

## RECENT LITERATURE.

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*Outlines of Historical Jurisprudence.* By Sir Paul Vinogradoff, F.B.A., Corpus Professor of Jurisprudence in the University of Oxford. Volume 1, Humphrey Milford, Oxford University Press.

After remarking in his Preface that knowledge of historical jurisprudence is needed by historians and that lawyers will find a practical value in the same, Sir Paul Vinogradoff intimates that he has undertaken to present the outlines of this comprehensive field of research in the hope that collaboration between historians and lawyers will be promoted thereby.

The initial volume of the series consists of an Introduction and a survey of Tribal Law, the latter being divided into three parts, *i.e.*: 1. Elements of the Family, 2. Aryan Culture, and 3. The Clan and the Tribe. The Introduction concerns itself, first, with the Law in its relation to Logic, Psychology, Social Science and Political Theory; and, secondly, with Methods and Schools of Jurisprudence. After dilating upon some of the rules, both in substantive and adjective law, that disclose such a content of pedantic logic as to take on the character of pure formulæ, the author is constrained to say that it is logic, *i.e.* the dialectical treatment of things, and nothing else, which provides the lawyer with a solid framework for his reasoning. On this point it is interesting to note, in Professor de Tourtoulon's recent book the view that the part played by logic in the creation of the rules of law has never been accurately determined, and that the irrational plays as important a part in the development of the law as the rational. But whether we agree or disagree with Professor de Tourtoulon's view, it is quite certain that we can find cases in the books to-day that go far to impugn Sir John Powell's dictum in *Coggs v. Bernard* that "Nothing is law that is not reason."

The value of psychology as a propædæutic to the law is demonstrated in the author's discussion of the relation subsisting between the human will and certain legal rules prevailing in civil and criminal proceedings. Lawyers, he says, are "often reminded of the awkward psychological background stretching behind their conventional formulæ." While recognizing, as we

must, that in the earliest civilizations, and on to our own day, the law has required of testators that they should be "of sound mind" when disposing of their property we cannot but concur in the learned author's view that we have not yet arrived at any satisfactory criteria of testamentary capacity as related to mental condition.

But when we turn to the criminal law we find a livelier play of the intellect and will as factors conditioning legal responsibility. There is no doubt, as Sir Paul asserts, that the eighteenth century built up its criminal law on an "indiscriminate application of the death penalty and on purely external tests of responsibility"; but it must not be overlooked that the books show that from the earliest times the theory of the law derived culpability from the intent of the person charged with any criminal act. We find the maxim "*Actus non facit reum, nisi mens sit rea*," in 3 Co. Inst. 107; and earlier still (Bracton, lib. iii, t. 2, c. 17, §1. f. 136b), we meet with the following clear statement of the psychological test of responsibility: "Crime has not been contracted unless the will or intention of hurting has intervened, and the will and the purpose distinguish the misdeed, and a theft is never at all committed without the intention of thieving." However, it is sadly true that much remains to be done to correlate the criminal law with the demands of justice towards those who are arraigned for offences against the King's peace. Professor Stewart's article on "Psychology and Crime," recently published in this REVIEW (*ante*, p. 314), is in entire accord with Sir Paul Vinogradoff's estimate of the position of the matter in question at the present time. And Sir Paul's counsel to us is that "measures of isolation and prevention adopted at the right time may safeguard society from dangerous outbursts on the part of degenerate subjects. In any case, it is obvious that the point of departure of any thorough analysis of the *mens rea* must be sought in psychology."

We regret that we lack the space to do more than mention one or two matters treated of in a work so replete with learning convenient for students of history, whether lawyers or laymen, as the one before us. But if what we have chanced to say serves to suggest to our readers that this undertaking by the Corpus Professor of Jurisprudence at Oxford is one of the first-rate performances of modern scholarship then we shall have achieved our purpose in a satisfactory degree.

C. M.

*Brief Drawing.* By R. C. Ringwalt, LL.B., of the New York Bar. Longmans, Green & Co., New York, London and Toronto, 1923.

The Canadian lawyer must not be misled by the title of this instructive little book. To his brethren in the United States, a "Brief" usually means what we would call a *Factum* or written or printed argument, and it is rather argumentation as a science with which Mr. Ringwalt deals. The subject is one with which he has dealt in previous books, and a careful perusal of this latest will benefit anybody upon whom the duty ever devolves of presenting any question to a Court, a Jury, or an audience of any kind. The faculty of clear and concise reasoning and expression is not any too common. The cultivation of it by lawyers would meet with the approval of Courts, and result in benefit to clients.

