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BOOK REVIEWS

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Volkermord oder volkerbund? By Dr. Heinrich Lammasch. The Hague, Martinus Nijhoff, 1920. pp. 128.

"The publication of this last volume by our departed statesman and jurist," says an editorial note by his colleague at the University of Vienna, "will surely be received not only with the interest which belongs to the subject of his study, but also with a feeling of sincere gratitude for the great work accomplished by the author both as a wise counsellor and as a practical arbitrator seeking to bring about harmony between the nations and to promote the cause of international arbitration and world peace." Those in other countries who remember how valiant have been the labors of this Austrian jurist in the field of international law and how keen was his disappointment at the outbreak of the world war will be doubly impressed by the logic and earnestness of the appeal here presented.

The choice for the nations, he says, is between mutual extermination and international union. The old order of state sovereignty and arbitrary interpretation and enforcement of claims of right has clearly broken down. A "solidarity of interests" compels the nations to regard war between any two of them as a matter of concern to the whole body and to undertake the task of affording each of them protection against attack. The experience of history has shown us that the mere declarations of the nations in favor of a rule of law, such as those made at the Hague Conferences, are inadequate to secure peace. An effective "league of peace" must transform the "recommendations" of the Hague Conferences into legal obligations, it must embrace within its jurisdiction all disputes, including those affecting vital interests as well as those hitherto regarded as justiciable, and it must create a sanction to enforce the observance of the law. Dr. Lammasch, while taking exception to the membership of the League of Nations, sees in the Covenant the embodiment of these necessary conditions of peace, and he does not consider Article 10 as a "petrification" of the territorial *status quo*. As obstacles to the development of such an agreement there is the traditional worship of the state as the "highest unity" in which men can be bound, as well as the belief in the value of war as a means of national development. The fact that both ideas run counter to the facts of history as well as to the demands of reason has not prevented their influence for harm.

In discussing the specific methods by which international disputes are to be settled, Dr. Lammasch recognizes the distinction between disputes of a justiciable character, which are by their nature susceptible of an arbitral decision, and disputes of a non-justiciable character arising from "the economic rivalry of states and their national aspirations." The former may well be taken care of by the courts of arbitration created at the Hague, if, in addition, the jurisdiction of the court be made compulsory and a sanction be attached to its decrees. The Judicial Arbitration Court, provided for at the Hague but never actually brought into being, should be set up as a permanent court of justice as distinct from the temporary courts of arbitration. Disputes of a non-justiciable character are to be adjusted by "agencies of mediation", such as those provided for at the Hague; but here again the resort to "good offices" and mediation must not be left optional, but must be put upon a legal and compulsory footing. The commissions provided for in the Bryan treaties of 1913-1914 furnish an example of the kind of agency required. With respect to the sanction by which the operation of the international courts and commissions is to be made effective Dr. Lammasch shows that the world war has brought about a "fundamental change of view" on the part of publicists. Many who, like himself, formerly

relied upon a moral sanction now confess to the need of a physical sanction as a last resort. The two closing chapters discuss the preventive and constructive activities to be performed by the League of Nations.

The death of Dr. Lammasch on January 7, 1920, was a loss which the new Republic of Austria could ill afford to suffer. He had been technical delegate of his country at both of the Hague Conferences and had served as president or member of arbitration tribunals in four important cases submitted to the Hague Permanent Court. As a pacifist in the best sense he had opposed the military party which was responsible for the outbreak of the war and subsequently labored to bring about a just peace by settlement. Had his voice been heeded, his country would have been spared much of its present suffering. It is to be hoped that these final words of a noble and just man will be translated and made accessible to the English-speaking public.

C. G. FENWICK.

Bryn Mawr College.

Early Records of Gilpin County, Colorado. Edited by Thomas M. Marshall. Published by the University of Colorado, 1920. pp. 313.

