

## BOOK REVIEWS

*Guide to the Law and Legal Literature of Argentina, Brazil and Chile.* By Edwin M. Borchard. Published by the Library of Congress, Washington. 1917. pp. 523. \$1.

This is the fourth in the series of guides to foreign law begun by the author when he held the post of law librarian in the Library of Congress, whose head, with characteristic intelligence, perceived the value of such work when well done, and gave it support and encouragement. In the present volume, as in those that have preceded it, there is the threefold object (1) to furnish lawyers and students with information as to the institutions and legal literature of the countries concerned, (2) to acquaint legislators and men of affairs with developments in foreign legislation, particularly on economic and social questions, and (3) to aid students of jurisprudence and of history with a discriminating indication of the sources from which a knowledge of the contributions of other countries to the theory and philosophy of law may be obtained.

In the performance of his present task, the author had the advantage of making a journey through the countries of Central and South America, including the three whose law and legal literature the work now before us surveys. Not only was he thus enabled to supplement his studies in the foreign law collections of the Library of Congress by studies in each of the countries concerned, but he had the highly valuable opportunity of direct conference with their jurists and scholars. As a result he is often able to impart to what might otherwise have been a dry bibliographical description or reference an illuminating quality which tends to instruct as well as to interest the reader. In this relation he makes special acknowledgment of his obligations to Dr. José León Suarez and other members of the Faculty of Law of Buenos Ayres, to Dr. Rodrigo Octavio and Senator Ruy Barbosa of Rio de Janeiro, and to Señor Carlos Silva Cruz and Dr. Julio Philippi of Santiago de Chile—names very familiar to those who are acquainted with recent developments in legislation and in legal science in South America.

The reader cannot fail to be impressed with the extent and variety of the legal literature here passed in review, embracing, as it does, commentaries on constitutional law, on the organization and procedure of the courts, on the codes of civil, commercial, and penal law, on administrative, military and ecclesiastical law, and on international law. Naturally, the legal literature of Chile, the country being not only smaller but possessing less diversity of economic and industrial interests than the other two, is not so extensive as that of Argentina or of Brazil, but it includes titles of great repute and value. The writings of Chilean publicists have indeed been characterized by thoroughness and care; and, with the single exception of the work of Ciriaco Morelli, professor at the University of Córdoba, on the law of nature and of nations, which was first published in Latin at Venice and has only lately been translated into Spanish, the earliest South American treatise on international law is that of the Chilean, Andres Bello, which appeared in 1832. But, while the work of Morelli is in the main a philosophical disquisition on natural, civil and public law, that of Bello is justly called by Dr. Borchard a "classic treatise" on the law of nations. Editions have appeared in Madrid, Paris, Carácas and Bogotá, in addition to the four that have been published in Chile. Dr. Borchard states that Bello's work "largely influenced our own celebrated publicist, Wheaton, in the latter's work on international law."

The service which Dr. Borchard has rendered in the preparation of the series of guides to foreign law is greatly enhanced by the latest number.

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JOHN BASSETT MOORE

*Roman Law in the Modern World.* By Charles Phineas Sherman (Vol. I, History of Roman Law and its Descent into English, French, German, Italian, Spanish and other Modern Law. pp. xxvii, 413. Vol. II, Manual of Roman Law Illustrated by Anglo-American Law and the Modern Codes. pp. xxxii, 496. Vol. III, Subject-Guides to the Texts of Roman Law, to the Modern Codes and Legal Literature, and Index. pp. vii, 315.) Published by The Boston Book Co., Boston. 1917.

The appearance of Professor Sherman's three-volume work marks an epoch for the English-speaking student of Roman law. The author has evidently conceived his task of presenting the contribution of Roman law to the jurisprudence of to-day to have three phases, each of which he has attempted to cover in one of his volumes.

The historical connection between the past and present is of course a necessary link if the causal relation is to be established for the sequence of the latter from the former. The avenue through which a given doctrine could descend must first be shown before conviction that such descent took place is possible. This is the purpose and scope of the first volume entitled "History." Another phase of the presentation is the pointing out of the actual similarities between the Roman and the modern law. This is the task of the second volume. The third phase of the presentation is to give the student an exhaustive bibliography of Roman and modern law. This forms the material for the third volume.

That the conception of the work is extremely clear and logically sound is at once apparent. The execution of the plan has been brilliantly accomplished. The style is lucid and concise. Indeed its lack of ponderous legal circumlocutions gives the perusal of the first two volumes a charm rarely found in reading a legal treatise. Nor, on the other hand, does the treatment at all border on the loose or inexact, for the stupendous amount of research in the original and secondary sources as shown by the brief but multitudinous notes is uniformly reflected in the scholarly character of the text.

