REVIEWS


The call to bring law closer to the economic facts has been one of the strong yeasts in the books and periodicals about law for at least a generation, but on the whole the consequences of the campaign, both in legislation and in legal thought, have been disappointing or worse. One reason for that failure, it may be, is the fact that many of those who most enthusiastically preached More Economics in Law read few books of the type reviewed here, and made no effort to read more. The result has been that much of the legal writing (and legal doing) which impinges on economic issues has remained callow in its economic outlook, and untouched by the development of post-war economic thought. The best of it is dominated by the formulae of Fabian socialism, which can no longer be defended as economic analysis in any terms; much of the rest, by crude phobias against High Finance and Cutthroat Competition which are difficult to isolate because they are rarely written down at length or in order.

When those who contribute to this branch of law think of economics at all, they like to think of it as a literature of competing faiths so full of heterodoxies that no two of the priests ever agree. That conviction serves the comfortable purpose of permitting those who share it to keep on repeating economic slogans learned in youth, without the labor of reading in the field. It is bad medicine for a bar (and bench) whose members feel qualified ex officio to pass expert judgment on novel experiments in the public control of business and finance. Actually there is no more—and surely no less—disagreement among economists than should be expected in a healthy, critical, and developing branch of scholarship: no more disagreement, for example, than among professors of mathematics, medicine, or law.

Mr. Keynes' new book, which loudly proclaims that it radically departs from all of economic orthodoxy, illustrates very well how wide the area of agreement among contemporary economists is. Although the book breaks new ground in several directions, and has provoked acres of argument in the economic journals, it seems, to an outsider, closely connected in method, in analysis, and in doctrine with the entire body of contemporary economics; and a reading of "The General Theory" in conjunction with Mr. Meade's up-to-date popular survey of economic opinion confirms the view. Together the books provide a fair introduction to a body of economic thought which has not so far been effectively popularized. Even Mr. Thurmon Arnold, that prodigious enemy of religion masking itself as science, could approve a large part of this literature. The men and women who write it are students of scientific method, as well as economic fact, and are properly scrupulous about eliminating ambiguities from their definitions, and properly tentative in their...
statement of conclusions. In the Arnoldian sense, they qualify better than most academicians as detached students of social affairs.

Meade's book states clearly and untechnically what the younger economists think about the scope of their work, especially in its relation to public policy. Chapter by chapter he summarizes and restates current opinion on wages, prices, the trade cycle, competition and monopoly, money, and international trade. He fairly indicates which issues are most controversial and what the terms of such controversies are. What emerges is the detailed portrait of an Idea—in newer dress, not quite so grand, an intellectual offspring of Adam Smith's idea of the Wealth of Nations. The book is half an analytical description of the economic machinery of any modern industrial society, capitalist or communist, and half a prescription for the successful management of such machinery in a capitalist society. For the radical young economists, whose spokesman Meade is, generally share a view which in less sophisticated forms has long been an article of faith among economists of older schools; that The Economic Problem can be solved in capitalist and democratic societies as well as, or better than, in any other. Beyond this general proposition the resemblance between the new and the old in economics fades. Although they write as academicians, and are in the first instance concerned with analysis rather than with policy, so that all would concede (though with different emphasis) the merits and difficulties of a given recommendation of policy, their position can perhaps best be explained to an audience of non-economists in terms of what they conclude are effective measures of governmental action.

Economists in the tradition which Mr. Meade represents, and Mr. Keynes leads, are capitalists, though not laissez-faire capitalists. In certain key places they look to government, and not to the magic harmonies of a free market, for the guidance which may control the worst excesses of the trade cycle. And it is their thesis that capitalist and democratic governments may successfully exert such controls without ceasing to be either capitalist or democratic.

In describing the capitalist economy, they emphasize the fact that it is still an entrepreneur economy, dependent for economic activity on the responses of business men. Since the willingness to undertake risks remains a function of the prospect for profits, economists of this school favor measures which increase profits at the expense of wages and interest. They regard it as socially desirable to weight the scales a little in favor of the entrepreneur, both as a matter of general policy and for the control of the trade cycle. Thus they tend to favor an inflationary monetary policy, for which the only defense is that it forces profits to increase faster than wage or interest payments. This position is by no means so callous or Bourbon as it sounds. These economists are enthusiastic advocates of social services and social insurance, and tend to be liberal—i.e., pro-union—in their attitude towards labor. The burden of their argument is simple. The insistent demand of the day is for a higher standard of living, which can be achieved, as a matter of statistical fact, only by sustained increases in the output of goods: i.e., by long periods of full employment and increased capital accumulation. The great waste of the capitalist system, which bars and delays such increases, in unemployment, which can be cured under capitalism only by reemploy-
ment on terms profitable to the capitalists. It seems to follow, therefore, that if a government wishes to secure large social improvements and still to preserve the vitality of capitalist institutions, it should seek in the first instance to secure full employment, and to see to it that it achieves social progress in the form of a more equitable distribution of income and amenities should be secured without paralyzing the economic machinery: concretely, that social services should be financed by income taxes and not by payroll taxes, or general minimum wage legislation. These latter measures add to direct costs, thereby reduce profits and the prospect for profits, and make new investment unattractive—and without new investment there is no way to achieve re-employment. They find it difficult to see how a profit system can be conducted without profits, and their position is that the same social ends can be better secured (and the golden goose preserved) when profits are earned, and then taxed, than when social legislation or high money wages prevent profits from being earned.

