

BOOK REVIEWS

War and the Private Citizen. Studies in International Law. By A. Pearce Higgins. London. P. S. King & Son. 1912. pp. 200. Price \$5.00 net.

A law book as interesting and absorbing as a novel is indeed a rarity. Mr. Higgins has accomplished this remarkable feat in a compact little book, which can be read at a sitting, thoroughly enjoyable, and yet thoroughly instructive.

War, in the popular mind, is considered, as stated by Lord Brougham, to be "not the concern of individuals but of governments." This dictum the author proves is but a partial truth; for in spite of advances in civilization and the mitigation of monstrous barbarities, war is still hell, not only for the combatants, but also for the private citizen. He is not exempt by the rules of warfare from its horrors. In the bombardment of defended towns, in effective blockades, and in the territorial occupation of land by the enemy, the private citizen is faced with great dangers and subject to great deprivations. And in fact the strategic policy in war is to bring pressure to bear on the private citizen, and, in the words of General Sherman, "to cause the inhabitants so much suffering that they must long for peace." A brief summary of the author is worth quoting: "Forced labor may be requisitioned, private property of every description can be commandeered for the use of the invading army, foodstuffs of all sorts compulsorily purchased, and several of the most powerful military States still insist on retaining the right—one of the most objectionable of the usages of war—of forcing non-combatant individuals to act as guides to the army of invasion." Therefore, a clear appreciation of the laws of war and its direct consequences will tend to bring sanity to the inflamed mind, and stability to the impulsive and excitable citizen. War is the modern sacrifice to false gods. Let the private citizen remember that he too is sacrificed.

Besides this warning, Mr. Higgins discusses in the chapters following other questions of interest, if not of such importance.

In Chapter II he gives a brief account of the treatment of Hospital ships, the provisions made by belligerents for the safety of persons taken from prizes which they destroy, and the right of belligerents to destroy neutral and hostile merchant-ships.

The third chapter considers the position of war-correspondents in naval warfare. No international convention has dealt with his legal status, and consequently it is still uncertain. The case of the correspondent of the *Times* during the Russo-Japanese War is cited; it shows that the invention of wireless telegraphy makes imperative a stricter control of their activities, and the author approves of the regulations made by the Japanese in 1904. He further advocates that the principle of rules of war on land, as applied to Red Cross assistance and to newspapermen attached to land forces, be adopted, with modifications, for naval correspondents.

In the last two chapters, there is an impartial examination of disputed questions, the conversion of merchant-ships into war-ships, and the opening by belligerents to neutrals of closed trade. The conclusion, in favor of the compromise offered in Italy, that no merchant-ship should be converted on the high seas except when they had left their national ports before the outbreak of war, is certainly sound, and in the interest of peace. In support of this contention he adds the weighty authority of Story and Mahan, and a quotation from Kent that leans very strongly in that direction.

May all peace loving people, strenuous warriors and lawyers read this book.

F. R. S.

Auditing, Theory and Practice. By Robert H. Montgomery, C.P.A. The Ronald Press Company, New York. 1912.

This timely work upon a subject of great importance, written by one of the leaders in his profession, will become the standard text book upon this subject in this country.

Dicksee's work on Auditing, hitherto the accepted standard throughout the English speaking countries, was written especially with reference to English commercial methods, and contained a considerable amount of British statute law which was of little or no importance to a practitioner working under other laws. Furthermore, since the original work was published, progress has been rapid in the systematizing of extensive and complicated accounting, and in some matters Dicksee's book is out-of-date, while on other matters of present importance no mention is found in that work.

There has been no authoritative, generally accepted work on the subject since Dicksee's book, although subsequent editions of that work presented attempts to supply a real need for a modern work on the subject.

Therefore, Mr. Montgomery's well written text will be welcomed by the profession, and by all who have occasion to consult such a work.

Advancing methods in corporation, syndicate and trust accounting, have given necessity for adequate advance in system and methods in auditing. The auditing of twenty years ago is no longer adequate; indeed the word has acquired a different meaning. Auditing is no longer merely examination and investigation of accounts. It embraces a wider field of examination and investigation and report and suggestion than was possible under the older methods.

The day of the amateur auditor, who simply added columns and compared results and checked vouchers, has passed. Modern financial methods require scientific examinations of accounts, character of business, condition of plant and properties, past experience and future prospects. Periodical audits of banks, public service corporations, institutions of learning, and ordinary business corporations, are becoming the rule and not the exception. Information which furnishes knowledge of actual existing conditions is daily required under modern investment methods, and only the modern, professional auditor, is able, as a disinterested party, to furnish impartial reports which will supply the material called for by such requirements.

Mr. Montgomery's book is adequate for the requirements of the business world of to-day. Well written, lucid, exhaustive, learned in the science, practical as only a great practitioner could make it, it is a worthy work from the pen of a master of his profession.

The work of the practicing lawyer in this day is so largely concerned with commercial enterprises, that this book will find its way into the libraries of many lawyers in our larger cities, where matters of investments in corporations, reorganizations, combinations and changes of various sorts are frequent subjects of consultations and of further services in lawyers' offices. It will be found a valuable aid in many features of the work involved in such service.

