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A History of Italian Law

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BOOK REVIEWS

A HISTORY OF ITALIAN LAW. By Carlo Calisse. Translated by Layton B. Register, with introduction by Frederick Parker Walton and Hessel E. Yntema. Boston: Little, Brown and Company. pp. lix, 827 (1928).

(Volume VIII of The Continental Legal History Series.)

In attempting to review any single volume of this series one is strongly reminded of the quotation from Maitland at the beginning of the general introduction: "All history is but a seamless web; and he who endeavors to tell but a piece of it must feel that his first sentence tears the fabric." It is not simple, for the purposes of the English or American student, to separate the part from the whole. This is true in spite of the fact that the series is not primarily intended as a mere history of the sources leading up to the development of the common law in England and America; if this were true the task would be even more difficult. As a matter of fact, the series is exactly what it purports to be—a history of law on the continent of Europe from the earliest sources of present day law to the present time.

The volume under consideration is a combination of two works of Professor Carlo Calisse, Professor of Law in the University of Rome, and Senator of the Kingdom of Italy. Those works are his "History of Italian Criminal Law from the Sixth to the Nineteenth Century," (1895) and his three volume "History of Italian Law," (1903). This latter work was in three volumes, "Sources," "Public Law," and "Private Law." The present book is made up, in the order named, of the public law, criminal law, and private law. Part of the volume entitled "Sources," has already appeared in Volume I of the Continental Legal History series under the title "A General Survey." The work begins with the fall of the Western Empire in 476 A. D. and follows through the Ostrogoths and Byzantines, thence through the Germanic period and the Renaissance to the modern period. History itself is mainly sketched in the first part—public law. The word "sketched" is used advisedly. It will be observed that this work was primarily written by an Italian for Italians, and the writer presupposes a sound knowledge of Italian history on the part of his readers. In fact, it may be said that a knowledge of history

is more important to a proper comprehension of the work than is a knowledge of law. One who approaches Calisse with a thorough knowledge of Gibbon will find his course made reasonably smooth.

The work of Professor Register in translation is to be highly commended for its simplicity. There is no difficulty in reading this book. The difficulty lies in another direction. While not difficult to read it must be regarded as an adult work or, if intended for the younger student, must be carefully studied as a text. Each paragraph is packed with information. But little space is given to commentary—it is rather plain statements of fact with every sentence of importance. The pages given above, while showing that the work is voluminous, do not indicate that each page contains the maximum amount of legibility as well as sufficient information to require no little time to digest. At the same time, there will frequently be found a primer-like simplicity in many of the chapters, so as to make certain subjects perfectly plain to the beginner. Among many instances of this may be pointed out such notable examples as the chapter on the Feudal State, in Book I, and the chapter on Feud (a very different matter) under Criminal Law, in Book II.

The work on Criminal Law begins with the Germanic domination and, at the beginning of each period treated thereunder, admirably develops the transition of the state's view of crime—the change from the consideration of crime as a matter of material damage to the regard of the subjective element. Few more entertaining chapters are to be found in the work. When we leave these and come to the consideration of particular crime we find ourselves with a work rather encyclopedic than entertaining. To the ordinary student of law the study of the punishments for particular crimes has only a limited interest; yet so well are these different criminal studies interwoven with the general development that the book is not likely to be laid down.

The third book—Private Law—occupies about half the volume and is the portion of the work which both lawyer and student will find most helpful. The part on Public Law is necessary to an understanding of the third book; yet in Book III we find the material for which we have been waiting. This book is divided into six parts—five subdivisions of law and a sixth part on private law since the unification of Italy. The divisions of private law are persons, the family, decedents' estates, property rights and ob-

ligations. The divisions, as will be observed, might well be made by an English jurist. Their subdivisions deserve the same comment.

This third part is subject in large measure to the same praise or blame mentioned above for the entire work. It is quite simple reading for a lawyer; yet so much is compressed into so short a space that a desultory perusal will benefit no one. For instance, the nature and the suppression of mortmain are set forth in two and a half pages. It is admirable in its conciseness; yet the difficulty of remembering all one may gather from a reading will be apparent.

The work of Professor Register has not stopped with translation. The original work ended with the unification under the older constitution of Charles Albert of Savoy. Professor Register and Professor Calisse have both added an outline of the subject to the present time—rather to the appearance of Mussolini. The final chapters on the private law of United Italy were likewise specially prepared for this translation. Just how far we may be indebted to Professor Register is hard to estimate. Certainly we are indebted to him for a readable book and for clarity of style.

As everyone knows, this series is not intended for browsing. It is a serious work for the scholar or the student. Properly used, it may well be doubted if any other work published so well equips a lawyer to avoid the imputation contained in the quotation from Guy Mannering, "A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect."

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TRADE ASSOCIATIONS: THE LEGAL ASPECTS. By Benjamin S. Kirsh. New York: Central Book Company. pp. 271. (1928.)

There can be no doubt that business may be carried on much more efficiently by a monopoly than by competitors. But the danger of oppression which is ever present where combination begins