Two kinds of legal controls are discussed as available for the job of achieving such objectives. The first and the more important can be described as the class of Remote Controls which can influence and even direct the volume of investment. It includes functions which in their opinion the state should be able with some effect to attack directly and positively: the active management of taxation, monetary policy and interest rates. Government bodies like the Treasury, the Federal Reserve System, the Securities and Exchange Commission, and the government budget are the classic agencies of action in this field. Their work may now be supplemented by the direct investment of semi-public bodies like the Federal Housing Authority. The second class of controls consists of administrative agencies, like the Interstate Commerce Commission and the Federal Trade Commission, whose nominal function is to enforce negative rules for policing monopoly, and for obviating the effects of size and combination on competition. These economists regard competitive pricing as on the whole more efficient than any known alternative pricing system, and tend therefore to resist experiments like N.R.A., which they regard as uneconomic, and a cruel method of punishing the consumer.

Under the lead especially of Mr. Keynes' new book, the notion of what state control can do effectively and how it can be exercised is becoming more realistic. It used to be said that the trade cycle was a monetary phenomenon, and for a considerable time it was discussed in terms of banking policy, government budgets, interest rates, and the flow of new securities issues. Without in the least denying that these are vital factors, of special importance from the point of view of policy because they can be controlled more easily than most economic forces, more attention is now being devoted to the relation between monetary and non-monetary factors—between real wages and money wages, as they bear on employment, modern forms of modified competition as they bear on the possibility of economic progress. The world has watched several relatively successful monetary attacks on the trade cycle—Roosevelt's cheap money, public works and budget deficits, for one—being strangled by what these economists regard as hopelessly mistaken and inconsistent price and wage policies: if cheap money stimulates investment and is good for Business, dear wages must and do have the opposite
As the history of the Great Depression shows, a successful trade cycle policy necessarily involves the consideration of every kind of economic policy and every branch of economic analysis. Keynes' book, which starts from the intellectual position admirably described in Meade's, is of special novelty, against that background, in its discussion of wage policies and its reformulation of trade cycle theory. Keynes takes the position that during a downswing decreases in wages will aggravate a deflation, in their tendency to reduce the total of available income; since a rise in money wages during a depression will also make the depression worse, he defends the paradoxical thesis that the best thing for a government to do to wages during a depression is to leave them alone, and work on other aspects of the economic situation which promise bigger dividends.

Since law is, among other things, an agency for implementing social policy, the publication of books like these should be an event of some moment among lawyers, for these are exercises in economic theory packed with lessons of politics and policy. Keynes has in his time touched events more forcefully than all but the greatest and luckiest of intellectuals. He has helped formulate the point of view of the prevailing body of economic thought; and has with considerable popular success dramatized—perhaps over-dramatized—some of the more conspicuous suggestions for action implied in that literature. If lawyers are to continue, as they must, to deal with economic problems, and to have opinions about economic policy, they would be well advised to follow the development of ideas among these lively practitioners of economics. What they say often seems to bear fruitfully on problems which lawyers cannot avoid.

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The Court of Common Right of East New Jersey was for nineteen years, 1683 to 1702, the supreme court of the province. Bearing the title Court of Common Right and Chancery it possessed a jurisdiction as wide as that of the common law courts at Westminster Hall and the English Chancery Court combined, and in the exercise of its functions met all the demands, within its sphere, of ultimate colonial justice. Its predecessors, at first a prerogative or proprietary court under Governor Philip Carteret and then for a few years a court of assize, had not proved satisfactory, so that with the coming of Deputy Governor Thomas Rudyard in 1683 the assembly exercised its constitutional right, based on the Concessions of 1665, of erecting a series of courts by legislative enactment. From 1683 to 1702, when the proprietors surrendered their rights of government, the system thus established consisted

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of a supreme court possessing original and appellate civil and criminal jurisdiction, equity jurisdiction, and apparently some measure of probate supervision, though the editor does not happen to mention it; four county courts, with concurrent civil and criminal powers, from which lay an appeal to the higher court, a right the exercise of which was discouraged as far as possible by the appellate judges; and town courts or courts of small causes, limited to cases of forty shillings or less. From both the law and equity decisions of the supreme court lay a right of appeal to the king in council, a right taken advantage of in a number of cases. There was nothing exceptional about this gradation of courts, except in the name given to the highest tribunal and the entrusting to it of both equity and common law business. Mr. Edsall's explanation of the origin of these peculiarities seems to me entirely sound. Had he broadened out his view to take in procedure in other colonies, he would have found that the combination of law and equity in a common law court was not an unusual occurrence. Separate chancery and prerogative courts were popularly disliked in the colonies, and though there were such courts—East New Jersey's neighbor New York had a Chancery Court—they were neither common nor influential.