The first rush of gold seekers to Colorado occurred in 1858 and 1859. In the present volume are found the records of the earliest organizations in the state and the legislation of the early mining districts. In June, 1859, the Rocky Mountain News reported "The first mass meeting ever held in the Rocky Mountains." It was at the "Gregory Diggings", attended by "between two and three thousand miners", and was addressed by Horace Greeley. A report on what they found at Gregory Diggings was prepared by a committee of three distinguished visitors, consisting of Horace Greeley, A. D. Richardson, and Henry Villard. At the mass meeting then held the miners designated boundaries of the district, prescribed rules as to the size and location of claims, and created a miners' court. At later meetings these laws were amplified. In the volume is found the legislation of some nineteen mining districts, enacted at similar public meetings of the entire population. This legislation deals chiefly with the mining industry, but criminal codes are also included. The Hawk Eye District enacted that "Any person found guilty of wilful murder shall be hanged by the neck till dead and then given to his friends if called for and if not to be decently buried, and all other crimes not enumerated in these laws shall be punished as the Court or jury of men may direct."

The Russell District devoted eight sections of its code to the organization of its Miners' Court, giving it "equity as well as law jurisdiction." Fifteen more sections stated in detail the rules of practice before the court, while other sections dealt with the "Trial and its Incidents" and with "Levy and Sale upon Execution." The volume contains much historical material of interest.

A. L. C.

Jurisprudence. By Sir John Salmond. Sixth Edition. London, Sweet & Maxwell, Ltd., 1920.

Salmond's Jurisprudence, first published in 1902, and now in its sixth edition, is an excellent example of the developed type of the analytical school of John Austin. The author is now Solicitor General of New Zealand. The first edition appeared when he was Professor of Law at the University of Adelaide. This edition contains no material changes from the prior edition except, perhaps, a more extended examination of the conception of state-territory, based upon the organization of the British Empire.

The disinclination of practicing lawyers to recognize the usefulness of jurisprudence in any form is well known. Mr. Dicey, as quoted by Professor Gray,

in his *Nature and Sources of Law,* says that "Jurisprudence is a word that stinks in the nostrils of a practicing barrister," but goes on to say, "Prejudice excited by a name which has been monopolized by pedants and impostors should not blind us to the advantage of having clear and not misty ideas on legal subjects." Professor Gray says, "Especially valuable is the negative side of analytic study. On the constructive side it may be unfruitful, but there is no better method for the puncture of windbags. . . . The task of the analytic student of the law is the task of classification and, included in this, of definition." If this is true, and we have no doubt it is, the practical utility of that method of jurisprudence styled analytic ought to be evident to and recognized by the practicing lawyer who desires to fortify the art of law by the scientific consideration of its fundamental principles. That, through the primary influence of Austin and Maine, some change has taken place in the attitude of practitioners in recent years, is evident from the successive editions of the leading textbooks which follow the methods of the analytical school. Holland's Jurisprudence has gone into twelve editions since 1880; Salmond, six since 1902, and Markby, Elements of Law, five between 1871 and 1896. Within the last few years articles upon jurisprudence in some form have appeared in increasing numbers in the law reviews. The law schools have both reflected and largely developed this attitude by introducing more or less extended courses on Legal History and Jurisprudence into the curriculum, and the study of law from the historical, comparative, and analytic points of view, in their elements at least, is fairly well established as a necessity in any adequate course in law.

Salmond says that the aim of the abstract study (analytical jurisprudence) is to supply that theoretical foundation which the science of law demands, but of which the art of law is careless, and therefore defines jurisprudence as treated by him as "the science of the first principles of the civil law." What keeps the science, so understood, upon the ground, is that it is based upon and takes its vitality from actual, concrete law as in fact administered at the given time. It follows that the subject-matter in treatises of this class is substantially the same. The conception of law, the state, sovereignty, administration of justice, sources of law, some reference to legal history, legal rights, liabilities, property, possession, etc.—all these Salmond has treated quite clearly and somewhat more extensively than the authors referred to.

