

REVIEWS

IT IS LATER THAN YOU THINK. By Max Lerner. New York: The Viking Press, 1938. Pp. 260. \$2.50.

SAVE AMERICA FIRST. By Jerome Frank. New York: Harper and Brothers, 1938. Pp. 432. \$3.75.

DARE WE LOOK AHEAD? By Bertrand Russell, Vernon Bartlett, G. D. H. Cole, Sir Stafford Cripps, Herbert Morrison and Harold J. Laski. New York: The Macmillan Company, 1938. Pp. 190. \$2.00.

NEARLY a hundred years ago John Stuart Mill pointed out that there are two problems in economics, production and distribution, and that while in the former we are dealing primarily with natural resources, the latter is purely a matter of human intelligence. The delay in solving it has resulted in the major issue now before the world. While democracy advanced as a political way of life, it conspicuously failed to penetrate the economic sphere, and of this failure we have become dangerously conscious in view of the immense progress of the last half century in the control of natural forces. These three books reflect this consciousness. Mr. Lerner strikes a common note in pointing out the paradox of "the technique, lying at hand for us to use, of planning for a stable and abundant economy, and the technique we seem determined to follow of distributing ever less wealth, with ever greater friction." All three recognize the decay of capitalism and the danger to democratic institutions implicit in the challenge of Communism on the one hand, and Fascism on the other. All three find the way of defense in an offensive on the part of the democratic majority, but do not minimize the lengths to which the possessing minority will go to preserve their economic overlordship. And all outline this defense in terms of economic planning.

Mr. Lerner finds the historical cause of the delay in fulfilling the democratic hope of economic amelioration in the ambiguous doctrine of liberalism which allowed the capitalists to convert it "from a credo for freeing the oppressed into a code for keeping them in their places." But the place of the workers is no longer that of mere producers; they are necessary as consumers to the fulfilling of the economic process, and to be consumers they must have purchasing power, if not in the form of wages then in that of relief. To secure a stable equilibrium between production and consumption, especially to employ the machinery of production to effect that possible economy of abundance, of which we have become aware, requires economic planning. In Mr. Lerner's view such planning would result in a democratic collectivism or state capitalism. "Private property and private industrial initiative would remain, but capitalists could make their large decisions on policy only within a framework set by planning boards." To achieve this supremacy of plan over chaos the incentive would be the determination to expand the national income through "gearing the major economic processes together."

Mr. Lerner is not entirely optimistic as to our ability to arrive at this result in view of our experience with the most ambitious effort in this direction, the New Deal. He analyzes the intellectual outlook of this enterprise into

nine different schools of thought, and concludes sadly that "after more than six years in power, it has not made up its mind as to the goal toward which it is travelling and the means by which it hopes to arrive." Nor does he underestimate the opposition of the capitalists to the loss of power to do as they like with their own, an opposition particularly powerful in a democracy through their control of "the principal channels for influencing mass opinion, which have become virtually a class monopoly." There is, moreover, always the possibility of invoking terror, through government officials and vigilantes, as in the "little steel" strikes in 1937. There is finally the alternative of Fascism, which makes the intelligent element in the majority fearful of pressing its rational program lest capitalism invoke this last resource in the class struggle.

On the other hand it may be assumed that in view of the discrepancy between production and consumption capitalism without planning cannot survive, and in the choice of instruments of planning intelligent capitalists who themselves have been habituated to respect the democratic theory may choose the democratic machinery. Moreover, the economics of Fascism, as exemplified in Italy and Germany, are rotten. It has met the problem of underconsumption and unemployment by inculcating a frantic nationalism expressed in armament. "Remove the pressure for armaments and you remove the underpinning of the economy and precipitate bankruptcy." From war the Fascists shrink because it will lead to Communist revolution, and yet war is imminent in the collapse of armament economics. The remedy for the democracies is the *cordon sanitaire*, which is not adopted "because of fear and short-sightedness." In short the same faults mark democracy in the field of foreign as in that of domestic policy. The vice of democracy is inertia. It must be roused to militancy in its own defense, for its own survival.