In his researches into the history of the colonial courts of New Jersey, Mr. Edsall has had one of those rare experiences, often longed for but none too frequently met with, of discovering unexpectedly a lost document, in this case the journal of the Court of Common Right. To the task of deciphering its difficult script and of interpreting its contents for the benefit of his legal brethren he has devoted both time and labor and has made within the field of legal history, covering personnel, jurisdiction, and procedure for the period and province in question, a contribution of first importance. The book is more valuable to the student of the history of legal practice than to the historian as such, as the text contains only a few items of historical significance, and Mr. Edsall's introduction devotes three-fifths of its space to disquisitions on procedure and forms of actions in the common law and to the composition, procedure, and cases in the chancery court. The remaining chapters on the story of the courts, the proprietary problems and the law, and cases under the navigation acts have something more of an historical bearing.

Mr. Edsall acknowledges that his subjects are "unspritely," but it seems to me that he might have made his treatment rather more spritely had he adopted a less stiff and unalluring style, which at times is so compact and legalistic as to require very close attention on the part of the lay reader. Furthermore, his vocabulary is not entirely free from professional jargon or from the use of technical language familiar only to the legal specialist, including an occasional word found in the text that today is not used, as far as I know, in the courts of this country or of England. Under Procedure he gives us sections on Process in Civil Actions, Bail, Pleading, Issues at Law and of Fact, Challenges, Trial, Verdict, and Costs and Fees. Under Forms of Action, he presents Trespass *vi et armis* and on the Case, with their many offshoots or descendants, of which he furnishes a "genealogical" table. Under Case he discusses Assumpsit, much simplified in its sole form here of *Indebitatus Assumpsit*, the only part of the Law Merchant that found its way into the deliberations of the court; Quantum *Meruit*, of which only one case appears; and Trover and Conversion, which with Assumpsit formed the most im-
portant divisions of the Actions on the Case. Under Trespass *vi et armis*, Torts to Persons, he comments on Deceit, Assault, Defamation, and False Imprisonment, in the last-named of which East New Jerseymen appealed to that branch of Trespass which the common law of England had shaped in the interest of an Englishman's liberty. Torts to Movable Property offers him an opportunity to present at least one case of *de bonis asportatis*, together with actions of Replevin, Keeping and Converting, and Escape. Lastly, he takes up Possessory Actions, Trespass *quare clausum fregit*, of which there are several instances; Forcible Entry and Detainer, one case; and Ejectment. Ejectment served many occasions and under it Mr. Edsall has something to say about Fictions, which were generally avoided in the colonies and here used, he thinks, only in actions of this kind.

Of more interest to the historian are the portions of the introduction given to Proprietary Problems and the Law and Cases under the Navigation Acts. Of the latter there are at least four, that of the ship *Dolphin* holding prominent place. Mr. Edsall believes that this case played a leading part in bringing about the surrender by the proprietors. I do not think so, feeling certain that the case of the *Hester* (to which, as also to the Billop case, Mr. Edsall refers only incidentally) was much more influential, if any single incident connected with the surrender can be given special prominence among the many factors operating to that end. That Mr. Edsall has not followed the *Hester* story through appears from his remark that a connection between the *Hester* dispute and the *Basse v. Belloniont* trial at Westminster Hall "cannot be proved positively". It certainly can. Furthermore there seems to be nothing in the text of the *Journal*, or in the story of the surrender, to justify his further statement that the Court of Common Right was so patently pro-proprietary as to prejudice the Board of Trade against the proprietors. He himself implies the opposite, when he says that the judges were competent and experienced and that there is no evidence of corruption or marked partiality, though in one or two cases judges were dismissed because personally objectionable. There is in his introduction some evidence to show that he is unfamiliar with England's executive and administrative procedure, as when he employs terms for the Board of Trade that are not in accord-ance with current usage and states that "James II with great Willingness directed," etc., when the chances are that neither King James in 1688 nor King William in 1702 had personally any part in bringing about the loss by the proprietors of their government.

Among the many important conclusions reached in this volume, two are specially interesting to the historian as well as to the lawyer. These are, first, the extent to which the law of England was made use of in the court, and, secondly, the extent to which English processes, pleadings, and procedure were simplified and altered in their transit to America. On the first point Mr. Edsall shows over and over again that the law of the court was English law, and he takes great pains to point out the similarities. The text also discloses that both judges and counsel were familiar with English statutes and English law literature, as when we find mention of such a work as Shepherd's *Marrow of the Law*. In matters of mutation and simplification the inevitable occurred, as was bound to occur, among a people in their infancy, with lawyers few and population scanty. Jury trial furnishes inter-
esting illustrations. East New Jersey could not afford a different jury for each issue, since it inflicted too heavy a strain on her manpower. In one case the judge gave the jury three charges at once, the cases being similar, before sending it out, for when out, the men of the jury were kept from "Meat, Drink fire and Candell" until a verdict was reached. In at least two cases the jury brought in special verdicts to the effect that if the law was one way it decided for the plaintiff, if another for the defendant, *curiam advisare vult.* Juries sometimes came from a different county from that in which the wrong was committed, a departure from the law which took place especially when jurymen were drawn from among the bystanders, *tales de circumstantibus.* Simplification appears also in the language of the court which was English; in the shortness and rapidity of procedure as contrasted with the delays resulting from the slow-moving legal machinery in England; in the freedom from verbosity and obscurity when drawing up declarations, pleas, and indictments; in the simplicity of pleading, the uncrowdedness of dockets, and the manifest colonial dislike of involved legal forms and processes. Though sometimes expedition was gained at the expense of substantive justice, yet on the whole the tendencies were all in the right direction.

