

Book Review

SOME TYPES OF PUBLIC AND PRIVATE LAW IN SPANISH AMERICA

- DELITO DE LESIONES. By *Diego Vicente Tejera, Jr.* Habana: Rambla, Bouza y Cia., 1931. Pp. 310.
- PROYECTO DE LEY ORGÁNICA DEL PODER JUDICIAL. By *Mariano Aramburo y Machado* "El Siglo XX." Pp. 52.
- PROBLEMAS DE DERECHO PENAL. By *Luis Jiménez de Asua.* Santa Fe, Argentina: Universidad del Litoral, 1931. Pp. 151.
- PROYECTO DE CÓDIGO CIVIL CUBANO (Libro Primero). By *Mariano Aramburo y Machado.* Habana: Rambla, Bouza y Cia., 1929. Pp. 103.
- PROYECTO DE LEY ORGÁNICA DEL PODER JUDICIAL. By *Mariano Aramburo y Machado.* Habana: Rambla, Bouza y Cia., 1929. Pp. 92.
- JURISPRUDENCIA RAZONADA DEL TRIBUNAL SUPERIOR DE BOGOTÁ (1917-1923). By *Luis F. Latorre.* U. Bogotá: Librería Americana. Pp. viii, 310.
- PROYECTO DE CÓDIGO MUNICIPAL. By *Mariano Aramburo y Machado.* Habana: Rambla, Bouza y Cia., 1929. Pp. 137.
- PRINCIPIOS DE REGIMEN MUNICIPAL. By *Rafael Bielsa.* Buenos Aires: J. Lajouane y Cia., 1930. Pp. 231.
- CUESTIONES DE ADMINISTRACIÓN MUNICIPAL. By *Rafael Bielsa.* Buenos Aires: J. Lajouane y Cia., 1930. Pp. 127.
- EL PODER LEGISLATIVO. By *Carlos A. Aldao.* Buenos Aires: L. J. Rosso, 1929. Pp. 211.
- MANUAL DE DERECHO CONSTITUCIONAL. By *Carlos A. Aldao.* Buenos Aires: L. J. Rosso, 1930. Pp. 311.
- BASES PARA LA REFORMA DE LA CONSTITUCIÓN ARGENTINA. By *Rafael P. Emiliani.* Buenos Aires: R. Saurez Baconé, 1931. Pp. 181.
- HISTORIA DE LA ORGANIZACIÓN CONSTITUCIONAL. By *Juan A. Gonzalez Calderón.* Buenos Aires: J. Lajouane y Cia., 1930. Pp. iii, 320.
- PRENOCIONES PARA EL ESTUDIO DE LA HISTORIA CONSTITUCIONAL DE LA REPÚBLICA ARGENTINA. By *Emilio Ravignani.* Buenos Aires: Jacobo Peuser, 1930. Pp. 173.

I

First at hand are three works dealing with special fields of law. Tejera's CRIME OF LESIONS, covering wounds by gunshot, knife, and other weapons, as well as criminal accidents, is a good example of the work in sociological jurisprudence now being done by some of Cuba's best lawyers. It would be a credit to any country. The author recognizes the obsolete character of existing law on this subject and seeks "to adapt the law to the discoveries of the sciences . . . and to current social convenience." He makes use of the leading Italian and German work in the field and summarizes the similar legislation of Europe, Latin America, the United States, Australia, New Zealand, and even of China and Egypt, as a basis for his constructive suggestions for the revision of the Cuban code. Tejera is city

attorney of Matanzas and the author of many able works on legal reconstruction.

Aramburo's PLAN FOR A LABOR CODE for Cuba follows the same objective of socializing the law. Until the use of the sugar industry under North American capitalistic control there was no labor problem in Cuba, legally speaking, says the author. Now the problem of adopting a system of general legal principles to cover litigation in the numerous cases arising in the courts becomes imperative. Mexico already has its code, but it is rather loosely constructed, the author thinks. His proposed code (pp. 15-52) he believes to be much more securely based upon fundamental economic and sociological principles.

The great Spanish criminologist and penologist, Jiménez de Asua, banished by Alfonso XIII because of his liberalism, found a refuge in Argentina and there he delivered the lectures on *Problems of Penal Law* here reviewed. Three of these are on the theory of crime, one on pain and blindness, and the last is on potential criminality (estado peligroso). In the first three the author shows in some detail how the concept of criminality is giving way to that of the behavior of maladjusted personalities requiring reeducation and a reconstructed environment. The final lecture covers the case of this maladjusted or pathological person (potential criminal) in more detail and suggests methods of handling him preventively. This last is one of the recognized penological problems of Latin Europe and Latin America.

II

In the field of the civil law in general the Cuban jurists are especially active. Aramburo's PLAN FOR A CUBAN CIVIL CODE is one of several proposals that have appeared in the last decade or so. The author, who has been director of what we would call the Cuban Legislative Reference Bureau and is a distinguished lawyer and jurist, has followed the German Civil Code in the main outlines of his plan, but in many concrete instances he has preferred to follow the Spanish work of Sánchez Roman, but always with care to adapt the principles to local Cuban conditions and needs. Incidentally he finds himself in controversy with another legal reformer, Sánchez Bustamante of international law fame. In his plan for the reorganization of the JUDICIAL POWER he stresses markedly the necessity of making the courts conform to modern social needs and innovations. He proposes a guardians' court (Juzgado de Tutelas) and a juvenile court. He would, among other things, limit the powers of the rural judges, increase the efficiency of the legal clerical aids of the court, raise the standards of the courts by establishing higher standards of tenure and function, and take the judges out of party politics, especially in connection with elections.