Mr. Lerner states his conditions for the survival of democracy chiefly in spiritual terms. His practical agenda for expanding our economy are sketched as the selection of twenty or thirty basic industries, an estimate of the consumption schedules for their product, at prices to yield a tolerable profit, and the simultaneous stepping-up of production with guaranties by government of both profits and wages. The banking and credit system will be socialized, foreign trade controlled, and also the investment process. This program is not different from that offered by Mr. Jerome Frank in *Save America First*, except that Mr. Frank relies on the intelligent cooperative action of capitalists rather than on government fiat. He belongs to the school of New Deal economists which Mr. Lerner describes as "regulatory", who "are willing to use whatever government power is necessary to get capitalism to function", but fear the resentment of capitalists if the power of making basic economic decisions is taken from them, "who are collectivists without the courage of Socialist convictions." It is government control rather than regulation which makes possible the simultaneous fixing of production and prices in all leading industries, which in Mr. Lerner's view, is the essential of a planned economy.

Save America First lacks the forthright, athletic quality of Mr. Lerner's book. It is wandering and repetitious with a good deal of irrelevant matter. Mr. Frank's title suggests that he feels it his special mission to protect

his fellow-countrymen against those misleaders of opinion who would have them seek salvation abroad. Since our foreign trade has never amounted to more than seven percent of our annual production of goods and services, and we have an "unchangeable conviction" against letting it increase beyond the modest limits of Mr. Hull's treaties (which Mr. Frank approves), it would seem unnecessary to deal repeatedly with this man of straw. Of course Mr. Frank's animadversions upon our practice of lending Europe money to buy our goods, and failing to collect, are amply justified, but our meekness in the face of this fraud would seem to work against his argument that foreign trade tends to involve us in the political complications of other countries. With what country are we in more danger of such involvement than with Mexico, with which Mr. Frank thinks "we can and should trade"? He is perfectly sound in arguing that "if we are to stay out of the next European war, the only safe policy is to stay out of Europe's preparations for that war." It might be supposed then that to shorten sail in foreign trade we should begin with embargoes upon supplies for war to nations who are threatening the peace of the world and our own. To the advocates of this policy Mr. Frank imputes a sinister intention of leading America into war, similar to the obscene purpose of radicals in increasing our foreign commerce "to make more certain the downfall of our economic system and paving the way for Communism."

Mr. Frank says, by the way, a number of interesting and important things. He regards a unit of continental dimensions as necessary for the well-being and security of the people in a world of international anarchy, and he blames Great Britain more than once for the selfish malevolence with which she frustrated the statesmanlike plan of Napoleon for a European continental system. He is acute in his criticism of the Marxist view of history as absolutely determined, without due regard to the "accidents". Suppose Seward had been nominated in place of Lincoln, or Booth's pistol had missed fire? Of course these examples merely refer causation to an earlier stage; but some of Mr. Frank's illustrations from the history of the New Deal are more apt to his purpose, and confirm Mr. Lerner's characterization of that experiment.

Mr. Frank believes that in place of foreign trade we should strive to increase the domestic market for goods, through distribution of purchasing power. He accepts the description of our economy as potentially one of abundance, and considers that its failure is largely a matter of industrial sabotage on the part of the capitalists, who leave part of the plant idle by reducing purchasing power through cutting wages and raising prices. But this process is not inevitable. We need not turn to Communism or to government control for its correction. "If we are an intelligent people, we can instead rely upon a modification and supplementation of our present profit system."

He fears that to deprive the "powerful few" of their authority, even more than of their property, could not be accomplished without violence. He therefore trusts that "they can be led to adapt themselves to an economy of abundance by inducing them, for their own selfish good, to accept new habits and customs." To assist this wished-for consummation he proposes consultation

among representatives of key industries, steel men with automobile, machinery, and building men, and these in turn with customers, to ascertain how much, with lower prices all along the line, their sales can be increased. This would be not unlike the N.R.A. with, however, the definite objective of increasing production. Like Mr. Lerner he would have government guarantee industry against loss as the result of increasing production and lowering prices. He overlooks the importance of simultaneous and concerted action in all key industries which to Mr. Lerner is so important. Nevertheless he would enlarge the function of government in business. After all it is government which gives vitality to the legal rights of those who operate our economy. Should it not then "more consciously and more responsibly seek to guide and to supplement those powers which it has heretofore left (with little or no accompanying obligations to the public) to those who control our major industrial enterprises?" The cautious style of this proposition measures the difference between Mr. Frank and Mr. Lerner.