It is quite impossible to give an adequate view of the author's method and conclusions in a brief notice. A single example must suffice. In a section entitled "Law logically subsequent to the administration of Justice," after having defined law as "the body of principles observed and acted on by the state in the administration of justice," the author states certain conclusions as follows: "The primary purpose of this function [the administration of justice] of the state is that which its name implies—to maintain right, to uphold justice, to protect rights, to redress wrongs. Law is secondary and unessential. It consists of the fixed principles in accordance with which this function is exercised. It consists of the preëstablished and authoritative rules which judges apply in the administration of justice, to the exclusion of their own free will and discretion. For good and sufficient reasons the courts which administer justice are constrained to walk in predetermined paths. They are not at liberty to do that which seems right and just in their own eyes. They are bound hand and foot in the bonds of an authoritative creed which they must accept and act on without demur. This creed of the courts of justice constitutes the law, and so far as it excludes all right of private judgment. The law is the wisdom and justice of the organized commonwealth, formulated for the authoritative direction of those to whom the commonwealth has delegated its judicial functions. . . . It is essential to a clear understanding of this matter to remember that the administration of justice is perfectly

possible without law at all. A tribunal in which the judge does that which he deems just in a particular case, regardless of general principles, may not be an efficient or trustworthy tribunal, but is a perfectly possible one. It is a court of justice which is not also a court of law. . . . Law is a gradual growth from small beginnings. The development of a legal system consists in the progressive substitution of rigid preëstablished principles for individual judgment, and to a very large extent these principles grow up spontaneously within the tribunals themselves. That great aggregate of rules which constitutes a developed legal system is not a condition precedent of the administration of justice but a product of it. Gradually, from various sources—precedent, custom, statute—there is collected a body of fixed principles which the courts apply to the exclusion of their private judgment. The question at issue in the administration of justice more and more ceases to be 'what is the right and justice of this case' and more and more assumes the alternative form, 'what is the general principle already established and accepted as applicable to such a case as this.' Justice becomes increasingly justice according to law, and courts of justice become increasingly courts of law."

The book is a valuable addition to the not over extensive group of books in English devoted to analytical jurisprudence and, though coming from the other side of the world, there is little, if anything, in it that makes it less valuable wherever the English law prevails.

E. B. G.

Textbook of Aerial Laws. By Henry Woodhouse. New York, Frederick A. Stokes Company, 1920. pp. 171.

When an authority on aviation, supported by eight lawyers in advisory capacity, purports to "make available a complete review of Aerial Jurisprudence," an imaginative student of things aerial or legal may be pardoned great expectations. Your swivel-chair becomes a Pegasus in clouds of theory, Spad-mounted speed cops lurk behind their fleecy ambushes, and colored kite balloons direct your flight of imagination.

In reality the subject is merely an application of familiar principles to a new set of facts. Mr. Woodhouse has reviewed actual aerial legislation, without significant comment. The regulations adopted by the Aeronautic Commission of the Peace Conference, the only aerial law as such, are printed in full, as well as the 1919 British Air Navigation Regulations, proposed legislation in France and the United States, the New York and Massachusetts statutes, and a rather conglomerate mass of recent war incidents, the latter illustrative of an illusory "Aerial War Code." The Constitution of the United States is given *in extenso* (including the names of the signers and the ratification majorities in the states), lest proposed aerial legislation be unconstitutional.

The remainder of the book consists of hypothetical cases that involve familiar enough legal principles and will offer none of the difficulties the author expects, when once society has decided how air-craft shall be used. For that is the whole point. It is only in the adjustment of our jurisprudence to aerial conditions that a real problem arises. Take for instance the question of state sovereignty over the air (although it was perhaps finally settled at Versailles); shall we consider an aeroplane a flying automobile upon the aerial roadways of a nation, or a flying ship upon the high seas of the air? None of the fundamental principles are suggested to us by which alone similar undecided questions may be answered. The author's only explanation of the rejection of the "Freedom of the Air" theory seems to be an objection by Great Britain that the aviators of European belligerents might fight their battles over a neutral London and the falling débris cause damage! Even a cursory reading of Dr. Harold Hazelton's or of Sir H. Erle

Richards' work, would have revealed an historic legal background for a logical working out of the question, in the arguments that rights in land have always implied sovereignty over the air above it, and that the territory of a nation is not analogous to an ocean bottom, unless both gravity and immemorial precedent are to be disregarded.

