BOOK REVIEWS


The work of Professor Feilchenfeld is devoted to an important question of international law. His book is composed of two parts. One deals with the history of the "treatment of public debts in cases of territorial changes" (p. v) and occupies pages 15-578; the other gives "analysis and conclusions" (pp. 579-922). The historical part is divided into five periods (before 1790, 1790-1830, 1830-1878, 1878-1918, great peace treaties and the development since 1918). It gives for every period history of the actual "treatment" of public debts, separately in cases of cession and in cases of annexation, dismemberment and unions and, besides, for every period, legal theories of contemporary writers, and general conclusions.

It is the first comprehensive treatise on the subject published in the English language and contains an exceptional wealth of material. It is "an experimental study in method" (p. viii) and it deserves full attention on the part of all those who are interested in the subject.

The problem of the effects of territorial transformations of States on their public debts is controversial primarily with regard to the case when the "old" debtor State, having lost part of its territory (by cession to another existing State or by secession—formation of a new State on the lost part of its territory), continues to exist. It is, on the contrary, almost universally admitted, that in case of extinction of the debtor State (by annexation of its whole territory by another State, or by division or dismemberment of its territory), its debts should be taken over by that State or those States which appropriated to themselves the territory of the debtor State.

A-I. Our analysis will begin with the case of extinction of the debtor State. After a scholarly historical survey of cases of extinction of States, F. comes to the conclusion that the "rule of maintenance", a "positive" rule (p. 681) of International Law, was applied in all such cases.

For different periods of time, into which F. divided his historical survey, his conclusions are as follows:

(1) Time before 1790: "It might be argued that a rule of international law came into existence" to the effect that debts of extinct States should be maintained in case of voluntary loss of sovereignty and "it does not appear to have been contradicted" in case of conquest as well (72). "The maintenance and

1 The material given by F. in this part of his historical survey is very rich and never before was presented in such fullness.

Speaking of the treaty between England and Scotland of 1706, F. says (57): "It appears from Article 15, which is mainly devoted to matters of taxation, that the debts of England and Scotland were to be maintained, and that special arrangements were made for their payment." It should perhaps be explained that this article of the Act (5 ANN. c. 8) provided for a financial settlement of a special character between England and Scotland. By the terms of the treaty for the Union, the subjects of Scotland "for preserving an equality of trade throughout the United Kingdom", became liable to several customs and excises then payable in England, which revenues were applicable towards payment of the debts of England contracted before the Union. Therefore, it was agreed that Scotland should have "an equivalent for what the subjects thereof should be so charged towards payment of the said debts of England". Add to the further development: 1 GEO. 1, STAT. 2, c. 27; 3 GEO. 1, c. 14; and 5 GEO. 1, c. 20. The provisions of art. 15 provided for an internal financial settlement between two states after their political union and because of the merger of their fiscal resources. Cf. this writer's 1 LES EFFETS DES TRANSFORMATIONS DES ETATS SUR LEURS DETTES PUBLIQUES (Paris, 1927) 253-256, 262-266. This work last cited is hereafter referred to as TRANSFORMATIONS DES ETATS.
payment of domestic [as distinguished from foreign (A. S.)] debts was hardly regarded as an obligation under international law" (73); however, with regard to "local debts", "while the material cited . . . does not justify the statement that a rule of law clearly existed, it is safe to state that all indications point to its existence" (74).

(2) 1790-1830: "The recognition of the debts of dismembered States, steadily growing since 1790, became a rule of law after 1814" (185). "The rule that debts of annexed States must be maintained was also amply confirmed by the state practice between 1790 and 1830" (187).

(3) 1830-1878: "The rule of maintenance, which had . . . become a rule of international law before 1830, received further confirmation . . . In all cases of annexation debts were maintained" (263). "The rule of maintenance, which was already a rule of international law in 1830, received ample confirmations" (311).