A. T. B.

Penal Philosophy. By Gabriel Tarde (late Magistrate and Professor in the College of France), translated by R. Howell. Boston. Little, Brown & Co. pp. 567.

The reviewer pauses with amazement and stands aghast at his task. The book is simply overwhelming, literally, and without exaggeration. You open it and start with the ordinarily accepted and conventional principles of moral responsibility based on free will; you finish and the old ideas have crumbled under the keen, philosophical pen of Professor Tarde. However, his is not the mere hand of impotent though destructive criticism. He formulates a new foundation for the one which he has demolished; he builds one that is more certain, more secure, and which squares itself better with history, logic and common sense. Instead of free will, the basis of responsibility is now rested on two cornerstones, those of personal identity and of social similarity. The first is the more important; the criminal is responsible if he is "himself", as we would say. But if by some perverse force his nature, this "himself", be suddenly changed and twisted, then the personal identity is lost, and with it the personal responsibility. This principle Tarde applies even in the case of moral conversions; an inveterate sinner commits a crime; then through the influence of religion or the stirring of some great enthusiasm, he is changed, converted. To hold this man (whom Begbie calls "reborn" in his book *Twice Born*) is in the opinion of the author

illogical, for the obvious reason that we have here a different "himself", not the man who was guilty of the crime. The reader, however, is warned not to make the mistake made by many, in concluding that Professor Tarde refers to a change in *organic* activity; it is with the *social* identity alone that he is concerned. So, although in the above case there is the same organic being, yet socially the old identity has completely changed, and a good citizen steps forward, instead of the former totally different and dangerous creature.

The secondary principle of social similarity is of some importance. Not only must the criminal be "himself", but he must be among people who are like himself in custom, ideas of morality, religion, etc. If a cannibal accustomed to feast on babies were to commit his barbarity in a civilized country, he could not be held as fully responsible as one of the inhabitants of the country, for the baby-eater would be socially dissimilar.

The reviewer has just one word of criticism. Would not the theory of free will bring us to the same conclusion in the majority of cases as the author's theory? Most certainly it would in the cases mentioned of the madman, epileptic, and persons generally deranged. But we admit that this theory is more comprehensive, even if it does present many difficulties in deciding exactly when the personal identity breaks and a new identity comes into existence.

Besides expounding his new theory, which is of startling originality, with a wonderful faculty of analysis and effective examples, the author dissipates with vigorous strokes the opposing theories of the Positivist School; he knocks down the "criminal type" of Lombroso; he refutes Ferris' misplaced emphasis as to the three factors of an offense, and shows by his original philosophy of the laws of imitation, that the criminal, instead of being a person who reverts to the savage, or who is made by a certain temperature and time of year, is the product mainly of the imitative influence of social customs and conditions. But while the socialist immediately says, "Therefore society is responsible," Tarde replies No, the individual is responsible, for he has imitated, assimilated and made all this a part of himself, and therefore, being himself and in a society to which he is similar, he should be punished.

The book is really inexhaustible; the criticism of the different schools and authors on criminology, his illuminating method of interpreting statistics (in which he shows himself a master), the sanity of his views, the profound grasp of all the systems of philosophical thought, the minute knowledge of history, the skillful application of his theories in specific cases, which are enumerated in Chapter IV, his discussion and criticism of the jury, his suggestive treatment of the death penalty, are all in all the product of a great mind and fine thinker. Burgon could truly say of his work, that "One grand conception underlies the whole construction and imparts to it direction."

F. R. S.

THE JOURNAL has received the *Bibliography of International Law and Continental Law*, by Mr. Edwin M. Borchard, of the Law Library of Congress. This most valuable publication just published by the Government Printing Office at Washington will be welcomed by all interested in international law and European jurisprudence. While both the Library of Congress and other large collections in our country have been successful in securing much valuable literature bearing on the public law of the leading European States, the usefulness of such collections is greatly impeded by the lack of general knowledge as to the precise whereabouts of these books in our own country. We have here from Mr. Borchard's pen a very painstaking and accurate account which will serve to many as an introduction to the important subjects whose literature it covers, and will doubtless stimulate a new interest in these subjects on the part of many. A very valuable feature of Mr. Borchard's work is his account of the leading periodicals devoted to international law and European public law and valuable are his reference lists of books contained in various noted works.

G. E. S.

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Regulation, Valuation and Depreciation of Public Utilities. By Samuel S. Wyer, M.E. Columbus, Ohio. The Sears & Simpson Company. 1913. pp. 313. Price, \$5.00 net.

The Quarterly Law Review. Vol. XXIX, No. 113. Edited by The Right Honorable Sir Frederick Pollock, Bart, D.C.L.,

LL.D. London. January, 1913. Containing: Notes; *Whitby v. Mitchel* Once More; Vested Remainder or Executory Devise? When Will the English Courts Follow a Foreign Grant of Probate or Administration? *Locus Regit Actum* and Wills of Foreigners in France; The Super Tax; Indictments for Adultery and Incest Before 1650; The Rescission of Executory Contracts for Partial Failure in Performance, II; The Universities and the Legislature; Book Reviews.

THE YALE LAW JOURNAL has been delayed in its publication this month owing to a fire which destroyed some of our printing machines. We ask our subscribers to overlook this unfortunate delay.