

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.

D. C. THOMSON*

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.

book is still divided into four main divisions, part one giving a general introduction, part two dealing with the history of the courts and the profession, part three covering the history of the common law, while part four deals with the history of equity. There are three appendices, one on the influence of civil and canon law in England, a second on the law of persons, a subject characteristically lacking in most recent treatises on legal history, and a third illustrating diagrammatically the growth of the Court System. Despite the new appendix and table of statutes and a much enlarged table of Year Book cases, the overall size has not been greatly increased.³ This has been achieved by reducing the size of the history of equity section, by deleting some speculation and by Dr. Kiralfy making his own contribution fairly concise.

The principal changes are these. The author has re-written several passages in the chapters on the forms of action and the history of tort. He has treated crime and tort separately, given an account of the history of the main crimes, a task that Potter did not undertake, and he has inserted a short new section on statute as a source of law. The passages concerning jury trial and the Year Books have been considerably rewritten. All of these changes are for the better, with the exception perhaps of the new section on statutes which is not very enlightening, due to an attempt to give too much detail in too small a compass.

Throughout, Dr. Kiralfy has shown a willingness, not so often found in the earlier editions of Potter, to express clearly stated opinions in an attempt to solve difficult problems.⁴ This is again, in the reviewer's opinion, a change for the better. Once a difficulty has been outlined a clear opinion is more likely to stimulate thought and discussion than cautious suggestion, and the added clarity which Dr. Kiralfy has given the book makes it more readable. This is a most important asset so far as Potter's *Historical Introduction* is concerned, since it is often the only legal history text that the unambitious first year student does try to read. And there is something to be said for his point of view, since the *Historical Introduction* still, under the editorship of Dr. Kiralfy, contains probably more material than any other single text-book on English legal history.

R. W. BENTHAM.*

Alexander Maconochie of Norfolk Island: A Study of a Pioneer in Penal Reform, by the Honourable Mr. Justice John Vincent Barry, of the Supreme Court of Victoria, with a Foreword by Professor Sheldon Glueck, Melbourne, Oxford University Press, 1958, xxi and 277 pp. (£2/10/0 in Australia.)

This book is much more varied than its modest title and sub-title suggest. It is not only a biography and narrative, but also a closely reasoned contribution to learning which will be of value to lawyers, historians, sociologists and philosophers. Even so, it is not a text-book and its lucid, readable style¹ will appeal equally to laymen and scholars. The learned author has used the remarkable life story of Alexander Maconochie, R.N., K.H., as the framework for a survey of prison methods and reforms—particularly those introduced in early colonial Australia.

The biographical background introduces the reader to a man who was able to combine the practical with the abstract, who was quite selfless and who devoted most of his life and the whole of his fortune to the cause of penal

³ The third edition contained 650 pp. of text and Index, as compared with 675 pp. in this, the fourth, edition.

⁴ See, e.g. at 305, 306, the deft way in which the author deals with the maze of conflicting opinions as to the importance of the Statute *In Consimili Casu*.

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¹ On the point of style, it is, in the reviewer's opinion, a welcome relief to find the logical spelling "judgement" preferred in a legal treatise.