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Book Reviews

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Book Reviews

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BOOK REVIEWS

HISTORY OF THE SAN FRANCISCO COMMITTEE OF VIGILANCE OF 1851. By Mary Floyd Williams. University of California Publications in History, Volume XII. Berkeley: The University of California Press. 1921. Pp. xii, 543.

PAPERS OF THE SAN FRANCISCO COMMITTEE OF VIGILANCE OF 1851. By Mary Floyd Williams (editor). Publications of the Academy of Pacific Coast History, Volume IV. Berkeley: The University of California Press. 1921. Pp. xvi, 906.

Referring to the subject of her history in the introductory chapter, the author says: "Probably every reader of these pages already knows that the men who organized them (the Vigilance Committees of 1851 and 1856) were respectable and influential members of the body politic; that for brief periods they assumed unlawful control over criminal matters in their city; that they arrested and confined prisoners at their own discretion, hanged whom they would, and banished from the state citizens and aliens whose presence they deemed a menace to the public order, while the community not only tolerated their usurpation of power but supported them in the infliction of the most condign punishments. But it is not so generally known that these societies which defied the law regulated their conduct by the ordinary practices of parliamentary procedure, and kept careful record of their daily actions."

These records and other miscellaneous papers of the committee have been annotated and indexed by the author of the History and appear as a separate volume under the title, "Papers of the San Francisco Committee of Vigilance of 1851." The History itself grew out of the task of editing the records and papers. Although originally designed as an introductory chapter merely, the "history" developed into what that name implies, a real interpretation of events and institutions. The author has presented her conclusions clearly and interestingly, and as far as one can judge who is not himself thoroughly familiar with the subject matter, has done well what she set out to do—"its history should be presented in detail, based on the authentic records of its daily doings, stripped as far as possible of false glamour and false condemnation, and fairly related to the causes which engendered it."

The book has a peculiar interest for the thoughtful lawyer. While it is no longer true, as in the heyday of the San Francisco Vigilance Committee, that a day's ride will put a criminal beyond pursuit, nor that jails are so insecure that a prisoner can escape (as George Adams did) three times successively within six weeks, nor that it is possible for the accused's attorney to delay trial until all the witnesses for the prosecution have flowed on to parts unknown with the ever-running stream of gold-seekers, nevertheless

extra-legal "justice" such as that dealt out by the Committee has not passed. Though circumstances have greatly changed, we have yet our Ku Klux Klan and our daily lynchings. What is there behind all these phenomena? What are their causes? What historical connection is there between the popular justice of 1851 and that of today? These are questions which are always to the fore in our author's consideration of the incidents of 1851. Her observations (and especially the bibliographies and discussions in the introductory chapter and in Chapters XIX and XX) will furnish plenty of food for thought to those who are concerned with lynch law as a modern problem.

BURKE SHARTEL.

THE LAW OF CONTRACTS. By Samuel Williston. Volume V, Forms, by Clarence M. Lewis. New York: Baker, Voorhis & Co. 1922. Pp. xi, 725.

The present volume contains a very useful collection of practical forms for contracts having to do with the more complicated transactions of modern business. The ordinary and more simple forms usually to be found in books of this general character have given place to such matters as labor protocols, employment contracts, motion picture agreements, commercial contracts of various kinds, separation agreements, etc. Emphasis has also been placed upon the more intricate kinds of building contracts, leases, land contracts, and partnership and corporate agreements.

One is impressed with the accuracy and conciseness of expression which characterizes the specimens set forth. There is a commendable lack of the prolixity and attendant obscurity which have so frequently marred legal draftsmanship. The forms are "keyed" to the text of Williston's work on Contracts and have been annotated somewhat, particularly with reference to the New York decisions. The book is a fitting supplement to Professor Williston's monumental work and will be found especially helpful by those who are called upon to formulate the more complicated agreements of modern life.

GROVER C. GRISMORE.

TREATIES AND AGREEMENTS WITH AND CONCERNING CHINA, 1894-1919. By John V. A. MacMurray. The Carnegie Endowment for International Peace. New York: Oxford University Press. 1921. Two volumes: pp. xlvii, 928; 929-1729.

"Whoever understands China socially, politically, economically, religiously holds the key to world politics for the next five centuries." The prediction of John Hay, former Secretary of State of the United States, has indeed been justified. With the ending of the World War a new era has begun—an era in which the center of gravity in matters international has shifted to the Pacific and the Far East. On account of its extensive territory, dense population, and geographical position, China certainly occupies an important

place. But so delicate and complicated are China's relations of international concern that a comprehensive understanding of its international status can scarcely be had without resorting to the various treaties and agreements made with and concerning China during the last three decades. The two volumes under review, the result of elaborate and painstaking labor by Mr. John V. A. MacMurray, certainly answer the very purpose.