In Latin American countries, where the code rather than the judicial precedent is central in the determination of judgment, the publication of court decisions is much less well provided for than in this country. Therefore Latorre's JUDICIAL DECISIONS OF THE SUPERIOR COURT OF BOGOTÁ during the compiler's period of tenure (1917-1923) is hailed by his fellow

judges and by lawyers as a most useful work. More than 700 important and typical cases are covered in abstract. There is also an essay on the art of judging. The strong demand for such a compilation shows clearly that in this day of rapidly changing law the relatively fixed code is being supplemented largely, even in South America, by the use of the more fluid court decisions used as precedents.

III

With the increasing importance of cities and their rapid modernization in Latin America there is a corresponding increase of interest in the law and government of municipalities. Aramburo's reasons for proposing his new **MUNICIPAL CODE** sound like the indictments of one of our own city governments by an authority like Merriam, Beard, or Munro. He says that a new municipal code is one of the most marked needs of Cuba, since the old code has not fulfilled the promise of its sponsors to stimulate local autonomy, the sense of official responsibility, administrative honesty, nor popular interest. In fact, he says, the municipal governments are primarily tax collecting and money spending organizations which give the citizens little to show for their pains. By way of remedy the author proposes stricter concentration of administrative responsibility, better supervision over finances, and the raising of the population requirements for incorporation. His detailed plan does not propose commission government or the city manager plan.

Bielsa's **PRINCIPLES OF MUNICIPAL GOVERNMENT** attacks much the same proposition from the angle of political science rather than from that of administrative law. He uses the comparative method and outlines the types of city government in France, England, the United States, Italy, Spain, and Germany and compares these with the system of his own country, Argentina. His proposals for improvement are largely in relation to financial reforms and efficiency of administration. The same author has also brought out **PROBLEMS IN MUNICIPAL ADMINISTRATION**, which consists very largely of court cases and administrative problems relative to police, gambling, duplicate public service functions, conflict of powers in the control of municipal utilities, concessions, municipal contracts, franchises, etc. The author is a leading professor of law in the universities of Buenos Aires and of the Litoral (Santa Fe-Rosario).

IV

In recent decades, with the growing antagonism toward the United States, there has arisen a sharp controversy over the relation of the Argentine constitution to that of the United States. Some commentators deny that the former was derived from the latter, but Carlos A. Aldao, one of the leading publicists of Argentina, maintains in his **LEGISLATIVE POWER** and **MANUAL OF CONSTITUTIONAL LAW** that the Argentine constitution of 1853 (still in effect) was a close copy of that of the then much admired sister republic to the north. His second volume takes up the correspondences in some detail, together with an exposition of the defects of the Argentine constitution. He maintains, however, that the only copies of the United States

constitution available to the Argentine constituents were faulty French and Spanish translations, which led to several serious errors. Also, he shows, the Argentine constitution makers, because of their imperfect grasp of fundamental principles of political science, erected a presidential system upon a federal framework, with results that have been very confusing administratively. His *LEGISLATIVE POWER*, which consists of a translation of chapters XI-XXI of Bryce's *AMERICAN COMMONWEALTH* together with a long argumentative introduction, is intended to illustrate and reinforce the second contention. The author argues from these facts that a revision of the Argentine constitution in the direction of a more original adaptation to local needs is imperative. A similar demand for a radical revision of the Argentine constitution is made by Emiliani in his *BASES*, but the reasons offered for his proposal is that the old constitution is anachronistic socially and economically and that only a new constitution which gives better guarantees to labor and to the exercise of citizenship generally can avert the recurrence of revolution against the domination of the vested interests of the propertied classes. He maintains that, just as the revolution of Urquiza against Rosas in 1852 was made effective by the constitution of 1853, so should the present revolution against Irigoyen be consolidated in a new constitution. He offers his own plan for a fitting liberal constitution (pp. 109-181).

González Calderon's *HISTORY OF THE ORGANIZATION OF THE CONSTITUTION OF ARGENTINA* is a very competent and scholarly work by the distinguished professor of constitutional law in the universities of Buenos Aires and La Plata. He traces the history of all of the attempts at constitution making from 1811 to 1853. The decade 1810-1820 witnessed no fewer than five such attempts of major or minor character. The federal constitution of 1819 gave way to the centralized regime of 1826, and this in turn was overthrown in 1829 by the federalist faction which ultimately put Rosas in power, because the provinces were not yet ready for centralized government. Even the constitution of 1853 was opposed by the province of Buenos Aires until in 1860 its governor, Mitre, succeeded to the presidency of the nation, largely through conquest. Ravnigani's *PROLEGOMENA TO ARGENTINE CONSTITUTIONAL HISTORY* is primarily a methodological work by the able director of historical investigation in the University of Buenos Aires. In the three long chapters of the work he sets forth the principles of historical method and their application to the study of the constitutional history of Argentina and its sources. He reviews in detail the various attempts that have been made to cover this field and the sources and methods employed by the writers. For the student of Argentine constitutional history Ravnigani's work is an invaluable introduction.

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