



1922

## BOOK REVIEWS

Follow this and additional works at: <https://digitalcommons.law.yale.edu/ylj>

### Recommended Citation

*BOOK REVIEWS*, 32 *YALE L.J.* (1922).

Available at: <https://digitalcommons.law.yale.edu/ylj/vol32/iss1/14>

This Article is brought to you for free and open access by Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in *Yale Law Journal* by an authorized editor of Yale Law School Legal Scholarship Repository. For more information, please contact [julian.aiken@yale.edu](mailto:julian.aiken@yale.edu).

## BOOK REVIEWS

*The ABC's of Business.* By Henry S. McKee. New York, The MacMillan Co., 1922. pp. vi, 135.

An able, remarkably readable, and clear introduction to the present business functioning of the United States at home and abroad. The point of view is that of a rather forward-looking orthodox economist in touch with practical operations. The author's gift of simple exposition is unusual, and errors due to brevity are few. If an understanding of existing business institutions derived exclusively from the book would be a trifle over-rosy, we may perhaps trust the reader's awakened interest and his own business experience to provide the desirable check. The reviewer does wonder, though, how a writer with the clarity of thought and honesty of expression shown in the book at large, can discuss division of labor and international trade as Mr. McKee does without even mentioning what seems an inevitable corollary to his arguments: to wit, that tariffs need considerable justification. The book is worth the attention of anyone, old hands as well as new.

KARL NICKERSON LEWELLYN.

Yale University School of Law.

*Our Changing Constitution.* By Charles W. Pierson. Garden City, Doubleday, Page & Co., 1922. pp. xiii, 181.

Under this title, Mr. Pierson has presented a series of interesting and suggestive essays upon various phases of American constitutional law and amendment. Some of these essays have been published previously, but they are woven with new chapters into a general thesis which gives them due place in a reasoned conspectus of constitutional government. The nature of the American Union, with its attempted division of sovereignty between the states and the Nation, always has been a mystery to foreign students. It has become almost as much a mystery to our own people. The original theory of a federal government, possessing only the powers expressly conferred upon it by a written constitution—including those necessary and proper for carrying into execution the powers expressed—those not delegated to the United States by the constitution, nor prohibited by it to the states being expressly reserved to the states respectively, or to the people, has given way, in practice, to many departures from that simple plan. The federal government has encroached upon the reserved spheres of the states and the states have assumed functions properly within the scope of the powers devolved upon the Union. From time to time, the tide has set in favor of the states, followed by an ebb strongly towards the federal government. Mr. Pierson discerns in recent times an increasing tendency to devolve upon the federal government powers which, in their essence, belong to the states. The most conspicuous example of this tendency is found in the adoption of the Eighteenth and Nineteenth Amendments, particularly the former.

"Could Washington, Madison and the other framers of the Federal Constitution revisit the earth in this year of grace 1922," says Mr. Pierson, "it is likely that nothing would bewilder them more than the recent Prohibition." It would "evidence to their minds the breaking down of a principle of government which they had deemed axiomatic, the abandonment of a purpose which they had supposed immutable. As students of the science of government they would realize that the most fundamental change which can overtake a free people is a change of their frame of mind, for to that everything must sooner or later conform."

But, as students of human nature, those great statesmen would have known that

it is in the nature of free people to change their minds. Freedom is not static. In its very essence it is mobile. A free people seek the readiest practicable means of solving problems. Experience had demonstrated the impossibility of eradicating the evils of intemperance through state action. To grapple with it effectively, the power of the nation alone was adequate. Whether that power will prove effective or not may be doubtful, but no one could question the ineffectiveness of all previous action by the states. Hence the Eighteenth Amendment. Probably woman suffrage would have been realized gradually by state action alone. But the progress would have been slow. Its advocates saw in the successful campaign of the prohibitionists a demonstration that a shorter way lay through the process of constitutional amendment. They pressed forward over that way and the Nineteenth Amendment embodies their triumph. In many other respects, the established barriers between state and nation have been broken down through legislative action. The pure food laws and the statutes prohibiting the carriage of lottery tickets and of interstate transportation of women for immoral purposes, are examples of the successful exercise of national power in domains properly controlled by the police power of the states.

The effort at national regulation of the hours and conditions of labor of children, through the control of interstate commerce, is an example of an unsuccessful attempt to usurp state police regulation by national law.

