RECENT LITERATURE.

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The Constitution of the United States. By James M. Beck. Geo. H. Doran Co., New York.

During the first year of the war the present Solicitor-General of the United States suddenly gained for himself a worldwide reputation by the publication of *The Evidence in the Case,* a brilliant and judicial exposition of the Allied point of view, which exercised an immense influence upon the mind of his own country and the whole neutral world. In the present volume of lectures he appears before us in the rôle of an interpreter, explaining to an audience of English lawyers the main principles that underlie the American Constitution.

As Mr. Beck points out, very few educated Englishmen know anything whatever about the Constitution of the United States. We may add that the same criticism is true generally of Canadians, and it is much to be regretted that more space has not been found in our scheme of education for a reasoned and sympathetic study of American institutions. The fact that our own federal system is fundamentally different from the American is all the more reason for studying both. The statesmen of the Quebec Conference knew the American Constitution, and their knowledge is built up into the structure of our own. Where they decided to differ from the model before them they did so for weighty reasons, and we cannot really appreciate the nature of Canadian federalism unless we understand the main principles of the great Constitution to which our own forms such a striking contrast. Furthermore, we must remember that the men who framed the Constitution of the Australian Commonwealth deliberately modelled their system upon that of the United States. In many respects they turned from the Canadian to the American example. Finally we may note that the declaration of "Fundamental Rights," which forms the first section of the new Irish Constitution, is clearly framed after American models. In every way the study of the American

Constitution has a close bearing upon problems of British Imperial history and constitutional law.

In the first and second lectures, which deal with the historical genesis of the Constitution and the debates at Philadelphia, Mr. Beck lays emphasis upon the point that in insisting upon a legislature of limited powers the American statesmen were really asserting a principle which had been laid down by Coke and by other seventeenth century Judges in England. In no instance does Coke's theory appear to have been actually acted on by any English Court, and in the eighteenth century the doctrine was finally dropped. English law since that time has always accepted the principle of the omnipotence of Parliament, as it was defined by Blackstone, and the distribution of legislative power in Canada is based upon the same theory. (*Ontario* v. *Canada*, [1912] A. C. 571).

The third lecture is devoted to a brief explanation of the political principles upon which the Constitution rests. Mr. Beck rightly points out that its framers pinned their faith to representative government, as opposed to the principle which they called "democracy," meaning thereby the direct rule of the people. In this matter, we might add, the men who have drawn up the various State Constitutions have emphatically departed from the principles laid down by the statesmen of Philadelphia. The distinguishing feature of nearly all the present State Constitutions is their distrust of representative government, a distrust which is marked by the endeavour to transfer as far as possible the election of every officer and the decision of every question to the direct vote of the people.

The remaining principles of the Constitution, as laid down by Mr. Beck, are the dual form of government, the guarantees of individual liberty, the independent control by the judiciary, the system of checks and balances, and the dual control of foreign relations. Limitations of space have compelled him to treat each of these great topics with the utmost brevity, and for the same reason we must follow his example. To attempt the survey of so wide a field in a single lecture was an ambitious aim, but Mr. Beck has done his work exceedingly well, and the little book forms a most admirable introduction to the further study of the subject.

On page 130 there is an obvious slip in the statement that "Both the nation and the States are forbidden to impair the obligation of contracts." The reader can easily correct this by referring to the text of the Constitution printed at the end of

the book (p. 245), and we only mention it here because a statement made on Mr. Beck's authority may serve to confirm the erroneous and widespread impression that Congress has no power to interfere with the obligation of contracts.

Mr. Beck has included in his volume an address on "The Revolt against Authority," delivered at the meeting of the American Bar Association in 1921. The Articles of Confederation and the present Constitution, together with the amendments, are printed at the end of the book. Upon the Eighteenth Amendment Mr. Beck makes the following very just comment: "No amendment has more virtually affected the basic principle of the Constitution, viz: Home Rule. That the Federal Government should prescribe to the peoples of the States what they should drink would have been unthinkable to the framers of the Constitution."

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A History of English Law. By W. S. Holdsworth, K.C., D.C.L. Vol. 1. Third Edition, Re-written. Methuen & Co., Ltd. London. The Carswell Company, Limited, Toronto.