There are occasionally points in the text that are informing and of considerable interest, such, for example, as the account of the "Horrid murder of Lewis Morris of passage point esquire" and the punishment meted out to the slaves who shot him. But I must leave these for the reader to discover for himself, as this notice has already overstepped its allotted space.

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**LEGAL MACHINERY FOR PEACEFUL CHANGE.** By Professor Karl Strupp. London: Constable & Co., Ltd., 1937. Pp. xxvi, 85. 4s.6d.


Actualities never daunt thinkers and theorists. The world owes much to the obstinate refusal of a long list of honored men to recognize the hopeless odds immediate events cast against them. Even though their efforts have often borne no visible fruit, they have kept alive the continuity of thought concerning mankind's problems until popular will attained a condition favorable to the realization of their dreams.

Figures of this stature abound in the field of international law, now and in the past. At the moment, international law has sunk to low esteem in public opinion. Debates on the floor of Congress and in other places often voice the dictum that there is no such thing as international law, that the very concept of law implies the will to obey and the means to enforce, and that these prime conditions must always be absent from any international society this world is likely to foresee.

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REVIEWS

It is, of course, true that efforts to settle nations' quarrels with one another by peaceful means seem just now to be futile and time-wasting. Unilateral denunciations of treaties and cool disregard of obligations by certain countries, not by accident but as a part of studied governmental policy, have led many of us to conclude that force must always, inevitably, be the final arbiter in clashes between sovereign states. Existing machinery for peaceful settlement of international disputes has been of little avail in Europe, in Asia, in Africa and in Latin America in the years that have followed the World War.

A useful corrective to this defeatist point of view is supplied by Professors Strupp's and Dunn's books. These scholars are quite evidently undismayed by current deviations from the path they wish to chart. They address themselves soberly to an appraisal of proven defects in peace machinery and propose remedies. Professor Dunn takes cognizance of the disturbed state of the world today and attempts to argue in favor of pacific change against the contentions of the nations which have resorted, or which apparently intend to resort, to force. Professor Strupp, on the other hand, deals with the problem purely in the abstract, offering a treaty to end treaties. He would have all the civilized nations of the world subscribe to an International Peace Convention and an International Peace Charter. These would tie up the loose ends of the Covenant of the League of Nations, the statute of the Permanent Court of International Justice, the Briand-Kellogg Pact of Paris, and offer so perfect a peace machinery that the appeal to arms would be utterly useless.

Both writers recognize the need for frequent and painless change in existing relations. Their principal effort has been devoted to thinking out a course by which the "haves" might feel justified in consenting to changes in the status quo and by which the "have-nots" might consider appealing peacefully for an amelioration of their condition. Both take into consideration the weaknesses inherent in present arrangements that tend to force nations with grievances, real or fancied, to desperation.

Of the two scholars, Professor Dunn is the less inclined to believe that adequate remedy is totally lacking now. He finds most of the complaints of the so-called "have-nots" to be based on premises that will not stand the acid test of pure logic. Population pressure is less in the war-threatening nations than in many others. Economic problems in industrial countries are generally of a domestic nature and would not be solved by acquisition of territory. Overcrowding in agricultural countries can only be solved by limitation of the population. "One does not hear much discussion, for example, of the possibility that a country like Switzerland might be suffering from a lack of raw materials," he finds, "or that China might need more territory in order to obtain relief from population pressure, or that Austria should have colonies in order to provide her with markets for her surplus manufactures. The specific claims discussed are those of nations which are in a position to threaten war if their demands are not conceded."

The influence of prestige, national honor, self-sufficiency, ethnic unity and the other popular doctrines of certain nations are discussed, with the conclusion being drawn that peaceful change is so difficult because of the shifts in power relations that these forces entail. The nations of the world
still believe in the dogma of "self-help" in their international affairs; all of
the slogans used by leaders can be translated into that expression. Thus, no
country is likely willingly to give up something which weakens it and at the
same time strengthens a potential enemy. In the last analysis, the threat of
war outweighs all other considerations when sovereigns begin to weigh up
their relative status. Diplomatic negotiations, conciliation, international con-
férences, international legislation, the League Covenant, and international
adjudication all break down in the face of possible war needs.

There would be no point, in Professor Dunn's opinion, in the so-called
peaceful powers placating or bribing the dissatisfied nations by yielding piec-
meal to their demands. In the end, this would merely mean a reversal of their
relative power positions, and the same struggle would start again. The
former "haves" would merely become the present "have-nots".

