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## Book Reviews

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## BOOK REVIEWS.

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THE MODERN LEGAL PHILOSOPHY SERIES. Edited by a Committee of the Association of American Law Schools.

I. INTRODUCTION TO THE SCIENCE OF LAW. A Systematic Survey of the Law and Principles of Legal Study. By Carl Gareis, Professor of Law at Munich. Translated from the Third Revised Edition of the German by Albert Kocourek, Lecturer on Jurisprudence in Northwestern University. With an introduction by Roscoe Pound, Story Professor of Law in Harvard University, Boston: The Boston Book Company, 1911, pp. xxix, 375.

II. COMPARATIVE LEGAL PHILOSOPHY. Applied to Legal Institutions. By Luigi Miraglia, Professor of the Philosophy of Law in the University of Naples. Translated from the Italian by John Lisle, of the Philadelphia Bar. With an Introduction by Albert Kocourek, Lecturer on Jurisprudence in Northwestern University. Boston: The Boston Book Company, 1912 pp. xl., 793.

It is not many years since one of the most distinguished Oxford scholars said, "jurisprudence stinks in the nostrils of the practical barrister," and within a decade a one-time colleague of this scholar echoed the same sentiment in a somewhat milder form by saying that "the worth of books on the philosophy of law can not be placed very high." These statements when uttered were received with approbation, by the practical lawyer of course, if he had ever taken the trouble to read the writings of a jurist who would even mention such an esoteric subject, but also by the more careful student of law who had looked in vain for any practical help in the elucidation of the fundamental problems of legal science in writings of this class. But to this student in his nihilistic attitude toward philosophy had been applied the goad of dissatisfaction, with the present chaotic state of our law and the apparent hopelessness of any improvement in it along the line of present methods, and while his faith was weak his hopes were high that something might be found in this despised field of juristic philosophy to remedy existing evils.

Codification or even the much less pretentious scheme for simplifying our law for the learner in an elementary treatise on law, seems out of the question until we know something more of the basic principles of our science. It was only by the labors of Paulus, Modestinus, Ulpian and Papinian in the scientific elaboration of legal principles that the *Corpus Juris Civilis* of the later period was made possible. Savigny maintained with success, in opposition to Thibaut, the thesis that the Germany of his time was not ready for codification because the lawyers of that period knew so little of the real meaning of their own system. The great triumph in that field, the German Civil Code, had to wait nearly a century and is a success because it has this century of careful scientific and philosophic study of legal principles behind it.

The Editorial Committee of the Association of American Law Schools has recognized that if we expect to do anything toward remedying the evils of our system we must have a similar preliminary training in the principles

of our own law as they have been historically developed, and the three volumes of *Essays in Anglo-American Legal History* were published to meet this demand. It may well be said that this series has more than justified its existence in the short period since its publication. But when the same committee came to the presentation of the philosophic basis of law in general it was perfectly evident that we must look to sources other than English for the later developments in this field of knowledge.

The *Modern Legal Philosophy Series*, a prospectus of which appears in the advertising pages of this Review, aims to present to English readers the results of the ripest scholarship of Continental Europe on this subject, and the three volumes that have already appeared make it perfectly evident that American students of law will find here the materials necessary for a thorough grounding in legal principles. Korkunov's *General Theory of Law*, translated and published independently by Dean Hastings of the Law Faculty of the University of Nebraska (reviewed in 8 MICH. LAW REV. 351) has been incorporated in this series as Volume IV.

Of the volumes noted above the one by Gareis, entitled *The Science of Law*, is meant to be an introduction to Continental legal thinking and serves as a preliminary study to the succeeding volumes. The translator has very fortunately hit upon the term "Juristic Survey" as a translation of the "Enzyklopaedie" of the original and has thereby avoided the confusing English literal equivalent of this German term. It is designed to serve the purpose for the German student which our treatises on *Elementary Law* accomplish for the American student, but in the perfection of its finish and the philosophic grasp of the basic principles of law is far superior to anything that has been done for students of the Common Law. The first third of the book is devoted to a systematic survey and classification of the law. In it are considered the subjects of law in general as compared with morals, religion, equity, and social convention, the state and legal order, the sources of law and the application of law. It will be noted that this covers the ground ordinarily covered by the first part of English works on general jurisprudence. The middle third is devoted to the system of civil law in detail. Here it is that the practical purpose of the book as an introduction to the study of German law for the use of beginners shows most plainly. This part follows substantially the order of the German Civil Code in its discussion of the law of persons, of things, of obligations, family law and inheritance, and the statements of abstract principles are illustrated at every point by citations from corresponding parts of the Code. This method of treatment presents but little difficulty to the American student without knowledge of German law since the Code has been made accessible to English readers by the translations of Loewy and of Chung Hui Wang. It has the very great advantage of keeping the abstractions tied to solid ground. The last third of the book is devoted to the public law of the state and in a supplement we have the special law of profession and position and a very interesting and valuable section on the methodology of legal science.

