

BOOK REVIEWS

The Government of the British Empire. By Edward Jenks. Boston, Little, Brown, & Co. 1918. pp. xii, 369.

Mr. Edward Jenks is well known from his many contributions to the history of medieval and English law. The present is a work of somewhat different kind. It is an account of the institutions and practical operation of the British government intended for general reading and study: for "those who have not yet the leisure, or who have not yet arrived at the age, to appreciate" the larger and more technical works, as the preface says. It must be said that Mr. Jenks has succeeded admirably in his purpose, and has made a book which ought to be of great value to the public. It is written in an attractive style; the presentation, though full enough and accurate, is not technical; and the subjects to be emphasized are so well selected that the account is clear and easily retained. The understanding of the various institutions and their operation is made easier by brief historical accounts of their origin and development, going often to remote beginnings, which explain how their especially important features came to be what they are. The book begins with an account of the king's position and of the limited monarchy. Then the position in the Empire of the Dominions and other colonies and possessions is described. There follow chapters on the Cabinet, Parliament, the army and navy, and the Treasury and the other Departments. Particularly interesting to Americans should be the last four chapters dealing with institutions which are essentially the same as ours but rather differently organized: the courts of justice, the established churches, and the two last on local government, allusions to which are often a puzzle to us. While constitutional legislation during the war period is adequately dealt with, there is no attempt to estimate the possible changes which have taken place in the unwritten law of the constitution, as for instance in the responsibility of the Cabinet to Parliament, of which no one can yet predict the permanent effect.

One cannot avoid comparing the book with the older one of Mr. J. A. R. Marriott, "English Political Institutions," which has the same purpose and covers the same ground. Marriott is more full, goes more into detail, has a more scientific air, is more technical and therefore less interesting, and gives a general account which is not more accurate and is less clear. It lacks Jenks's attractive style and, while Marriott may perhaps be a better text book for class room use, Jenks is undoubtedly a better book for the general reading public and ought to find a large use. There is abundant need of a better understanding of English institutions.

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North Atlantic Coast Fisheries Arbitration at The Hague: Argument on behalf of the United States. By Elihu Root. Edited by Robert Bacon and James Brown Scott. Cambridge, Harvard University Press, 1918. cix, 445 pp.

With the exception of the Alabama Claims arbitration at Geneva in 1872, the arbitration of the Fisheries question at The Hague in 1910 settled perhaps the most vexatious, long continued, and economically important dispute which

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has arisen temporarily to disturb friendly relations between the United States and Great Britain. The origins of the dispute reach back to the earliest days of our history as a nation, involving an interpretation of the treaties of 1783 and 1818, and its final satisfactory settlement by arbitration speaks volumes for the temper of the litigating nations, the fairness of the arbitral tribunal, and, not least of all, the ability of counsel in presenting to the court the respective contentions of Great Britain and the United States. The case was presented by prominent lawyers from both countries, and the leading counsel of the United States was none other than Elihu Root, who had during his incumbency as Secretary of State taken an active part in drawing the issues for arbitral settlement of the complicated questions involved, and had, in fact, with James Bryce, signed the special agreement under which the two countries laid their differences before a court of arbitration. It was, therefore, appropriate that he should be selected to head the legal forces of the United States, and the satisfactory settlement which has been reached is in no small degree due to his personal contributions to the American argument. The case served again to emphasize the remarkable abilities of a man who, after many years' absence from the bar in the fulfilment of important public duties as Secretary of War, Secretary of State, and United States Senator, could demonstrate with ease the finest technique of advocacy such as was required in the responsible effort of closing the case of the United States by a six-day argument. His wonderful command of hundreds of documents and of the full import of some thirty days of arguments of respective counsel preceding the opening of his own argument, which consisted largely of refutation and summing up, evoked the admiration of those who heard Mr. Root's able presentation of the American case and will produce the same effect upon those who read the work now under review. The work constitutes one of a series of volumes, edited by Robert Bacon and James Brown Scott, which are designed to republish for a wider public some of the more notable addresses and state papers of Mr. Root.

