

REVIEWS AND NOTICES

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Le Droit Civil Français. Livre-Souvenir des Journées du Droit Civil Français. Publié par Le Barreau de Montréal. Paris: Librairie du Recueil, Sirey. Montreal: Le Barreau de Montréal. 1936. Pp. 959. (\$4.00 unbound; \$5.00 bound)

The present volume which was published under the auspices of the Bar of Montreal, is admirable in every respect, both in its planning and its execution. As part of the larger Jacques Cartier celebration in 1934, the Montreal Bar decided to organize a gathering of lawyers and jurists in order that the development of French law in Quebec might be thoroughly and adequately discussed. The present volume contains a collection of the papers which were presented at that meeting.

Designed to indicate the influence of the French Code in countries outside France, the book is composed of three parts. The first comprises the reports of the four distinguished French professors of law who were sent by the French Government, namely Messrs. Henri Capitant, of the Faculty of Paris, Louis Josserand, Dean of the Faculty of Law of Lyons, now a Conseiller à la Cour de Cassation (Judge of the Supreme Court), René Demogue and Maurice Picard, of the Paris Law Faculty. Others papers in this part are those of Professor Xavier Janne, delegate of the Belgian Government and Professor Elemer Balogh, secretary of the International Academy of Comparative Law.

It is the second part of the volume of which Canadians, whether they be of common law provinces or from Quebec, can be extremely proud. It contains thirty-one reports written by various Quebec lawyers and jurists. These reports cover practically every phase of the Quebec Civil Code and are concerned chiefly with pointing out the differences between that Code and the Code Napoleon, as well as indicating the analogies and development of the French doctrine in Quebec. It is impossible in a review of this nature to comment on all these papers, but the standard is extremely high, and to a student from any of the common law provinces should be indispensable as a means of acquiring an insight into that great system of the Civil law in which Quebec plays such an important part.

This part of the present volume may well be envied by the common law student and practitioner. It is extremely doubtful, in the reviewer's opinion, whether a like number of able contributions on common law topics could be procured from all the eight common law provinces of Canada. Whether the importance which the civilians attach to *la doctrine* accounts for the fact that one province can produce such a number of persons willing and capable of writing on legal topics, may be a matter of speculation. At any rate, the common law lawyer can at least pay his sincere respects to a system of law which can arouse such enthusiasm and produce so many excellent articles devoted to its study and improvement.

The third part of the book comprises reports from writers abroad, chiefly from Latin America. There are, in addition, reports by Professor Naojiro Sugiyama, of the University of Tokyo and Mr. Salvatore Galgano of Rome. Other reports deal with the influence of the French Civil Code in Switzerland, the Netherlands, Albania and in various countries of South America.

Here is a book that every student of comparative law must of necessity read. It is a book from which the common law lawyer may learn much, not merely of comparative law but of a spirit of enthusiasm for the law. Canada should be proud that it has been capable of producing such a book and the Bar of Montreal are to be congratulated for undertaking such an important academic project. The reviewer recommends this book unhesitatingly to all persons who are interested in the development of the Civil law and to all Canadians who may be interested in the development of thought within the Dominion.

C. A. W.

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Legislative Processes: National and State. By JOSEPH P. CHAMBERLAIN. New York: D. Appleton — Century Company. 1936. Pp. xi, 369. (\$3.50)

This book is both timely in subject and happy in authorship. It fills for the United States an urgent need for something more than the merely descriptive studies of legislative forms and practices produced by political scientists unlearned in the law. The author, who is a lawyer with a wealth of practical experience in preparing bills and handling them during enactment, is professor of Public Law in Columbia University. He is also Director of the Columbia Legislative Drafting Bureau, and during 1925-36 was counsel to the New York City Charter Revision Commission.

Mastery of this volume will give a law student an insight, otherwise difficult to acquire, of the way in which complex law-making machinery, federal and state, really works. Here he will find a functional background to aid him in understanding and evaluating constitutional limitations, judge-made rules and other devices which conspire sometimes to effect, sometimes to defeat, the purposes of statutory enactments. Anyone who attempts to teach to law students a course comprising material broader in scope than the threadbare canons of construction will soon have impressed upon him the need for such a background. Certainly it is a background not possessed by members of the legal profession generally.

