REVIEWS AND NOTICES

Medical Negligence: Being the Law of Negligence in Relation to the Medical Profession and Hospitals. By the RT. HON. LORD NATHAN, P.C., with the collaboration of ANTHONY R. BARROWCLOUGH, B.A. London: Butterworth & Co. (Publishers) Limited. Toronto: Butterworth & Co. (Canada) Limited. 1957. Pp. xxxi, 218. ($8.75)

The author states in the preface that the purposes of this book are two-fold: first, to present an objective and comprehensive statement of the law relating to the liability of medical practitioners and medical institutions for professional negligence; secondly, to avoid as far as possible "obscure language, voluminous footnotes and the rest" in the hope that the book will be readable and useful to members of the medical and nursing professions and to hospital administrators. This reviewer fully agrees that a book of this kind should be written so as to be intelligible to laymen, and the author has succeeded in accomplishing this somewhat difficult task. Thus, matters such as duty and standard of care, the classes and instances of negligent conduct, proof of negligence, *res ipsa loquitur*, liability for hospital staff, consent to treatment, and numerous other subjects are discussed in non-technical language which medical men should have no difficulty in understanding.

The book will also be useful to lawyers. Dealing with liability in contract and tort the author states (p. 15) that "in the great majority of cases the duty owed by a medical man or a medical institution towards the patient is the same whether there exists a contract between them or not". In other words, the duty of care owed to a patient is independent of contract. This important point is well established but is sometimes overlooked.

Of considerable interest is the chapter on liability of a hospital for its staff, in particular for negligence of consulting and visiting practitioners. In Canada (including Quebec) a hospital is now liable for the acts and omissions of its employees (whether professional or otherwise) in the regular performance of their duties. But, as a general rule, it is not liable for the negligence of visiting or consulting physicians and surgeons. Doctors in this category

are usually held to be independent contractors under contracts for services as distinct from resident physicians, surgeons, interns and nurses under contracts of service. There have been several decisions in England to the same effect.[1] Nevertheless, some English judges have expressed the view that the admitted extension of liability[2] of an employer for the negligence of an independent contractor should be applied to hospitals. It has been contended that since a hospital is under a duty to treat its patients it cannot evade its responsibility by delegating that duty to someone else, whether it be to an employee under a contract of service or to an independent contractor under a contract for services.[3] But there is no doubt that a hospital is not liable, either in England or in Canada, for negligence of a physician or surgeon engaged and paid by a patient, notwithstanding the fact that he uses the operating room, nursing services and other facilities provided by the hospital.[4]

In the introductory chapter it is stated that frequent references are made to Scottish, Dominion and American decisions. However, only about 170 cases are cited and comparatively few references are made to works of other medico-legal writers. In all probability the author purposely limited the number of citations in order to make the book more attractive to the lay reader.

In so far as Canadian decisions are concerned, it must be noted that in referring to two important cases, *Crits* v. *Sylvester*[5] and *Wilson* v. *Swanson*,[6] the author has dealt only with the trial-court judgments. The book is dated 1957 and each of those cases was appealed and finally decided by the Supreme Court of Canada in 1956. The *Crits* case was concerned with a patient who was injured by an explosion due to a discharge of static electricity in an operating room. On page 92 it is stated *inter alia* that the court held that there was no negligence on the part of the anesthetist. This holding was reversed, however, by the Ontario Court of Appeal, which applied *res ipsa loquitur*, and held the anesthetist liable.[7] The latter judgment was unanimously affirmed by the Supreme Court.[8] In the *Swanson* case the question was whether,

[1] *E.g.* see *Collins* v. *Herts C.C. et al.*, [1947] K.B. 598 (Eng.); *Gold* v. *Essex C.C.*, [1942] 2 All E.R. 237 (Eng. C.A.). See also Salmond on Torts (11th ed.) p. 101.

[2] Liability in such cases is direct or "personal"—not vicarious. "The employer is not liable for the contractor's breach of duty; he is liable because he has himself broken his duty": Salmond on Torts (11th ed.) p. 133.