Professor Dunn points out the often forgotten truism that colonies are only
liabilities, unless they are ruthlessly exploited for the benefit of the mother
country alone and without regard for the welfare of the natives. Such a
course is, in the long run, self-defeating, as we are seeing in India, Morocco,
and other colonial parts of the world. "The most promising way to meet
these difficulties," the writer points out, "seems to be to turn away from the
idea of empire altogether and toward the idea of a freer international trade
with all countries. In other words, instead of perpetuating the notion of
exclusive exploitation of colonial territories, the world needs to move in the
direction of liquidating existing colonial empires".

Little as this advice may appeal to Messrs. Mussolini and Hitler, the rea-
soning follows very closely that advanced by Cordell Hull when a member
of the House of Representatives shortly after the World War. Equality of
economic opportunity is the important factor in colonial questions, and not
political sovereignty. So our present Secretary of State reasoned fifteen
years ago, and Professor Dunn comes to largely the same conclusion today.
However, he wants the nations of the world to proceed into a field of eco-
nomic international law to make this pacific procedure possible. A code of
fair practice for the exploitation of prime raw materials would be drawn up.
Production control plans, such as the Stevenson rubber program and the
Chadbourne scheme for sugar restriction, would be subject to the approval
of an international advisory committee. He cites the existing international
control over opium production as proof that it could be done. Consumers
would be represented on the committee dealing with production control.

An international lending organization (the Bank for International Settle-
ments is suggested) would be empowered to finance transactions for "have-
nots" wishing to purchase raw materials but unable to do so because of ex-
change difficulties. The essential purchase would be made through an ordi-
nary commercial credit, to be repaid from the proceeds of the sale of the
processed commodities. To salve Germany's pride, for example, all colonial
territories might be given over to international administration under a scheme
of that kind, so that the Germans would not feel that they alone, of the great
peoples, had been branded as unworthy to possess colonies.

The proposals of Professors Dunn and Strupp meet at the point where
they both believe existing machinery is unsatisfactory for the settlement of
disputes between nations. The former, at the end of his book, advises that
"the object is to have proposals for change dealt with in a manner different from that in which disputes over rights are treated." This is practically the entire burden of Professor Strupp's book. He would set up a Permanent Court of International Equity, composed of nine judges chosen largely in the same manner as are judges of the Permanent Court of International Justice. The last-named tribunal he would prefer to be called the "Permanent Court of International Law". Its jurisdiction would be strictly limited to issues that can be decided according to admitted principles of international law. He realizes, however, that nations often do not want a mere application of existing law to their common problem, but a settlement of that problem in a permanent and mutually satisfactory manner. The Behring Sea Arbitration would probably be a case in point. Parties to such a controversy should have access to a known and continuing court where a decision *ex aequo et bono* could be handed down.

A competent criticism of Professor Strupp's suggestions is given in a preface, in French, by Professor Georges Scelle of the Faculté de Droit de Paris. With French logic, Professor Scelle doubts that juridical procedure will have much value in a world that has to deal with "outlaws".

"Dans les pays dictatoriaux ou États totalitaires," he writes, "que ce soit en Allemagne, en Italie, ou en Russie, il semble que la mystique d’arbitraire et de négation du droit qui caractérise les gouvernants l'emporte sur l'efficacité des institutions juridiques. Dans les pays démocratiques, au contraire, ce sont les institutions qui ont maintenu ce qui demeure de la légalité".

The probably immediate solution for difficulties of the kind, this critic concludes, would be the abandonment of the theories of universalism embodied in the conception of the League of Nations so as to direct current effort toward decentralization of peace machinery into regional units. This also is a theory which attracts President Roosevelt and Secretary Hull, and which is behind their attempts to bolster the Pan American Union into an entity capable of keeping the American peace safe against threats from within and from without.

These attractive concepts will not lure the Italians out of Ethiopia nor the Japanese out of North China. They will not convince the Germans that they should give up economic autarchy and demands for restoration of colonies. But they contribute toward the continuity of thought about peace and its positive qualities, about the urgency of doing something to preserve it, if the common sense of mankind is to triumph over the contemporary stupidities of its leaders.

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No conscientious student of the development of parliamentary procedure can fail to find interest in an authentic first hand account of the actual workings

of the House of Commons two centuries ago. The Liverpool Tractate, while in form not a manual of procedure, fully meets this description. It is even more, for it serves as a connecting link with works of a like nature dating more than a century earlier. It serves to fill in a well recognized gap between the seventeenth and nineteenth centuries, resulting from the dearth of writings on this subject in the eighteenth century. It seems quite strange that a work of this character and importance should so long repose peacefully in the archives of the British Museum unpublished. The editor has performed a distinctly worth while piece of work in finally bringing it to light, and in presenting the volume with an introduction of eighty pages indicating a vast amount of research.

