

Jersey & Guernsey Law Review – June 2011

BOOK REVIEWS

Guillaume Terrien, *Commentaires du Droit Civil*, with an introduction by Gordon Dawes, The Guernsey Bar, St Peter Port, Guernsey, 2010. ISBN: 978-0-9950395-1-5

1 In a recent review for the *Transactions of La Société Guernesiaise* of a book on nineteenth-century Guernsey history, I observed with some envy the great strides our sister Island has made in the scholarly examination of the period. When it comes to the study of the laws of our two jurisdictions and their Norman heritage, as readers of this *Review* will appreciate, there is a more of a balance in the contributions from the two Islands. Nonetheless, in Jersey, we would have to accept that we do not have an equivalent to the energy and industry of Gordon Dawes. His *Laws of Guernsey* (Oxford, 2003) was a mammoth, ground breaking achievement. In the meantime, he has edited *Commise 1204—Studies in the History and Law of Continental and Insular Normandy* (Guernsey, 2005) and contributed several articles to this journal. And now Advocate Dawes brings us a facsimile edition of Maitre Guillaume Terrien's *Commentaires du Droit Civil tant public que privé, observe au Pays & Duché de Normandie* (Guernsey, 2010).

2 The publication of this work, some 355 years after the third and last edition, speaks volumes (if you will excuse the pun) of the renaissance of customary law in the Channel Islands which has occurred in the last two decades. A major impediment to the progress of such a renaissance and the evolution of customary law in the Islands is the absence of original texts. None of the public libraries in the Islands holds an extensive collection of customary texts. In Jersey, at any rate, those interested in the customary law are thus driven to beg and borrow what they can from private collectors. In practice, this is something of a random exercise. The text one may consult and, ultimately, put before the Court is often determined more by its availability than its being the final word on the point in issue. This journal has made great strides towards remedying this difficulty and that includes the publication of texts at affordable prices. This edition of Terrien is a most welcome addition to what are in reality only the beginnings of a collection of available and affordable texts.

3 Advocate Dawes provides the reader of the *Commentaires* with both an introduction and an annotated translation of the preface and the table of contents. By virtue of the introduction we are taken on an explanatory tour ranging from, to select but a few, the biographical ("Terrien the man"), the jurisprudential (an insight into Terrien's holistic view of the law), the historiographical (a survey of how Terrien has been viewed by other commentators over the centuries), the investigative ("the anonymous second authorship" of parts of the text), the grammatical (the use of the medial "s", accents and the tilde which we learn is an abbreviation manifested as "a short accent-like stroke descending from right to left over the letter immediately preceding a letter or letters which have been omitted") to the hilarious (a section on "Artwork" which draws to our attention a woodland dryad

breaking wind as an ornamentation of the letter “Q” on a certain page in the text which, tongue in cheek, the author suggests to be a forerunner of the professional French flatulist, Le Pétomane).

4 Terrien, as Advocate Dawes reminds us, has received a mixed reception from the Courts of the Islands. And not only Courts, for most puzzling of all remains the finding in the First Report of the Commissioners Appointed to Inquire into the State of the Criminal Law in the Channel Islands 1847: “The treatise enjoys a high reputation among the lawyers of Jersey, for which we find it difficult to account.”¹ The fact is, however, he remains an important source on Norman customary law. In my time at Caen University, Madame Jacqueline Musset, Professor of Norman Customary Law, was unbending in her view that the two key commentators on Norman customary law, by some distance, were Terrien and Basnage. In Guernsey, indeed, following the *Approbation des Loix* of 1583, parts of Terrien’s *Commentaires* actually have statutory authority.

5 If I were to be required to highlight one particular aspect of this important contribution to our law, it would be this. The key obstacle to the novice’s understanding of customary texts is the daunting prospect of unravelling how the text operates: how it is structured, which parts represent the author’s comments, which parts represent statutory intervention or (as we might put it) case law, which parts draw on Roman law, Canon law, the *ius commune*, and so forth. Having discovered what you believe to be the relevant section, there remains a lurking doubt that somewhere else in the text, in a place where you do not expect it, the author has written something else on the point which refines or, worse still, alters what he says elsewhere. One seldom has time to go through a whole commentary. Fortunately for the novice, this work takes you by the hand and unlocks the delights and learning within the text. There is no better starting point for someone new to this form of work.

