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# Klein: The Book of Acquisition-Book 12 of the Code of Maimonides

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Constitutions have been one of the most popular of Anglo-American exports. The continuous demand for new Constitutions, as evidenced by the high mortality figures for such instruments, points to their high degree of perishability. I am reminded of the story (surely apocryphal) of those 19th century Hungarian liberals whose admiration for English constitutional government was so great that they sought not merely to copy English forms but to build a replica of the Houses at Westminster on the banks of the Danube. How have those high ideals borne fruit today?

If the United States is increasingly to become the center of World legal studies, its Law Schools must direct attention not merely to the institutional forms of many countries, but to the working practices of government underlying the constitutional instruments. And our judgments as to whether a particular community is or is not democratic must not be based solely on a correspondence or non-correspondence to Anglo-American governmental forms. That is the worst type of academic imperialism! We need to penetrate the surface layer of doctrine, in order to determine to what extent there is, in fact, in that community a sharing of power, wealth, respect, and other values.

As a painstaking collection of source materials—the basic constitutional instruments of many countries—Mr. Peaslee's volumes are indeed worth a place in law libraries. Yet when he seeks to transcend these more modest confines and launch into detailed analysis and comparison of his 83 countries, and when Dr. Ivan Kerno (Assistant Secretary-General in charge of the Legal Department, United Nations), in an inspired introduction, hails Mr. Peaslee's volumes as "a scholarly work, . . . a real contribution to this essential understanding of fundamental principles of government of the various countries," I am forced to say that in this respect at least, Mr. Peaslee, and for that matter, Dr. Kerno, have not yet begun to fight.

EDWARD McWHINNEY†

THE BOOK OF ACQUISITION—BOOK 12 OF THE CODE OF MAIMONIDES. Translated from the Hebrew by Isaac Klein. New Haven: Yale University Press, 1951. Pp. xv, 335. \$5.00.

HISTORIANS of political and legal theory have only recently abandoned the Hegelian view that early non-European peoples had no aptitude for legal and political thought while peoples of the West were lavishly endowed with such talents.<sup>1</sup> That this view prevailed as long as it did was due principally to the dearth of non-European legal and political literatures and the unfamiliarity of scholars with the languages of the scanty materials available. Furthermore even where there was some familiarity with the languages involved, their technical manner of discourse was not easily mastered. Yet,

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1. MAXEY, *POLITICAL PHILOSOPHIES* 7 (rev. ed. 1949).

these were not adequate reasons for assuming that there was no material worthy of study and report. The trend today is to be less sweeping in aspersive generalizations with regard to early Asiatic peoples and particularly with regard to the Hebrews whose achievements in law were heretofore ignored because of the esoteric character of the Talmud and the cultivated hostility of Christian theologians to the Pharisees—masters of the Law. Christian scholars have begun to atone for their historic caricatures of the Pharisees<sup>2</sup> and are beginning to appreciate the ethical insights of the legal and political thought of the Hebrews. However, if Europeans are fully to appreciate the scope of this thought much more must be done to make the literature available in European languages with adequate commentaries. The Talmud, though translated into English, still remains a difficult work to master except for those with special training in its unique manner of analysis and argumentation. No translation has yet been published with sufficient critical comment to make the text fully intelligible to one who is not a trained Talmudist.

More readily translatable and intelligible is the code of Moses Maimonides. This monumental code of Jewish law compiled in the latter part of the twelfth century was one of the most systematic and exhaustive codifications of Talmudic law. Yale University, under the editorship of Prof. Julian Obermann, has undertaken the publication of a complete translation in fourteen volumes. A fifteenth volume is also projected as a critical appraisal of the code in its entirety. When completed the set will afford all scholars with a statement of almost every rule of law—public and private, civil and criminal, priestly and ritual—that was articulated in Talmudic sources.

With the recent emergence of a Jewish state interest in ancient Jewish law has increased tremendously. This law is not now the law of the state of Israel. It is the law only of Israel's Rabbinic courts which have exclusive jurisdiction in matters pertaining to the personal status of Jews and concurrent jurisdiction with the civil courts in other matters when all the parties involved consent thereto. There is, however, very determined agitation by the religious parties in Israel that Jewish law become the basis of the entire legal system. The translation of a code like that of Maimonides, therefore, helps not only the legal historian, who knows no Hebrew, to become familiar with Jewish jurisprudence but also students of Israeli movements to appraise Jewish jurisprudence with an eye to its reception by the new state.

Thus the publication of a translation of the entire code is to be heralded as an event of major significance.