Dare We Look Ahead is made up of six lectures delivered before the Fabian Society in 1937. Its chief interest in this discussion is the bearing of the several essays upon the theses of the Americans. Mr. Cole emphasizes the economic dislocation resulting from war preparation. Sir Stafford Cripps declares roundly that "the economic aims and objectives of Fascism do not differ essentially from those of democratic capitalism. In both cases it is essential to maintain authoritarian government by a privileged minority." And he decries the idea that a combination of progressive forces will "accomplish the effective economic change that is essential if democracy is to survive, since there is in fact no common basis for any positive action." The alternative would seem to be revolution; but Mr. Herbert Morrison warns against upsetting "the stability of the social order and the capitalist financial system." Socialism will have to come in orderly fashion or the finish will be Fascism. Mr. Harold J. Laski, like Mr. Lerner, points out that the momentous nature of the change in social constitution will "disturb vested interests whose acceptance of democratic institutions is contingent upon their relation to those interests", and will therefore put a strain on the toleration of civil liberties. Privileged classes in the democratic countries will regard the challenge to their position in much the same light as did those classes in Russia and Spain. Moreover, "we have no longer the leeway in the economic realm which enabled continuous concessions to be made to the working class without any effective alteration in the position of the privileged."

These three books cannot be described as optimistic in regard to the social outlook. Even Mr. Frank's faith in the intelligence of the capitalists is overshadowed by his own account of the persistence of industrial sabotage and the follies of financial capitalism during the war and after. All three books are written with a sense of urgency reflected in the titles. The question in each is: Can we accomplish the necessary and inevitable changes in our economy without civil war? On the other hand there is a general opinion that international war on a world scale will be avoided. Mr. Lerner believes that the Fascists fear war more than anything except freedom of thought. Mr. Vernon Bartlett in his lecture on "The War Horizon" believes that "these dictators who so terrify our Government are not nearly so dangerous as they

sound." And yet the menace of civil war invariably suggests the alternative of foreign war, especially to irresponsible dictators who have made their appeal to nationalism. On the whole it cannot be said that the outlook for democracy and the civilization which it connotes is one to inspire confidence.

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TAXATION OF GOVERNMENT BONDHOLDERS AND EMPLOYEES. THE IMMUNITY RULE AND THE SIXTEENTH AMENDMENT. A Study by the Department of Justice. Washington: U. S. Government Printing Office, 1938. Pp. xi, 219.

A GREAT many people, I suppose, write reviews of books which they haven't bothered to read, but it is not the general custom to preface such a review with such a confession. Well, I haven't read the Department of Justice's 219-page report on taxation of government bondholders and employees, entitled "The Immunity Rule and the Sixteenth Amendment." I haven't read it because I know pretty well what's in it without reading it—and by that I do not imply either discredit to its authors or credit to myself. I'm sure that Messrs. Morris, Key, Buck, and Gardner of the Department have turned out a capable legal report. I'm sure that anyone who knows anything about income tax law also knows pretty well what that report contains. Or could find out the way I found out. I did read the table of contents.

