

Book Reviews

MR. JUSTICE BRANDEIS. Edited by Felix Frankfurter. With an Introduction by Oliver Wendell Holmes. New Haven: Yale University Press. pp. 232. \$3.

For those who were born and brought up in the faith that ours is a government of laws and not of men, the growing interest of both lawyers and laymen in the personality, background and outlook of some of our leading judges, as an aid to understanding the business of judging, must seem like tilting at windmills. The idea that judges do not make or create the law, but only search out what is already in existence and apply it to the case in hand, did not die with Blackstone. "Men do not make laws," writes Calvin Coolidge. "They do but discover them— That state is most fortunate in its form of government which has the aptest instrument for the discovery of laws."

Few persons have played a more important part than Mr. Justice Brandeis in dispelling this delusion that judges do not have a direct hand in the making of the law. In the now almost legendary battle over his appointment to the Supreme Court in 1916 and in his rôle as a dissenter, Mr. Justice Brandeis has, in a relatively passive manner, driven home the thought that the job of a judge is something more than discovering and matching precedents. Senators, lawyers and the lay public may have been following a false scent, but the fact is that a searching investigation of the man and his philosophy was considered necessary to determine his qualifications as a judge. Discovery may be the chief function of the judge's craft, but precedents seemed to hunt in pairs, when in the selfsame case Holmes and Brandeis "found the law" to be one thing and the majority of the Supreme Court the exact opposite.

In a more active way, Mr. Justice Brandeis has also clearly pointed out that the bondage of precedent does not and should not absolutely fetter judicial law making. In the sorties and retreats of the Supreme Court on the pitched field of *stare decisis*, Mr. Justice Brandeis has consistently and repeatedly illustrated how the court practices the fine art of judicial government by amending, modifying, distinguishing and overruling its own decisions. "The process of inclusion and exclusion, so often applied in developing a rule, cannot end with its first enunciation. The rule as announced must be tentative. For the many and varying facts to which it will be applied cannot be foreseen. Modification implies growth. It is the life of the law." (*Washington v. Dawson & Co.*, 264 U. S. 219, 236.) Realizing the paradox that law should be certain and stable and subject at the same time to progressive change, Mr. Justice Brandeis does not think that mere modification alone has and will always balance the demands of progress and the needs of stability. Often the law has and can best be made by unmaking and overruling previous decisions. "*Stare decisis*," writes Mr. Justice Brandeis, "is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be right. * * * But in cases involving the Federal Constitution, where correction through legislation is practically impossible, this Court has often overruled its earlier decisions. The Court bows to the lessons of experience and the

force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function." (*Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393, 406.)

Recently Mr. Justice Brandeis has sown an idea, which may in time make *stare decisis* a subject of only morphological interest to students of Supreme Court history. To him *stare decisis* is only an embodiment of the wise policy of usually following applicable rules of *law*; it has little, if anything, to do with dictating that a court should follow prior judicial determinations of *fact*. (*Burnet v. Coronado*, *supra*, p. 411.) Even admitting that there is not always a bright judicial line dividing fact from law, most of the great questions before the Supreme Court involve questions of fact. When is a Federal statute such a substantial and direct burden upon the governmental functions of a state as to be invalid; when is a state statute so unreasonable and arbitrary as to be violative of the due process clause; when is an admitted statutory burden upon interstate commerce so substantial and direct as to invalidate it; when is a statutory classification so unreasonable as to run counter to the equal protection clause?—all these and many other analogous questions certainly involve more of fact than they do of law.

With such a slant we may well expect an increasing decline in the power of *stare decisis* to limit changes in the Supreme Court decisions. Whether or not this view of Mr. Justice Brandeis has as yet filtered through to the other members of the Court is, of course, problematical; but it is interesting to note the Court's most recent illustration of the knack of overruling. About four years ago the Supreme Court, in *Long v. Rockwood* (277 U. S. 142), held invalid a Massachusetts statute taxing the gross receipts of royalties from patent rights on the ground that it constituted a substantial and direct burden upon an instrumentality of the Federal Government. This year the Court by a unanimous decision in *Fox Film v. Doyal* (286 U. S. 123), a case involving a similar tax on copyright royalties, candidly said that there was no valid distinction between patents and copyrights for this purpose, and frankly overruled *Long v. Rockwood*. Surprisingly enough, three of the judges, Van Devanter, McReynolds and Butler, who voted with the majority in *Long v. Rockwood*, took an about face in *Fox Film v. Doyal*. Perhaps Mr. Justice Brandeis has shown his brethren when and why *stare decisis* is not one of the "inexorable commands" in the judicial governing process.

