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Book Review (reviewing Louis Josserand, Cours de droit civil positif français (1930))

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BOOK REVIEWS

COURS DE DROIT CIVIL POSITIF FRANÇAIS. 3 vols. Louis Josserand, Doyen de la Faculté de Droit de Lyon. Paris: 1930.

The first reflection that suggests itself in noting this comprehensive and up-to-date treatise on French private law is that there is no parallel to it in Anglo-American legal literature. Blackstone and Kent have given us general commentaries; but, covering the entire field of law, they are inadequate guides to what is called the private law. A civil code naturally gives to the private law some degree of formal unity; but in Germany, even before the days of national codification, private law was treated as a unit in teaching and writing, owing to the fact that it was only as a system of private law that the Roman *Corpus Juris* had been received on the Continent of Europe.

The title page to Mr. Josserand's treatise states that it conforms to the official programs of the law faculties, which in their turn presumably have the sanction of the Government. Probably this does not mean that the arrangement of the subject is official. In any event, the arrangement does not follow that of the Code as closely as is the case in the current treatises on German private law; but then, the system of the French Code, partly modeled upon Justinian's *Institutes,* compares unfavorably with the system of the German Code, which, closely following the traditions of university teaching and text book writing, groups the private law material in lucid, and so far as the nature of the subject matter permits, logical sequence.

The following brief conspectus of the contents of the treatise will give an idea both of Mr. Josserand's method of treatment and of the French system of private law:

1. An Introduction on sources of law, classification of legal rights, and legal acts and their proof. Josserand here restates his theory of the abuse of rights, which he developed in an earlier essay.

2. The law of persons: natural and juristic persons; beginning and end of personality; name; domicil; vital statistics; capacity and guardianship; married women.

3. The family: marriage; divorce; parent and child; illegitimacy and legitimation; adoption.

4. Property: movables and immovables; possession; rights in land, waters, and neighbor's rights; intangible property; small holdings; fiscal property; title, adverse possession, and occupancy; joint rights; conditional rights; restraints on alienation; usufruct and easements.

5. Obligations: torts; unjust enrichment; specific performance; damages; natural obligations; time limits and conditions; joint and several obligations and claims; assignment; discharge, novation, *etc.*; limitations.

6. Specific contracts: sale; hiring and letting; work and services; partnership; loan; aleatory contracts; mandate; compromise.

7. Suretyship: pledge; mortgage; lien. (The extraordinarily involved character of the French law of liens accounts for this separate division).

8. Marital property rights. (As in the German law, this subject is dealt with in great detail).

9. Estates and successions: heirship; devolution; administration; distribution.

10. Liberalities: testaments; gifts; conditions; reservation; capacity; inducement; residuary and particular legacies; charges; implicit and express revocation; disposable portions; marital gifts; substitutions; charitable trusts.

If a French law school course in private law succeeds in covering the entire contents of the treatise, the student is likely to obtain a better-balanced fund of information than an American law student will get by taking even all the courses that are represented by our case books dealing with private law subjects; the French student will of course have, like ours, additional courses in commercial law, criminal law, procedure, constitutional and administrative law, and so forth. Educationally, this gain may be considered to be offset in part by the more cursory treatment of a text as compared with a case book; it is, however, a fair question whether our study of cases does not rather mean a greater intensiveness in laboring particular points, than a greater number of particular problems covered. In recently conducting a course in Comparative Law, I leaned heavily on Josserand's treatise, and nearly always obtained the information that was needed.

For purposes of legal education, it is the range of subjects covered that counts rather than the more or less perfectly systematized view of the law. Even if it were possible to construct a "scientific" system of the private law, it would make only a fragment of the law as a whole, and the systematization of the entire field of the law is likely to be undertaken only for bibliographical or library purposes. An encyclopaedia will prefer alphabetical arrangement; and legislative codification will not venture to treat the entire body of the law as a unit project. In dealing with one comprehensive field the codifier is indeed compelled to adopt some system; but that system he is as apt to inherit as to originate, and his choice will be only a minor factor in determining the success or failure of his work.