Here is the story. The President decides it's high time that people who hold government bonds or jobs began to pay state and federal income taxes on them, just as do people who hold private bonds or jobs. The only reason they haven't paid up to now is a series of rickety Supreme Court rulings stemming from Justice Marshall's much misconstrued and misquoted dictum that "the power to tax involves the power to destroy." So the President, wisely scorning a constitutional amendment (which the Court, after all, could twist just as blithely as it has twisted the Sixteenth), calls for legislation waiving the immunity of federal salaries and bonds from state income taxes, and proclaiming the power of the federal income tax to reach state and city salaries and bonds. Unquestionably the first part would hold legal water. If Congress wants to waive it can waive and the Supreme Court can't stop it. But those antique buggies-without-horses, *Pollock v. Farmers Loan and Trust Co.* and *Collector v. Day*, still stand in the road of the second part. So the President asks the Hon. H. Cummings for legal support. The Hon. H. Cummings asks the Hon. H. Oliphant (General Counsel, Treasury Department). The Hon. H. Oliphant asks Messrs. Morris (Assistant Attorney General) *et al.* (Special Assistants to the Attorney General). And Messrs. Morris *et al.* produce a 219-page report.

It is, of course, written in legal language, restrained, respectful, thickly annotated—and apparently emanating, as do all legal arguments, from an

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unsaid assumption that this is a tough objective problem on which objective men must put their objective minds, solemnly. It marshals, in full detail, all the old contentions, precedential, logical, historical, to the effect that the Court has been misguided in following the immunity rule and that it should therefore mend its error. (I haven't read the report, remember, so stop me if I'm wrong). It divides the old contentions into two types—those based on the law before the Sixteenth Amendment was adopted, and those based on four little words of the Amendment itself. It adds to the second group of contentions voluminous "new" material to prove that "from whatever source derived" was originally intended to mean "from whatever source derived." It nuzzles up to the present membership of the Court by citing a couple of decisions from the last term which "modify" the immunity rule. Its sum and substance could be contained in a three-word plea:—"Wise up, boys."

How, then, will the story go on? A bill, flouting the immunity rule, will be introduced in Congress. It will pass, not because it is backed by a solid legal document, but because it will have heavy popular support. Next, some previously untaxed holder of state bonds or a state job will hire a lawyer. The lawyer will marshal all the old arguments as to why the new law is unconstitutional just as painstakingly as Messrs. Morris *et al.* marshalled the arguments on the other side. He will carry his protest up to the Supreme Court. And what will happen then? Why, then the nine men who make up the Court will decide whether the immunity rule should be discarded just as a majority of them please to decide it—and just as they would have decided it if Messrs. Morris *et al.* had never written their 219-page report. Except that if they decide in favor of the government, they may swipe some material from the report (which by that time will be embalmed in a brief) to use in their opinion.

And don't for a minute suppose that the President and the Hon. H. Cummings and the Hon. H. Oliphant and the rest don't know this. Here is the pay-off. The legislation recommended by the President would include a provision that the interest on all federal bonds issued in the future be subjected to the federal income tax. That, along with the other provisions, would leave just one type of government income still *not* subject to the federal income tax. The lone type of income thus left immune would be none other than the salaries of federal judges, including the Honorable members of the Supreme Court. And those salaries were put out of the reach of the federal tax collector by a Supreme Court decision far more flagrant in its distortion of the Constitution than *Pollock v. Farmers Loan and Trust Co.* or *Collector v. Day*.

Maybe the omission was an oversight. Maybe. Still, I can't help wondering whether that oversight won't carry more weight with certain members of the Court than 219 pages-worth of legal argument.

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THE INTERNATIONAL PROTECTION OF LITERARY AND ARTISTIC PROPERTY INCLUDING COPYRIGHT IN THE UNITED STATES. By Stephen P. Ladas. New York: Macmillan, 1938. 2 vols. Pp. xlix, 679; ix, 594. \$8.50.

PRESENT-DAY circumstances make a book on the subject of the international protection of literary and artistic property timely. It is bound to receive the attention of lawyers representing composers, authors, publishers, radio broadcasters, motion picture producers and exhibitors, manufacturers of phonograph records, electrical transcriptions and player-piano rolls, proprietors of dance-halls, and night clubs, the embryonic television industry and hosts of others whose principal source of profit is obtained from the exploitation of copyrighted musical, literary, artistic or other works of an intellectually creative nature. Many of these industries are international in scope. All use works written or composed by authors living throughout the world. This is particularly true in the case of music, which does not know the barriers of language.