But Mr. Justice Brandeis has not halted his task by merely illustrating that ours is more often a government of men, than of laws. What is probably more important, he has helped to show how judges should make the law. Qualitative bases, and by the same token almost incommunicable ones, have for centuries been the chief factors in the judicial process. Whether or not, for example, a State statute regulating the hours of labor of women was a reasonable exercise of the police power in protecting the health and morals of the State was and still is to a large extent argued in a vacuum. Counsel for both sides usually marshal precedents to show in what analogous cases regulation has been held constitutional and where it has not. In most of the important cases the previous analogies are, to say the least, often remote. In advance of decision in such a case it is almost impossible to tell, from the previous decisions, what the Supreme Court will decide, and once they did decide there was no objective or quantitative indication that the decision would accomplish a socially desirable result. About all that happened was the obtaining of the composite best guess of a majority of the Supreme Court Justices. Mr. Brandeis' contribution to the traditional technique of arguing and deciding cases is now one of the "twice-

told tales" of the law. In his now famous brief in *Muller v. Oregon*, in support of the Oklahoma statute limiting the hours of women workers, he gathered together a wealth of non-legal material showing the results of similar legislation both abroad and in this country; he presented to the court statistical data showing, among other things, the effects of long hours of work upon the physical health and the morals of the women workers, and upon the physical health of their offspring; and he collated the consensus of informed non-legal opinion on the subject. In winning the case, Mr. Brandeis also helped to win the Court over to a recognition that quantitative indications of the social desirability of a statute or decision ought to be given the *imprimatur* of some authority.

When Mr. Justice Holmes remarked some thirty-five years ago that the man of the future in law would not be the master of precedents but the man of statistics and the master of economics, he probably little realized that Mr. Brandeis would be the man to break these new paths, but nevertheless he would no doubt now classify Mr. Brandeis as an apt illustration of what he meant by his observation. Although the obtaining of quantitative indices in most fields of the law seems improbable—as improbable, no doubt, as man's flying seemed from the dawn of thought to the beginning of the twentieth century—Mr. Justice Brandeis has taken some steps forward. Only time's verdict can tell whether his quest for some better method of tying up law with life is worth while or merely a hunt for the crock of gold.

Most of what has merely been indicated here and infinitely more is admirably told by Felix Frankfurter's collection of essays originally published by the Columbia and Harvard Law Reviews and the Yale Law Journal upon the occasion of Mr. Justice Brandeis' seventy-fifth birthday. Although these essays do not profess to give a full length portrait of Mr. Justice Brandeis as a man and judge, they mirror many aspects of his powerful mind and unique career in fine and fascinating prose. The contributions of the two non-lawyers, the essay of Max Lerner on *The Social Thought of Mr. Justice Brandeis* and that of Walton H. Hamilton on *The Jurist's Art* are probably the best from the lawyer's as well as the layman's point of view. To say this, however, does not detract greatly from the quality of the others. For those who have worked up prejudices against the attitudes and supposedly non-liberal views of Chief Justice Hughes, his essay will probably come as a refreshing surprise. Felix Frankfurter has paralleled his work on the relationship of Holmes to the Constitution with his present essay on Brandeis. Henry Wolf Bikle and Donald Richberg portray the supremacy of Brandeis' contributions in specialized fields; and topping all is Oliver Wendell Holmes' one page introduction into which he has packed what most of us could not say as well in a volume. Viewed as a whole, this collection of essays has the power and passion of Mr. Brandeis himself, whose contagion few of us, even if we wanted to, could resist.

New York City.

OSCAR COX.

THE BANKERS IN BOLIVIA. A Study in Foreign Investment. By Margaret Alexander Marsh. New York: The Vanguard Press. 1928. pp. xvi, 233. \$1.

