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BOOK REVIEWS

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International Law Codified and its Legal Sanction. By Pasquale Fiore. English translation by Edwin M. Borchard. New York, Baker, Voorhis & Co. 1918. pp. xix, 750.

This is the English translation of the late Professor Fiore's well-known *Il diritto internazionale codificato e la sua sanzione giuridica,* the first edition of which was published in 1889-1890. When the third edition was exhausted, the author revised and partly re-wrote the work, with the consequence that the fourth edition, which was published in 1909, represented almost a new work. He died in December, 1914, after having prepared a fifth slightly-enlarged edition, which was published in 1915 and the Italian text of which is the basis of the present English translation. It ought to be said at once that Professor Borchard's translation is most excellent; it is written in thoroughly idiomatic English, and no one would know that the work is a translation were it not that the title page informs the reader of the fact. And it ought likewise to be mentioned that Professor Borchard has added a valuable introduction and a number of valuable notes of his own to the text of the author.

In its fourth and fifth editions the work is intended to be a codification of International Law, although the author distinctly says that at the present time a codification of International Law in its entirety is impossible, and that it can only be attained step by step by codifying separate parts of International Law. If nevertheless he offers a codification, his intention is to show how a codified International Law in its entirety would present itself provided all his views were adopted. Naturally his codification embraces a good deal of the positive International Law in force because the author is very far from asserting that the bulk of the existing International Law does not stand the test of criticism. However, his work comprises not only rules which considerably deviate from the corresponding rules of the International Law in force, but also a great many rules to which no rules of the existing positive law correspond. It is a merit of the work that, in most cases, it becomes clearly apparent whether a rule is one of the rules of International Law in force or a rule of "rational law," the law of reason as it appears to the author, which ought to become positive law.

Fiore was born in 1837 and was appointed as early as 1863 to the first of the several Chairs of International Law which he successively adorned during his long life, namely that at the University of Urbino. Thus he was educated, and began his work as a teacher and writer on International Law, at a time when Positivism in International Law had not yet carried the day, and when international lawyers belonged mostly either to the school of Naturalists or that of the Grotians. Fiore was from the very beginning, and remained till the last day of his life, a Grotian, and he therefore gives equal attention to the natural (rational) Law of Nations and the positive Law of Nations. Apart from this, his work shows traces of doctrines which can no longer be upheld. For instance—see sec. 1546 of the present work—he still adheres to the nowadays impossible doctrine of the substituted sovereignty of the belligerent who militarily occupies enemy territory. Again, he still teaches the nowadays antiquated rule—see sec. 1721 of the present work—that a belligerent may continue in neutral waters "against an enemy merchant ship an attack and pursuit for purpose of capture which had commenced on the High Sea and had been prosecuted without interruption."

Very peculiar are the attitude and the rules of the author with regard to naturalization. Whereas according to sec. 658 it is one of the international rights of man that he may renounce the citizenship of a country and may—see sec. 654—"freely choose the State to which he wishes to belong and when he has fulfilled all the conditions fixed by the legislature he may demand recognition of his citizenship and the enjoyment of all the rights and privileges granted to citizens," sec. 696 lays down the astonishing rule that he shall be held guilty of a felony and treason who shall take up arms against his native country even when he has renounced his nationality, and that no civilized State can compel naturalized citizens to take up arms against their native country. The author overlooks, firstly, that if an individual has a right to renounce his citizenship by birth, thereby all ties of allegiance to his native country are severed, and, secondly, that if he becomes naturalized, and takes the oath of allegiance to another country, the latter must have a right to demand from him the fulfilment of all the duties of a citizen by birth, duties amongst which the taking up of arms against an enemy is one of the most primal, even if the enemy be his native land.

The purpose of the work is to offer a codification of the Law of Humanity based on historical, scientific, and rational sources. The author knows very well that International Law, as the very term "international" denotes, is a law between States only and exclusively, and he thinks it might be better to employ the expression "Law of Mankind" for his code of the Law of Humanity, but he nevertheless clings to the title "International Law." In his opinion one of the objects of International Law should be to determine the international rights and reciprocal duties belonging to every member of humanity, and he distinguishes three groups of such members, namely States, individual human beings, and the Churches, particularly the Roman Catholic Church. He gives the name of *Magna Civitas* to the ensemble of all the States, all the human beings, and all the Churches. His code provides therefore not only rules defining international rights and duties of States but also international rights and duties of all human beings, of the Churches, and of independent tribes. Yet the author is far from contending that individual human beings, Churches, and States are international persons of the same kind, he only claims that individual human beings and Churches enjoy an international personality *juribus suis*, and not as subjects of States, with the consequence that the enjoyment of civil rights by foreigners as well as natives cannot be deemed to depend upon arbitrary concession on the part of any State but is properly to be considered as the legal recognition of international rights of individual human beings.