[3] *E.g.*, Denning L.J. in *Cassidy* v. *Ministry of Health*, [1951] 1 All E.R. 574 (Eng. C.A.); Morris L.J. in *Roe* v. *Minister of Health et al.*, [1954] 2 All E.R. 131 (Eng. C.A.).

[4] *E.g.*, *Petite* v. *MacLeod et al.*, [1955] 1 D.L.R. 147 (N.S. Sup. Ct.); *Cassidy* v. *Ministry of Health*, *ante*, footnote 3.

[5] [1956] S.C.R. 991.

[6] [1956] S.C.R. 804.

[7] [1956] O.R. 132.

[8] *Ante*, footnote 5.

in the particular circumstances that existed, a surgeon was justified in proceeding with an extensive abdominal operation in the mistaken belief that cancer was present. The trial court judgment (discussed on page 24 of the book) held that there was no negligence on the part of the surgeon. That decision was reversed by the British Columbia Court of Appeal,[9] but was later restored by a three to two majority of the Supreme Court.[10] No doubt the book was completed before 1957. In any event, both cases could be brought up to date in a second edition.

It should be recalled that English hospitals operated by the Ministry of Health under the terms of the National Health Service Act are subject to numerous rules and regulations not applicable in Canada. However, the rules and principles of liability for medical negligence are much the same, and the author has referred to numerous decisions in this country. There are not too many works dealing exclusively with medical negligence, and comparatively few have been written in such a manner as to be useful to members of both the legal and medical professions. The book under review can be included in the latter category and should be a worthwhile addition to any law or medical library.

W. C. J. MEREDITH*

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Criminal Procedure Manual: A Manual of Instruction for Constables, Justices of the Peace, Police Magistrates, Prosecutors and Lawyers, with diagrams to illustrate the procedure in criminal cases. By A. E. POPPLE, LL.B. Second edition. Toronto: The Carswell Company Limited. 1956. Pp. xliv, 423. ($11.50)

No man can very well serve two masters, and even Mr. Popple, whose contributions to the elucidation of the criminal law are so well known, must have encountered considerable difficulty in his attempt to produce a book which would be of use to both lawyer and layman. The fact is that the *Criminal Procedure Manual*—"A Manual of Instruction for Constables, Justices of the Peace, Police Magistrates, Prosecutors and Lawyers"—suffers from its dual destination. On the one hand, while the volume provides a wealth of information for the non-lawyer, he may get bogged down in some of the technical detail. The professional reader, on the other, may be forgiven if he feels some annoyance at finding a diagram of a justice's courtroom, complete with the proper places for ink, pen and pencils.

[9] (1956), 18 W.W.R. 49 (*sub nom.*, *Swanson* v. *X*), 2 D.L.R. (2d) 193.
[10] *Ante*, footnote 6.
*W. C. J. Meredith, Q.C., Dean, Faculty of Law, McGill University.

Having said that, let me add at once that no justice or magistrate should be without this book, which, if properly used, will help him to avoid the pitfalls awaiting those who must venture on the more intricate paths of procedure. The sections, therefore, which deal with those proceedings that are frequently conducted by persons outside the legal profession are probably the most useful of the manual's many parts. In making this observation, I am not unmindful that the book also contains generous portions both of substantive law and of evidence, written in the same concise way we have come to expect of the learned author.

It is inevitable, however, to question the wisdom of including more than a bare minimum of substantive law and of evidence in a book on procedure. For myself, I think I should have preferred to see more detail on questions of procedure and less on points of law dealt with already in *Snow's Criminal Code of Canada*[1] or in *Canadian Criminal Evidence*,[2] both of which were prepared by the same author. Indeed, one of the complaints heard about the latter volume—and it is a good volume—was that it contained a certain amount of repetition. The need, therefore, to repeat some things once again, although in a different book, is questionable.

