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Book Reviews

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BOOK REVIEWS.

A SKETCH OF ENGLISH LEGAL HISTORY, by Frederic W. Maitland and Francis C. Montague. Edited with Notes and Appendices by James F. Colby. Pp. x, 229. G. P. Putnam's Sons. New York and London. 1915.

Mr. J. F. Colby, Parker Professor of Law in Dartmouth College, has done a most admirable bit of work. There has long been need of a good introductory study of English Legal History. The well-known works of Pollock and Maitland and Holdsworth are too technical for the beginner, while Jenks's *Short History of English Law*, though of brief compass, fails through an attempt to treat too many topics. It was a happy inspiration which led Mr. Colby to bring together in one brief volume the series of articles contributed to *Trail's Social England* by the late Professor Maitland and Professor Montague. These articles, scattered as they were through the large volumes of "*Social England*," were not easily available to the student. It is true that Professor Maitland's sketch was reprinted in Mr. Fisher's edition of his miscellaneous writings (*Collected Papers of F. W. Maitland*, II; 417-496), but it is a great advantage to have it in one single volume together with the articles by Professor Montague which bring the sketch of legal history down to the end of the nineteenth century.

Maitland's work is, of course, well known, and the present sketch, written in his tense, nervous style, will command the admiration of every reader. By comparison, Mr. Montague is somewhat disappointing. His style is not so graphic; it will scarcely fulfill the expectations of those who remember his brilliant introduction to *Bentham's Fragment on Government*. Mr. Colby's work as editor is well done. He has supplemented the text by inserting extracts from the works of Pollock and Maitland and Jenks. In the appendices he has given useful extracts to be used as supplementary reading. His notes are brief and serve to explain allusions which might baffle the beginner. Furthermore, he has added to each chapter a list of readings which is most suggestive.

It may seem captious to make any criticism of so excellent a book. We think, however, that Mr. Colby has made somewhat too ready use of *Taswell-Langmead's Constitutional History* when it might have been better to quote a later work. It would seem also that the unsuspecting student should not be referred (e.g., p. 43, note 2) to the *Edition of Bracton* by Sir Travers Twiss without a word of caution. Again, to define benefit of clergy (p. 73, note 1) as "a privilege from capital punishment granted to all who could read" is certainly misleading and actually untrue of that institution in the time of Henry II. In the main, however, the work of the editor is very well done. Mr. Colby has placed all students of Legal History deeply in his debt.

W. B.

BELGIUM NEUTRAL AND LOYAL—THE WAR OF 1914, by Émile Waxweiler, Director of the Solvay Institute of Sociology at Brussels, Member of the Royal Academy of Belgium. New York, G. P. Putnam's Sons, 1915; pp. xi, 324.

This volume by a distinguished Belgian scholar of German training and associations, which has already appeared in French and German, stands out from among the scores of books relating to the outbreak of the war. Considering the provocation to be otherwise, the author is always temperate even when describing the horrors to which his country has been subjected. There is throughout the book a judicial attitude, almost an air of detachment, which few among the eyewitnesses and victims of the greatest crime of modern times, who have written about these things, have been able to maintain. This self-restraint of the writer adds great force to his arguments.

Belgium was obliged to be neutral by the treaty of 1839, and she was bound to protect this neutrality. Dr. WAXWEILER traces Belgium's attitude toward the treaty and shows that at no time before the war was she accused of failing to live up to her obligations. After the occupation of Brussels her loyalty was questioned, and thus insult was added to injury. Much has been made of some documents found by the Germans relating to certain conversations had with the British military attaché. "Conversations" have been twisted into "conventions," and political arrangements have been alleged between Belgium and Great Britain. This matter is patiently and carefully examined and the conclusions ought to convince any fair-minded person. The second part of the book is a consideration of German acts in Belgium: treatment of the civil population, destruction of ancient and artistic monuments, fines, levies, and exactions, as measured by the standard of The Hague Convention, which stated that war should be conducted according to "the laws of humanity and the requirements of the public conscience." Perhaps these are two very different standards. At any rate, such a standard as the first the German War Book denounces as puling childishness. To those who agree with the German War Book this part of the work will not appeal. But it ought to appeal to all those who have an interest in humanity.