Mr. Pierson discerns a changed attitude of our people towards the Constitution. He finds the principal explanation of this in the growth of national consciousness, due both to pressure from without and to developments within. Perhaps the most controlling cause for the changes noted may be found in the character of the state governments. Too often have these fallen into unworthy hands. State legislatures do not enjoy a high reputation. Local political machines too often control both the legislative and the executive arms of the state. Unwieldy as is the federal Congress, its acts are more closely observed than those of the state legislatures, and the presidential veto power is used with a high sense of public responsibility.

"What then is the future?" Mr. Pierson asks. "Is the Constitution hopelessly out of date? \* \* \* The integrity of the States was a cardinal principle of our governmental scheme." No. The equilibrium between the states and the nation will be preserved in its essentials by the Supreme Court. Recent decisions, particularly the unanimous ruling of the Supreme Court in declaring the child labor law unconstitutional, have reaffirmed that security.

That question was in doubt when Mr. Pierson's book was prepared. It now has been settled. So long as the powers of that great tribunal remain unimpaired, the "indestructible union composed of indestructible States" will be secure. And, as Mr. Pierson says, "if leaders and teachers do their part, American intelligence and prudence will assert themselves, and the slogan of an awakened public sentiment may yet be: 'Back to the Constitution!'" The book very clearly presents the problems involved. It is clearly written and pregnant with intelligent suggestion. It touches upon problems which vitally affect our national welfare and amply justifies attentive perusal.

GEORGE W. WICKERSHAM.

New York City.

*Latin-American Commercial Law.* By T. E. Obregon. With the Collaboration of Edwin M. Borchard. New York, The Banks Law Publishing Co., 1921. pp. xxiii, 972.

Any work throwing light on the legal systems of our sister republics in Central or South America is certain of a cordial welcome in the United States. This is especially true of works dealing with the business law of Latin America. The commercial law of the individual Latin-American states has been accessible to us

in English for a number of years as part of "The Commercial Laws of the World." Because of the vastness of this collection, however, and the fact that it consisted in the main of a translation of the detailed provisions of the various commercial codes, it was difficult to obtain therefrom a comprehensive view of the outstanding features of Latin-American law as compared with those of our own law.

The present work is the first to give a general survey of the different departments of business law as contained in the Central and South American codes. In addition to this, the work discusses the rules of the conflict of laws as given in the civil codes and legal procedure. An introductory chapter is devoted to the sources of commercial law in each country and to the relationship existing between the commercial and civil codes; and another chapter, to the constitutional law of the different countries so far as it affects commercial law.

The work was written primarily as a text-book for students in American universities studying Latin-American commercial law, and, as such, it deserves much praise. The task, which was indeed a difficult one, in view of the vast amount of material to be covered, has been performed with rare skill. The author had the wisdom to leave out the unimportant and to confine his exposition to a discussion of the various systems followed by the different codes. He has given us, therefore, not only an outline of Latin-American commercial law, but of comparative commercial law as well. The work is written in an excellent style and shows throughout the hand of the accomplished scholar. Professor Obregon in his preface acknowledges the invaluable assistance received by him in the preparation of the work by Professor Edwin M. Borchard of the Yale Law Faculty.

From the standpoint of the American student the value of the work would have been enhanced considerably if it had set forth the Latin-American "business" law instead of the Latin-American "commercial" law in the technical sense. As it is, we are told nothing of the general principles governing the Latin-American law of contracts, and if a particular transaction is not "mercantile" and is controlled by the provisions of the Civil Code, we are not told what those provisions may be. For a proper understanding of the commercial law of any country having separate commercial codes, some knowledge of the rules of the civil code, so far as they relate to the subject matter under discussion, is indispensable.

E. G. LORENZEN.

Yale University School of Law.

*Documents and Their Scientific Examination.* By C. Ainsworth Mitchell. London, Charles Griffith & Company, 1922. pp. xii, 215.

