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BOOK REVIEWS

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The History of the Temple, London—from the Institution of the Order of the Knights of the Temple to the Close of the Stuart Period. By J. Bruce Williamson, of the Middle Temple. New York, E. P. Dutton and Company, 1924. pp. xiii, 690.

The Temple holds as great a place in literature as it does in legal history, and no place in London is more frequently visited by the historical pilgrims than the Temple church. Mr. Williamson has written a history of the Temple to the beginning of the eighteenth century which is not merely interesting reading but impresses one as most thorough in its sifting of the evidence and most careful and restrained in its conclusions. It is difficult to see what is left for any future scholar to glean or what need there can be of rewriting this history.

The Temple begins as an ecclesiastical institution, the home of the Knights of the Temple in the days of the crusades. This Order was founded in 1118 and first came to England probably in 1128. They built their first house in the parish of St. Andrew, Holborn, near the north end of the present Chancery Lane. This home, which came to be known as the Old Temple, soon proved to be too small for their needs and was sold sometime before 1162. From it they removed to the present site on the banks of the Thames where they had been given extensive grounds. Just what they built here at that time is not known except that the round part of their church, round after the pattern of the church of the Holy Sepulchre of Jerusalem, was dedicated in 1185. The beautiful early English choir was added in the thirteenth century and dedicated in May 1240. This home in distinction from the old was called the New Temple. In the thirteenth century it was easy for the Order, because of its existence throughout the whole of Christendom and the trust reposed in it, to become one of the first great national and international banking houses. It received extensive deposits of money and valuables from governments and private individuals for safe keeping or for transfer to other countries. The thirteenth century was the great age of the Order. At the beginning of the fourteenth it was greatly weakened by losses in the Holy Land, and its great wealth excited the cupidity of the kings of western Europe. Following the lead of the king of France, the Order was put on trial on charges probably fraudulent and abolished and its property confiscated by various states.

Following the dissolution of the Templers is a long period of obscure history in which few facts can be determined with certainty in regard to the Temple and those who occupied it, though it is evident that important changes were taking place. Mr. Williamson has examined with minute care all scraps of evidence surviving, but it is not possible to say with any certainty just when, nor how, the Temple passed into the possession of the students of the law; nor why instruction in the law settled there instead of in the universities; nor the exact origin of the two societies, the Inner and the Middle Temple; nor how their offices, titles and practices originated, like the Benchers, the Readers, the Utter and Inner Barristers, the Apprentices, and calling to the Bar. These various matters have to be studied as they are after they have come into existence, rather than in the process of their origin and growth. In the sixteenth century the evidence becomes more plentiful, and in the Tudor and Stuart periods our knowledge of the life of the Temple is comparatively full. It is interesting to note that the earliest explanation of why instruction in the law settled in the Temple instead of in the universities is by Sir John Fortescue. He gives as the reason that while teaching in the

universities is in Latin only, teaching in law must be in three languages: English, French and Latin. (p. 93.)

From a report upon the Inns of Court made to King Henry VIII by Sir Nicholas Bacon (father of Francis Bacon) we get a glimpse of the methods of instruction which it is interesting to compare with our own:

"then the first day after Vacation (between the terms of court), about 8 of the clock he that is chosen to reade openly in the Hall before all the Company shall reade some one such Act or Statute as shall please him to ground his whole reading on for that Vacation and that done doth declare such inconveniences and mischiefs as were unprovided for and now by the same Statute be (met) and then reciteth certain doubts and questions which he hath devised that may grow upon the said Statute and declareth his judgment therein; that done one of the younger Utter Barresters rehearseth one question propounded by the Reader and doth by way of argument labour to prove the Reader's opinion to be against the Law and after him the rest of the Utter Barresters and Readers (Benchers) one after another in their ancienties (order of age) doe declare their opinions and judgements in the same, and then the Reader who did put the Case indeavoureth himself to confute Objections laid against him and to confirme his own opinion; after whom the Judges and Serjeants if any present, declare their opinions, and after they have done the youngest Utter Barrester again rehearseth another Case which is ordered as the other was; thus the reading ends for that day: and this manner of reading and disputations continue daily two houres, or thereabouts." (p. 120.)