Mr. Ladas devotes Volume 1 to a discussion of his theory of copyright protection, the history of international copyright, the structure of the Berne Convention and a discussion of certain phases of copyright law as interpreted by the courts of continental Europe, with only occasional reference to British and American decisions. Part 3 of Volume 1 gives the history and structure of the Inter-American Conventions. Volume 2 devotes less than 200 pages to a discussion of the copyright law of the United States, 35 pages to the copyright law of the British Empire, 60 pages to the copyright law of Latin America, 150 pages to the law of other countries, and 90 pages to the text of the Berne Convention and its various modifications, the several Pan-American Conventions and the United States Copyright Act. A brief bibliography is given which unfortunately makes no reference to articles and student contributions in the several law reviews. The index is far from satisfactory. It contains no reference to such important subjects as "renewal rights," the "term of copyright," copyright in "ideas," "pleading," "evidence," "novelty" or "originality" of subject matter, "injunction," "employer and employee," and many other subjects which are given prominence in the indices of most works on copyright. Moreover, Mr. Ladas does not mention in his index any of the authors whose works are frequently referred to in the text.

A discussion of the law of continental Europe and the citation of cases is a distinct contribution to the field of copyright literature because the books heretofore written in the English language have concentrated on the law and the decisions in English speaking countries with only an occasional reference to the law and its interpretation in other nations. The foreign cases cited by Mr. Ladas, however, omit all reference to the official reports. Even the names of the cases are not given, the sole citation being to *Droit D'Auteur*. The author misses another opportunity in failing to correlate the law of the various countries. There is no attempt to compare the copyright law of the United States with the copyright law of other countries, to cite foreign cases on questions which have not yet been decided by the United States courts, and to show those respects in which the copyright laws of all countries are substantially identical so that the decisions of one country may be treated as precedents in another country in cases of first impression.

Mr. Ladas' ideas as to the nature of copyright are not in accord with the progressive theories developed over the years since copyright was first recognized as a form of property. In his very first paragraph, he explains that "the use of the word 'property' in the title of this study in connection with authors' rights in literary and artistic works does not imply that the writer accepts the juristic theory which conceives of such rights as property rights" (p. 1). On the contrary, he argues that copyright is not property for many reasons: the copyright is not perpetual; the author is not given the exclusive right of enjoyment of its object; upon the publication of a work, the creation to which the copyright attaches becomes common to all; in a case of transfer of copyright, certain rights, the moral rights, are always retained by the author; certain modes of acquisition of property, such as prescription, accession and adverse possession are inapplicable to copyright; property is governed by the law of the place where it is located, while copyright is governed generally by the law of the place where protection is sought (pp. 7-8). The author then concludes that since copyright is not "property" the legal relations resulting from the ownership of a copyright must be determined "by the weighing of the interests that these rights purport to secure in the whole scheme of interests that the law seeks to satisfy and protect. In this connection the interests of users of the authors' creations and the social interest in the advancement of culture or the progress of arts and letters are to be considered" (p. 12).

Against the background of these conclusions, the author proceeds to recommend theories and legislation which would strike a serious blow at the objects sought to be accomplished by the framers of our Constitution when they drafted Article 1, Section 8—namely, to promote the progress of science and the useful arts. The author prefers the notions of copyright now prevailing in Germany and Italy to those of France (pp. 5-6).

It is impossible in a short review to analyze at length the conclusions which Mr. Ladas draws from the fallacious premise that copyright is not property. Briefly, however, he concludes that since copyright is a "personal right" and not "property," the author holds his rights at the whim and the caprice of the legislature, and that copyright legislation should be enacted as much for the immediate benefit of the user of copyrighted works as for the author who creates them. Apparently, Mr. Ladas would admit this theory to be unsound if copyright really were property. The test he applies certainly is not determinative of that question. It is absurd to argue that copyright is not "property" because it cannot be acquired by prescription, accession or adverse possession. Who ever heard of acquiring an interest in a corporation by any of these means? Imagine anyone claiming that he acquired certain shares of stock by adverse possession for more than 20 years of certificates evidencing ownership! Or similar acquisition of a promissory note without obtaining the endorsement of the payee. Yet no one can deny that the shareholder in the one case, or the payee in the other have very definite property rights.