THE AMERICANS IN SANTO DOMINGO. By Melvin M. Knight. New York: The Vanguard Press. 1928. pp. xix, 189. \$1.

THE CAPITALISTS IN COLOMBIA. By J. Fred Rippy. New York: The Vanguard Press. 1931. pp. xxxii, 256. \$2.

PORTO RICO: A BROKEN PLEDGE. By Bailey W. and Justine Whitfield Diffie. New York: The Vanguard Press. 1931. pp. xxxv, 252. \$1.

EXTENSIVE as both popular and scientific inquiry into expansion has been, it has nevertheless been dominated by a highly monistic view of society and of imperialistic processes. It is undeniable that state activity has played an extremely active role in expansion. It is equally certain that the extension of the authority of the stronger powers has been frequently an important consequence. Yet surely it is an archaic juristic metaphysic which stresses the exertion of political force or the maiming of an "individual sovereignty" of backward peoples as the essential phenomenon in imperialism. For domination is not only by or for the state. Any social order may seek it, of design or exert it without intent. Patterns of behavior, too, have their tenacles of dominance. Expansion is at least as much an economic and a cultural process as it is a political one. It is not state action alone which is provocative of conflict or injurious to community sentiment. In the case of the Americas, especially, it seems probable that governmental behavior is not the crux of the expansion problem.

It is the merit of the series to which the books under review belong that it does not view imperialism as a monistic phenomenon. It breaks definitely with the definitions which have circumscribed both liberal and Marxian speculation and investigation in this field. The series is aware of the coexistence of at least two processes. It does not view the political process, whether as end or instrument, as the only figure in the picture. It finds its unifying theme in the multiple interrelations of politics with concomitant economic processes in American expansion.

The individual studies illustrate this theme in various ways, their differences being determined partly by the data, partly by preferences of the authors. Mrs. Marsh's compact study reveals processes almost purely economic at work in Bolivia. It is an admirable interpretation of the uneconomic effects of an avalanche of loans upon an area of limited resources. When it was first published, this work was sneered at by "new era boys". But events have turned greatly to its credit for scientific prescience, as well as to the misfortune of sundry salesmen and investors in Bolivian bonds.

Professor Knight's study of Santo Domingo provides perhaps the clearest illustration of the distinctness of political and economic processes. It is at the same time a mine of wisdom upon the nature of economic expansion itself. It is regrettable that exigencies of publication caused Professor Knight's equally penetrating analysis of political action prompted by economic interest to be seriously mutilated. The best part of the book as published is in the last three chapters.

Professor Rippy has found political and economic action working in close harmony in Colombia. His principal argument is, however, that the diplomatic policy of the United States government toward Colombia has been dictated largely by economic and financial considerations.

Porto Rico is the first dependency of the United States to be included in the series. Mr. and Mrs. Diffie have concentrated upon the social economics of the island. In doing so, their inquiry has proceeded somewhat beyond the field of "relations." It tends to include the impact of the Insular government and politicians as well as that of Washington upon the economic life of Porto Rico. As a result the impression of the effects of American dominance as such is somewhat blurred. A good account is rendered, however, of the injurious results of absentee ownership, of the privileged position of the sugar industry, and of Porto Rico's inclusion within a tariff wall conceived solely in the interests of the mainland.

All of the books display ample competence in research and are commendably free from the sentimentality either of the business promoter or of the social evangelist. They break new ground fruitfully in the study of imperialism. One point made in common by all the books in the series, with the exception of Professor Rippey's, deserves emphasis. The processes of expansion have thus far scarcely begun to transmit the pattern of the economic life of the United States to the regions with which we have been most concerned. Here is one of the most salient facts in modern politics and economics—the persistent backwardness of the backward countries. This is a matter which deserves closer scrutiny. It is possible that even bank directors as well as Marxians and romantic reactionaries might give it thoughtful attention to their advantage.

Wellesley College.

LELAND HAMILTON JENKS.

THE HOLDING COMPANY. Its Public Significance and Its Regulation.

By James C. Bonbright and Gardiner C. Means. New York: McGraw Hill Book Co., Inc. 1932. pp. xv, 398. \$4.