Unfortunately, as much exception may be taken to some of the author's purely aeronautic conclusions as to those offered from a legal viewpoint. And all such aspects as jurisdiction and the conflict of laws in the air are entirely omitted. This is the more unfortunate in view of the need of a complete review of aerial jurisprudence.

G. G. D.

A Memoir of the Right Honourable Sir William Anson. Edited by Herbert Hensley Henson. London, Oxford University Press, 1920. pp. 242.

American lawyers and law students who have used Anson on *Contract* and also his work on *Law and Custom of the Constitution* will be interested in this memoir, to which a number of Sir William Anson's close friends have contributed. College and law school teachers and college reformers and executives will also be interested, inasmuch as his real life work was that of scholarship and administration. For thirty-three years he was Warden of All Souls College, being elected to reform that institution, after a vigorous campaign between conservatives and radicals. All Souls is a college devoted to graduate research, with no undergraduates. Its Fellows had from time immemorial been largely non-resident. Because of a constitutional provision giving a preference to "Founder's Kin", out of 113 Fellows between 1815 and 1857, 78 were of the "sacred families". It was a popular gibe that the requirements for election were that the Fellow must be *"bene natus, bene vestitus, mediocriter doctus."* Anson was under forty, a lawyer, a layman, and a Liberal. He reconstructed the constitution of All Souls; but he so linked his reforms with the ancient traditions of the place that he reconciled everybody, and many men of distinction were later attracted to All Souls. He was a leader in the teaching of law at Oxford, even going so far as to give courses to undergraduates in Balliol and Trinity; and he was one of the founders of the Law Quarterly Review. His method of teaching was what Dicey describes as "professorial and tutorial", meaning undoubtedly lecture and the discussion of a text-book. Sir Frederick Pollock says of Anson, in a review of the present volume, that "Langdell and the brilliant school of American theorists, not always as sound as their spiritual father, whom Langdell's example has raised up in America, had no attraction for him, and the Year Books had little more." And again, "His one obvious mistake in university matters, as it now appears, was to favour the establishment of a new university for women." This he favored in order to prevent the necessity of Oxford's granting degrees to women.

Sir William Anson was a scholarly, reasonable, energetic, and sweet-tempered man. The present volume, including contributions by Dicey and Holland, presents an interesting account of his career, both at Oxford and in Parliament. In his youth he rejected an offer to become the tutor of William II, late emperor of Germany. Two years before his death he gave personal instruction in Government and Constitutional Law to the present Prince of Wales.

A. L. C.

The Grotius Society, Vol. V. Problems of Peace and War—Papers read before the Society in 1919. London, Sweet & Maxwell, Ltd., 1920. pp. xxvi, 154.

The foundation of the Grotius Society in the year 1915 was an eloquent

recognition of the fact that the Great War was fought primarily in the defence of international law. The members of this Society could not take the superficial view so prevalent at one time during the war that international law had been badly discredited. They realized that the presence of one outlaw or of a band of outlaws in a community does not imply that law has ceased to be worthy of respect. And the union of so many members of the great community of nations to crush the German outlaw together with his fellow criminals was to be interpreted as supreme proof of the vitality of the law of nations.

The Grotius Society realized the obligation to reaffirm faith in international law and to foster its study and growth. The problems considered by the Society in the year 1919 give evidence of its valuable services in this regard. We find papers on "The Influence of Grotius", "Grotius in England", "A Court of International Justice", "Treatment of Prisoners of War", "The Freedom of the Seas", "Submarine Warfare", "The League of Nations—The Work of Lawyers", "Islam in the League of Nations", "Cardinal Alberoni's Proposed European Alliance for the Subjugation and Settlement of the Turkish Empire, 1755", and "Labour Legislation under the League of Nations".