(4) 1878-1918: "The rule of maintenance not only was never questioned but was further affirmed and developed" (369); so far as Great Britain is concerned (379-389) the "negative" principles advocated by the Lyttleton commission "were not in accord with international law" and "the (actual) British policy with regard to debts was much more liberal" (392).

(5) Development since 1918: "On the Continent it is not only true that the rule of maintenance has never been questioned since the war, but there is also a strong tendency to demand distribution of debts even in case of cession" (569). "In the Anglo-Saxon countries on the other hand, the rule of main-

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2 Referring to cases of: Tunis (369) Annam, Cambodia, Madagascar ("The difference between maintenance, guarantee and succession was even more clearly shown by France's treatment of the debts of Madagascar" (371)), Congo and Haiti, F. states (378): "In most of the cases cited in this section, debts of annexed states were maintained by means [?] other [?] than succession." Namely, debts of annexed States remained a charge on the local resources of the annexed territory and were not taken over on the general resources of the annexing State. Is this difference in the (internal financial) treatment of debts of the annexed State by the annexing State a question of "succession or no succession"? Does the principle of succession imply that debts of the annexed State should be taken over on the (general? central? federal?) treasury of the annexing State? Cf. on this point the Opinion of Attorney-General Griggs on Claims Against Hawaii (1899) 22 Op. Att'y Gen. 583, which should be added to the material compiled by F. in § 182 (p. 377 et seq.) on Annexation of Hawaii. Cf. also this writer's I Transformations des ETATS 247 et seq. 256 et seq. 267 et seq., Adde to the discussion of German colonial loans (548 et seq.): Dr. H. Wehberg, Die Pflichten der Mandatarmächte betreffend die deutschen Schutzgebietsschulden (1927) 25 WELTWIRTSCHAFTLICHES ARCHIV 136 et seq.

3 Add to the discussion of German colonial loans (548 et seq.): Dr. H. Wehberg, Die Pflichten der Mandatarmächte betreffend die deutschen Schutzgebietsschulden (1927) 25 WELTWIRTSCHAFTLICHES ARCHIV 136 et seq.

4 This assertion appears to be based on the following facts:

(1) Report of the Lyttleton Commission: but the Report dealt with concessions, and not with public debts, and "was certainly more sanctioned by other States" (390); cf. also the attitude of the British government in 1898 with regard to Philippine cable concessions: "Her Majesty's Government believe, that [the concessions contracted by Spain] became binding on the United States . . . " (391).

(2) Decisions in the West Rand Gold Mining Co. case (385): but F. himself states (and correctly) that the ratio decidendi in this case was that the court had no jurisdiction, and the case had nothing to do with public debts. F. states that actually Great Britain satisfied the creditors "as a matter of grace" (384), but he admits that the alleged negative attitude of the British government with regard to the question of legal responsibility for the debts of the annexed South African Republics has "never been set forth in any published diplomatic document" (385) and that "the British Government failed to obtain the approval of other powers for its new [?] policy and had to yield wherever foreign rights were concerned."

(3) Two tort cases in the American and British Claims Commission: the first case, decided in 1923, was a claim against Great Britain, where Great Britain denied its liability for tort claims against the South African Republic. The claim was rejected on the ground that
tenance is less firmly established today than it was fifty years ago, and certainly no very detailed legal rules in the matter are officially admitted" (570).

2. What is this "rule of maintenance"?

F. deals with this rule in chapters 29 to 31, the first of them being devoted to "The protection of tangible property and of property rights in general" (623); the second to "The application of the principles of protection of property to debts and the protection of public debts in general" (643); and the third to "The protection of the substance of public debts in case of State succession" (660-734).