The foreword of the book, which betrays the facile pen of Dr. Scott, presents in forty-eight pages an interesting account of the history of the fisheries dispute, of the issues involved in the arbitral submission, and of the tribunal's award and its effect. The appendix to the foreword reprints the fisheries articles of the treaties of 1783 (Art. 3) and of 1818 (Art. 1), the general arbitration treaty of 1908, the special agreement of 1909 which constituted the arbitral *compromis*, the award of the arbitral tribunal, and the British-American agreement of 1912 carrying out, with modifications, certain of the tribunal's recommendations as to procedure for the determination of what is a "reasonable" regulation of the fisheries on the treaty coasts. The remainder of the book is a verbatim reprint of the argument of Mr. Root, taken from the official report of the proceedings.

The dispute involved the interpretation of a treaty granting to American citizens in Canadian waters certain exceptional fishing rights, privileges, powers, and immunities which, in the course of time, as conditions changed, brought up new situations not contemplated by the negotiators of the treaty. These rights became of great commercial importance to the inhabitants of New England as improved methods of fishing were invented, and their exercise by Americans was looked upon with a jealous eye by the Canadians, and also by the inhabitants of Newfoundland, whose shores and waters were principally involved in the grant. Numerous efforts at a settlement of the whole question by treaty having failed, Newfoundland again brought the dispute to a head by the promulgation in 1905 of vexatious regulations, enacted and enforced without advance notice to American fishermen, whose fishing rights and privileges were thereby greatly restricted and hampered. *A modus vivendi*

tempered the bitterness of the issue for a time, but the United States could not tolerate a permanent assumption of Newfoundland's alleged right to enact any regulations it saw fit without consent of the United States. But for the fortunate wording of the special agreement, the United States would have completely lost its contention before the tribunal on this point, which became Question 1 of the arbitral agreement. That agreement put in issue the question whether Canada and Newfoundland could enact "reasonable" regulations without consent of the United States. As a matter of law, the United States contention that the treaty had created a servitude in favor of the United States, that is, a limitation upon British sovereignty, was emphatically denied; but inasmuch as "reasonableness" requires a standard by which it was to be measured, and inasmuch as British counsel had in argument admitted that Canada or Newfoundland could not arbitrarily determine what was "reasonable," the tribunal decided that while Canada and Newfoundland possessed sovereignty in the waters in question, the reasonableness of regulations should be submitted to an arbitral test whenever their reasonableness was challenged by the United States. The procedure recommended by the tribunal for carrying out this award has been substantially adopted by the two countries; and under it no fishing regulations can be enforced against American citizens until they have been duly published for given periods and the United States has been given full opportunity (seven months in all) to object to their enforcement on the ground of unreasonableness, and until the question of reasonableness, if challenged by the United States, has been submitted to an impartial body of experts. While the United States lost its legal argument, it did in fact win practically everything for which it had, on this point, contended.

The other important legal question was Question 5. The treaty of 1818 had renounced certain American rights and privileges granted in the treaty of 1783, and, among others, the "liberty . . . to take, dry, or cure fish on or within three marine miles of [certain] coasts, bays, creeks, or harbors of his Britannic Majesty's Dominions in America." The question was, What was three miles from a bay? The negotiators had overlooked this problem. The United States contended that they meant a territorial bay; that is, a bay ceased to be a territorial bay at the point where it became wider than six miles, and from the line across the bay at that point the three miles were to be measured. Great Britain contended that they meant a geographical bay; that is, anything called a bay on the map, no matter how wide, was a bay within the meaning of the treaty, and the headland theory, by which a line connecting the headlands marked the limits of the bay, applied. Again the tribunal, with a strong dissenting opinion by Dr. Drago, of Argentina, supported the British legal contention, but in fact recommended that the difficult problem be settled by drawing in certain bays the lines which had been embodied in the unratified Bayard-Chamberlain treaty of 1888, and as to other bays adopting a ten-mile width, according to the general modern rule as to the limit of territorial waters in bays from which the three miles are to be measured.

The five remaining questions, while economically of great importance, did not involve any intricate legal questions, but were confined principally to the interpretation of words and phrases in the treaty of 1818. They involved questions concerning the conditions under which the fishing industry was to be carried on: whether American fishermen could employ Canadians in their crews; whether certain bays, creeks, and harbors were included in the treaty grant; whether American fishing vessels could be subjected to entry and report at custom-houses and the payment of certain dues; and whether fishing vessels could engage in trade. While some of these questions were not satisfactorily answered, the award of the tribunal was in all cases eminently fair, and,

on the whole, satisfactory to the United States. A great and troublesome question has thus been removed from the field of international controversy, with mutual satisfaction to the interested parties. The American contribution to this happy solution is largely due to the efforts of Elihu Root.

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