Systematization assumes a somewhat different aspect, if we pass from classification by way of arrangement to the structure of concepts and of

institutions. We then enter upon the technique of thinking and of formulation which determines the legal complexion of a code. In this respect, however, a code will be even less likely to originate, and the commentator will be compelled to accept the stock of current concepts. One possessed of a fertil mind like Mr. Josserand's will reserve his original ideas for monographs, and display normal orthodoxy in a treatise inteded for the use of students and of the profession. Occasional criticism is not incompatible with a general attitude of conformity. Mr. Josserand is thus particularly severe on the code recognition of quasi-contract as a category in the source of obligations, declaring it to be a "legendary monster;" he would greatly prefer the "unjust enrichment" of the German and Swiss codes. However, quasi-contract in the French Code appears merely as a collective designation without being a specific commitment, whereas enrichment without cause is treated by the German Code as a sufficiently definite concept to guide parties as well as courts, thus representing a step in legislative jurisprudence upon which the French Code has not ventured. The author also deplores the French lack of an equivalent to the German "Stiftung," the eleemosynary foundation, endowed with juristic personality; but here we are confronted not merely with a conceptual defect, but with some uncertainty, if not illiberality, in the French provision for gifts to charity.

Even though a civil code expresses abstract patterns of adverse human relations which are in a sense permanent and universal, it is to be expected that a code of 1804 does not serve modern needs as adequately as a code of 1900 or 1912. The continuing serviceability of the French Code, due in a considerable measure to its concise and pregnant phrasing, is a great tribute to its authors. The division on obligations remains almost unaltered; the same is true of the law of wills and succession. The most numerous changes are to be found in family law, where in recent times a progressive view of the status of married women and of the relation between parent and child has made itself felt. The law of property relations between husband and wife has likewise been modified at least so far as the earnings of married women are concerned (legislation of 1907); but on the whole the elaborate regulation of the "matrimonial regime," with the option that it leaves to the parties among various types, including freedom of contractual arrangements, remains, and Mr. Josserand believes that this is preferable to the statutory proclamation of separate property rights. The statistical information presented as to the number of marriages to which the different types were made applicable in selected years, are a particularly welcome feature of this part of the book.

In the general comments on the state of the law, which are scattered throughout the treatise, there will be found many interesting comparisons between the policy of the French Code and the policies of foreign systems,

and in a number of cases a preference is expressed for the solutions found by the German and Swiss codifiers. It would indeed have been surprising if a hundred years' acquaintance with the French Code had resulted in no improvements upon it. The conceded superiority of the German Code in some respects raised some doubts as to the wisdom of its displacement in Alsace-Lorraine upon the recovery of the lost provinces, but, inevitably perhaps, nationalistic considerations prevailed, and the French Code was re-introduced in 1924. A number of concessions were made, and these, under the circumstances, are of particular interest: thus the German institution of land title registry was maintained for a period of ten years from January 1, 1925, the modifications of the corresponding provisions of the French law in its application to Alsace-Lorraine to be then determined by law. There is now in the French law an admittedly imperfect system of registration for mortgages and liens, but none for conveyances, and it will be interesting to see to what extent the rigid German system of publicity will be modified in the re-annexed provinces in 1935.

The foregoing observations merely touch upon some of the innumerable points of interest which the treatise presents; detailed critcism would be impracticable even if the reviewer were competent to make it; but it is a pleasure to express the sense of obligation which must be felt by a foreigner to Mr. Josserand for having furnished so lucid an exposition of the French law.

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STRIKE INJUNCTIONS IN THE NEW SOUTH. By Duane McCracken, with a foreword by Maurice T. Van Hecke. Chapel Hill (N. C.): University of North Carolina Press. 1931. Pp. xi, 290. $3.00.

Injunctions in labor disputes have often been studied in their legal aspects, but little attention has been paid to their practical effects. This is one of the few studies dealing with the results rather than with the law of injunctions—restricted in scope but excellent in quality.

Only five injunctions are discussed, but three of these are among the best known of recent injunctions in labor cases. As to these cases, and particularly the three most important, the author appears to have exhausted all available sources of information. He not only examined all the court records and read newspaper and other accounts of the strikes in which these injunctions were issued, but interviewed scores of participants and local officials. An economist, not a lawyer, he has a good grasp of the law of labor combination, and above all a clear understanding of the points which are at issue in the controversy over injunctions.