To be more specific: if the book is written for laymen engaged in the administration of justice, then the author should not have concerned himself with such matters, for instance, as a judge's directions to a jury (pp. 264-343) or the *grounds* of appeal (pp. 360-379). These are matters of little concern to police officers, justices of the peace or even magistrates. As for the lawyer, he has other—and more detailed—publications available to help him in the preparation of his case. All this is not to say that procedural matters should not have been included merely because they are beyond the stages where J.P.'s and P.M.'s may act, but that they should be dealt with in a more simplified form and without making undue inroads on other branches of the law.

There is little doubt in the mind of this reviewer—and he speaks with respect—that a good many criminal cases are lost because of some advocates' ignorance of procedure and evidence. Perhaps this would not occur if our law schools would allot more time for the teaching of criminal law. In the meantime, the practitioner who deals but occasionally with criminal matters will find much that is useful in the *Criminal Procedure Manual* for the conduct of his case.

FRED KAUFMAN*

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[1] The Sixth edition of this work was reviewed by P. J. O Hearn at (1955), 33 Can. Bar Rev. 734.

[2] For a review of the second edition, see Austin Morley Cooper (1955), 33 *ibid.* 110.

*Of Cohen & Leithman, Montreal.

The Lion and the Throne: The Life and Times of Sir Edward Coke (1552-1634). By CATHERINE DRINKER BOWEN. Boston: Little, Brown and Company. Toronto: Little, Brown & Company (Canada) Limited. Pp. xiii, 652. ($6.75)

Catherine Drinker Bowen's portrayal of Sir Edward Coke and his times has enriched the literature of legal and political biography. A product of scholarly research, the book is written in a narrative style which delights the reader. It is a vivid presentation of the struggles aroused by the crucial political, religious, legal and constitutional issues of a turbulent age—the latter years of the first Elizabeth, the reign of James I and the earlier years of the reign of Charles I—and of the highly influential rôle played by that complex personality, Edward Coke.

To write an objective biography of Coke is no mean achievement. Macaulay describes him, in his essay on Francis Bacon, in these words: "Pedant, bigot, and brute as he was, he had qualities which bore a strong though a very disagreeable resemblance to some of the highest virtues which a public man can possess. He was an exception to a maxim which we believe to be generally true, that those who trample on the helpless are disposed to cringe to the powerful. He behaved with gross rudeness to his juniors at the bar, and with execrable cruelty to prisoners on trial for their lives. But he stood up manfully against the King and the King's favourites. No man of that age appeared to so little advantage when he was opposed to an inferior, and was in the wrong. But, on the other hand, it is but fair to admit that no man of that age made so creditable a figure when he was opposed to a superior, and happened to be in the right. On such occasions, his half-suppressed insolence and his impracticable obstinacy had a repectable and interesting appearance, when compared with the abject servility of the bar and of the bench."[1]

Born in Norfolk in 1552, when the Reformation settlement was still in danger, Coke died eighty-two years later, in 1634, on the eve of the Civil Wars. His was a long and turbulent life in a turbulent age. It was an era of profound change; the sixteenth century has been called the dividing line between the mediaeval and the modern world. In the England of that age Coke played a powerful rôle. In the words of Professor Corwin, "always he was Edward Coke, an outstanding, aggressive personality, with a fixed determination to make himself mightily felt in whatever place of authority he might occupy".[2] In this he succeeded in each of four careers.

Learned in the law, able and ambitious, he attained almost in-

[1] Thomas Babington Macaulay: Critical and Historical Essays (Toronto, J. M. Dent & Sons, Everyman's Library Edition), Vol. 2, p. 236.

[2] Edward S. Corwin: The "Higher Law" Background of American Constitutional Law (Ithaca: Cornell University Press) p. 42.

stantaneous success as an advocate following his call to the bar in 1578. He soon acquired a highly lucrative practice and figured in the major lawsuits of his time. In 1581 he was one of counsel for the successful party in *Shelley's* Case. In 1585 he became Recorder of Coventry. In 1589 he was elected to Parliament, where he sat with Robert Cecil, Walter Raleigh and Francis Bacon, who was to be his great rival in law, politics and love.

