly number of "cases" involving principles which have been the subject of much legal controversy. The mere citation to the "case" or the mere abstract statement of the principles enumerated will fail in many cases to attract the attention or to create the understanding the subject merits. Taken as a whole, however, *THE LAW OF PUBLIC SCHOOLS* should find a place in the library of every school and on the desk of every school administrator who wishes to know and to act according to the law, right, and justice.

A. S. WHITNEY.

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WOOD ON LIMITATIONS, 4th edition by Dewitt C. Moore. Albany: Matthew Bender & Co., 1916; 2 vols., pp. cclii, 1765.

This is a new edition of the well known work by H. G. Wood, which appeared first in 1883. The original edition was in one volume, of about a thousand pages. The second edition was prepared by the author in 1893 and appeared in two volumes. In 1901 a third edition appeared; and now after a longer interval than that between any two former editions, a fourth edition has been issued.

The text as left by Mr. Wood has not been much changed, though some matter has been appropriately shifted into the notes. A large mass of new material, consisting of cases decided since the last prior edition appeared,

has been divided between text and notes, but when using it as the basis for new text the editor has added new sections instead of tampering with the old text. This is a questionable advantage as a method of handling new material. It tends to disturb the unity of the book, the new sections being often mere digests of cases grouped together without any very close connection, related rather vaguely to previous sections of the original text. Most of this material would be more appropriate and conveniently accessible in notes properly placed, although some of it might well be used for amending old sections or adding new ones.

On the other hand, it would seem that notes should not be expanded indefinitely by mere addition of material. A long note, covering several pages should be broken up and paragraphed and organized if it is to be most useful. The book under review, following the prevailing custom, gives too little attention to this feature. The publishers of *Corpus Juris* have shown what can be accomplished in the way of clarifying note material, and text book publishers ought to be able to do as well.

Except for the formal defects due to the two causes just mentioned, it is a satisfactory edition of a very excellent work. Nearly seven thousand new cases have been added in this edition, making it a very valuable repository of recent law.

E. R. SUNDERLAND.

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LEADING CASES ON INTERNATIONAL LAW, by Lawrence B. Evans. Chicago: Callaghan and Company, 1917; pp. xix, 477.

This is the first case-book in the law school sense that has appeared in the field of international law. It is prepared essentially for the lawyer rather than for the statesman. Its key-note is private right and liability rather than public policy.

This purpose of the compilation distinguishes it in several respects from other case-books. It necessarily differs from Pitt Cobbett in that the verbatim opinion of the court is given, and not the author's analysis. It differs from Stowell and Munro in that it contains only the opinions of judicial tribunals in cases before them for decision. Mere statements of events which have received no solution, diplomatic settlements, and even awards of arbitral tribunals, such as are found in the latter work, have no place here. It differs again from Scott in that it is within a compass (102 cases) that makes feasible its use as a basis for the construction of legal principles. It differs from all of these in that its purpose is to train the student in the judicial discussion of the law applicable to given facts, and not merely to illustrate a didactic text.

The book appears admirably adapted to the purpose. Here and there an error may be detected, as "correctly" for "earnestly" on page 331. Obviously the very design of the book precludes a complete covering of the field. There is no word for example concerning the agents of international intercourse. Designed for the use of American law students, the book is subject to the peculiar limitation that only decisions of American and English courts can be profitably included, since only in these courts is international law judicially

discussed in the manner in which such students are trained to think. The arrangement is satisfactory, following closely that usually found in text writers. In selection, there is a blending of old leading cases with more recent decisions. One-third of the cases date since 1900. Only nine of these arose out of the Great War, though the book was not completed until November, 1916. It is probably of sounder utility, though of less interest, on that account.

In one other respect, along with many other law school case-books, this work may possibly be open to criticism. It is that the facts have been too compressed. The student is thereby deprived of the necessity of arriving at essential facts for himself. At the same time there is squeezed out too much of the juice of human interest that stimulates thought and aids memory.

ROBERT T. CRANE.