The first volume covers the period from 1894 to 1911, which has been characterized as a period of international struggle for concessions. Among the treaties then made, those concerning foreign loans, territorial leases, definitions of spheres of interest, declarations of non-alienation, extra-territoriality, and mining and railway concessions were the most conspicuous. The reaction on the part of China culminated finally in a revolution and the establishment of the Republic.

The second volume covers the period from 1912 to 1919, in which the policies of foreign powers underwent some radical changes. International coöperation and control supplanted international struggle for concessions. The consortium was the chief instrumentality through which the powers acted, although separate loans and concessions were none the less prominent.

The division into treaties made under the Manchu dynasty and those made under the Republic is logical. Since the forms of government are fundamentally different, the bodies in which the treaty power is vested are necessarily different, the King in one case and the Parliament as expressly provided in the written Constitution in the other. Although the editor wisely refrains from any statements as to the validity of the various treaties, the fact remains that those made since 1913 have not been ratified, and most of them, owing to their obnoxious character, could never have been ratified by the Parliament. In this group of treaties are found the notorious Twenty-one Demands, Military Compact, Army and Navy Agreement, etc., which form a vital issue between the Peking government, recognized by the powers, and the constitutional government supported by the legal parliament.

All the treaties are arranged in chronological order. There are many valuable explanatory notes, and authentic maps are inserted. The appendices and index also help to make the materials more readily accessible. This "labor of love," as Dr. Scott very appropriately puts it, should certainly be credited as a most valuable aid to the more thorough understanding, not only of China's problems, but also of the policies of the different powers towards China and the probable fruits of those policies.

University of Michigan.

S. C. Ho.
S. M. Ho.

A TREATISE ON THE LAW OF MARRIAGE, DIVORCE, SEPARATION, AND DOMESTIC RELATIONS. By James Schouler. Sixth edition, by Arthur W. Blake-more. Albany: Mathew Bender & Co. 1921. Three volumes: pp. xxx, 1344; 1345-2292a; viii, 2293-3038.

This work is based on Professor Schouler's well-known works on Domestic Relations and on Husband and Wife, the former having appeared

first in 1870 (with later editions in 1874, 1882, 1889 and 1895) and the latter in 1882. In addition to the subjects there covered by Professor Schouler, the present work includes a third volume containing the full text of the divorce statutes in all of the United States.

The two older works by Professor Schouler covered somewhat the same ground, his work on Husband and Wife being merely an amplification of his treatment of that subject in his work on Domestic Relations. The duplication of treatment which was natural and desirable in the two separate books is continued to some extent in the present work. Volume I, on Domestic Relations, contains introductory and concluding chapters on marriage and on separation and divorce which attempt to summarize the contents of Volume II on Marriage and Divorce. These chapters are, of course, useless under the circumstances, and might well have been omitted. The space they occupy could have been much better used for a table of cases, the absence of which is a very grave defect, inexcusable in a compendious work.

Since the first edition of "Domestic Relations" the subjects covered in these volumes have undergone a tremendous change, a change perhaps more complete and revolutionary than in any other major field of the law. In 1870 the emancipation of married women had been in process for many years, but it had progressed only a little way in comparison with the present situation. The mediaeval rules of unity of person, of the wife's personal and economic subjection to her husband, were still pretty generally enforced; the legislative inroads on those ancient doctrines were jealously suspected by the courts and were given only grudging recognition. Now there is little left of the old rules; as Mr. Blakemore tells us in Section 4 of the present work: "It can almost be said that the modern wife has a legal right which, fortunately for all of us, she does not exercise, to leave home in the morning and go to work, collect and keep her own wages and leave her husband to do the housework and take care of the babies." The author's touching expression of the pitiable plight of poor man is not overstated. In most jurisdictions wives are entitled to their own earnings, and can spend them as they will, free from any control by their husbands. But if a husband doesn't spend his earnings for the support of wife and children, he is a felon and goes to prison. So, too, in many states a wife can sell her land without the consent of her husband, while he cannot sell his land unless he secures her signature to the deed to bar her dower. Compare this with the law of a century—or even a half-century—ago! The changes have been less marked in the fields of Infancy and of Parent and Child, though even there the demands of society have made considerable inroads on the old rules, especially as to the custody of children.

Such a field of law—constantly shifting and yielding to new sociological demands—is covered by this work of Mr. Blakemore, working on the foundation of Professor Schouler's earlier (and now sometimes obsolete) discussion of these important relations. It has been a very difficult task. Different courts, with different ideas of the needs of society, have yielded much, or little, or not at all, to various pressures brought to bear by new and

growing forces in the social fabric. The result is a nearly hopeless welter of decisions, which the author has pretty skillfully classified and summarized in his text. He has perhaps followed too closely the discussion by his illustrious predecessor; in many cases he has added new paragraphs containing a statement of recently-developed doctrine, when it might have been better to rewrite a preceding paragraph based on the older work. But on the whole the work is excellently done. The foot-notes frequently contain illuminating classifications of authorities—a very helpful device which is all too rare in recent textbooks—and seem to include all of the cases on the subject, though the absence of a table of cases makes it impossible to check the accuracy of the latter statement.