This small volume deals largely with the chemistry involved in cases of suspected forgery, disputed handwriting, and questioned documents. It contains chapters dealing with the examination of the following: paper, pens and pen markings, inks, pencil pigments, copying-ink pencils and their pigments, handwriting, secret writing, typewriting and printing, stamps, seals, and envelopes and finger prints. Many of the illustrations are illuminating. At the end of each chapter is a valuable bibliography. The book is written chiefly for the use of the chemist and the expert examiner of documents. But it is of much value to the lawyer who has a case involving a disputed document. It will suggest numerous tests that may be applied to the instrument, with many of which he would ordinarily be unfamiliar. If he is so situated that an expert examiner of disputed documents is unavailable, he may be able, with the aid of this book and of a competent chemist and photographer, to subject the questioned document to a thorough examination. The value of the work to the lawyer might have been greatly increased by official citations to the cases mentioned, and by an accurate reference to other cases.

EDMUND M. MORGAN.

Yale University School of Law.

## BOOKS RECEIVED

- Accident and Health Insurance Law.* By Myron W. Van Auken. Albany, Matthew Bender & Company, Inc., 1922. pp. vii, 357.
- Cases on the Law of Bills and Notes.* By Howard L. Smith and Wm. Underhill Moore. American Casebook Series. Second Edition. St. Paul, West Publishing Co., 1922. pp. xvi, 847.
- Cases on Business Law.* By William Everett Britton and Ralph Stanley Bauer. St. Paul, West Publishing Company, 1922. pp. xxix, 1563.
- Bracton De Legibus et Consuetudinibus Angliae.* Edited by George E. Woodbine. Volume II, With a Preface by the Editor. New Haven, Yale University Press; London, Humphrey Milford, Oxford University Press, 1922. pp. xi, 449.
- Common Law Marriage and its Development in the United States.* By Otto E. Koegel. Washington, John Byrne & Company, 1922. pp. 179.
- Constitutional Law of England.* By Edward Wavell Ridges. Third Edition by Sydney E. Williams. London, Stevens & Sons, Ltd., 1922. pp. xxii, 552.
- The Control of American Foreign Relations.* By Quincy Wright. New York, The Macmillan Company, 1922. pp. xxvi, 412.
- Democracy's International Law.* By Jackson H. Ralston. Washington, John Byrne & Company, 1922. pp. 165.
- Early History of the Federal Supreme Court.* By W. H. Muller. Boston, The Chipman Law Publishing Company, 1922. pp. xii, 117.
- Federal Income Tax Problems—1922.* By E. E. Rossmoore. New York, Dodd, Mead & Company, 1922. pp. xxxv, 541.
- George Bryan and the Constitution of Pennsylvania.* By Burton Alva Konkle. Philadelphia, William J. Campbell, 1922. pp. 381.
- The Great Experiment.* By Thomas Dillon O'Brien. New York, The Encyclopedia Press, 1922. pp. 122.
- The Holy Alliance.* By W. P. Cresson. Published by the Carnegie Endowment for International Peace. New York, Oxford University Press, American Branch, 1922. pp. 147.
- Inheritance Taxation.* By Lafayette B. Gleason and Alexander Otis. Third Edition. Albany, Matthew Bender & Company, 1922. pp. lxi, 1224.
- Cases on International Law.* By James Brown Scott. American Casebook Series. St. Paul, West Publishing Company, 1922. pp. xxxvi, 1196.
- The International Law Associations: Report of Meeting of 1921.* In Two Volumes. London, Sweet & Maxwell, Ltd., 1922. Vol. I, pp. cxix, 541; Vol. II, pp. cxix, 312.
- Law and Business.* By William H. Spencer. Volume III. Chicago, University of Chicago Press, 1922. pp. xviii, 644.
- Law of Building and Loan Associations.* By Joseph H. Sundheim. Second Edition. Philadelphia, Smith-Edwards Company, 1922. pp. 1-200, 210-376.
- The Law and Custom of the Constitution.* By William R. Anson. Fifth Edition by Maurice L. Gwyer. New York, Oxford University Press, American Branch, 1922. pp. xxv, 443.
- Legislative Procedure.* By Robert Luce. Boston, Houghton Mifflin Company, 1922. pp. vi, 628.
- A Manual of Archive Administration* (Economic and Social History of the World War British Series). By Hilary Jenkinson. New York, Oxford University Press, American Branch, 1922. pp. xviii, 243.
- Political Ideas of the American Revolution.* By Randolph Greenfield Adams. Durham, N. C., Trinity College Press, 1922. pp. 207.