There seems to be no positive conclusive evidence of the actual authorship of the Tractate. It was written in or about the year 1763. In the British Museum it is catalogued as "Additional Manuscript 38456" of the voluminous collection of papers, official and private, of Charles Jenkinson, First Earl of Liverpool. That Jenkinson himself is not the author is quite apparent from internal evidence. It is suggested with probability that the author was private secretary to Jenkinson, but, if so, he must have been an officer or member of the House for a number of years prior to the time Jenkinson first became a member, which was in 1761. Some of the incidents in which the author appears to have been an actual participant occurred at least as early as 1740, or earlier, whereas Jenkinson was born in 1727. At any rate, the Tractate seems to have been written from the viewpoint of a member and quite distinctly as by one having authority and not as the scribes.

Another suggestion is that George Grenville wrote the Tractate. He fits into the picture quite satisfactorily, and while the evidence is not sufficient to exclude other hypotheses, there is none that necessarily excludes this one. There are other suggested possibilities that need not be here explored. Whoever wrote it evidently had intimate first hand knowledge of the minutiae and details of passing bills, both public and private, through Parliament and has here set out the process with great particularity.

Two lengthy chapters are devoted to public and private bills and a third to petitions, a subject of more interest and importance in the seventeenth and eighteenth centuries than at present. The longest and probably the most valuable chapter, from a historical point of view, is the one on Committees.

The chapter on Supply is brief but contains more of interest as well as more food for serious thought by American legislators than all the others. In view of the very large lump-sum appropriations made during recent years and placed solely within executive discretion, it is especially applicable to our own Congress at the present time. The Tractate contains a description of how it came to pass that instead of the Parliament's voting large lump-sum appropriations to be spent at the discretion of the executive, a "Clause of Appropriation" is always added "where every sum voted in the current session is specified and appropriated." It appears that this "Clause of Appropriation" was first used in the time of Charles II, Lord Clarendon protesting that it might be well suited to a commonwealth but not to a monarchy. The author, with evident satisfaction, records that "these Clauses, fraught with all these anti-constitutional Principles, were taken up at, and have been uniformly continued ever since, the Revolution." He adds that "in the beginning
of King William's Reign, they were very loose and general; but they con-
tinued to become more and more exact, till they have been brought to the
utmost possible nicety, without any bad consequence, either to Prerogative
or Liberty."

The remaining chapters, on other more or less transitory subjects, are of
some historic importance, but of little present day interest, with a single ex-
ception. The chapter on Conferences, Lords' Amendments, and Messages
between the Houses deserves a word because it touches our American ri-
sibilities, if for no other reason; but, in fact, it has other interest. Matters of
ceremony seem to have caused trouble occasionally at these conferences,
though usually they were adjusted to the satisfaction of all concerned. On
one occasion Mr. Walpole reported back to the House that the Managers on
the part of the House had waited some time at the appointed place but that,
the Lords failing to appear, the House Managers "thought it their Duty to
stay no longer. Upon which the House adjourned directly in a Pett."

A sidelight on conferences is given by the author, though a little apologeti-
cally, when he says:

"It may seem trifling to add that the Lords used formerly at Con-
fences to be treated by the Black Rod with Sack and Biscuits in
imitation I suppose of Homers Herses (sic) who never went upon
a knotty point fasting. But Sir Edward Seymour shamed them out
of this Custom by desiring their Lordships to allow the Commons
Cakes and Ale."

Another account of a conference says:

"The Lords came in and set down with their hats on, and the
Commons . . . are not admitted to sit but stand with their Hats off,
and from thence came the saying that the Commons never make so
poor a Figure as when they meet the Lords at a Conference."

The Tractate is in no sense a guide to parliamentary procedure, and only
infrequently is reference made to any established rules of procedure that
have been formulated as a result of actual experience; and yet, from a read-
ing of this quaintly written and even more quaintly spelled document, it
clearly appears that the foundations of our entire parliamentary system of
procedure had been substantially laid long before this document was written.
In fact, as stated in The Unreformed House of Commons, by Edward and
Annie G. Porritt: "In its organization for work the House of Commons
was complete before the Great Rebellion; and on the eve of the Reform Act
there was scarcely an order or a usage which could not be traced as far back
as the reign of James I or Charles I."

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THE PRESENT book consists of a preface, a short monograph, and three appendices. The monograph discusses the precedents for international action to safeguard human rights, the international legal aspects of German National Socialist policies and the task of the League of Nations. The appendices—of equal length to the monograph—present the text of James G. McDonald’s letter of resignation, a petition in support of this letter to the seventeenth Assembly of the League of Nations, and finally a selection of expressions of opinion on the persecution of Non-Aryans in Germany. The excellent preface by James Brown Scott states in most succinct and impressive form the great progress accomplished in the definition and recognition of international law in the 150 years since the American Revolution. Dr. Scott sees as the primary purpose of government “to insure for the individual, irrespective of nationality, sex, race, language, or religion, the full enjoyment of his or her rights as a human being. So-called laws are not worthy of the name of law if they fail of this purpose . . . Law must be reasonable and just, moral as well as social; it must be applicable everywhere and at all times consistent with the nature and dignity of the human being.” In these words Dr. Scott reaffirms the faith of the enlightened eighteenth century and of one of its greatest sons, the German philosopher Kant—a faith which today dominates the United States and Western Europe. The important point, however, is that this faith is in no way shared by the present German government and has been resisted, since the days of the French Revolution, by many leading German philosophers and political scientists. Reasoning based upon premises generally accepted in the Western world will in no way impress or influence the German attitude.