Of especial interest are the papers on "Treatment of Prisoners of War" by Geo. G. Phillimore, B.C.L., and Hugh H. L. Bellot, D.C.L., "Revision of the League of Nations Covenant" by F. N. Keen, LL.B., and "Grotius in England" by W. S. M. Knight.

The paper on "Grotius in England" is noteworthy for bringing out new facts concerning the founder of international law—though unfortunately not all to his credit. Mr. Knight rather conclusively proves that Grotius wrote his renowned *Mare Liberum* for the express purpose of challenging Portuguese and Spanish domination of newly discovered lands and waters, and that later on he came to England as the member of a Dutch diplomatic mission in March, 1613, to uphold the reverse thesis in order to challenge the British claim to universal freedom of trade! According to Knight, "'No,'" declares Grotius now, "'it must be recognized that many of the laws of nature and nations are indefinite', that is to say, their content and application must depend upon particular human opinions and social conditions. And thus, he reminds the English, all nations arbitrarily define their own boundaries and, as a fact, restrict and regulate as they will the trade they permit in their territories and with their peoples, excluding what persons they like. In fact, he continues, it is of the essence of natural liberty to be able to bind or limit the action of others. Moreover, with regard to the monopolies which the Dutch had agreed upon with several of the peoples of the East, these being founded on contract must be observed by others." (p. 29)

Mr. Knight also baldly asserts that "*De Jure Belli* was written largely with a regard for the possibilities as an introduction to diplomatic service." As Professor Goudy observed in the course of a subsequent discussion, this paper "could scarcely be said to be *laudatio Grotii*." None the less it is most interesting and stimulating. One cannot ignore the curious fact, however, in reading this paper as well as the coldly critical address by the President of the Society, Sir John Macdonnell, that a society in honour of Grotius should be so markedly inclined to depreciate his services. One wonders whether there would have been the same tendency had Grotius enjoyed the privileges of an English environment as did Gentilis, the pride of Oxford!

The League of Nations obviously claimed special consideration, and one finds interspersed in the general praise of the project much constructive criticism such as one more naturally would expect to find from American sources. For example, with respect to Article X of the Covenant, one finds the following comment in the illuminating paper by F. N. Keen on the subject of the "Revision of the League of Nations Covenant":

"A nation may be content to rest under an obligation, onerous though it be, to join in guaranteeing the 'status quo' where it is clear that the 'status quo' is, under all the circumstances, just and reasonable. But supposing it should become clear that the 'status quo' is unjust or unreasonable, how can all the Members of the League be expected contentedly to remain under a permanent obligation to support it? Article 10 seems to involve the risk that the Members of the League may be subjected to an unreasonable liability unless adequate facilities exist for "enabling the League to require that changes of territorial boundaries and of political status shall be made from time to time if and when justice and reason so dictate. I do not think the facilities at present provided in the Covenant for bringing about such changes can be described as adequate." (p. 97)

One reads the "transactions" of the Grotius Society with interest and pleasure because of the refreshing candour and thoroughness that characterizes these British defenders of the law of nations. And one cannot but feel keen regret that, during so momentous a crisis in the development of that science, similar societies were not at work in the United States for the purpose of submitting international law to a searching analysis as well as for the moral obligation of vindicating its supreme worth.

PHILIP MARSHALL BROWN

Princeton University.

Problems in Business Law. By Justin H. Moore and Charles Houston. New York, D. Appleton & Co., 1920. pp. 272.

That scientific training for business is both wise and practicable is unquestionable. It is also obvious that such a training, to be adequate, requires a general knowledge of those principles of law which are operative in every business transaction. Schools professing to offer such training now generally include in their course of study some instruction in commercial law. Such courses have usually used the text-book method.

The book here noticed offers a basis for an interesting departure which is somewhat similar to the "case method" of instruction now used in the leading law schools. The outstanding advantage of this is that it offers the student constant opportunity to observe the operation of the legal principle upon facts of life, with the result that an ability to apply it himself to those facts is much more readily acquired. That this ability is valuable to the business man in much the same way as it is to the lawyer is obvious.