Declares F.: "The rule of maintenance applies only to acquired rights, and guarantees only maintenance of the rights in their previous condition" (625). Thus the rule in question is that of "maintenance of acquired rights"—an old friend indeed.6

F. explains (634) "the three functions of the Rule": the one being to "enable individuals to keep their own"; the other—to "protect international commercial and economic intercourse in general, by promoting certainty which is an important element in commerce"; and the last ["the most important one of all" (635)]—to "protect the relative distribution of wealth among states and nations, at least against certain arbitrary changes; it protects what might be termed the international balance sheet".

3. How does this "rule of maintenance" apply to public debts of an extinct State?

In order to explain the working of his "rule of maintenance", F. introduces the following notions: "substance" of the debt, "quality" of the debt, and "auxiliary rights".

Declares F.: "The rights of creditors may be divided into those forming the substance of the debts, and auxiliary rights. The right to demand payment of a certain amount forms the substance of a debt. As examples of auxiliary rights may be mentioned pledges and liens" (643-4). "The substance of the debt, i.e., the amount owed to the creditor should be distinguished from provisions determining the manner in which the amount is to be paid as well as from additional rights and provisions securing the payment of the amount" (730); "a guarantee concerns, not the substance, but the quality of the guaranteed debt" (731). "The quality of a debt is affected either through modifications of the existing legal situation or through changes in the wealth, earning capacity, or reliability of the debtor" (634-6).

F. introduces also notions of creditors' "risks" and of different kinds of "interferences".

Declares F.: "Risks" are Internal or External; the last are those "which result from events other than acts of the debtor himself acting qua debtor" (646). External risks are those of either Accident or Interference. Interference is either Private or Public. Public Interference is either "Inside Interference"—"act of interference of the legislator of the debtor, not the debtor acting qua debtor" (646), or "Outside Interference" "by legislators and sovereigns other than those of the debtor" (646).

the annexing State is not responsible for torts of the annexed State. The other case, decided in 1925, was a claim against the United States, and in this case the British agent suggested that a distinction should be made of the case of conquest (South African Republics) from that of voluntary annexation (Hawaii). These ("Hawaiian") claims were rejected for the same reasons as was that of R. Brown in 1923, and the distinction suggested by the British agent was flatly disapproved: there is "no valid reason for distinguishing termination of a legal unit of International Law through conquest from termination by any other mode of merging in, or swallowing up by, some other legal unit."

Cf. this writer's 1 TRANSFORMATIONS DES ÉTATS 59 et seq.

Adde: Dr. Bernhard Meier, Der Staatsangehörige und seine Rechte, insbesondere seine Vermögensrechte im System des Völkerrechts (Jena, 1927) 69-74 and passim.
With the help of those notions F. explains in the following way the working of his "Rule of maintenance":

First in case of ("total") annexations: "international law imposes obligations upon the annexing state with regard to the maintenance of debts" (665); "the acquiring person becomes capable of inside interference with debtors and debts within the territory, and gains the capacity to incur international law obligations for such interference" (664); "cancellation of debts is public inside interference with property rights and a successor State becomes internationally responsible for cancellation and nonmaintenance of debts of a totally annexed debtor . . . " (671).

In case of dismemberment "the situation is the same as in the case of annexation (666). "Custom holds all successor states equally responsible for the maintenance . . . It would not seem, however, that custom has established any more definite rules. It would not seem necessary that all successor states . . . assume portions of each debt or even a part of the total of debts" (675). "The successor state is under an obligation to supply some debtor, because the maintenance of debts involves necessarily the existence of a debtor; the successor state is not, however, under an obligation to supply a particular debtor" (676).

"Generally speaking, it might be said that international law will guarantee to the creditor the existence of a debt and of a debtor, but not the existence of a good debt and of a rich debtor" (675).

4. First are to be considered the theoretical aspects of F.'s theory. "The rule of maintenance", declares F., "applies only [!] to acquired rights and guarantees only [?] maintenance of the rights in their previous condition" (625). It would follow that rights of public creditors, in case of extinction of the debtor State, should be maintained, so far as possible, "in their previous conditions".