When one considers why Dr. Holdsworth found it necessary to re-write the first volume of his well-known work so extensively as to make it substantially a new book, namely, because of the recent increase of knowledge concerning the development of English law, one is inclined to exclaim with old John Lyly: "Knowledge flourisheth so high that Time cannot reach it." And yet it is the very quality of incompleteness—the lack of finality—in history that inflames us with a desire to apprehend its ultimate truth.

The volume before us is a much better book than its predecessors of the earlier editions. There is an improvement in method, in sureness of opinion, in adequacy of documentation. Added to all this is a finer literary quality—not comparable, indeed, with that of Maitland's *purpurei panni* as we find them here and there in the great "P. and M.," but not lacking a certain sprightliness and charm. The author's observations on the legal and political effects of the jury system (Chap. III., p. 347 *et seq.*) afford an example of his style at its best.

Bearing in mind that Pollock and Maitland found it necessary to exhaust the capacity of two large volumes in tracing the history of English law only so far as the reign of Edward I.,

while Dr. Holdsworth, within the compass of three volumes, endeavours to lead us through the whole field from the tenth to the eighteenth century, with an occasional excursion upon modern times, we must extenuate certain *lacunae* appearing now and then. It is a defect incident upon the necessary quality of condensation in his work. In the first volume as now presented to us he restricts his survey of the growth and organization of the Court of Chancery to the space of some eighty pages. Yet the separation of the Chancery from the *Curia Regis* began in the thirteenth century, when the loss of the French duchies made England the home of the Norman as well as of the Saxon, and Magna Charta, with its savour of the sovereignty of the law over that of the king, became the seed-field of the national consciousness. Truly a fascinating epoch of our incipient constitutional growth was that century when the Chancellor, in addition to his high political functions as "the king's natural prime minister," began to exercise those supreme juridical powers which made his office the axis upon which the English legal system has revolved down to this day. We are reminded, too, that George Spence of the Inner Temple, seventy years ago and more, when antiquarian research had done little for legal history, wrote a colossal work upon the origin and development of Chancery jurisdiction. But to say that Dr. Holdsworth does not tell us all that we wish to know about the origin and development of the Chancery is not to say that what he does tell us is not commensurate with his purpose. Indeed he gives the general reader a very adequate conspectus of the subject, while there are many passages infused with the provocative spirit of the one we quote below to which the keen student will respond by further enterprises upon the latest and amplest revelations of the historical record.

We quote from Chapter V., p. 446:

> "The distinction between the strict rule of law and modifications of that law on equitable or moral grounds is a distinction well known to many systems of law; and it was familiar to English lawyers from the twelfth century onwards. It is not, therefore, the distinction between law and equity which is peculiar to English law. What is peculiar is the vesting of the administration of law and equity in two quite separate tribunals. The result has been that the distinction between law and equity has in England been given a sharpness and a permanence which it possesses in no other legal system. The questions then which we must here consider are, firstly, why did this separation of

tribunals occur? And, secondly, why did it originate the distinction between the common law and the equitable jurisdiction of the Chancellor?"

We have only touched upon so much of the matter of the book as holds the more absorbing interest for us. We should like to mention other portions that are excellently done, but the limitations of space imposed upon us must be observed. We cannot lay aside this book, however, without one further observation, namely, that he who reads it carefully, and ponders what he there reads of the conduct of Englishmen in striving to build their commonwealth upon the sure foundations of law, must arrive at the conviction that in doing this they were not taking thought as to what they should eat and drink or wherewithal they should be clothed—although in the result all these things were added unto them—but rather were inspired by the spirit of patriotism and an innate love of order and liberty, things which are hardly incitements of an economic kind.

C. M.

Hugonis Grotii de Jure Belli ac Pacis. Libri Tres. Selections translated, with an Introduction by W. S. M. Knight, of New College, Oxford, and of the Inner Temple, Barrister-at-Law. Sweet and Maxwell, Limited, London. The Carswell Company, Limited, Toronto, 1922.

This little work constitutes No. 3 of the "Texts for Students of International Relations" issued by the Grotius Society. It consists of selections from three books of the masterpiece of the great Dutch jurist, including the Law of Nature and of Nations, and the Principal Points of Public Law.

