

A Source Book of English Law, by A. K. R. Kiralfy, Ph.D., LL.M., of Gray's Inn, Barrister-at-Law, Reader in Law at King's College, London, Sweet and Maxwell Ltd., 1957. xx and 445 pp. (£3/10/0 in Australia).

Teachers of legal history will welcome Dr. Kiralfy's latest contribution to the study of that subject, for it provides within reasonable compass and at reasonable cost a well-balanced collection of source materials. As such, it supplements not only text-books but also standard works of reference. Certainly it will relieve the pressure on library space and ease the wear and tear on the valuable, but limited, supplies of source materials available in Australian universities¹—always problems in large first year classes.

Far more important, however, are the issues which this book raises as to the role of legal history in the curriculum. The belief is held in some quarters that legal history should not be taught as a separate subject and that sufficient historical background can be sketched in as a preface to instruction in particular (so-called) practical subjects. This attitude is, the reviewer believes, unsound both from an academic and practical standpoint. Students, and even practitioners, cannot appreciate the present structure of the law unless they know something of how it came into being. For instance, two of the basic Acts governing real property law in New South Wales,² are meaningless unless you know something of their common law background. It is most unlikely that legal history, taught as an appendage to particular courses, e.g. torts or contracts, would provide even the minimum necessary background.

Assuming, therefore, that some type of (independent) course in legal history is necessary the basic issues are: When shall it be given? and What shall it contain? These issues are, of course, closely related, the average intellectual maturity and legal background of the student determining very largely the level and content of the course. Thus a course taken in the early stages of the LL.B. degree³ cannot aim too high; it must take into account the fact that many students will have come straight from school with, unfortunately, very limited knowledge of English history. Even so, there is considerable scope for such a course. If its purpose is merely to give a minimum of instruction on the history of the institutions, procedures and substance of English law, there is rarely any need to go beyond the confines of the short text-book—there is no place for such work as *A Source Book of English Law*. But this type of course is both pedestrian and barren to teacher and student alike. If, however, the aim is to give the student a deeper insight into the working of the English legal system in the past, to indicate the complexity of the legal problems which faced the lawyers and judges of earlier ages, and to relate their solutions to the law and legal questions of the present day, this kind of book may well serve constructive purposes and also engender real student interest. In these circumstances the use of source materials becomes very necessary and a book such as Dr. Kiralfy's is a most useful aid in academic instruction, particularly where much of those materials are not readily available. An honours course in legal history would aim even higher and accentuate its value. The same could be said for post-graduate work in legal history, though such work done in Australia would be more likely to require the use of local Australian materials.

Recent years have seen the production of several collections of source material, notably, C. H. S. Fifoot, *History and Sources of the Common Law; Tort and Contract*⁴ and J. Goebel, Jr., *Cases and Materials on the Development of Legal Institutions*.⁵ The former is a stimulating treatise containing much source material but, as its title indicates, limited to the sphere of tort and contract.

¹ Notably on the *Selden Society* publications.

² I.e., Conveyancing Act, 1919-1954 (N.S.W.); Real Property Act, 1900-1956 (N.S.W.).

³ In most Australian Law Schools Legal History is taken during the first year.

⁴ (1 ed. 1949).

⁵ (7 ed. 1949).

Professor Goebel's work, an older book now in its seventh edition, is a much more ambitious project. It covers the whole field of English law. It deals with the transplantation of English law to America and the growth of an indigenous jurisprudence there. And, it portrays some of the economic, social and political factors which form the backdrop of legal institutions. Its materials are drawn not only from original sources but also from a number of published works, including such standard publications as Plucknett,⁶ Holdsworth⁷ and Pollock and Maitland.⁸ Although of great merit, two factors are likely to prevent it from being more than a work of reference in Australia, viz.: (1) the considerable content of American material which is not directly relevant to law teaching in Australia; and (2) the use of materials readily available in text-books or in standard reference works. *A Source Book of English Law*, though canvassing a smaller range than *Cases and Materials on the Development of Legal Institutions*, has from the Australian point of view, the advantages that all of its contents are directly relevant to law teaching here⁹ and that it does not quote from the standard text-books or works of reference. It is simply a collection of original materials designed to supplement, not overlap, the text-book.

In the preface Dr. Kiralfy indicates the three principles by which he was mainly guided in his book.¹⁰ In the first place, he has used materials which illustrate substantive and adjective law at the same time. This approach is evident throughout the whole work. For instance, the case of *Cole v. Pinnell*¹¹ (which establishes the principle that payment of a less sum is not satisfaction of the whole) occupies three pages of the book, more than half of which are devoted to the pleadings. In the second place, the author has taken into account the existence of other collections of sources¹² and of the major reference works,¹³ a matter which has already been commented upon. And, thirdly, he has tried to follow the order and subject-matter of H. Potter, *Historical Introduction to English Law* so that the two could be used as companion volumes. This has the double advantage that Potter is widely prescribed as a text-book in Australian law schools and that Dr. Kiralfy is the editor of the latest edition of that work.¹⁴ But even if Potter were rejected as a text-book this would, in the reviewer's opinion, be a minor consideration, for *A Source Book of English Law* is readily adaptable to any course in legal history. A further characteristic of Dr. Kiralfy's work, although one to which he does not lay claim, is the selection of "interesting" cases. Law students, like most other human beings are both fascinated and amused by the bizarre and they will find plenty to stimulate their interest in this connection.¹⁵