THE Holding Company is one of the startling innovations that came "only yesterday." Save for a few sporadic instances of legislative favoritism it dates from 1888. In that year the New Jersey General Incorporation Act first made it possible for any one willing to pay the fees to organize a corporation with unrestricted power to hold stock in other corporations. Gradually the bar learned to make use of this privilege and other states saw the revenue raising advantages of charter mongering. Today it would seem almost as revolutionary to do away with intercorporate stockholdings as to abolish trusts. For the ability to organize holding, subsidiary and affiliate corporations has meant to the modern corporation lawyer what the Chancellor's protection of uses meant to the fourteenth century conveyancer—an escape from legal restrictions which had been framed for an earlier and simpler society, and which were championed by those who strove ineffectually to block new economic trends.

The modern lawyer's corporate and corporation-dominating clients were hemmed in by a multitude of vexing legal restrictions, federal and state, and differing from state to state. They might be required to pay taxes, unreasonably high, discriminatory, and even double; "to reveal" to their numerous scattered stockholders and thereby to let their rivals and the public learn too much about the business; and to forego lucrative advantages from collateral activity beyond the powers of the corporation. A majority desiring to promote a combination might be forced to pay hold-up prices to dissenters who could invoke rules requiring unanimous consent to changes in their contract of association. Promises to prior bondholders to subject after acquired prop-

erty to the lien of their mortgages might seem to cramp the future development of the business. Great corporations might think that decentralization would promote efficiency. Desire to stabilize the management of a corporation and to permit those with a minority of investment interest to stipulate for control might run afoul of dogma that voting power cannot be separated from ownership. Financial wizards might wish to pyramid securities in order to build up vast empires with a great deal of other people's money and very little of their own. Investors might hesitate to buy if they saw too many prior charges ahead of what was offered them. Attempts might be made to limit public utilities to what someone else considered a reasonable profit, and even to control their financing. In these and many other situations, clever lawyers have done much to evade and minimize the obstacles in the way of their clients. Most commonly, some form of holding company has worked the magic.

Today holding companies are on the defensive. Tax collectors and regulatory commissions have come to demand power to deal with businesses as economic units without regard to formal division into separate corporate entities. They are more and more commanding the ear of courts and legislatures. Exhaustive investigations of the use of holding companies in the public utility and railroad fields have made information available and focused public attention on the use of the device by lawyers. Depression has furnished hindsight wisdom to those who ignored occasional warnings of the dangers of complicated and highly pyramided financial structures. We have seen the crash of institutions but recently so proud and mighty: The Bank of United States, Insull Utility Investments, Inc., Kreuger and Toll. We have seen a tremendous deflation of the value of all holding company securities. The time is ripe for reform. There is danger lest it be blind, superficial and futile, outlawing the institution which has been abused, without saving it for the situations where it is socially desirable, and without reaching the abuse itself.

Bonbright and Means are therefore most timely in bringing out their book. It offers a comprehensive summary of available information as to the holding company; its history, its specialized uses in the industrial, public utility, railroad and banking fields, and its connection with current issues as to the scope of public control over businesses. The authors' interest in holding companies is a by-product of their interest in utilities. Hence they have directed their attention primarily to the utility holding company, and its closest parallel in the railroad field. They present detailed descriptions of the principal systems, illustrating with charts the small financial stake of those who dominate them, and developing a convincing argument for subjecting the holding company to the same regulation as the operating company. An appendix by Maurice Mound of the New York Bar draws on reported cases to illustrate the charges of mismanagement which have been made against holding companies in suits by stockholders and creditors of their subsidiaries. The authors are to be congratulated on the clearness with which they state essential issues, their fairness in assembling the arguments on both sides, and the perspective which they give of the relation between economic problem and legal formula, and between the holding company and alternative legal devices for accomplishing similar purposes. The book is an invaluable adjunct to strictly legal materials for any one wishing to acquaint himself with some of the vital problems of modern corporation law.

THE INTERNATIONAL JOINT COMMISSION BETWEEN THE UNITED STATES AND CANADA. By Chirakaikaran Joseph Chacko. New York: Columbia University Press. 1932. pp. 431. \$5.50.