Volume one, as mentioned above, is an historical development of Roman law from its earliest beginnings down to the present time. As the object of the work is to present the Roman law as it exists to-day, not much space is allotted to the earliest periods of its growth. These are hurriedly yet, for the purpose, adequately treated. The remainder of the volume is devoted to demonstrating the channels by which Roman legal concepts flowed into the various systems of present-day law. This volume is prefaced by a comprehensive table of contents which aids in no small measure in presenting the most complete and lucid picture yet to appear of the historical connection between the Roman and the modern systems of jurisprudence.

The second volume forms the doctrinal exposition of Roman law as it existed at the time of Justinian, with enough historical perspective to enable the student to grasp intelligently the finished juristic phenomena as they appear in the *Corpus Juris*. Besides this, a most valuable part of this treatise is the constant comparison of the Roman with the modern doctrine. In some cases dissimilarities are noted. The similarities by far preponderate. The order of subjects is generally that of the *Code Napoléon*. This order has been adopted, as Dr. Sherman tells us, because of the influence this great codification has exerted

on most of the systems with which he draws comparisons. This being the object the book has to accomplish, the choice is a wise one. In this volume as in volume one the text is supported with copious references to the sources of Roman and modern law and to the representative authorities on both. This renders the exposition of the doctrines particularly valuable to the student, for it puts him immediately in a position to carry on an independent investigation if he cares to go further than the text carries him.

The third volume of "subject-guides to the texts of Roman law and to the modern codes and legal literature" fills a want which has long been acutely felt by students of these subjects. It opens the way clearly and easily to that mass of available literature which it is essential for the research student speedily to find. This volume, although it is simply a collection of authorities and texts arranged according to the various legal systems covered in volume one, and again according to the subjects of volume two, is perhaps, from some stand-points, the most unique accomplishment of this whole work. Its value cannot be over-emphasized, and no one in the future can afford to study Roman law and its affiliations without availing himself of the friendly aid of this volume.

That this work will be received with universal approbation is, however, not to be expected. The bigotry of the so-called "common-lawyer" has not entirely been overcome; and it is therefore not to be wondered at if from certain quarters, either through ignorance or through prejudice, the position taken by Dr. Sherman should be severely, albeit unjustly, criticized. Again our author opens himself to the wrath of some of the teaching fraternity by his frank avowal of his distrust in the exclusive case system as the correct method of teaching law. That he is not, however, unreasonably opposed to the case form of instruction may perhaps best be seen from the fact that he is at present engaged in the preparation of a Roman law case-book, made up largely of translations of the cases used by Roman students of law under the later empire.

That Dr. Sherman has ably accomplished the task set himself in presenting the contribution of Roman law to the modern systems cannot be denied; and his handsomely printed book forms one of the most important contributions of recent times to the literature of the subjects treated.

THOMAS R. ROBINSON

New Haven

*The National Budget System and American Finance.* By Charles Wallace Collins. Published by The McMillan Co., New York. 1917. pp. vi, 151.

This book is not written as a reference book for those who would make an exhaustive study of the budget question, but for the general public as a convenient handbook showing the essential features of the budget system in countries where it is in force, the grave defects in our national finances which can only be remedied by such a system, together with a brief discussion of the constitutional and legal questions involved. The concluding chapter summarizes the recent agitation of the reform in this country, the earnest efforts of President Taft on its behalf during his administration, and its endorsement by the recent national conventions of our political parties.

The book discusses only the necessity for a national budget, and no reference is made to the need for the same reform in the states under our dual government, and even in the large cities of the country. The system of "general appropriations" without any budget control is vicious and ineffective in our states and cities as well as in the national government, and the demand for a reform is urgently and widely extended. The subject is now being extensively agitated by governors of different states, and the reform has been adopted in

several states, and in some of our large cities, as shown in the Boards of Estimate and Apportionment in New York, St. Louis and other cities. In view, however, of the enormous increase in federal appropriations under the necessities of war, the demand for federal reform is so urgent that the author seems to have been justified in limiting his present discussion to the finances of the national government.

The book is what it purports to be, a convenient handbook. The style is clear and direct, and the analysis of the financial systems of the different nations of the world is in an effective and convenient form. The author has made an interesting, concise and readable presentation of a somewhat complicated subject which will be most useful in promoting the correct popular understanding of a system which now demands the thoughtful consideration of all who are interested in the efficient control of public finance.

FREDERICK N. JUDSON

St. Louis

*Handbook of Criminal Procedure.* By Wm. L. Clark, Jr. Second edition by William E. Mikell. (Hornbook Series.) Published by West Publishing Co., St. Paul. 1918. pp. xi, 748. \$3.75.