Another object of the present work is to offer a method of formulating and pronouncing the rules which should constitute the law of humanity, to make such rules binding as really are law, and to ensure their universal respect. Three institutions are proposed by the author for this purpose, namely the Congress, the Conference, and the Court of Arbitration. The *Congress* is to be the legislative assembly of humanity, to be composed not only of the representatives of the States but also of members directly elected by the peoples of all the States. The Congress, however, is not to be a permanent institution, but should convene only whenever the historical exigencies of humanity require the declaration of new rules or the modification of existing rules. The *Conference* is to be the executive organ of humanity, and is to be constituted by each Congress before it dissolves. The task of the Conference is to apply the legal rules initiated by the Congress, to order references to arbitration, to regulate collective interventions, and the like. The Conference ensures respect for its decisions by proposing to the Congress the use of coercive measures against such a State as may refuse to execute its decisions. However, neither the Congress, nor the Conference, nor the Court of Arbitration will make strife

and war impossible, and the author therefore offers in his Code a body of rules respecting war and neutrality which to a great extent follow the lines of the several Hague Conventions concerned.

Looking upon the work as a whole, the fact that it comes from the pen of the leader of Italian thought in the science of International Law would suffice to secure to it the attention of the world, but there is also its intrinsic value which must appeal to every reader. It stands to reason that no one will agree with every single rule laid down by the author. For instance, the present writer is of opinion that, as long as International Law remains what it is, namely a law between and not above States, international rights of individuals are an impossibility, although, of course. the States could agree by an international treaty that every member of the Family of Nations should be obliged by its Municipal Law to grant certain rights to human beings, natives as well as aliens. Yet, whatever may be its imperfections, Fiore's Code is an important work and will always be greatly appreciated. It will quicken thought wherever it is read, and it is therefore particularly welcome at the present time when the World War has rent humanity into two hostile camps. Victory of the Allies will vindicate International Law and lay the foundation of a peace which will again unite suffering humanity. The voice of a constructive scholar which resounds through Fiore's work will then find sympathetic ears. Although many of his proposals will hardly be realized the idealistic spirit that pervades them will act as a fertilizer. Hearty thanks are due to the Carnegie Endowment for International Peace and to Professor Borchard for the English translation which secures to the work a wide range of readers in America and in all parts of the British Empire.

L. OPPENHEIM

Cambridge (England)

Cases on Future Interests and Illegal Conditions and Restraints. By Albert M. Kales. St. Paul, West Publishing Co. 1917. pp. xxvi, 1455. $6.00.

According to the preface, this volume is a revision of volume 5 and part of volume 6 of Gray's *Cases on Property,* with inclusion of new subjects and further development of others. "The effort has been to follow Mr. Gray's work as closely as possible, not to find some different arrangement just as good." The result in statistical form is one volume of convenient thickness, containing 1450 pages, exclusive of index and table of cases, as against 1433 pages of Gray; with about 200 cases omitted and 125 cases and selections from various other authorities added. The omissions are largely by dropping the sixth volume titles of fraudulent conveyances, registration, joint ownership, curtesy and dower, and election and conversion. All of these titles may well be treated in other courses, and in any event the reviewer's experience and observation at the Harvard Law School demonstrated that there was seldom time in the advanced property course for more than a summary consideration of them.

As to the subjects retained, the cases omitted are for the most part early decisions and those added are, with few exceptions, comparatively recent. It is difficult to determine for pedagogical purposes the extent to which cases showing the origin and development of the law, but otherwise obsolete, should give way to those stating the present law. Mr. Kales in general emphasizes the latter. In the largest and most important subject of perpetuities, however, he has wisely retained almost every case, adding thereto about a dozen.

As to the additions in general, the reviewer has not had an opportunity to make detailed study, but on the whole the material appears to be instructive and

teachable. The editor has, however, yielded somewhat to the temptation to include cases turning on the construction of particular phrases, and cases from his own bailiwick, the state of Illinois, even where local statutes are involved. The order of cases has been somewhat improved for teaching purposes by grouping those on particular points instead of adhering to the chronological development of the whole topic where the topic is a large one. Here again it is difficult to strike a balance between the demands of orderly research and the limitations of classroom progress. Neither, however, seems to justify placing *Pells v. Brown* (1620) and other authorities—largely Illinois cases—on the development of indestructible springing and shifting uses before *Chudleigh's* case (1594) and others on contingent remainders and their destructibility. In the *Moot* case on page 121, Mr. Kales himself shows the proper historical relationship, and no pedagogics appear to demand a reverse order.