Dr. Kiralfy's work is a source book not merely of the common law, but of English law as a whole. Indeed, only 210 of the 440 pages of the text deal directly with the common law, the remainder covering the old customary, feudal and borough courts,¹⁶ the courts of equity,¹⁷ the conciliar courts,¹⁸ the Admiralty Courts¹⁹ and the ecclesiastical courts.²⁰ Within this framework there is blended a mixture of case law and statute, of tribunals and doctrine, of substance and

⁶ *A Concise History of the Common Law*. ' *A History of English Law* (14 vols.).

⁸ *History of English Law* (2 vols.).

⁹ This is an advantage stated in negative terms, for Dr. Kiralfy's book does not, of course, contain materials on Australian legal history. See *infra*.

¹⁰ At vi-vii.

¹¹ (1602) 5 Rep. f. 117a. Trin. 44 Eliz. I (Kiralfy, *op. cit.* 175-77).

¹² Notably, Fifoot, *op. cit.*, Digby, *History of Real Property* and the *Selden Society* publications.

¹³ I.e., Holdsworth, *op. cit.* and Pollock and Maitland, *op. cit.*

¹⁴ I.e., (4 ed. 1958).

¹⁵ See e.g., *R. v. Ludlowe* (1606) Hawardes Star Chamber Reports 316. (Kiralfy, *op. cit.* 313-320).

¹⁶ Pp. 211-258.

¹⁷ Pp. 259-300.

¹⁸ I.e., the Court of Requests and the Court of Star Chamber (pp. 301-349).

¹⁹ Pp. 349-389.

²⁰ Pp. 390-440.

procedure. It is, in all, a fine achievement to have encompassed such a wealth of source material within so relatively few pages. And it is only to be expected that considerations of size have compelled the author to omit important material which, presumably, he would have included in a larger work.²¹

A Source Book of English Law does not, except incidentally, portray the wider social, economic and political milieu in which the legal rules operated and developed, and in this respect it differs basically from *Cases and Materials on the Development of Legal Institutions*. If one believes that legal history can only be taught effectively in relation to its social, economic and political background and that such background should be canvassed in the course itself,²² then Dr. Kiralfy's work, by omitting this aspect, falls short of the ideal. In any case, a work produced for use in English or American law schools is not likely to be the complete answer for Australia. What is needed, in the reviewer's opinion, is a source book firstly, dealing with English materials (but omitting, as Dr. Kiralfy has done, matter readily available from other sources); secondly portraying the introduction of English law into this country and the subsequent development of Australian law; and, thirdly, providing a sufficient background of the social, economic and political factors which have conditioned the growth of the law both in England and in Australia.

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Potter's Historical Introduction to English Law and its Institutions, 4 ed., by A. K. R. Kiralfy. London, Sweet and Maxwell Ltd. 1958. xxxii and 675 pp. (£3/3/- in Australia.)

Dr. A. K. R. Kiralfy has been keeping his printers and publishers very busy recently. Not only has he found time to compile his own *Source Book of English Law*,¹ but he has also produced a new edition of Potter's *Historical Introduction to English Law*—the fourth since this work was first published in 1932 and the first to appear since Professor Potter's death. The *Source Book* was printed first so that references to it could be included in this edition of Potter, the *Source Book* being intended as a companion volume to the *Historical Introduction to English Law*.² As well as references to his own *Source Book*, Dr. Kiralfy has included in the new Potter references to C. H. S. Fifoot's *History and Sources of the Common Law, Tort and Contract*, and by this means he has put within the grasp of all those interested in legal history a simple means of enlivening a sketch of English legal development with example and illustration. This is a very real help to those who are unfamiliar with mediaeval materials, or who, for one reason or another, do not have access to a well stocked law library.

Apart from including these references and a great many new references to the publications of the Selden Society, Dr. Kiralfy, as a former student of Professor Potter, has striven to bring his work up to date without altering its original character, and he has not made many fundamental changes. The

²¹ E.g., *Talcarn's (Taltarum's) Case* (1472) Y.B. 12 Ed. IV, M., f. 19, pl. 25 (real property); *Scott v. Shepherd* (1773) 2 W. Blackstone, 892 (torts); *The Case of the Sale of the Barley* (1505) Anon. Y.B. Mich. 20 Hen. VII, f. 8, pl. 18 (contracts).

²² It is, also highly desirable that students of legal history should have had previous instruction in general political, social and economic history, preferably at University level.

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¹ The *Source Book* is reviewed by D. C. Thomson in the present issue.

² Those who wish to use Dr. Kiralfy's *Source Book* as a companion volume to the *Historical Introduction to English Law* will, however, find some discrepancies between the translation of Year Book cases appearing in the *Historical Introduction* and those in the *Source Book*. Compare for example the extracts from the Year Books at 378-79 and 463 of the *Historical Introduction*, with those at 131-32 and 195 of the *Source Book*. And see further 75 L.Q.R. at 117.