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Book Review (reviewing Max Radin, Handbook of Roman Law (1927))

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These errors and misquotations are unfortunate, since they cast some doubt on the general accuracy of the work, a doubt which, for the most part, is not believed to be justified.

University of Pennsylvania Law School.

HENRY WOLF BIKLÉ.

TWENTIETH CENTURY CRIMES. By Frederick A. Mackenzie. Boston: Little, Brown & Co. 1927. Pp. viii, 273, and 7 illustrations.

This is the most interesting of the books in this field in recent times. It is the most interesting, first, because of the style, which is neither too matter of fact nor too journalistic; next, because the crime-cases selected are modern; and lastly, because they are cases having a general interest but not ordinarily accessible for study. (And, by the way, the author nowhere gives any list of references for the sources of his accounts. This is unpardonable in a responsible author. We have to rely on the intrinsic evidences of his fairness.)

The first case described is the Loeb-Leopold murder in Chicago in 1924. The only error in it is its total misinterpretation of the moral character of the chief counsel for the defense. The next crime chronicled is the killing of the Russian monk Rasputin and the later killing of the Tsar's family. Then comes the Stockholm murder by dynamite in 1926, done by Arbin and Kreuger. Next, the trial of Steinie Morrison in London in 1911, for the murder of Beron; this trial has been already fully reported in the Notable British Trials, Series; but the preliminary chapters here give a helpful setting to explain the interest of the case. Next is the Becker case, in New York, in 1912; a book treating the accused as the victim of a frame-up has recently appeared; but the present account is an impartial one. The proceedings lasted three years, and illustrate that the Massachusetts license to long-drawn out delays is not unique. As this review is penned, a dispatch records that the date of execution in another murder case in New York was fixed by the Court of Appeals at a date more than six weeks after the final action on appeal; why such further delays?

The remaining cases are those of Abe Hummel in New York, in 1905, for subornation of perjury, and of Landru in Paris, in 1919, for multiple woman murder. Altogether, an interesting mosaic.

JOHN H. WIGMORE.

HANDBOOK OF ROMAN LAW. By Max Radin, LL. B., Ph. D., Professor of Law, University of California. St. Paul: West Publishing Co. 1927. Pp. 516.

It is significant of the slight interest that American legal scholarship takes in Roman law, that this is the first treatise on the subject that has appeared in this country in a generation—

since the publication of Morey's book in 1890. Mr. Radin's work covers the same ground as the familiar English and Continental treatises on the Institutes of Roman Law, i. e., it gives in an elementary form the results of Justinian's codification. Two-fifths of the book is given to the law of obligations (torts and contracts), one-third to the law of inheritance (wills and intestacy); the law of property is much more briefly disposed of, and the treatment of persons (family relations) is very meagre. In very characteristic fashion the Romans practically superseded abstract legal rights, both as between husband and wife and as between parent and child, by customary conventional arrangements which absorbed the interest of the jurists, and in the absence of an account of these we hardly get a proper perspective of the family law of the later period.

A very readable account is given of the history of procedure. The formal character of the old *legis actio* is strikingly stated by the observation that an issue is not created by assertion and denial, but by the fact that two parties assert contradictory rights. The operation of the formula is described as clearly as our knowledge of it permits; but for an adequate picture we must largely draw upon analogies, if not upon the imagination. The details of the development of the Roman law will probably always remain obscure; the enormous accession of material through the discovery of Egyptian papyri has added as much to the consciousness of ignorance as to knowledge, and it was perhaps easier to teach Institutes of Roman Law, when little or nothing was known of Hellenistic jurisprudence.

A happy feature of Mr. Radin's book is the running comparison with Anglo-American law. Since the main value of the study of the Roman law to the American student lies in the recognition of parallels and contrasts, this feature might have been much enlarged to our great profit. The absence of agency in the Roman law can be better understood when we realize that there is a similar absence in our law in the relation of the executor of the estate; in the law of guardianship we lack, on the other hand, anything like the useful *auctoritas tutoris*, which is also found in the modern civil law.

It may, however, also be that a treatment of Roman law in the main as a phase of comparative law would result in a basic shift of emphasis. There are in reality two histories of Roman law, the one ancient, the other modern. If we begin the former about 250 B. C., the time at which the *legis actiones* were first made the subject of teaching, and end it about 550, the approximate date of the completion of Justinian's work, and if we begin the latter about 1100, when law began to be taught at Bologna, and end it at 1900, the year of the taking effect of the German Civil Code, we have two periods of eight hundred years each, with intervening darkness. Of the two periods, the latter is infinitely more enlightening, partly because we know a great deal more about it, and partly because it developed the characteristics that mark the civil

from the common law—a law dominated by University learning and bureaucracies, as against a law dominated by a centralized judiciary and almost entirely dispensing with administrative machinery. The study of this modern Roman or civil law would be a study of the operation of sources, of institutions and of doctrines, not the study of the systematic structure of an entire body of law. The study of the Institutes of the Roman law is the latter. The conditions which gave it that character have disappeared and cannot be re-created. Nevertheless, the strength of academic tradition is such, that if, as may be expected, the growth of university teaching of law in America will lead to a revival of the study of Roman law, it is likely to be pursued along the old established lines. It is undoubtedly with this prospect in view that Professor Radin has prepared his book, and his lucid and competent presentation will greatly help in making the study of Roman law popular and useful.

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ERNST FREUND.

PSICOLOGIA GIUDIZIARIA. By Enrico Altavilla. Turin: Unione Tipografico—Editrice Torinese. 2nd ed. 1927. Pp. xxxi, 671. [Psychology in Court Proceedings.]

This is the kind of book that we ought long ago to have had in English, if our psychologists had only concentrated on this field, instead of scattering their energies on less utilitarian subjects. The Italian word "giudiziaria" has no single equivalent in our language; it signifies "pertaining to the operations of courts," and corresponds to the old meaning of "justice" in French. Hence this book treats of the applications of psychology to the valuation of testimony, in general (Book I); and, the participants in the trial (Book II). Under the first general head come chapters on: the normal psychological process of testifying; age and sex; emotions; temperaments; subject of testimony; illusions and hallucinations; mental defects; mental disease; simulations of mental disease. Under the second general head come chapters on: the accused (interrogation, confessions, accomplices); victims, suicides, and informers; witnesses; confrontation in court; interpretation of documents; experts and interpreters; the counsel; the prosecutor; the judge and the jury.

Such an array of topics, fully treated in the light of science and experience, would form a valuable book for the self-education of our judges and prosecutors. The nearest to it that we yet have in English is Mr. Albert Osborn's "Problem of Proof" (2nd ed. 1927); and yet its author is neither a psychologist nor a lawyer. The present treatise represents the results of the author's twenty years of experience in court—though the preface does not reveal the capacity in which he officiated. As a solid and useful exposition of the psychology of the problem of proof, it is worthy of a prominent place in the library of legal science. It is amply documented