Appointed Solicitor-General in 1592, Coke entered upon his career as a law officer of the Crown. Speaker of the House of Commons in 1593, he became Attorney-General in the following year, defeating the claims of his rival Bacon. He continued in this office until 1606, "the most brutal Attorney-General who ever served the Stuarts, though afterwards the proudest Judge who ever withstood their usurpations".[3]

Coke was Attorney-General in an age of conspiracy, an age of fear—fear of the Spaniard, fear of the Roman Catholic. It was a period marked by sensational political trials—the trials of Dr. Lopez, the Queen's physician, of the Earl of Essex, of Sir Walter Raleigh, of Guy Fawkes, of Father Garnett, and others. The charge was treason and Coke was prosecutor. Subservient to the royal interest, he was cruel and his addresses to the jury often rabble-rousing. Mrs. Bowen's account of the trials is masterly.

In 1606 James I appointed Coke Chief Justice of the Court of Common Pleas and, almost overnight, the Attorney-General who had guarded and defended the King's Prerogative changed his direction. He fought doggedly to maintain the supremacy of the Common Law against the royal power. "Only one thing was dearer to Coke than promotion and power and that was the Common Law. For it he sacrificed place and royal favour. . . . In essence the quarrel was this: James and Charles held, with the students of Roman Law, that the will of the Prince was the source of law, and that the Judges were 'lions under the throne', bound to speak as he directed them. Coke, on the other hand, in the spirit of the English Common Law, conceived of law as having an independent existence of its own, set above the King as well as above his subjects, and bound to judge impartially between them. Laws were alterable only by the High Court of Parliament."[4] Coke's basic doctrine was " 'that the King hath no prerogative, but that which the law and the land follows', and that of this the judges and not the king were the authorized interpreters".[5]

Coke's struggle for the independence of the judiciary was brave and tenacious. Of all the judges he alone dared reply to the King,

[3] G. M. Trevelyan: England Under the Stuarts (London: Methuen & Co. Ltd., 13th ed.) p. 112.

[4] G. M. Trevelyan: History of England (Toronto: Longmans, Green & Co. Ltd., 1926) p. 391.

[5] Corwin, *op. cit.*, p. 43.

in answer to a question whether the King could stay proceedings in certain cases, "that when that case should be, he would do that which should be fit for a judge to do".[6] His so-called dictum in *Dr. Bonham's* Case,[7] "that in many cases, the common law will controul acts of parliament, and sometimes adjudge them to be utterly void", was destined to become "the most important single source of the notion of judicial review".[8] Hence Coke's importance in American constitutional law and theory.

In 1613 he was appointed Chief Justice of the King's Bench. But his conflicts with the absolutist principles of James I, with the Star Chamber and with Chancery, in consequence of his prohibitions removing suits from the prerogative courts, made his dismissal in 1616 inevitable. Bacon felt triumphant; he was soon to be Lord Chancellor. But Coke's career was not at an end.

In 1621, after an interval of ten years, the urgent need for funds compelled James to summon a parliament. Coke, approaching the age of seventy, now entered upon his fourth and last career. He was elected to the Commons, where, as chairman of the Committee of Grievances, his prestige was very great. He was a member of the committee which impeached Bacon. He led the opposition to the King in defending the liberties of Parliament. The Declaration and Remonstrance asserting these liberties resulted in his imprisonment in the Tower for seven months. But he returned to the Commons to be the principal author of the Petition of Right, which Charles I was compelled to accept in 1628, and which remains to this day a landmark of the constitution.