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George Joseph Bell, *Principles of the Law of Scotland*, Edinburgh: Edinburgh Legal Education Trust. 2010. ISBN 978-0-9556332-2-5

1 This book is a reprint of the fourth edition (1839) of the work usually referred to simply as “Bell’s *Principles*”. The interest of this book to the Jersey or Guernsey lawyer is clearly comparative. However, there are some points worthy of particular note.

¹ *First Report of the Commissioners appointed to inquire into the state of the criminal law in the Channel Islands, Jersey*, London, 1847, p viii.

2 The first is the status of the work. Bell is one of the class of jurists known in Scotland as the institutional writers.² They are writers on the law of Scotland whose work is treated as a formal source of law.³ In this respect, Bell's work is analogous to that of Poingdestre, Le Geyt, and—to some extent—that of Le Gros, as used in Jersey.⁴ For the Scots lawyer, accustomed to the idea that the high status accorded to this body of legal writing is one of the defining features of the system, the discovery of a similar phenomenon in another of the uncodified mixed jurisdictions⁵ is extremely interesting (and one which I hope to explore further at another time).

3 The second is Bell's use of Pothier as an authority. Reference to Pothier (as well as some other notable French jurists) is plentiful. Pothier thus appears to be a point of convergence—in terms of sources, at least—of Scots law and the laws of Jersey and Guernsey.⁶ It would be interesting to investigate further the substance of the law in each jurisdiction in areas to which Pothier's work has apparently contributed.

4 Although the final edition of Bell's *Principles* was published in 1899, the fourth was selected for reprinting as it was the last that Bell produced before his death in 1843. This facsimile of it is augmented by the addition of an introduction by Professor Kenneth Reid, the present incumbent of the chair that Bell once held at the University of Edinburgh.⁷ The introduction in itself is a serious piece of scholarship, and runs to twenty-eight pages covering Bell's later career, the design of the *Principles*, their relationship to his lectures, the structure, style, and sources⁸ of the *Principles*, some comparison with the first four editions, and the influence and reputation of the work.

5 *Principles of the Law of Scotland* is the first in the Old Studies in Scots Law series, published by the Edinburgh Legal Education Trust. (There are already two publications in its sister, monograph series.⁹) Given the continued significance of the work to Scots law, together with the relative difficulty which attends obtaining an original copy today, this

² Others are (with their works of institutional status): Sir Thomas Craig, *Ius Feudale*; Sir George Mackenzie, *Laws and Customes of Scotland in Matters Criminal*; Viscount Stair, *The Institutions of the law of Scotland*; Lord Bankton, *An Institute of the laws of Scotland*; Professor John Erskine, *An Institute of the law of Scotland*; Baron David Hume, *Commentaries on the law of Scotland respecting the description and punishment of crimes*; Professor George Joseph Bell, *Commentaries on the Law of Scotland* (in addition to his *Principles*, which are the subject of this review); and, Archibald Alison, *Principles of the Criminal Law of Scotland*, and *Practice of the Criminal Law of Scotland*.

³ See, for example, the use of institutional authority in *Burnett's Trs v Grainger* 2004 SC (HL) 19.

⁴ See, for example: *In re Esteem Settlement* 2002 JLR 53; and *Mendonca v Le Boutillier* 1997 JLR 142.

⁵ See also the use of, for example, Voet in South Africa.

⁶ See also the references to Terrien and Godefroy in the work of the Scottish jurist Sir Thomas Hope, uncovered by John Ford in *Law and Opinion in Scotland during the Seventeenth Century* (2007), which book was reviewed in the October 2008 issue of this journal. Further, there is at least one reference to Terrien in Sir George Mackenzie's *Laws and Customes of Scotland in Matters Criminal*, a scholarly edition of which is currently being prepared by the Stair Society and is likely to be published in 2012 or 2013.

⁷ Professor of Scots Law.

⁸ Pages xx and xxi are of particular interest in relation to Pothier.

⁹ *Studies in Scots Law: Assignment* by Dr Ross G Anderson (2008) (visiting Professor of the Law of Immoveable Property at the Jersey Institute of Law), and *Pledge and Lien* by Dr Andrew JM Steven (2008).

facsimile reprint is a welcome and worthwhile publication. Recent efforts to reprint or make available texts fundamental to Jersey law and to Guernsey law must also be commended. In smaller jurisdictions—such as Jersey, Guernsey, and Scotland—the continued existence and development of indigenous law depends upon such enterprise.

6 *Principles of the Law of Scotland* is available from Avizandum Law Bookshop, 56A Candlemaker Row, Edinburgh, EH1 2QE, +44 (0)131 220 3373, customerservice@avizandum.com; price £30.

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