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BOOK REVIEWS

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The Great Experiment. By Thomas Dillon O'Brien. New York, The Encyclopedia Press, 1922. pp. 122.

This book, written by a former Associate Justice of the Supreme Court of Minnesota, in praise of American Constitutions and their enforcement and interpretation by our courts, reads as if divine right and revelation, formerly claimed by kings, had been given to American constitution makers and courts about 1776, and as if Woodrow Wilson had not, in his *Congressional Government,* published in 1885. set the new fashion of describing our National Government as it actually operates instead of merely as the Constitutional Fathers hoped and expected it to operate.

It is easy to understand that a busy lawyer and judge would not have time, in the midst of hurried professional and political life, to keep up with the literature presenting the results of modern scholarship and recent research in the field of the European background and the development of American History and Government. But it is much to be regretted that Mr. Justice O'Brien should lend the influence of his name toward keeping alive the mistaken idea that the American Revolution, the Declaration of Independence, the Revolutionary Constitutions were sudden departures from entirely dissimilar and antagonistic conditions then fully and finally established in England and still dominant and unchallenged now throughout the British Empire, rather than some of the natural developments in the long and gradual evolution of constitutional liberty and government among the English-speaking peoples. The thinking of the American Revolutionists was largely based on the ideas of the Puritan Revolution of 1640-50, and the American national and state constitutions were formal enactments of theories evolving in British thinking and experience long before, as well as after, the founding of colonies, and evolving in the British Isles as well as in the American Colonies.

Most Political Scientists do not now believe in the existence of the absolute "natural rights" often referred to in this book as if they could be discovered somewhat as are mathematical principles. All human rights exist in relation to, and depend upon, the social relations between their possessor and other human beings and therefore change with changing social conditions and with the will of the whole body politic. If the rights to life and liberty are "natural and inalienable," how have any human beings the power to decide when such rights have been "forfeited" by one of their number? No human right is possessed by anyone longer than his possession of it coincides with the welfare of the society in which he lives.

To assume that we have attained a condition in the United States where human liberty is adequately protected, by courts and constitutions, federal and state, or by any other means, is to live in a fool's paradise. We have not yet even nearly approached the American ideals of "equal opportunity for all and special privileges for none," and of complete liberty and protection for the individual. "Liberty under law" exists at present in these United States only with many shortcomings and limitations. Let him who believes we have sufficiently learned to protect personal liberty, the most cherished American right, read Mr. Hastings H. Hart's *Report of the Committee on Treatment of Persons Awaiting Court Action and Misdemeanant Prisoners* (1921), or his *The Third Degree Methods of Obtaining Confessions and Information from Persons Accused of*

Crime (1921). We have, as a people, little ground for pessimism; we have done much to forward the advance of human liberty throughout the world; but our faults and failures are great enough to challenge our utmost efforts for many a year in the future.

EDWARD JAMES WOODHOUSE

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A Summer Sojourn Among the Inns of Court. By Cornelius Comegys. Scranton, Pa., International Text-book Press, 1922. pp. 131.

"Forewords" are rightly subject to suspicion, but for the foreword to this little volume we are grateful. In it Mr. D. Campbell See, an American barrister of the Middle Temple, introduces to us the author; and without knowing the author we should miss half the charm of the book. He is an American "lawyer of the old School." Without the aid of college or law school, indeed with little schooling of any sort, he makes his way by sheer courage and determination to the bar at Scranton, and then to success and leadership. To him the Law is no trade, but a noble profession, full of dignity and graced with honorable traditions. What were more natural than that such a lawyer should turn to the source of those traditions, the venerable cradle of his profession, The Ancient Inns of Court? He goes well armed with letters of introduction, as all good Americans should, and for a whole summer he wanders with almost boyish delight among the scenes and places where English Law was made and walks reverently in the sacred precincts where were born the traditions that glorify the legal profession even in far away America with its newer and cruder setting. In pure friendliness he takes us with him, as he visits the famous Inns where the lawyers have lived for five hundred years, he learns with keen interest the course of study pursued by the young man who has been entered at one of the Inns seeking a call to the bar, and how he must keep his terms not by attending lectures, but by eating a fixed number of dinners at his hall. He describes the call to the bar, and then the long years of wageless service he must render before he can hope to secure clients and fees of his own. He adds charm to the picture by bringing into it from Thackeray's *Pendennis*, the briefless young barrister, George Warrington, with Arthur Pendennis, and for a description of the barrister's clerk, he adopts Lamb's charming picture of his own father. Later he sits on the Bench with the Common Sergeant of London, Sir Henry Fielding Dickens, son of the great novelist.