THIS volume, composed of nine chapters and four appendices, deals with the functions of the International Joint Commission, United States and Canada, in connection with the boundary waters between the two countries and cognate questions. The Commission was established by the two Governments pursuant to provisions of the Boundary Waters Treaty concluded between the United States and Great Britain, on January 11, 1909. In the first chapter of the book the author gives a brief description of the boundary waters and connecting canals, and sets forth statistics showing their importance in marine transportation and in the development of hydro-electric power. This chapter also contains a brief discussion of pertinent provisions of treaties between the United States and Great Britain beginning with the Treaty of Peace of 1783 and ending with the Boundary Waters Treaty of 1909, just mentioned. The succeeding chapters discuss the creation of the International Joint Commission, its powers, functions, and methods of procedure. The author properly observes that the Commission is empowered to exercise judicial, investigative and administrative functions. But, that while it is empowered by the Treaty to act as an arbitral tribunal when a question or matter of difference between the High Contracting Parties is referred to it, the functions thus far performed have pertained principally to granting, or withholding, approval of applications for permission to place obstructions in or make diversions from the boundary waters, and to making investigations and reports to the two Governments, with recommendations, on questions or matters of difference referred to it pursuant to Article IX of the Treaty of 1909. Outstanding instances of the latter character are the investigations and reports with respect to the pollution of boundary waters, the regulation of the level of the Lake of the Woods, the St. Lawrence Waterway System, and the matter of the Trail smelter. This latter case is concerned not with boundary waters but rather with the drifting of fumes [produced by the Trail Smelter in British Columbia] across the boundary into the Columbia River Valley in Washington.

The author, discussing, in an interesting fashion, these cases, the various power projects, and the dredging projects in the furtherance of navigation, develops the importance of the Commission in the settlement of questions arising between the two countries along a boundary of more than 3500 miles which, but for the Commission, might be fruitful of dissension and misunderstanding.

The discussion of the St. Mary and Milk River situation shows an appreciation of the questions involved and of the proper interpretation of the functions of the Commission under Article VI of the Treaty of 1909. Likewise, the discussion of the Commission's powers and the necessity for joint action by the two Governments in bringing cases before the Commission under Article IX of the same Treaty shows that the author has not only brought together a great amount of useful material arranged systematically, so as to portray the history of the International Joint Commission, the situation that called forth its existence, its functions and its work, but has also applied to important phases of the Treaty a marked degree of thought and reasoning. In discussing the various aspects of the work of the Commission, the author has covered a very broad field of subjects, practically all of which are of great importance to the Governments of the United States and Canada and to private interests in the respective countries. The St. Lawrence Waterway Project, for example,

involving a total expenditure by the United States and Canada of approximately five hundred millions of dollars and opening up to ocean-going vessels, the interior of both countries, with its vast natural resources, wealth, and population, presents live international questions in which students of economics and international cooperation must be interested.

While expressing approval of the work as a whole and recommending it to students and others interested in this important phase of our relations with a great neighboring country, I may be permitted to remark that the analysis of Lake of the Woods Treaty of 1925 might have been more complete. It is stated that the two Governments adopted the report of 1917 of the International Joint Commission with respect to regulating the level of the Lake, "although it was only in 1925 that a treaty was concluded between them for the purpose of installing an International Board to regulate the levels." This Board, it is stated, "is required to assume jurisdiction over the discharge from the lake (which occurs in Canadian territory) when the level falls below the minimum of 1056 sea level datum provided in the treaty", and that it is also the duty of the Board to report upon the "suitability and sufficiency of protective works which the treaty seems to require the United States to construct."

The creation of the International Board of Control was a secondary feature of the Treaty of 1925. The purpose of the Treaty was to regulate the level of the Lake to prevent further damage from the extreme fluctuations in such level, to provide protective works at certain points, to acquire a flowage easement necessitated by the elevation (under the Treaty) of the normal level of the Lake by approximately two feet, and to settle the damages resulting from the artificial level at which it had been held in the past by virtue of the obstructions in the outlets in Canada. To provide these protective works and the flowage easement, the Government of Canada paid to the Government of the United States \$275,000 pursuant to Article X of the Treaty. The International Board, to which the author refers, not only has jurisdiction when the level of the Lake falls below 1056 sea level datum, but it also has jurisdiction when the level rises above 1061.25 sea level datum, each of these stages being regarded as dangerous from the point of view of interests on the Lake—navigation, fishing, agriculture, etc. There can be no doubt that the 1925 Treaty (Article VIII) specifically requires the United States to construct the protective works to which the author refers. The construction of these works and the assessment of damages to the owners of property abutting on the Lake in the United States are still under way and have been the subject of reports to Congress by the Secretary of War and of several Acts of Congress. These matters, it is believed, might properly have been discussed by the author.