The editor informs us in his brief preface that the twenty-two years that have elapsed since the publication of the first edition of this well-known treatise have witnessed a marked change in the law governing criminal procedure. "This change has been brought about," we are told, "partly by statutory enactment and partly by judicial legislation;" and the "change wrought by both of these agencies has been in the same direction—towards a more rational system of procedural law." It is especially comforting to be assured that the "super-technicalities once dominating criminal procedure are yearly being attacked by legislatures and daily meeting with less respect by the courts."

These brief statements lead the reader to expect that the editor has done his work with a wholesome desire to point the way to better things in this intensely interesting and important subject. This expectation is in part fulfilled. See, for example, pages 179, 180 and 186. One might wish, however, that the distinguished editor had allowed himself more latitude in pointing out the absurdities that still obtain in this branch of the law and had given more prominence to those statutes and court decisions which make for progress in a field where the need for progress is so urgent. The changes for the better that have been made cannot be brought too forcibly to the notice of the student, the bar, and the bench.

As a practical manual, also, the book leaves some things to be desired. It is obviously not exhaustive of the cases either old or new. The paucity of the very recent cases is especially noticeable. Approximately 6,000 cases are cited. This number stands in marked contrast with the 28,000 or 29,000 cases cited by Mr. Bishop in his *New Criminal Procedure* as far back as 1896. In no subject so much as in a procedural one is the practitioner so interested in detail. Generalizations, even when accompanied by what might seem a reasonable number of illustrations, are not sufficient. This difficulty could have been remedied in part by inserting references to the Century Digest and the Key Number Series of the Decennial Digest, in accordance with the practice pursued in some of the recent companion books in the Hornbook series; also specific references to statutes where in some instances their existence has been noted only in a general way, would save the student and practitioner time. The index, too, should contain more detail.

Again, because of the brevity of the treatise, there is a failure to elucidate adequately a number of important topics. For example, neither on page 29, where the necessity for a sworn complaint preceding arrest is referred to, nor elsewhere so far as the reviewer can discover, is there any discussion of the question whether a judgment of conviction can be supported on an unsworn complaint or information. A recent Illinois case holds that it cannot. See *People v. Clark* (1917) 280 Ill. 160. See, also, for an able criticism of the case, a note by H. W. Ballantine in 1 ILLINOIS LAW BULLETIN, 175.

There are a few places where a failure to note the existence of a substantial conflict in the authorities makes the statements in the text misleading. These shortcomings appear chiefly in the chapter on "Evidence;" but, since this chapter may be looked upon as somewhat incidental to the primary purpose of the work, they should not be taken too seriously. On page 595 the statement is made without qualification that on a prosecution for homicide, when the defendant sets up self-defence, it may be shown that the decedent had previously threatened the defendant, as tending to show that the decedent began the encounter. It is true that there are some authorities which support this statement, but there are also numerous authorities to the effect that the threats of the decedent are not admissible unless it is first established that the decedent was the aggressor in the affray, and then only to prove that the defendant acted reasonably. In support of the statement in the text the author cites among other cases *Campbell v. People* (1854) 16 Ill. 17. The language of the court in this case is somewhat ambiguous, and the recent cases of *People v. Terrell* (1914) 262 Ill. 138, does not at all support the statement in the text, but rather the rule here suggested. A similar error is made on page 632, concerning proof of the character of the deceased. In the case of *State v. Byrd* (1897) 121 N. C. 684, it is made clear that such evidence is not admissible to show that the decedent was the aggressor, but only to establish the reasonableness of the defendant's conduct. On page 643, in dealing with the subject of the privilege of a witness not to incriminate himself, it is said that "if he answers so as to disclose part of the transaction, he waives his right to refuse to answer further." One case is cited in support of this statement, with the addition "But see *Reg. v. Garbett*, 1 Denn. Cr. Cas. 236." No reference is made to such a clear-cut American decision as *Chesapeake Club v. State* (1885) 63 Md. 446, in which it is held that the witness may at any point in his testimony refuse to make further disclosures of an incriminating character.

There is difficulty in accurately appraising a book of this character. It is neither an exhaustive digest and statement of the law of the subject, nor a critical and constructive treatise. It is believed that in this day law-books should be of one character or the other, and preferably of the latter character. Moreover, the need for the latter type of book is especially great in a branch of the law which is going through a process of change and in which the reform kettle is boiling so vigorously. We can only regret that such a distinguished scholar and expert on criminal law and procedure as Professor Mikell has not given us the full benefit of his mature learning in a book entirely of his own making.

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