Our delighted author is everywhere received with cordiality by the barristers. With them he attends an historic criminal trial in Old Bailey, sees a civil case disposed of in the High Court of Justice with a business-like expedition that excites envy in a lawyer accustomed to the slow moving judicial machinery of our American system; and on the Sabbath attends services in the beautiful Temple Church with its ancient tombs and its monuments to crusading Templars. The hospitable barristers take him to dine with them amid the glories of the Great Hall of the Middle Temple, where to this self-made lawyer of distant America there comes an overwhelming realization that this historic room is a shrine not only for English lawyers, but for all those, in whatever part of the world they may live, who revere the Common Law of England.

A more particular account of each of the four Inns of Court closes a little book that is charming in itself but more charming still for having enabled us to spend some two hours with an Old School Lawyer of such delightful personality as the Author's—Long may he live!

WILLIAM R. VANCE

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Trusts for Business Purposes. By William C. Dunn. Chicago, Callaghan & Co., 1922. pp. xx, 795.

Although this is a good-sized volume of nearly 800 pages, less than 175 pages contain the author's lucubrations. The text ends at page 418, the remaining pages containing an appendix of forms, a table of cases and an index. Of the 418 pages of text, about 250 pages are devoted to the reproduction *verbatim* or almost *verbatim* of some twenty-five or thirty cases, some of which are leading cases on the subject, while others are not important and not closely relevant to the subject. See, for instance, *State v. Scougal* (1892) 3 S. D. 55, 51 N. W. 858 which occupies twenty-five pages of the text. The absence of quotation marks makes it difficult for the reader to know whether the author or the court is speaking. Where the author does give his own views, they are presented in such an unmethodical and cursory way as perhaps to justify, in this instance at least, his observation in the preface that "the busy lawyer is more interested in the law expressed by the court than the deductions of a law writer." Certainly the book is not as useful as that by Mr. Sears on the same subject.

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BOOKS RECEIVED

Le Boycottage Devant les Cours Anglaises, 1901-1923. By René Hoffherr. Paris, Marcel Giard, 1923. pp. 180.

Federal Income Tax. By George E. Holmes. 1923 Edition. Indianapolis, Bobbs-Merrill Company. pp. lviii, 1847.

Insanity and the Criminal Law. By William A. White. New York, The Macmillan Company, 1923. pp. lx, 281.

Interpretations of Legal History. By Roscoe Pound. New York, The Macmillan Company, 1923. pp. xvii, 171.

On the Witness Stand. By Hugo Münsterberg. New York, Clark Boardman Company, Ltd., 1923. pp. xiii, 269.

The Psychology of Misconduct, Vice and Crime. By Bernard Hollander. New York, The Macmillan Company, 1923. pp. 220.

Removal of Causes from State to Federal Courts. By James Hamilton Lewis. New York, Clark Boardman Company, Ltd., 1923. pp. 679.

Cases on Code Pleading. By Edward W. Hinton. Second Edition. Chicago, Callaghan & Company, 1922. pp. viii, 690.

Brief Drawing. By Ralph Curtis Ringwalt. New York, Longmans, Green & Company, 1923. pp. xii, 214.

Enemy Property in America. By Arthur Garfield Hays. Albany, Matthew Bender & Company, 1923. pp. xii, 396.

Transactions of the Grotius Society. Volume VIII. Problems of Peace and War. London, Sweet & Maxwell, Ltd., 1923. pp. lii, 132.

The Law Applied to Motor Vehicles. By Charles J. Babbitt. Third Edition. By Arthur W. Blakemore. Washington, John Byrne & Company, 1923. pp. clxxxiv, 1654.