Coke retired in 1628 to devote himself to the completion of his famous Institutes of the Laws of England, of which the first was his "Commentary upon Littleton", and of his Reports, which had been issued serially from 1600 to 1616. He had lived in the law for more than fifty years and the law was inseparable from his life. In the words of Lord Birkenhead: "In all his writings his dominant purpose appears to have been to sum up all the available material so as to render it accessible to working lawyers. . . . Coke, in his published writings and reports, so gathered up the past precedents, and so bound them together for the benefit of his own generation, that he transferred the Common Law into a living system capable of regulating the lives and fortunes of a developed civilization extending over the world. It must be conceded that he was not the first nor was he alone in this work. . . . Still, it is his glory that he excelled all others because he knew the wisdom of the past, and gathered it into his works while it could still be garnered, and that, while he was protecting the Common Law from encroachments on all sides, he was laying down those principles of civil liberties which he had read

[6] The Case of Commendams (1616), Hob. 140.
[7] (1610), 8 Co. Rep. 107a. [8] Corwin, *op. cit.*, p. 57.

in the ancient precedents and which were soon to be consecrated by blood. He was the great exponent of the law which is the keystone of the Constitution and the safeguard of liberty."[9]

Sir Edward Coke died in 1634. A dominant figure in public life under three monarchs, he accumulated large estates and great prestige. His private life was unenviable. There were the undignified lawsuits between him and Lady Hatton, his second wife, all based on greed. There was the kidnapping by The Lord Coke, as he was called, of his own daughter! These stories appear incredible, but there was much that was incredible about the age in which the oracle of the Common Law lived. Mrs. Bowen's work presents the age and the oracle very vividly.

H. CARL GOLDENBERG*

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The Civil Law System: Cases and Materials for the Comparative Study of Law. By ARTHUR TAYLOR VON MEHREN. New York: Prentice-Hall, Inc. 1957. Pp. xxii, 922. ($11.00 U.S.)

When the faculty of the Harvard Law School decided, immediately after the war, to introduce a course in comparative law, lengthy consideration was given the exact nature of the course and the type of teacher who should offer it. A number of outstanding courses on comparative law were already being offered in American law schools by distinguished civil-law jurists who had made their homes in the United States, usually as refugees from Nazi persecution. The existing courses were, however, intended primarily for specialists, other law professors or graduate students, whereas the Harvard design was for one that could be taken by the ordinary LL.B. student as an elective seminar in his second or third year. In these circumstances it was felt that there might be some advantages in a course offered by a teacher whose primary training had been in the common law and who should, therefore, have a special understanding of the problem of communicating ideas to common-law students. Acting on this premise, the Harvard faculty invited Arthur von Mehren, then a young Harvard graduate, to enter on a long-range plan to make himself an expert in the area of comparative law. Mr. von Mehren was taken on the strength of the Harvard faculty immediately and then sent to Europe for three years to study civil-law systems in actual operation—first in Switzerland, and then successively in Germany and France. The present volume is the result of Professor von Mehren's

[9] The Earl of Birkenhead: Fourteen English Judges (London: Cassell & Company, Ltd., 1926) pp. 43-44.

*H. Carl Goldenberg, O.B.E., Q.C., of Goldenberg & Yelin, Montreal.

unique experience—the product of some ten years of research and teaching.

His approach to the civil law, and to comparative law generally, is jurisprudential in the best sense of the word, looking to the particular responses to social problems of legal systems within the communities they are serving. In its emphasis on the instrumental application of rules and techniques, as a means of adjusting community relations and ordering social conduct, the book is in the full stream of American sociological jurisprudence, as Dean Roscoe Pound recognizes in his foreword.

Professor von Mehren's method is selective rather than comprehensive. He considers the two principal civil-law countries—France and Germany—with only the briefest of glances at the Swiss Code and classical Roman law. The essential limitation of his study to France and Germany (a decision to a certain extent dictated by considerations of space) has this main justification, that the chief civil-law systems of the modern world—including countries as far removed from each other as Soviet Russia, Japan and Egypt—stem from one or other of these two major sources. Purists may perhaps cavil at his elimination of classical Roman law, except for some brief discussion of the Roman categories of contract and the Roman concept of *causa*—something certainly is lost in historical perspective by the omission, but anyone who has (like the present reviewer) been subjected to the standard Roman-law courses that were once compulsory fare in Commonwealth law schools can understand and partly sympathize with the widespread American feeling the the teaching of the principles of Roman law has been a barren piling up of detail remote from the social problems, not merely of the present day, but even of the periods in which they evolved in Rome itself.