Does copyright lose the attribute of "property" because it is not perpetual? So-called "common-law copyright" (which is a misnomer because the exclusive right to make copies arises only upon securing statutory copyright) is perpetual. Publication is a dedication of all common law rights. As long as the work remains in its unpublished state and no statutory copyright has

been secured, the author's common-law rights are perpetual.¹ Statutory copyright, however, exists only for limited periods of time, except in Portugal, where it is perpetual.² But limitation of the term of property rights in intangibles is not uncommon. If the payee of a note fails to sue the maker within six years after maturity he loses most of his rights.

The fact that a copyright owner is given *some* rights with respect to his work but is denied others does not destroy the proprietary nature of his interest. We are all familiar with laws denying to owners of real estate the right to erect billboards, or to build stores in neighborhoods restricted under zoning laws. The terms and conditions under which owners of corporate shares can dispose of this form of property under rules laid down by the S. E. C. materially limit the exercise of rights in that form of property. Owners of railroads and factories cannot operate their respective facilities or plants except in a manner prescribed by the Interstate Commerce Commission or by the National Labor Relations Board. All property rights in *choses in action* may be destroyed by the obligor's discharge in bankruptcy.

Under our law, *all rights* granted to *copyright* owners *must* be exclusive.³ What can be more definitely a "property" right than one in which exclusiveness is guaranteed under the federal constitution? The "compulsory license" feature of our Copyright Law, under which all manufacturers of records may appropriate the author's musical works on paying two cents for each record manufactured regardless of the merit of the work, is the only instance where a right granted to American copyright owners is not exclusive,⁴ and all reliable authors of treatises on copyright law have universally branded this "compulsory license" provision as unconstitutional.⁵

Apparently the author claims that copyright is not "property" because "upon publication of a work, the creation to which the copyright attaches becomes common to all" (p. 7). That is not the law in any civilized country of the world. Publication is *not* a "dedication" or "abandonment" of property rights in the work *unless* the author *fails or refuses to secure statutory copyright*. The purpose of all copyright statutes as well as of our constitutional provision is to *secure* rights to authors *after* publication. Common law rights adequately protect authors *before* publication. Equally unsound is the claim that "property . . . may be fully ceded and assigned, while in a case of transfer of [copyright], certain rights, the moral rights, are always retained by the author" (p. 7).⁶ The so-called moral right is entirely *inde-*

1. *Ferris v. Frohman*, 223 U. S. 424 (1912); *Palmer v. DeWitt*, 47 N. Y. 532 (1872).

2. *LADAS*, 1081.

3. U. S. CONST. Art. I, Sec. 8, Cl. 8.

4. 17 U. S. C. § 1(e) (1934).

5. Even Mr. Ladas agrees that this provision is of questionable constitutionality.

6. The "moral right" is recognized and defined as follows in Article 6^{bis} of the Berne Convention as revised at Rome in 1928:

"(1) Independently of the patrimonial rights of the author, and even after the assignment of the said rights, the author retains the right to claim the paternity of the work, as well as the right to object to every deformation, mutilation or other modification of the said work, which may be prejudicial to his honor or to his reputation.

"(2) It is left to the national legislation of each of the countries of the Union to establish the conditions for the exercise of these rights. The means

pendent of copyright. It is a personal right similar to the right of privacy.⁷ The copyright laws of the United States and England do not recognize this moral right.⁸ The fact that some countries recognize a moral right in the author in addition to his copyright certainly cannot detract from the proprietary nature of the copyright itself.

It is to be regretted that a work which so ably presents the copyright law of continental Europe and the historical development of international copyright should be marred by a discussion of domestic copyright and the theories underlying domestic copyright protection, with which Mr. Ladas is obviously unfamiliar.

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DIPLOMATIC CORRESPONDENCE OF THE UNITED STATES. INTER-AMERICAN AFFAIRS, 1831-1860. Selected and arranged by William R. Manning. Vol. X, THE NETHERLANDS, PARAGUAY, PERU. Washington: Carnegie Endowment for International Peace, 1938. Pp. xxxvii, 913.