This small book puts before us a question of basic importance. Is national sovereignty so absolute that a government may do whatever it likes with its citizens or certain groups of its citizens? In theory this question should be answered in the negative. Kant has proven that peace on earth will be possible only through a world federation of republics, and that can be attained only by the abolition of the absolute sovereignty of states. Recent happenings confirm his thesis. The League of Nations is powerless because it respects the sovereignty of the nations. The present book is entirely right in claiming that, especially in the United States, “the oppression of minorities has repeatedly been condemned not only because it violates elementary justice and decency but also because of the recognition that the persecution of any one minority strikes at the very foundations of all human rights and is a menace to all peoples everywhere.” Undisputably it is not only a question of the defence of the rights of Jews, but of humanity, because “persecution of any minority is but the entering-wedge for an assault upon all human liberty.” Theoretically, national sovereignty should not be absolute; practically, however, it is under present circumstances absolute in the
case of a strong state. Any effective intervention seems impracticable to lay against a powerful transgressor.

The book in itself is most valuable because it describes in a scholarly way, starting with the body of fact contained in the letter of resignation of Mr. McDonald, the systematic persecution of Jews in present Germany and its consequences in the field of international law and international relations. A convincing and well documented array of texts and facts leads to the conclusion that “the international community is authorized to intercede in order to bring relief to the victims of oppression.” By driving the non-Aryans out of Germany the German government has imposed upon neighboring states the burden of sheltering thousands of stateless and impoverished refugees. There is no doubt, as the authors point out, that the persecution of the Jews in Germany is a circumstance affecting international relations which threatens to disturb either international peace or the good understanding between nations upon which peace depends. There is ground therefore to bring the whole matter to the attention of the League of Nations under Article 11, paragraph 2, for a sincere attempt to find the solution of a difficult international problem. Whether this hope will be realized remains doubtful, but the book is in any case important as a powerful plea for the application of international law.

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Records of the Vice-Admiralty Court of Rhode Island, 1716-1752.
Edited by Dorothy S. Towle, with an introduction by Charles M. Andrews.

It seems but yesterday, although twelve years have passed, since the late Circuit Judge Hough edited the records of the Vice-Admiralty Court of the Province of New York. At that recent date he believed that in New York alone such records had been preserved; in Rhode Island, he thought, there existed “some remnants”¹. Now a selected portion of these “remnants” from Rhode Island has been printed, and they take up 460 generous pages! The picture of Admiralty therein portrayed is far more vivid than in the New York reports, because Judge Hough in general was contented to print the decisions alone, and to summarize the facts, whereas in Rhode Island the very questions and answers are transcribed as a portion of the report of the entire proceeding.

With the publication of this book legal history has bridged the chasm of ignorance that separated the English from the American admiralty jurisdiction. Miss Crump, from the English side, in her Colonial Admiralty Jurisdiction in the Seventeenth Century, six years ago began the edifice which

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¹Hough, Reports of Cases in the Vice Admiralty of New York, pp. xi, 257.
Mrs. Towle has now completed. Today one can trace the development of the American admiralty jurisdiction straight back to its English origins.

To this reviewer there is an historical parallel that is fascinating. The English admiralty jurisdiction arose in the fourteenth century primarily not for commercial and maritime reasons; but for administrative reasons because of violence and disorder at sea. The vice-admiralty jurisdiction arose in the colonies, originally in the seventeenth century, in a slightly different but perfectly analogous way.

American lawlessness, while perhaps exaggerated, has a much older tradition than we suspect. The great Elizabethan sea captains, when in the Spanish waters of the New World, engaged in deeds which at times sailed closely to the line of piracy. Nor did the tradition die with them. During the English Civil War a Parliamentarian ship captured a Royal ship in Boston harbor. In the later years of the seventeenth century it was difficult to control the privateers during the various wars with the Dutch, the French and other nations. The slave trade was, to put it mildly, of doubtful legality, and smuggling was at times connived at in high quarters in the colonies while the Governors were permitted to trade for their own account. Whether Captain Kidd was a pirate or merely a smuggler is a matter still disputed. To enforce the English laws concerning the revenue and the colonial system, to bring some order into this lawless maritime chaos, the colonial vice-admiralty courts were created. Administrative in their origin, they developed a peace-time business at least as important as the prize cases.

The colonial admiralty was in many respects more fortunate than that of England. The commissions which issued out of the English Admiralty purported to give a most sweeping jurisdiction, and other jurisdiction was conferred by statutes. This wide authority was not entirely acceptable in the colonies, and while it was true, as Judge Hough wrote, that little of “the historic struggle between Admiralty and Common Law” crossed the Atlantic, yet the writ of prohibition was known to colonial lawyers and was more than once employed in various colonies against the colonial admiralty courts. Nevertheless, on the whole, the admiralty judges in the colonies enjoyed a wider jurisdiction than in England, although in some types of cases they were constrained to admit a concurrent jurisdiction in the common law.