The collection of problems here included is, on the whole, very excellent for the purpose. Each problem is presented by a statement of the facts of an adjudicated case. There is a citation to the report of the case, but the decision of the court is never stated, the idea being that the student may consult the report, or reach a solution unaided, which will, of course, very often prove to be incorrect. However, he will become curious and alert mentally, and will be in an ideal state of mind for receiving to the greatest advantage the proper answer with the seasons therefor. The case selected is not always the leading one on the point, but is usually well adapted because of its "human interest" element and illustrative value.

Problems have been included dealing with Contracts, Quasi-contracts, Sales, Personal Property, Chattel Mortgages, Lost Property, Pledged Property, Bailments, Agency, Carriers, Master and Servant, Suretyship and Guaranty, Negotiable Instruments, Insurance, Partnership, Corporations, and Bankruptcy.

It is the belief of the reviewer that a course conducted along the line here suggested will be of considerably greater practical value to the student than one covering the same ground conducted in the old way. It goes without saying that it will be much more interesting. The book here noticed seems admirably suited to the purpose.

H. W. A.

Philippine Business Law. By Eugene Arthur Perkins. New York, D. Appleton & Co., 1920. pp. xx, 491.

This book is meant to be a text-book for college students taking a course in business law, and covers the subjects of Contracts, Agency, Partnership, Corporations, Bailments, Sales and Mortgages of Personal and Real Property, Insurance, the Management of Decedents' Estates, Inheritance, Intestate Succession, Wills and Trust Estates. Books of this nature are too elementary as a rule to be of value to the lawyer. In view of the fact, however, that there is going on in the Philippine Islands at the present moment a most interesting development, namely, the gradual introduction of our common law doctrines into the civil law of those islands, the subject matter of the book naturally appeals to all students of law. In this regard, the book is, however, very disappointing, for, with few exceptions, it indicates the fact that a change in the law has been made only where a branch of the native law, such as bills and notes, has been superseded in its entirety by American law, but not where individual rules of law are involved.

The book is not an original treatise, but is adapted from Sullivan's *American Business Law.* A large number of sections from Sullivan's work have been retained without alteration. Others have been changed by additions from the Spanish civil or commercial code. Provisions from these codes are often inserted between the sections taken from Sullivan. This method leads at times to great confusion. For example, in stating the doctrine of "consideration" the rules given are now the rules of Anglo-American law, now those quite different provisions of the Spanish law relating to *causa,* the latter term being translated as "consideration". Such a throwing together of the principles of the common law with those of the civil law without any explanation whatever as to their origin or application, makes the discussion of this subject wholly unintelligible. The book would have been of far greater service if a clearer demarcation had been made between the rule of the native law and the provisions which have been introduced since the American occupation.

In the preface to the work the author calls attention to the fact that the "commercial" law of the Philippine Islands has been converted since the American occupation into a "business" law, such as is popularly understood in this country, and the impression is left by the book that, with some reservations, the Philippine business law is to all intents and purposes today the same as our own law. If this impression be true to fact, the transformation that has taken place in the law of the Philippine Islands in such a short period of time is certainly most remarkable.

E. G. L.

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Uniform State Laws in the United States. By Charles Thaddeus Terry. New York, Baker, Voorhis & Co., 1920. pp. xii, 688.

A Selection of Cases on the Law of Domestic Relations and Persons. By Edwin H. Woodruff. Third Edition. New York, Baker, Voorhis & Co., 1920. pp. xviii, 754.

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the Advisory Committee of Jurists. Report and Commentary by James Brown Scott. Washington, Carnegie Endowment for International Peace, 1920. pp. vi, 235.

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The Relation of the Judiciary to the Constitution. By William M. Meigs. New York, The Neale Publishing Co., 1920. pp. 248. $2.00.

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Collected Legal Papers. By Oliver Wendell Holmes. New York, Harcourt, Brace & Howe. pp. vii, 316.

A New Principle of International Law. By A. M. M. Montijn. The Hague, Beliofonte Bros., 1919. pp. 56.