Their moot courts are also described in the report:

"In these vacations every night after Supper . . . the Reader with two Benchers or one at the least cometh into the Hall to the cuboard and there most commonly one of the Utter Barresters propoundeth unto them some doubtful Case, the which every of the Benchers in their ancienties argue and last of all he that moveth; this done the Readers and Benchers sit down on the Bench in the Hall whereof they take their name, and on a forme toward the midst of the Hall sitteth down two Inner Barresters and on the other side of them two Utter Barresters And the Inner Barresters doe in French openly declare unto the Benchers (even as the Serjeants doe at the barr in the King's Courts to the Judges) some kinde of Actions, the one being as it were retained with the Plaintiff in the Action and the other with the Defendant; after which things done the Utter Barresters argue such questions as be disputable within the Case (as there must be alwayes one at the least) and this ended the Benchers doe likewise declare their opinions how they think the Law to be in the same questions and this manner of exercise of Moting is daily used during the said Vacations." (p. 122.)

GEORGE BURTON ADAMS

Yale University

A History of Political Theories of Recent Times. Edited by Charles Edward Merriam and Harry Elmer Barnes. New York, Macmillan Company, 1924. pp. xii, 597.

Contributed by thirteen students of the late William Archibald Dunning, Lieber Professor of History and Political Philosophy at Columbia University, this compact volume of thirteen essays well fulfills its mission as an appropriate memorial to the venerable Professor in that it is a positive service to society. Without the pretentions of a complete sequel to Professor Dunning's three volume *History of Political Theories,* it nevertheless interprets the major developments in political philosophy since the third quarter of the Nineteenth century, which was the latest period treated in Professor Dunning's *Rousseau to Spencer,* published in 1920.

This period is reviewed by Professor Merriam in the initial chapter, wherein he discusses the outstanding social forces, the leading groups that developed systems of political rationalization, and the actual progress in political speculation. Successive essays treat of the "Theory of Democracy," "Pluralistic Theories

and the Attack on State Sovereignty," "Proletarian Political Theory," "Political Tactics and Socialism in Germany," "Implications of Recent Movements," "Contributions of Sociology," the "Social Psychology," "Anthropological Theories of Political Origins," "Anthropological Geography," and the "Race Factor"—respectively developed by Messrs. Willey, Coker, Douglas, Hayes, Schneider, Barnes, Gehlke, Goldenweiser, Thomas, and Hankins.

While each one of these discourses would appeal to the legal intellect, the most direct advantage to students of jurisprudence is to be derived from two concise treatises by Professor E. M. Borchard of Yale and C. P. Patterson of Texas, respectively, on "Political Theory and International Law," and "Recent Political Theory Developed in Jurisprudence." These represent exacting legal research, profound reflection, and mature contemplation.

Professor Borchard presents the thesis that international law is law even though occasionally violated, and it places limitations upon state sovereignty. Reasoning from his argumentation, one is inclined to fear that should this thesis be rejected, society shall continue to suffer from international anarchy as well as from the misdeeds of kings and other agents of the State or of the people, e.g., in those cases where the State as a sovereign may not be sued without its consent. Thus shall suffer the individual—the major consideration of society. One is apt to aver that if, perchance, international law is not yet law, and if absolute sovereignty is still absolute and unlimited, then a new political philosophy ought to be constructed for the protection of the individual.

Such a philosophy would necessarily admit that "the doctrines of sovereignty, of free will, of equality have all performed a useful function in their time" and as regards the equality of states, Professor Borchard concludes with Dr. Julius Goebel, Jr., that "the private law notions of the equality of the individual in his capacity for legal rights aided by the Continental theory of the corporation furnished the legal authority for a theory of equality which was applied in practice to the relations of monarchs. The equality of states was a conception independent of the question of power, which so strongly attracted Hobbes, and many since his day." In short "the theory of absolute sovereignty and its supposed corollary, the equality of states, have done much harm," and the fact that "the League of Nations, as a new organization, has, in spite of its subservience to these theories, been able to function at all, is perhaps a tribute to the practical sense of its administrations."

Professor Patterson outlines the nature, scope, purpose and method of jurisprudence, giving unprejudiced analyses of the five schools of jurisprudence: the Analytical founded by John Austin, the Historical, the Philosophical and the more recently developed Comparative and Sociological Schools. The latter is still in the process of formation from previous stages including the mechanical stage, when an attempt was made to equip the law with mathematical certainty; the biological stage which is the reflection of Darwinian influence, the psychological stage which was fostered in part by the German lawyer Gierke, and the stage of unification. The presentation of these five schools stimulates a desire for comprehensive monographs on each of them that would involve research something like that now being conducted under Professor Seligman of Columbia to determine the influence of economic science upon the decisions of the United States Supreme Court. Professor Patterson supplies sufficient footnotes for the inauguration of such inquiries and he even suggests a biographical approach to jurisprudence by including brief biographies of such jurists as Dean Roscoe Pound of Harvard who recently declined the presidency of a leading university in order to further jurisprudence.