2. SANBORN, ORIGINS OF THE EARLY ENGLISH MARITIME AND COMMERCIAL LAW 267, 293.
3. Id. at 272-273.
4. Id. at 284-288.
5. CRUMP, COLONIAL ADMIRALTY JURISDICTION IN THE SEVENTEENTH CENTURY (1931) 41-42.
6. P. 83.
7. P. 95.
8. For examples, see 1 BENEDICT ON ADMIRALTY, (5th ed. 1925), 789-816.
Review of courts; this was, perhaps, the reason for the famous provision of our Judiciary Act of 1789.

For this there were several reasons. One is undoubtedly the fact that nearly all of the vice-admiralty judges knew little of the Civil Law or of the highly technical practice of the English court of admiralty. Quarry, in Pennsylvania and Maryland, apparently did, since the proceedings of his court were partly in Latin, but the instance appears to be unique. Such ignorance was providential, for the colonial court of admiralty returned to admiralty's earliest ideals—swift, simple, informal justice. In Rhode Island the procedure of the vice-admiralty court was exceedingly simple and cases were often tried in a single day; rarely did they require more than several weeks. Because of this simple and quick procedure litigants saved time and money. Moreover the fees of the court were reasonable in amount. Finally, appeals were few, partly because of the great expense, and partly because of the uncertainty of the English tribunal to which an appeal would lie. Such a court could not have failed to be popular with those engaged in maritime affairs, as nearly everyone was in little Rhode Island, so that we could safely assume, as the fact indeed was, that the history of the court in that colony was comparatively peaceful.

Varied indeed were the cases that came before it. Not merely were there the administrative cases for the enforcement of the laws concerning trade, navigation, and the revenue, or the war-time cases involving prize, but there were the true maritime causes involving wages, unlawful treatment and discharge of seamen, salvage, bottomry, charter parties, necessaries, disputes between co-owners, barratry, pilotage, etc. Then there were the cases involving the repair or the sale of damaged vessels and damaged cargo, sometimes at the request of the master, sometimes arising as an issue in an action for failure to deliver. For a colony with as much maritime trade as Rhode Island such a court was indeed invaluable.

In an appendix various of the simple, informal pleadings and forms are given, most of them much nearer to our modern practice than to the technical, artificial practice of the English admiralty of that day: in fact the witness's oath is almost verbatim that which is administered in New York courts today.

Mrs. Towle and the American Historical Association are to be congratulated upon a splendid piece of work which has great value both to the legal historian and to the admiralty lawyer. One can go even further than this;

13. Now 28 U.S.C. § 41 (1936); “saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it.”
16. SANDBORNE, op. cit. supra note 2, at 88, 270.
17. Pp. 94-95.
18. Pp. 95, 574-575.
19. P. 94.
anyone interested in the authentic atmosphere of the past should browse through the testimony of the various cases, for he will be richly rewarded.

FREDERIC ROCKWELL SANBORN

New York City


DESIGNED primarily as a handbook for students, this volume sweeps the field—if a rag-bag collection of loose ends can be called a field—of the traditional law school course in Personal Property. Its main divisions and titles are those of the standard casebooks. There is an opening chapter (the least imaginative and least adequate of the book) on the nature of law, general definitions, and property classifications. This is followed by eight chapters on the acquisition and transfer of rights in personal property: original acquisition, finding, adverse possession, judgment and satisfaction of judgment, accession and confusion, gift (of chattels and of choses in action), sale (largely of the rights of the bona fide purchaser). Next come six chapters on questions arising "when one person has a limited interest in the personal property of another:" bailments (nature and distinctions, rights and duties, special types—including common carriers and innkeepers), liens (parties possessed and enforcement, transfer, and loss), and pledges. Two concluding chapters—"chiefly the product of work of Professor Jacob H. Beuscher"—are on topics "athwart the fields of personal and real property:" fixtures and emblements.

In his Preface Professor Brown promises not merely "the bare rules of the law," but a "critical" work—a consideration of "fundamental principles and policies." Yet his book will be thought by many to be scarcely critical enough. For student purposes it is too much a summary—excellent though that be—of decisions and opinions; the "criticism" seldom rises to clear-cut, objective description of the judicial play with elastic concepts, flexible doctrines, and contradictory social ideals. Concepts like title, possession, ownership, dominion, still carry, save perhaps in the chapter on fixtures, too much prestige. Frequently, too, when the author is paraphrasing opinions, it is difficult to tell whether he is stating his own faith or merely setting up a dummy; criticism, if any, may follow pages later and is usually confined to a "legalistic" level. Fairness must, however, compel the judgment that Professor Brown's volume is definitely superior, for both information and criticism, to previous texts. Its readable summaries should save much time for the critical gymnastics of the classroom.

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