The chief criticism of the book from the American teachers' standpoint would probably be its difficulty as an introductory text. This of course has

no force as applied to beginners in German law for they are all men of university grade. When the good time comes—may it not be too long deferred—that will bring students of like calibre into our first year law work, the book will serve admirably as a model on which to construct a like introduction to our own law, with Common law illustrations instead of those from the Civil Code.

Since the publication of the work of Korkunov and the completion of the translation of the work of Gareis the plan of the entire series has been somewhat elaborated. The Science of Law was made Volume I of the series as being the most typical of the works on juristic survey, the translation of Korkunov was put in the fourth place as the best representative of the general theory of law, and Volumes II and III, *The World's Legal Philosophies*, by Professor Berolzheimer of the University of Berlin, and *Comparative Legal Philosophy*, by Professor Miraglia, of the University of Naples, were designed as a general introduction to the later volumes of the series.

The third volume, which has been finished before the second, has a general introduction to the series which explains and justifies the somewhat ambitious program of the committee. This is followed by a valuable introduction to the translated volume by Albert Kocourek of the Editorial Committee, who is also the translator of Volume I. He discusses the creation and application of law. The introduction to the work of Professor Miraglia gives a summary of the history of general philosophy from the Pre-Socratics down to Schopenhauer. The general part opens with a discussion of the idea of the philosophy of law. Philosophy is the most general and elevated system of the fundamental principles and concepts of the mind. It is the science that systematizes the mother ideas of the particular sciences. The philosophy of law, a part of philosophy, is the science of the highest principles of law. It should not, therefore, be separated from the complexes of positive and historical studies of jurisprudence and of social and political sciences. It is not possible to base the philosophy of law on *a priori* principles alone. The social theory of law is not separable from the juristic. This philosophy of law is the search for first and supreme principles, while the general jurisprudence of the Austimians—among whom Miraglia includes Sir Henry Maine—recognizes only similarities of fact or homonyms, and does not consider reasons. He rightly says that the analysis of ideas in which the English jurisprudence is so valuable never reaches a philosophic height. In the second book Miraglia takes up the several main categories of law; person, property, possession, obligation, contract, family and inheritance. Each is examined from the point of view of the principal philosophies of law. In this part of the book the wide learning of the author is perhaps more in evidence than in the first part. In his discussion of inherent rights the general theories of thinkers from the Sophists to Hobbes, Rousseau, Hegel, Spencer and Vico are cited and criticized. In the chapter on the theories of the incorporeal person there is a similar cosmopolitan range. In his history of property he cites illustrations from Polynesia and India to North America. In his praedial property in land the theories of Wagner, of Spencer, of Henry George and of Loria are contrasted and criticized. The au-

thor shows throughout the book a much greater familiarity with the work of English scholars than is usually possessed by Continental writers and his knowledge of the Continental literature is surpassed by few.

If the volumes of the Legal Philosophy Series already published may be taken as fair representatives of what is to come—and there seems no reason to doubt it—the years of the publication of this series in the future may be referred to as the period when the American bar discovered Continental Europe.

J. H. D.

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GUIDE TO THE LAW AND LEGAL LITERATURE OF GERMANY. By Edwin M. Borchard, Law Librarian of the Library of Congress, Washington: Government Printing Office, 1912, pp. 226.

This is the first of a series of guides to the great collection of foreign law in the Library of Congress. It calls attention to important contributions both in the way of books and periodicals in the English language and to a few standard works in French, but with these exceptions is confined entirely to the German literature of the subject. It is, however, more than a mere catalogue of the works mentioned. The introduction has a keen criticism of our lack of knowledge of comparative law and the philosophy of law. The section on Jurisprudence is an admirable commentary on the literature and the modern development of the subject and may well be read in connection with the articles now appearing from the pen of Professor Pound on the Scope and Purpose of Sociological Jurisprudence. The term Legal Encyclopedia is unfortunately retained in place Juristic Survey, as the caption of the first division of this subject. The section on Legal History is quite as well done as the one on Jurisprudence. This is followed by a bibliographical commentary on the Civil Code, Commercial Code, Criminal Code and the Codes of Procedure. There is an especially interesting account on pp. 164-171, of the reform of criminal law and procedure, a subject which has of late years received so much attention in Germany. A full glossary of German legal terms, pp. 189-211 adds materially to the value of the book. The author says in his preface that he has here retained the terminology adopted by Schuster. The book is throughout a model of its kind and will be invaluable to students of the German legal literature. It may be obtained of the Superintendent of Documents, Government Printing Office, Washington, D. C., for sixty-five cents.

J. H. D.