Cause for additional appreciation of the volume might have been apparent if it also had included a study of recent political theory in public administration,

developed along the lines of Woodrow Wilson's brief essay in 1887 as published in the POLITICAL SCIENCE QUARTERLY, and including the later views of Dicey, Goodnow, the Willoughbies, Freund, and Frankfurter. If "that law which is best administered is best," it seems possible that such a chapter might have constituted a fitting climax to this most excellent symposium.

MILTON CONOVER

Yale College

Anson on Contract. By Arthur L. Corbin. Fourth American Edition. New York, Oxford University Press, 1924. pp. lx, 592.

Five years ago Professor Corbin published the third American edition of *Anson on Contract.* That edition, immediately upon its appearance, was recognized as a notable achievement in critical lawbook writing. The present edition is its worthy successor.

But how shall it be judged? The reviewer of the present volume, in commenting upon its predecessor, expressed the belief that a simon-pure *Corbin on Contracts,* in which an author had a free hand, would have been a much greater contribution to the literature on that subject than any edition by him of Anson would ever be—excellent as Anson is. A reviewer, however, may not chide an editor for not undertaking a different task nor judge of his success with reference to limitations other than those within which he chose to work. More proper is it that he should judge whether the accomplishment is worth while and as successful as the plan adopted would permit. So judging, the reviewer finds scant ground for anything but praise for the volume in hand.

Three features of this book, as a successor of the previous American edition, will be noticed.

(1) The changes in the text, with the exception of the five new sections by Professor Corbin, are changes that appear in the sixteenth English edition. All the changes noticed appear to the reviewer to be improvements. A considerable number of interesting cases appear here for the first time, illustrating the application of principles that have been stated. See, for examples, pages 36, 300, 309, 421, 452, 468, 491, 494. Occasionally the new text indicates that a rule is weakening, as evidenced by some legislative provision or by the attitude of the courts in making an exception to the rule. See, pages 302, 451, 493, 551. There is a new section on "Enemy Status," dealing with the termination of an agent's power by his principal becoming an alien enemy, based upon the case of *Tingley v. Muller,* [1917] 2 Ch. 144. As an illustration of the improvement frequently found in the changed text, we may note the much clearer statement of what the situation really is when it is said that one who is not hired because of his personal qualifications can assign his contract, namely, that such a person is merely at liberty to perform vicariously the duty that he has. (p. 378.)

Aside from the addition of the new text matter just referred to, there are numerous revisions in the text of varying importance. Examples of the more important revisions are found in the sections that deal with aliens (sec. 154), equitable relief against infants (sec. 162a), mistake as to party (sec. 184), protection of good will from competition by vendor (sec. 258), and choses in action that are not assignable (sec. 310).

There is included in the appendix a note on the English Law of Property Act, effective January 1, 1925, in which are noticed some important and interesting changes relating to matters dealt with in this volume.

A few errors that appeared in the text of the previous edition are corrected herein. For example, the error, on page 25 of the previous edition, where the presence of the public omnibus is said to be a constant offer of an act for a

promise, is corrected by omission and the positive statement, at page 526, that an agent who contracts on behalf of a foreign principal has no power to pledge his employer's credit but becomes personally liable on the contract, based on a mere dictum of Blackburn, J., in *Armstrong v. Stokes* (1892) L. R. 7 Q. B. 601, is properly toned down and authorities cited in support of the expressed doubt that any such rule exists. (p. 551.) A note occasionally saves the quality of the English text (e. g. sec. 420) from suffering by comparison with that of the editor's own sections (e. g. secs. 355-373).

(2) The improvements in the text of the preceding edition caused by the addition of several important sections by the American editor have been retained in the present edition without change. Five more new sections (secs. 107-108c) have been written by him to replace sections 107 and 108. They deal in general with the legal operation of the statute of frauds and convincingly uphold the view that the statute affects "substance" and not merely "procedure."

(3) The critical notes of the previous edition have been recognized as one of its most valuable features. These have been improved and made more useful by the substitution of important late for earlier cases as well as by the addition of a large number of the interesting and stimulating analyses that characterized the notes of the former edition.

The volume here noticed bears abundant evidence that it is the work of a master hand. As suggested above, complaint that the master tied his own hand before he began work is not meet. He has wrought admirably notwithstanding and the very substantial improvement noticed in this later product justifies its appearance and exhibits an ability and continued willingness to stretch the thongs that bind. The reviewer hopes that this latter presages a day when the shackles will be abandoned and an entirely free hand assumed.

H. W. ARANT

School of Law, University of Kansas

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