In the "Notes on the Map" (page 10), the author states, with respect to the Lake of the Woods, that, at the request of the two Governments, "the Commission drafted a Treaty, which was subsequently signed, creating these two boards, [referring to the Canadian Lake of the Woods Control Board and the International Lake of the Woods Control Board] which have now been in operation for several years." As a matter of fact, the International Joint Commission was never asked to and did not draft a treaty regarding the Lake of the Woods. The only draft treaty ever submitted to the two Governments by the Commission was that with respect to the pollution of boundary waters.

I heartily commend the book, not only because of its thorough exposition of important data—historical and economic,—but also because of its narration of a successful and interesting experiment by two countries in the adjustment of international questions.

Department of State, Washington, D. C.

GREEN H. HACKWORTH.

CASES ON PARTNERSHIP. By Charles E. Clark and William O. Douglas. St. Paul: West Publishing Co. 1932. pp. xv, 743. \$5.50.

THE preface to this book announces that, "One object has been to secure a more realistic arrangement." It does not appear to the writer of this review that this purpose has come to as complete a degree of accomplishment in this book as has been done in some of the recent case books in other fields. There are now in use several published case books and a number of mimeographed collections of teaching material which, both in the arrangement of material, the designation of categories, and actual content of cases reported, seem to have gone farther than the present book in emphasizing the realistic as opposed to the conceptual or fundamental analysis of the subject matter in hand.

These other books so far as known to the present writer are not in the field of partnership and perhaps should not be compared with it. It is probably not equally easy to work out a satisfactory functional classification of teaching materials in all of the several categories into which lawyers are accustomed to subdivide the law. The writer has been trying for nearly three years to fit a satisfactory body of content material into his own idea of a realistic outline of the subject of Negotiable Instruments and still does not know how it is going to come out.

In the chapter and section headings of the book offered by Professors Clark and Douglas, one finds a distinct departure from the conceptualistic approach as outlined in the tables of contents of the older Partnership casebooks. It is difficult for the reader of the book who has not tested it in the classroom to say just how "self executing" this skeleton of the subject will be in affording the students a whole-hearted functional treatment of partnership law. It should be very easy for the most thorough-going legal fundamentalist to give his class an irreproachably orthodox course in partnership from this book. On the other hand, of course, the realists do teach the rankest heresy about the "fundamental legal principles" from the old fashioned books.

It is very likely that it would be impossible to make a selection of cases on the law of partnership which would go far towards bringing to the subject enough of the fresh breeze of judicial realism to sweep away very much of the fog of conceptual formalism with which the subject is so extensively obscured. Partnership law seems to have almost more than its share of formalism. In the first place we have the controversy as between the entity and aggregate theories as to the nature of a partnership. As the editors of this book point out in their footnote on page 6, "It is interesting to inquire, in connection with each topic of partnership law, how important in practical result this question of theory is." It may be added that it is also interesting to inquire, in connection with each topic, how consistent were the draftsmen of the Uniform Partnership Act, in their adherence to their avowed adoption of the aggregate theory.

This book is divided into two parts. Part one is entitled "Liabilities and Assets" and is subdivided into three chapters. The first chapter deals with liabilities and consists of a group of cases covering the question of "Powers of Partners", as they would be designated in the older books. The second chapter on assets indicates the sources from which liabilities may be satisfied. The third chapter deals with the distribution and marshalling of assets. Part two of the book is called "Management" and consists of two chapters, one of which deals with the conduct and control of the business and the other with the enforcement of rights *inter se* and against third persons.