In his Introduction Mr. Knight gives us a very instructive sketch of the life and work of "the scholar, poet, literary man and jurist, as well as politician and theological partisan," intimately known to his contemporaries as Huig de Groot and better known to the learned world for three centuries as Hugo Grotius. Mr. Knight points out that it is in the light of its author's abounding faith in revelation that, notwithstanding its formal rationalism, the *De Jure Belli* must be read. In this view we think Mr. Knight has the support of Westlake and Maine. The late Dr. J. N. Figgis in his scholarly "Studies of Political Thought from Gerson to Grotius," expressed the opinion that the object of Grotius was "not to make men perfect or treat them as such, but to see whether there were not certain

common duties generally felt as binding, if not always practised, and to set forth an ideal."

These selections from the *De Jure Belli* are sufficient to show that Grotius bases his theory of the obligations of men as members of society on a Natural Law that makes promises binding. This Natural Law environs civilization and has a superior sanction to that of the positive law of any particular State. While the Civil Law, and its concomitant the Canon Law, had an ideal perfection in his age, still he thinks that States, as persons in International Law, must regulate their relations with each other by right tested in the light of the immutable rules of Natural Law. And so far as we can apprehend his meaning—not always abundantly clear—Natural Law is nothing else than the law of God as interpreted by Nature to the reason of man.

C. M.

A Selection of Cases and other Authorities on Labour Law. By Francis Bowes Sayre, LL.B., S.J.D., Assistant-Professor of Law in Harvard University, Cambridge: Harvard University Press, 1922. The Carswell Company, Ltd., Toronto.

This is an exceedingly useful book for the times. The compiler informs us that the volume is published "in response to the growing demand for an adequate collection of cases on the subject." The plan of the book is "not to give exhaustive collections of decisions, but rather to cite a few leading authorities or suggestive decisions, in the belief that the latter will prove more stimulating and helpful to the student than encyclopædic collections of cases." We think that the object of the compiler has been adequately attained both in the method and matter of his book.

In the Introduction there is to be found a very useful summary of English Labour Legislation, commencing with the so-called "Statute of Labourers" (which was really an Ordinance of King Edward III) passed in 1349, and ending with the Trade Union Act, 1913 (2 & 3 Geo. V. c. 30). The later enactments are usefully annotated, and references given to cases and text-writers. Part I, among other matters, deals with the Legality of Combinations, the Right of Association, Conspiracy, The Strike, Picketing, Lockouts, Boycotts, and the Union Label. Here will be found a valuable compendium of pertinent decisions

by the courts in England, the United States and the British Dominions. We are glad to observe that the decision of Saint-Pierre, J. in *Lefebvre* v. *Knott* (32 Q.R.S.C. 441), is not overlooked. (See pp. 390, 391). That case arose out of trouble between the Association of Master Plasterers of Montreal and the Journeymen Plasterers' Union in 1905, and involved, amongst other things, the validity of an agreement between the master plasterers to "protect their material interests" by such means as a lock-out in the event of a strike by the journeymen plasterers. Part II deals with the Rights and Liabilities of Unincorporated Labour Unions, Trade Agreements, and the Internal Government of Unions, etc. Part III treats of the Prohibition of Strikes in the United States by Injunction or by the Criminal Law in the light of the Thirteenth Amendment, Compulsory Arbitration and the Industrial Court (in the survey of which Canadian and Australian statutes and cases pertinent or related to these matters are included), and Workmen's Compensation Laws. There is an Appendix to the work comprising a number of "Subsistence Budgets" the relevance of which to the purpose of the work is not quite apparent. The volume is discerningly indexed.

No student of industrial problems can rise from an examination of this excellent compilation of Labour Law without affirming the justice of Stanley Jevons' dictum, namely, that "the manner, occasion and degree in which the State may interfere with the industrial freedom of its citizens is one of the most debatable and difficult questions of social science."

C. M.

Principles of the Law of Evidence. By the late W. M. Best, A.M., LL.B., Twelfth Edition by Sidney L. Phipson, M.A. (Cantab.) of the Inner Temple, Barrister-at-Law. Sweet & Maxwell, Ltd., London. The Carswell Company, Limited, Toronto.

Mr. Phipson explains in his preface to the twelfth edition of the well-known and indispensable "BEST" that "all the recent cases and statutes of general importance in the law of evidence have been duly included in the text, both being brought down to the early months of the current year (1922)" But there is a sting in the tail of this preface for the more intimate constituency of this REVIEW. It concludes with the announcement that