CONFERENCIAS INTERNACIONALES AMERICANAS, 1889-1936. RECOPIACIÓN DE LOS TRATADOS, CONVENCIONES, RECOMENDACIONES, RESOLUCIONES Y MOCIONES ADOPTADAS POR LAS SIETE PRIMERAS CONFERENCIAS INTERNACIONALES AMERICANAS, LA CONFERENCIA INTERNACIONAL AMERICANA DE CONCILIACIÓN Y ARBITRAJE Y LA CONFERENCIA INTERAMERICANA DE CONSOLIDACIÓN DE LA PAZ; CON VARIOS DOCUMENTOS RELATIVOS A LA ORGANIZACIÓN DE LAS REFERIDAS CONFERENCIAS. Prefacio por Leo S. Rowe. Introducción por James Brown Scott. Washington: Dotación Carnegie para la Paz Internacional, 1938. Pp. lviii, 746.

No one seems to know how to preserve peace or how to secure a real understanding between peoples but it may be safely asserted that, if these potential blessings ever become a reality in the Americas, the work of the Carnegie Endowment for International Peace will have helped to achieve it. The two works listed above constitute only a small portion of the vast amount of published material that the Endowment has made available on the international relations of the American states.

The first volume noted is number ten in the series of substantial volumes Dr. William R. Manning has edited for the Endowment on inter-American

for safeguarding them shall be regulated by the legislation of the country where protection is claimed."

7. Cf. Warren and Brandeis, *The Right of Privacy* (1890) 4 HARV. L. REV. 193, cited by Ladas at p. 4.

8. LADAS, 802.

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affairs. The documents relating to the Netherlands and Paraguay are of relatively minor importance and the bulk of the correspondence is devoted to our relations with Peru. Among the subjects treated are the efforts of the United States to obtain a treaty with Peru containing the most-favored-nation clause, our dispute with Peru regarding the sovereignty of Peru over the Lobos Islands, and the dispute concerning the free navigation of the Amazon River. In view of the recent conference at Lima, it is interesting to observe that in 1846 President Castilla enquired of the United States consul at Lima whether the "Governm't of the U. States would lend itself to oppose this iniquitous attempt on the part of the Monarchies of Europe [General Flores' threatened invasion of Peru, supposedly with the connivance of England, France, and Spain] to Subvert the principles and Republican form of governm't existing in South America." Castilla wanted to buy United States warships and the consul believed that this "would be a service to the cause of Republicanism and of Humanity."

The second work is a translation in Spanish of the volume issued in 1931 entitled *International Conferences of American States, 1889-1928*, with additional material covering the Montevideo conference of 1933. It constitutes, as the title indicates, a complete record of the formal acts of the first seven American conferences and is therefore an indispensable work of reference for all students of the international relations of the Americas. In one sense, however, this volume may be considered a museum of pious hopes, for many of the proposals agreed upon have never been carried out. Resolutions have been passed on sanitation, finance, education, bibliography, cultural relations, women's rights, functions of the Pan American Union, labor, arbitration, and aviation—to name only a few of the subjects considered at one time or another since Secretary Blaine called the first conference in Washington in 1889—but not always have these decisions been put into effect. One is reminded of the flourish with which Spanish officials used to receive a royal decree in America—*obedézcase pero no se cumple*: let it be obeyed but not enforced.

Valuable as this formal record is, it needs to be used in conjunction with the day-to-day discussions as shown in the minutes of the various conferences. Only thus can we appreciate the attitude of the various nations to the individual resolutions. A steady increase in the time and realistic wisdom devoted to cultural exchanges is a welcome sign. One of the most important single documents in the volume is the convention on private international law presented to the Sixth Conference at Havana in 1928 (pp. 302-350).

All in all, these two volumes demonstrate the faith held by Dr. James Brown Scott, Director of the Division of International Law of the Carnegie Endowment, which this reviewer shares, that any true understanding among the Americas must be based upon the facts of their relationship.

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