Our editors tell us that they have subordinated the question of what is a partnership. This seems to have been done chiefly by putting it in the second

chapter under a section heading, "Property of those disputing the relationship." This material usually appears in the first chapter of partnership case-books. On the other hand, the material involving the powers of partners, which comes first in the present book, is usually found in a later chapter. In the heading of this second chapter we are told that we are about to deal with the problem, "What assets are subjected to satisfying partnership liabilities." When we get into this material, we find that it includes many of the old familiar cases which have been used in all the case-books in discussing the tests of what constitutes a partnership. This new designation of the chapter and sections may tend to increase the probability that the student will discover, or the instructor point out, the functional basis for the routine syllogistic formulae by which losses are shifted in the various transactions involving unincorporated business units.

In the type situation treated in these chapters the ordinary problem of course is simply the question: "Will A's property be seized through the power of government to satisfy claims arising out of another man's doings?" The answer is, "Yes, if A is partner of such other men in such doings." Then the question arises, "Who is a partner?" This in turn is answered, "A partner is one who etc., etc." The order of the questions asked or the syllogisms employed to answer them makes little difference. Any device in the preparation of study material is useful to the extent that it will assist in making clear that the problem calling for the act of judgment is whether the loss should be shifted or left where it is; and any scheme is valuable which will help to bring some order out of the chaos of judicial answers to the question.

On the whole the use of this book should increase the probability that the course on partnership will be taught with less emphasis on conceptualism than if some of the older books were used. On the other hand the writer has been unable to convince himself that it will be easier to teach partnership, or to make interesting, a particularly uninteresting subject, with this book rather than with some of the other recent case books on the subject.

My feeling is that if this book had come out a few years ago I should have welcomed it joyously. Just before Crane and Magruder's first edition was published, one looked in vain for a newer case book to take the place of the excellent but out of date Gilmore. Now there are so many new books in this field that one is at a loss to make the best selection. The present book does not seem to the reviewer to be as different from some of the other recent case books on the same subject as might have been expected from these editors.

The size of the Clark and Douglas book in point of cases included is highly commendable. There are 168 cases. This is one of the few case books available for a course of two semester hours in which there is a reasonable possibility of covering the material provided. The supplementary material by way of cases, some part of which is printed in full size type, is unusual. This material is in turn supported by extensive fine print footnotes. In consequence of this abundant supplementary material the book extends to 743 pages, notwithstanding the small number of cases.

In conclusion it may be said at the risk of repetition, that if there is need for a new case book on Partnership, this is a very good one. However, in view of the fact that there are several new case books in this field and also in view of the new grouping of much of the material in this field under such topics as "Business Associations" or "Business Units" (in which Mr. Douglas has been a leader) one may wonder whether the labor of the editors will be rewarded by a satisfactory market. Will not most of the "realists" prefer the new grouping while the "conceptualists" cling to a more familiar arrangement of material and a more orthodox designation of categories?

University of South Dakota.

L. W. FREEZER.

FONTES JURIS GENTIUM. Edidit Viktor Bruns. Digest of the Diplomatic Correspondence of the European States, 1856-1871. Berlin: Carl Heymanns Verlag. 1932. Volume I, part I. pp. 432.

Ibid. Digest of the Decisions of the Permanent Court of International Justice, 1922-1930. Berlin: Carl Heymanns Verlag. 1931. Volume I, parts 1 and 2. pp. 260.

Ibid. Digest of the Decisions of the Permanent Court of Arbitration, 1902-1928. Berlin: Carl Heymanns Verlag. 1931. pp. 306.

Ibid. Decisions of the German Supreme Court relating to International Law, 1879-1929. Berlin: Carl Heymanns Verlag. 1931. pp. 943.

THESE several works, products of the scientific research of the Institut für ausländisches öffentliches Recht und Völkerrecht at Berlin, are, in my opinion, the outstanding contributions to the apparatus of international law since the publication of Moore's Digest of International Law. In making available source material, they attest the conviction that an accurate knowledge of the past is the most reliable guide for human progress, an axiom sometimes lost sight of in the concoction of intricate schemes for international government. At all events, Professor Bruns and his collaborators have in these volumes made available in readily accessible form an essential part of the materials out of which international law is compounded.