The author has not written a history of the development of the American legislature. He has presented a lucid and interesting picture of the law-making machine in action at its present stage of evolution. He thoroughly analyzes the organization which has grown up for the purposes of getting laws made, of examining the facts and policies behind a proposal, of weighing public opinion pro and con and of properly drafting bills. He explores the politicians' bag of tricks to disclose the "niceties" of log-rolling, riders, blind amendments and the "smoke-screen" effect of end-of-session haste. Today, as everyone knows, legislator and lawyer, creator and practitioner, deal almost equally with statutes. Legislation is the growing point of the law and its rules threaten to usurp the field at the expense of the

precepts of the common law. Even experienced members of both classes can probably learn something useful from these pages.

This work holds worthwhile lessons for Canadians as well as their southern neighbors. Limitations on its utility for the former chiefly emphasize that the time is ripe for a similar study of Canadian institutions.

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Roman Law and Common Law. By W. W. BUCKLAND and ARNOLD D. MCNAIR. Cambridge: At the University Press. Toronto: The Macmillan Company of Canada. Pp. xviii, 353. (\$4.50)

To this reviewer the English method of studying Roman law as a preliminary to the study of the Common law has always seemed open to question. Outside of any cultural advantage or intellectual exercise, which of course can be admitted at once, the chief value of the study of Roman law to a lawyer seems to exist only in the comparisons it affords with other legal systems. Such comparisons are not merely of academic interest. They may illumine many an obscure field in the law in which one is trained, and indicate the solution of future difficulties which have not as yet fully appeared. The writer believes, however, that such comparative study should follow, and not precede, a thorough understanding of the law which one is to assist in administering. To teach Roman law to the Common law neophyte, divorced from any comparison with his own law, is likely to dampen the most eager spirit. To begin comparisons before a solid foundation has been laid in Common law thinking, is certain to lead to superficialities and ill-conceived conclusions.

From English writers, we have had practically nothing which could serve as a text-book for a comparative study of the Roman and English legal systems. The present volume supplies that need, and needs no further recommendation to the profession than the mention of its authors' names. Avowedly with no thesis to prove, either of the influence of Roman law on English law, or of the relative merits of the two systems, comparisons are made as to the sources of law, the law of property, testate and intestate succession, obligations and procedure. Roman law is here treated solely as the "ancient" law of the Digests, and not the "modern" Roman law of the Civilians. As the authors point out, and as the illustrations given amply prove, "there is more affinity between the Roman jurist and the common lawyer than there is between the Roman jurist and his modern civilian successor. Both the common lawyer and the Roman jurist avoid generalizations and, so far as possible, definitions."

As a means not merely of enlisting sympathy in the study of Roman law, but of assisting towards a better appreciation of many problems in the Common law, the book can be highly recommended. Due to limitations of space and the nature of the volume, some of the statements of English law are not as complete as they might be. The authors, however, admit

this, and indicate that the reader can fill in the gaps for himself. This would indicate that the book is better adapted for use by a student already trained in Common law doctrine.

The reviewer rather regrets that some indication might not have been made concerning the treatment of the problems discussed in the "modern" Roman or Civil law. It is doubtless correct to say that the Common law makes no generalizations, but with the accumulation of case law, the possibility of "proceeding from case to case" seems to become more difficult. It is no accident that in the course of its long history in the modern world Roman law ultimately arrived at the generalization stage and the deductive method. It is the writer's opinion that it will not be long before English law is forced by dire necessity into a somewhat similar process. So long as the Common law remained insular and essentially national, it presented the same characteristics as the ancient Roman law. With the development of the Common law in the Dominions, and in particular in the United States, (which developments are excluded from the present volume), there is every evidence that similar "rationalizing" and "generalizing" movements are under way. The most conspicuous is probably the gigantic task of the American Law Institute in "restating" the Law.

The present volume serves to remove the study of Roman law from a position of glorious isolation. With this excellent beginning, it is to be hoped that soon we shall be able to study Roman law, ancient and modern, comparatively with the Common law of England and other countries where it is being patterned to modern conditions. Only then will we be in a position to evaluate and plan for the future.

C.A.W.