In the area of substantive law, Professor von Mehren deals only with contracts and delicts, apart from a lengthy chapter on French constitutional and administrative law, which presents in clear form the essentials of the complicated court structure of France. I have discussed this particular limitation with the author and his point is that, after several years of teaching the civil law to LL.B. students, he has found it better to cover a few fundamental topics exhaustively, with the same thoroughness that Continental professors would in teaching their own students. The alternative of attempting to teach a wide assortment of scattered topics has too often reduced comparative law, so to speak, to a butterfly collection of fragmented details and odd facts. For the man who grasps after detail, Professor von Mehren's solution would be to offer a second and more advanced elective in comparative law in the third year of the LL.B. course.

This is a scholarly work marked by careful research and deep

thinking at every stage. The author's emphasis is throughout on the presentation of concrete problems. His materials stress equally the actual judgments of the courts and doctrinal writings, including in the latter term texts and the reports of legislative commissions and scientific bodies. North American students of the philosophy of law have believed since Roscoe Pound's hey-day that there were many parallels in the development of substantive principles of private law in all advanced technological civilizations. Professor von Mehren's volume confirms this thesis case by case for France, Germany and the United States, with an empirical demonstration that will satisfy the most exacting American sociological jurist. Each main subject discussed has the benefit of a synoptic chapter in which historical trends are analysed by the author and the main policy alternatives indicated. One may, indeed, hope that after the successful publication of this monumental casebook Professor von Mehren will further develop his own doctrinal discussions and collect them in a single, interpretive treatise on the common-law and civil-law systems.

EDWARD MCWHINNEY*

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Roman Foundations of Modern Law. By H. F. JOLOWICZ, LL.D., D.C.L. Oxford: The Clarendon Press. Toronto: Oxford University Press. 1957. Pp. xx, 217. ($5.25)

L'ouvrage que l'éminent professeur d'Oxford avait projeté, mais que la mort est venue interrompre, devait étudier l'ensemble des rapports entre le droit romain et les droits européens. Seule la première partie toutefois portant sur les sources du droit, le droit des personnes et celui de la famille, à l'exception d'un chapitre consacré à la tutelle des incapables, a pu en être achevé. Les professeurs Lawson et Daube en ont assuré la publication.

"To explain the Roman system in so far as it has become the basis of modern law": tel est le but que s'était assigné l'auteur (p. iii). Il se proposait, en d'autres termes, de dégager des droits européens les éléments qui constituent l'héritage de Rome. Dans cette perspective, on comprend que toute recherche sur la formation du droit antérieur à Justinien lui ait paru inutile: il devait prendre pour seule base de son étude le droit du Corpus Juris et en suivre les destinées jusqu'à la rédaction des codes, à l'époque contemporaine. La pensée des interprètes du droit romain, depuis les glossateurs jusqu'aux Pandectistes allemands du XIXème siècle, pourtant primordiale pour la compréhension des droits continentaux, a été jusqu'ici souvent négligée; et l'auteur, en la re-

*Of the Faculty of Law, University of Toronto.

prenant, nous a montré l'immense intérêt qu'elle pouvait présenter. Nous n'en voulons citer pour preuve que le chapitre VIII qui retrace l'étrange fortune de la division tripartite des Institutes de Gaius ("Omne autem jus quo utimur vel ad personas pertinet, vel ad res, vel ad actiones": I, 8) jusqu'à nos jours. Il contient des vues originales et complète fort utilement l'étude de M. Villey (*Recherches sur la littérature didactique du droit romain*, pp. 31 sq.) sur les origines de cette division.