EVANS HOLBROOK.

THE CONSTITUTIONAL LAW OF THE PHILIPPINE ISLANDS. By George A. Malcolm. Philippine Legal Series, Vol. I. Rochester: The Lawyers' Coöperative Publishing Co. 1920. Pp. xxiii, 702.

The author of this book has brought to its preparation an extraordinary equipment for the work, for besides his still continuing service as Associate Justice of the Supreme Court of the Philippine Islands, he holds the chair of Public Law in the University of the Philippines, has been the Assistant Attorney-General, was the organizer and Dean of the present Law School of the University of the Philippines, and has written texts and preliminary studies upon the subject of his present book. Justice Malcolm has, in fact, an impressive total of accomplishment to his credit, particularly in view of the fact that he is still a young man. The book is a most valuable contribution to the study of Philippine institutions, both as a working manual for those engaged in the administration of its affairs, and as an aid to students of the institutions of the Philippine Islands and of legal and political institutions generally.

Part I of the volume is introductory in nature, containing definitions and statements of general principles concerning the nature of Constitutional Law and the adoption, alteration, construction and interpretation of constitutions. This part of the book is necessarily brief and cannot be considered an original contribution to political science; but it is of aid in defending the author's point of view and in calling the attention of the reader, at the outset, to some fundamental conceptions and assumptions to be kept in mind.

Part II contains compressed but exceedingly interesting and helpful sketches of the constitutions of England and the United States, of Australia, Spain, the Republic of Cuba, Mexico, and Japan, and of the so-called "Malolos Constitution." The latter is a document of exceeding interest and, so far as the reviewer knows, not elsewhere easily available, except perhaps in a Senate document. This comparative study is too brief to permit of absolute accuracy of statement, for Constitutional Law cannot be compressed in expression without undergoing certain mutilations; but it would be difficult to point to other brief summaries of this nature as carefully worked out and as helpful to the student of constitutional arrangements.

Part III is a very short historical sketch of the constitutional history of the Islands. Parts IV and V form the major part of the book and constitute a comprehensive, discriminating and able discussion of the political status of the Islands, their relation to the United States, and the important provisions of those Acts of Congress and of the Philippine Commission and Legislature which may be said together to constitute the Constitutional Law of the Islands. A summary of the so-called "insular decisions" of the United States Supreme Court, in which the status of the Philippines and of other citizens was defined, is clear and accurate. The author has stated fairly the widely divergent theories of Justices Brown, White and Brewer upon this important matter, but has refrained from expressing his own opinion as to which is the sound view. This will be regretted by those who would be exceedingly interested to have the views upon this interesting question of a man so saturated with learning upon the subject as is Justice Malcolm; but an author must determine for himself the scope of his book, and doubtless the need of compression and perhaps the fact that he considered that the book would find its greatest use as a guide to actual administrators in the Islands led him to the conclusion that he should reserve discussion of theory for some other work. The reviewer ventures to hope that Justice Malcolm will add the weight of his opinion to those who believe that the Constitution can neither be "extended" nor "restricted" by Acts of Congress or any other governmental agency except the people themselves. It seems reasonably clear that the Constitution applies to whatever may be the United States at a given time; and if an island or other territory is not a part of the United States, then the Constitution cannot be stretched or extended so as to apply to it; nor, on the other hand, withdrawn from territory to which it really appertains. It is, of course, competent for Congress to say that it will be guided by the principles and provisions of the United States Constitution, so far as applicable, even in governing unincorporated territory; but that is a very different thing from an undertaking, by Congress, to make the Constitution *per se* apply.

The doctrine of incorporation has been very clearly explained in the book. On the whole, while the application of a strictly scholastic logic might find flaws in the theory, time and matured opinion have served to confirm the sound common sense and political wisdom of the doctrine expressed by Mr. Justice White for what came to be a majority of the court. Incidentally, the author declares (page 181) that Porto Rico is an incorporated territory, a view which was by no means without some apparent justification. But the Supreme Court of the United States has recently held (*Balzac v. Porto Rico* (Adv. Ops.), decided April 10, 1922), and we think correctly, that the Acts of Congress granting citizenship to Porto Ricans, and setting up a District Court for the Island, have not resulted in an incorporation of Porto Rico into the United States.

Throughout the book Justice Malcolm shows familiarity not only with the decisions of the United States and Philippine courts, legislation and Commission rulings, but also with a wide range of the best work in political theory and government.

HENRY M. BATES.

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