G. F. H.

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*Men and Books Famous in the Law.* By Frederick C. Hicks, A.M., LL.B. The Lawyers Co-operative Publishing Company, Rochester, New York.

Dean Stone, in the course of his Introduction to this interesting little book, very truly says that to learn about the character and quality of the great commentators on the Common Law—how their work was done and what were the influence and vicissitudes of their publications—is of positive educational value in that it humanizes for us our legal studies and research. Mr. Hicks has given us a pleasantly written volume of modest size containing a surprising amount of information concerning the men and books treated of. It has that feature so desirable and yet so often lacking in a compendium, namely, the quality of provoking and stimulating a further and ampler study of the subjects with which the author concerns himself. We especially commend what Mr. Hicks has to say about the human appeal of law books in his first chapter. It is difficult to disagree with such views as the following:—

"Great law books are so much a part of the social fabric of their times that they are in themselves historical documents. They are as truly biographical documents in the lives of their authors, most of whom are men of note quite aside from their fame as law writers. Easily obtained evidence leads to the conclusion that these men were not 'mere

lawyers,' and that the human side of their characters was developed to an unusual degree by contact with life in all of its kaleidoscopic aspects. And while they influence the world through their books, their own lives were often very much affected by them."

The chapter devoted to a discussion of "Blackstone and his Commentaries" is timely reading in this present year of grace, the bicentary of the birth of the first incumbent of the Vinerian professorship at Oxford. The book contains much information concerning the lives and professional labours of those eminent American Lawyers—Edward Livingstone and Henry Wheaton—which is not easily accessible elsewhere.

C. M.

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*What the Judge Thought.* By His Honour Judge Edward Abbott Parry. T. Fisher Unwin, Ltd., London; Longmans, Green & Co., Toronto, Price \$6.50.

To us the contents of this book is quite different from what we were led to believe it to be from its title. It is in no sense a revelation of the author's mental outlook upon life in the large or upon any particular experience of it. Its quality is impersonal rather than intimate. It is chiefly a collection of character sketches of certain famous judges, lawyers and litigants, together with dissertations on some necessary reforms in the law. It is the lightsome character of the book—for all of it is environed with anecdote and gay satire—that induces us to think that the author was moved to his undertaking by the counsel of the poet of the Sabine Farm:—

*"Misce stultitiam consiliis brevem,  
Dulce est desipere in loco."*

And so he has given us a merry book, even if it be an ephemeral one. To say this is no dispraise. Is it not a fine thing to turn from the common tasks of life and provide a light literary repast for the man who is compelled to read as he runs—if he would read at all—in these drear and strenuous days? It is indeed worth while at any period to use one's talent and leisure to lance some tumid pretence, pour shame upon injustice and recall society to a sense of moral obligation. All this Judge Parry has done in his book, and for this we praise and commend it. It is pleasant to read of his veneration for the characters of American lawyers such as Abraham Lincoln,

Rufus Choate and William Henry Seward. True he fails to give us anything that approaches the finished picture of the great Lincoln that we have in his compatriot Drinkwater's recent drama, but we are able to see something of the real man in his sketch and no part of it is clumsy caricature. We regard his very sympathetic account of the life of Seward as the best thing in the book. Golfers—and we believe that there are some lawyers who play golf—will be entertained by what the author says about "The Law of the Lost Golf Ball." The copy of the book before us is from the second impression, so that it has attained more than a *succès d'estime*.

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*The British Empire and World Peace.* Hon. N. W. Rowell, K.C.,  
Victoria College Press, Toronto, 1922.

The Burwash Memorial Lectures delivered by our distinguished confrère Mr. Rowell in 1921 were published in 1922 and were then the subject of much comment by reviewers. THE CANADIAN BAR REVIEW was not then in existence, but the attitude which the President of the United States has more recently assumed upon the subject of World Peace affords an opportunity for reminding the lawyers of Canada of their plain duty to keep in touch with the subject, and of the simple fact that no Canadian, with possibly one exception, is as well qualified to present the Canadian viewpoint as Mr. Rowell.

The subject is too broad to be discussed with any degree of adequacy here. One must read the book. The writer had the privilege of hearing Mr. Rowell address the New York State Bar Association upon substantially the same subject last winter. It was a masterful address, which carried conviction to a large gathering of men of the kind whom it was good to convince. Who knows the impetus it gave to the movement which is now finding expression in the United States, with the President as its chief exponent?

G. F. H.

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EDITOR'S NOTE.—Owing to limitations of space other reviews in hand are held over for later publication.