Ayant à traiter du droit de la famille, l'auteur ne pouvait non plus passer sous silence l'influence de l'Eglise en ce domaine. Si le droit canon a joué, en matière de mariage surtout, un rôle prépondérant, c'est souvent en utilisant, de façon parfois curieuse d'ailleurs, des conceptions ou même des règles romaines. Ces conceptions et ces règles, reprises par les juristes de l'époque moderne, ont été transformées à nouveau par eux et sont passées sous cette forme dans nos codes. L'exemple le plus fameux, en France, de ces théories élaborées par les auteurs de l'Ancien Droit est certainement la distinction du mariage envisagé comme sacrement et comme contrat, distinction qui a finalement permis la sécularisation du mariage par l'Assemblée Constituante. On regrettera peut-être que l'auteur n'ait pas cru bon d'insister davantage sur cette dernière étape de l'évolution du droit romano-canonique.

Un autre domaine où le droit canon a joué un rôle décisif est celui de la procédure. On sait en effet que les tribunaux ecclésiastiques ont emprunté à la procédure extraordinaire du Bas-Empire ses principales règles et que c'est précisément de la procédure canonique qu'est issue notre procédure moderne. Mais cette histoire est beaucoup moins bien connue que celle du mariage et il eut été intéressant que l'auteur nous retraçât les principales phases de son développement. Il explique son silence en disant: "in this sphere the influence of Roman on modern law is too indirect to be worth tracing without description of intermediate, especially Canonist, developments" (p. 82). Cette explication nous paraît d'autant plus surprenante qu'il adopte le point de vue exactement contraire à propos du mariage (p. 141). Nous voulons bien admettre avec l'auteur que l'enseignement du droit romain d'un point de vue purement historique a considérablement gêné la compréhension des systèmes juridiques européens (p. iii), mais il nous semble que ce n'est pas en passant sous silence les douze siècles qui séparent le droit de Justinien de nos codes modernes qu'on pourra aider à la compréhension de ces derniers. Il peut être intéressant de mettre en parallèle le droit romain et les droits modernes, comme l'ont fait, par exemple, MM. Buckland et McNair dans leur ouvrage: *Roman Law and Common Law*, mais on n'en aura pas pour autant montré la filiation de l'un à l'autre.

Cette filiation d'ailleurs, particulièrement nette dans un domaine comme celui des obligations, l'est par contre beaucoup moins lorsqu'il s'agit notamment de l'état des personnes. En cette matière, la réception du droit romain s'est faite de façon essentiellement fragmentaire. Les mêmes règles ont eu, selon les régions, des sorts bien différents; et c'est ainsi que telle disposition, reçue en France, ne l'a pas été en Allemagne ou inversement. C'est un phénomène qui est attribuable, pensons-nous, en partie au degré de développement des coutumes locales, rendant par le fait même inutiles des emprunts considérables au droit romain.

Si la méthode de l'auteur, qui consiste à prendre pour termes de comparaison plusieurs systèmes juridiques, peut présenter l'inconvénient d'avoir à se limiter à des rapprochements superficiels, elle offre ici au contraire l'avantage de lui permettre de tracer en quelque sorte la carte de la pénétration du droit romain en Europe. On aurait aimé toutefois qu'il dégageât de façon précise les facteurs qui ont joué en faveur ou à l'encontre de la réception de telle ou telle règle romaine.

L'ouvrage du professeur Jolowicz n'étant pas écrit spécialement à l'intention des romanistes, sa lecture sera certainement appréciée de tous les juristes soucieux de connaître quelques-unes des sources du droit qu'ils appliquent. Les historiens du droit, de leur côté, y prendront aussi intérêt pour les vues originales qu'il apporte souvent sur ce que nous appellerons, en raison de l'amenuisement sans cesse croissant des liens qui unissent le droit romain aux droits modernes, les destinées du droit romain en Occident.

ANDRÉ MOREL*

*André Morel, LL.L. (Montréal), M.A. (droit) (Montréal), LL.D. (Paris), assistant-professeur, Faculté de droit, Université de Montréal.