Mr. Gray's second edition is ten years old. A considerable readjustment of the sixth volume has long been impending. The army of lawyers who have sat at his feet and mourn his death have every reason to appreciate Mr. Kales' endeavor, to quote from his preface, that his master's "collection of cases and his analysis of the subjects dealt with shall continue to live and serve the great body of law students of the Country."

CHARLES F. DUTCH.

Boston

Criminal Sociology. By Enrico Ferri. (Modern Criminal Science Series.) Boston, Little, Brown & Co. 1917. pp. 577.

We owe a considerable debt of gratitude to the learned translators, each of whom has suffered an untimely death, Joseph I. Kelly and John Lisle, for their well-performed task in translating for us this work, so well known abroad, by Enrico Ferri, sociologist, socialist leader in the Italian parliament and Professor of Criminal Law in the University of Rome. A first small edition of this book appeared in 1884; an English abridged translation, for years on the shelves of our libraries, has most inadequately represented the scholarship which marks the author's work.

To identify the author better we may use the very well-phrased paragraph from the editorial preface: "Ferri may be regarded as Lombroso's most distinguished pupil, and, in a sense, as a continuer of his work, though supplementing it on the sociological side and giving it a greater breadth than Lombroso himself showed. Ferri's work on Criminal Sociology may be regarded, therefore, as epoch-making, in bringing together the anthropological studies of Lombroso and his own work in criminal statistics and in criminal law, resulting in the founding in Italy of a new school of positive criminal law, of which Ferri is himself the chief exponent."

Ferri covers a large field in his work, and covers it with distinction, using a vast array of facts and showing familiarity with the views of many authors. Indeed it is his orientation of his own point of view in relation to other writers and his occasional, but not overdone, discussion of the conflicting theoretical schools of criminology that makes the perusal of his treatise an intellectual treat. And his dissertation is altogether to the point, for the last part of the volume consists of seven chapters under the caption of Practical Reforms—a well-balanced consideration of the machinery of public justice and penal administration.

Of course it is impossible to offer here in detail any account of these proposed reforms or of Ferri's theories, to which he so tenaciously clings. He lays stress all through on his fivefold classification of criminals, on certain

sociological laws which he believes determine the crime out-put of society and he emphasizes approvingly the clinical attitude towards the individual problem. Thus he brings together several points of view.

There is a good deal of shrewd common sense distributed throughout Ferri's handling of his many topics, *e. g.,* while he says that, given social conditions as they are, the criminal act may be, and often is, an act determined by necessity on the part of a person inevitably predisposed by nature to crime, nevertheless the State has also its own predetermined necessities. If the criminal says to the State, "Why do you punish me for an act from which it is impossible for me to abstain?" the State can reply, "For the sole reason that I likewise am unable to abstain from punishing you in the defense of law and society." Then also Ferri insists wisely that crime is always the product of the nature of the man plus the environment. And particularly valid is his emphasis on the fact that is growing more and more apparent, that "neglected childhood is the source and seed of habitual criminality and recidivity."

While respecting the eminent soundness of much that appears in the work, fairness to the science of criminology as it has now developed demands at least some remark on the limitations of Ferri's conclusions. In the first place he writes about material derived almost entirely from the Latin races and, then, while he freely acknowledges the part that study of the mind must come to play in criminology, his data of mental life are a hundred-fold less complex than modern studies in psychology show. Strangely naïve is Ferri's repeated statement that when he goes out into the practical field he can pick out types, especially the murderer type—"I distinguished it in one young soldier out of seven hundred." Of course we are well aware that America does not correspond at all to Italy in the findings of stigmata among the population, but generalizations should hold true in other than one's own locality. Nowhere do we find students here so easily passing on past or present conduct possibilities in the individual, even of peculiar appearance. The reviewer confesses, too, that Ferri's attempt to formulate a "Law of Criminal Saturation" lacks impressiveness because its statement that—"in a given social environment with definite individual and physical conditions a fixed number of delicts, no more and no less, can be committed"—is so broad that the modifications of a delinquent's career which may be made and which do lessen crime are included—of course they form from their very inception part and parcel of the social environment or the individual or physical conditions.

The true value of such work as Ferri's in criminological science is at the present day to be estimated only in light of the fact that modern studies of the mental life concerning native capabilities, traits, and dynamic experiences present a new phase of the subject which in its direct applicability to the individual problem and hence to the prevention of crime in general overshadows in practicability all other and, particularly, theoretical considerations.

WILLIAM HEALY