J. S. R.

THE MONROE DOCTRINE, AN INTERPRETATION, by Albert Bushnell Hart, Ph.D., Litt.D., LL.D., Professor of the Science of Government in Harvard University. Boston: Little, Brown & Company, 1916; pp. xiv, 445.

Whatever the Monroe Doctrine meant at the beginning, or at the various times in which it has been "invoked," it has come to include, or at least to color, almost everything connected with the policy of the United States toward political conditions in the Western Hemisphere. It remained for a German, KRAUS, to write the most elaborate volume upon the subject. Therein one will find all of the various stages in the development of the doctrine carefully classified and labeled. Professor HART follows closely upon the heels of Dr. KRAUS, and while his work lacks the systematic *Grund-*

lichkeit of the German account, it will bear favorable comparison with it as to scope and general treatment, and it is decidedly more suggestive.

The author is not one of those who regard the Monroe Doctrine as an "obsolete shibboleth." In earlier essays Professor HART has written much about the doctrine and in this book are amplified the principles which he had formerly sketched. The foundation is the "Doctrine of the Two Spheres," American and European. The declaration of 1823 was based upon a set of conditions which were transitory, it is true, but they gave rise to a "Doctrine of Permanent Interest" which has taken protean shapes—Polk Doctrine, Grant Doctrine, Blaine Doctrine, Olney Doctrine. Each differed from the Monroe-Adams declaration, but each having a common factor based upon the original idea, became effective because linked with a doctrine of permanent interest to the United States. It has no doubt been unevenly applied, but "it is simply a re-statement of a time-hallowed European and Asiatic principle." This statement recalls the association, made by the late Charles FRANCIS ADAMS, of the Monroe Doctrine and Mommson's Law. One conclusion deserves to be quoted: "Briefly put, the Monroe Doctrine is a formula which expresses a fact, not a policy. The fact is inherent in the political geography of the Americas and in the conditions of modern warfare. Even so peaceful a country as the United States, which desires no war and is bound to suffer heavily from any war in which she engages, whether victorious or defeated, may not have the choice. Peace can be maintained only by convincing Germany and Japan, which are the two powers most likely to be moved by an ambition to possess American territory. But the United States will defend her interests even though they seem at first only indirectly affected. If we are not prepared to take that ground, the Monroe Doctrine is dead." *Ergo*, preparedness, lest like some other doctrines put forth by the United States in the not distant past, it is a paper doctrine only. The Monroe Doctrine must be interpreted in terms of the world as it is.

J. S. R.

PROBLEMS IN THE LAW OF CONTRACTS, by Henry Winthrop Ballantine, Professor of Law in the University of Wisconsin. The Lawyers' Cooperative Publishing Co., Rochester, N. Y.; 1915; pp. 1, 363.

The substance of this volume can be best described in the words of the author, as, "a collection of concrete problems, arranged for study, review, and class-room discussion, in connection with case-books, text-books, or lectures with reference notes." Its aim is to furnish to students "more thorough drill in the actual application of the authorities and principles of law which they are studying to varied situations and sets of fact."

The greatest problem which confronts the teacher himself is that of inducing the students to think. Most teachers have come to realize that law is not, after all, a body of principles, already formulated somewhere in the reports, and needing merely to be applied to the facts in hand; but that it is a progressive development of new principles (or, if one choose, new applications of the one Blackstonian principle, "that man should pursue his own

true and substantial happiness") constantly going on. Most of them, it is safe to assume, train along this theory by having the student reason, deductively, to the proper adjudication of cases put to him—*de novo*, so far as he is concerned.

In the writer's opinion, this training in reasoning from known principles, or adjudications, to new ones, will become eventually even more fundamental in legal instruction. The difficulty in present methods, however, is that the hypothetical cases are put to students in class, where whatever real reasoning they do in answer must be extemporaneous. Future case-books will undoubtedly contain some, at least, of these problems to be pondered over in advance of class. Mr. BALLANTINE's book is a long step in this direction, a volume wholly of these problems with references to decided cases by which the answers may be checked and corrected to accord with practice—and presumably, therefore, with reason.

For the student who will use it, the book is an invaluable aid toward a true ability in deductive ascertainment of adjudications which are "according to law," and, in consequence, it would be of greater worth in preparation for examinations of the better law-schools than any "quizzer" the writer has even seen.

For the teacher who has not time or facility to work out hypothetical problems of his own, the book furnishes a most usable source of supply, with reference to authority on which to support the answers. J. B. W.