The method adopted in all four works is to classify the material digested or reprinted according to a topical outline of international law, so that a particular subject may be pursued through the various sources analyzed. The headings are given in three languages—German, French, and English. But the digest itself varies in this respect. In the diplomatic correspondence, the extracts are reproduced in the original language and, if this is not one of the three more current languages, are accompanied by a translation, if an official one was published. The extracts from the decisions of the Permanent Court of International Justice are reproduced in the two official languages, French and English, only, whereas the opinions of the Permanent Court of Arbitration are digested in the three languages mentioned. So also are the opinions of the German Supreme Court; but the appropriate parts of the decisions themselves, which follow the Digest, are printed in the original only. The sources are always indicated, and simple yet ingenious mechanical devices facilitate the work of the investigator.

Perhaps the most unique of the volumes under review is the Digest of European diplomatic correspondence, 1856-1871. Here material is uncovered which in large part has been a closed book to the student of international law. A great mass of official and unofficial collections of documents have been laid under contribution to produce this, the first of four volumes on the period, and the colossal and thoughtful character of the enterprise is evident throughout. Classification of such material and judgment on its importance call for the highest degree of editorial skill and acumen. That capacity is apparent on every page. The material from the Permanent Court of International Justice and the Permanent Court of Arbitration is perhaps more accessible than the diplomatic correspondence, but its classification under familiar topical headings will give it a currency it would not otherwise possess. The opinions of the German Supreme Court will embody, for most students, a new source of investigation for international law, and the profession will observe with interest the prolific contributions of that Court to the subject.

One reviewer, in speaking of the digest of decisions, made the remark that not all the extracts quoted could properly be considered international law. Certainly not; and it does not give much credit to the editors to assume that they thought so. What they have done is to make generally available expressions of opinion on legal questions coming from authoritative sources. The weight to be given to those opinions is a matter for the investigator to determine for himself, but he needs all the light he can get to determine how much importance to attribute to a particular dictum, view, or announced rule. That light, these materials help to afford. Political views on many topics are occasionally assembled, and here also it is the investigator's task to evaluate for himself these official opinions or arguments.

The volumes under review should inspire scholars in every country to make available their national contributions to the field of international law, a work largely performed for the United States by Judge Moore. That celebrated pioneer has also made known and is now further exploring the adjudications of international tribunals. The present digests indicate how much is still to be done in uncovering source materials. In the meantime, these volumes stand as a monument to the imagination, resourcefulness, and industry of one of the keenest and most eminent of European scholars, Professor Viktor Bruns, founder of the distinguished Institut over which he presides, and leader of an able group of collaborators from whom international law has already received much.

Yale School of Law.

EDWIN M. BORCHARD.

AMERICAN FAMILY LAWS. Introductory Survey and Marriage. By Chester G. Vernier, assisted by Fred A. Weller. Volume I. Stanford University: Stanford University Press. 1931. pp. xxii, 311. \$5.

THIS volume, the first of a proposed series which is to cover the whole field of domestic relations, deals only with the law of marriage, including the contract to marry. The editor gives in each section: (1) a brief summary of the common law; (2) the statutory law; (3) comment and criticism; (4) a selected list of references, including texts, case books, annotations, reports, articles, and case notes from law magazines.

This is a solid piece of work, well done. It will be of great value to any student of the subject. One should, however, be cautious in using a book of this kind. The emphasis is on legislation. Perhaps no branch of the law is at one and the same time so completely and so incompletely statutory. In every state the whole topical range of marriage and divorce has been covered by statute, and yet, as Bishop pointed out many years ago, most of the statutory provisions are declaratory and jurisdictional or else formal. That is to say, statutes have generally conferred jurisdiction upon courts, usually, at the outset, courts of equity, to grant relief which they did not have inherently, or confirmed a jurisdiction which they had assumed, taking for granted a substantive law which rests upon the English common law, in this subject largely ecclesiastical.

There has been no complete or even very extensive statutory overhauling of the substantive law anywhere. When a statute has enacted new law it has had reference chiefly to formal matters of license, ceremony and the like. The result is that the substantive law is in its technique and in its essential nature common law, but a common law of the statutes, a strange mixture of statutory jurisdiction, ecclesiastical origins, and equity practice.