The fifth volume in the series was translated by Dr. Isaac Klein as a doctoral dissertation at Harvard University. It is called *The Book of Acquisition*, which is in fact Book Twelve of the Code. Despite its title, however, it covers more than the law of sales and gifts. It actually consists of five treatises: the law of sales, the law of gifts, the law of neighbors, the law of agents and partners, and the law of slaves. Generally it can be said that if the translators will all be as conscientious and as well versed in the subject

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2. GUIGNEBERT, *JEWISH WORLD IN THE TIME OF JESUS* 165 (Hooke's transl. 1939); 2 MOORE, *JUDAISM* 193 (1927).

matter of their particular part of the text as was Dr. Klein, Prof. Obermann's undertaking will be one worthy of great respect and reliance.

The difficulties facing the translator are numerous. While Maimonides' work is in Hebrew, many of his sources are Aramaic texts. The translator must therefore check his translation against these original sources. And these sources are not always the same in different printed editions. Even Maimonides' text suffered many copyists' errors. A translator must be cautious and a close examination of Dr. Klein's translation reveals that he was careful to check with all available texts of the code itself as well as its many sources. Furthermore, "words of art" must be given by the translator in the closest equivalent of Anglo-American legal terminology. Dr. Klein was careful to examine both Roman law and common law texts to arrive at the best equivalents.

However, because of the great importance of the work, the translators and the editor should reconsider several important limitations which they have imposed upon themselves and which lessen the value of their undertaking.

The notes consist principally of references to the sources from which Maimonides derived the rules of law he codified. These notes are valuable. However, they contain no critical comment whatever and no comparative or historical observations. The omission is all the more painful when one comes upon a passage that begs for clarification:

"If two deeds, either of sale or of gift, have the same date and are written for the same field, then we hold as follows: if it is the custom of the place to indicate in the date the hour of the day, the deed with the earlier hour confers title; if it is not the custom of the place to indicate the hour of the day in the date, then the question has to be presented to a court of judges and they will place the field with whichever party they hold it ought to be placed."<sup>3</sup>

Anyone reading the passage would welcome comment on at least two questions: What is the scope of the judges' authority to resolve such an issue—can they act arbitrarily or are there criteria for their judgment? Second, why can't evidence be offered as to which of the two transfers was in fact the earlier one, despite the failure to mention the hour in the deed? Both of these questions are discussed fully in the sources but the meagre statement of the rule and its translation, albeit accurate, fails to convey either the rationale of the rule or the manner of its application.

In other places the failure to add either comment or additional explanatory words—at least in brackets or italics—creates ambiguity, if not bewilderment. Thus, for example, we find:

"If one person seeks to buy an article from another, and the vendor says, 'I will sell it to you for 200 zuz,' while the vendee says, 'I will not buy it from you for more than 100 zuz,' and they depart from each other without arriving at an agreement, and later they come together again and the vendee draws the object without mentioning any terms,

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3. Pp. 126-7.

then we hold as follows: if it is the vendor who takes the initiative in the sale, the vendee pays him only 100, while if it is the vendee who comes and draws the object without mentioning terms, he must pay 200."<sup>4</sup>

The phrase "takes the initiative in the sale," to an American lawyer, refers to the maker of the original offer. The text in fact refers to a vendor who accepts the counter offer. Similarly in the same chapter, on page 72, the pronoun "he" in the third paragraph of Sec. 10 refers not to the vendee mentioned in the same paragraph but to the vendor mentioned in the preceding paragraph. The Berlin, 1868, edition of the Hebrew text has the word "vendor" specifically and not the pronoun.

Furthermore, the failure to include critical comment of a comparative law character results in unfortunate concealments. An examination of the index, for example, reveals no reference to trade regulation or fair trade. Yet the text does contain the following:

"A storekeeper is permitted to distribute parched corn or nuts to children and to female slaves in order to accustom them to come to him. . . ."<sup>5</sup>

And:

"The residents of a town can prevent traders who bring their merchandise for sale into the towns from selling it in their town."<sup>6</sup>

Nor are there any references in the index to the right of privacy. Yet the text has scores of paragraphs dealing with this right though Maimonides did not use this Anglo-American term. The same is true of building and zoning regulations. If the meagrest critical comment of a comparative law character had been added, a research student exploring a particular problem would have been able through the use of the index to discover many ancient analogues of modern legal problems. As the volume stands now one must read it in its entirety to make the discovery.

The omission of critical comment is perhaps the fault of the editor more than the translator. The translator, Dr. Klein, prepared a lengthy introduction as part of his doctoral dissertation, which is also not included in the printed edition. That introduction discusses fully the logic of the organization of the materials in this one book of the Code and the discussion sheds much light on the nature of several concepts of Talmudic law. Perhaps the editor feared that the undertaking would become too voluminous if more than the text were printed. It is to be regretted, however, that as a result the value of the work is reduced. The policy ought, therefore, be reconsidered with regard to the volumes yet to come. Nonetheless, grateful we must be for that which has already been done, even if it is not all one could have hoped for.

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4. Pp. 69, 70.

5. P. 64.

6. P. 179.

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