The public debt was a charge upon all the fiscal resources of the extinguished State; the fiscal resources of the State were those based on, or derived by, the exercise of (fiscal) jurisdiction within a determinate territory. If the debtor State is in its entirety annexed by one other State, that State becomes responsible with, and within the limits of, the fiscal resources of the annexed territory for the debts of the extinct State. If the debtor State is divided or dismembered, then all the successor States become rateably responsible for such debts in proportion to (and within the limits of) the fiscal resources of those parts of the territory of the old State, which they severally appropriated.

It may well happen that it is practically advisable to effect the financial settlement otherwise than by a direct apportionment of all the debts between all the successor States in proportion to the fiscal resources of the territories they appropriated. But if such a settlement practically infringes the legitimate interests of creditors, the result would be that their rights are not "maintained in their previous conditions" (625), and that an illegitimate damage is caused them.

In the opinion of F. that is of no consequence: the only thing the successor state is under an obligation to do, is to "supply some debtor" (676) and to "guarantee to the creditor the existence of a debt" (657). But what about the "rule of maintenance" which "guarantees only [!] maintenance of the rights in their previous condition" (625)? And what remains from the three "functions" of this rule: to enable individuals to keep their own, to protect international commercial intercourse and to protect the international balance sheet (634-5)?

5. Next can be given an illustration from actual practice.

In 1844 the United States and the Republic of Texas signed a treaty, by which Texas ceded her whole territory to the United States. By Art. 5, the United States undertook to assume all debts of Texas, which were estimated as not exceeding ten million dollars. This treaty was not ratified by the United
States Senate and in 1845 a Joint Resolution was passed, by the terms of which Texas became one of the states of the Union, keeping her property and revenue and was to pay her debts out of her own assets: "in no event are said debts and liabilities to become a charge upon the government of the United States". As a matter of fact Texas found itself deprived of some important resources, namely of its custom revenue, the same having been taken over by the Federal government. Then an Act of Congress in 1850 provided for an altogether different settlement. In consideration of relinquishment by Texas of "all claim upon the United States for liability of the debts of Texas, and for compensation or indemnity for the surrender to the United States of her ships, ... custom-house revenue, etc." the United States undertook to pay to Texas ten million dollars in 5 per cent. stock, of which five million dollars only was to be issued until the creditors of Texas, holding bonds for which duties on imports were specially pledged, "shall file releases of all claim against the United States for or on account of said bonds". In 1855 a new Act provided for payment to the creditors of Texas of the sum of 7.5 million dollars and for reimbursement to Texas of her past payments to her creditors. "The majority of the committee (on Finance of the United States Senate, Report of July 1, 1854) was of the opinion that the United States had become liable for the Texan debts" (275).7

Why did the United States pay the money if the successor State is under an obligation to supply only "some" debtor, not a "particular" debtor, and is not under an obligation to "guarantee the existence of a good debt and of a rich debtor" ("good" and "rich" is, of course, not the point at all)?

B-1. The really controversial point in the doctrine, is the case when the debtor State, after having lost part of its territory (by cession, or as a result of secession), did not cease to exist as an international person.

Some general remarks should be made concerning this problem. Rules of International Law generally, and those concerning legal effects of territorial transformations of States particularly are of an eminently practical character. If a State loses one-half or one-third of its territory, that is one thing; if the Russian Empire lost in 1905 to Japan the southern part of the island of Sakhalien, that is an entirely different thing. For the question of legal effects of territorial transformations of States on their public debts, the quantum is necessarily—by the very nature of the problem itself—an important element in the actual working of the rule of law. To argue that the rule—to be rule at all—should apply equally to a 50 per cent. transformation and to a 1 per cent. "transformation", and that, if the rule was not applied to the 1 per cent. "transformation", there is no such rule in existence at all, is equivalent to applying to legal rules of an eminently practical character tests of the laws of physics or of mathematics.

7 Cf. also Opinion of the Attorney-General Cushing, Sept. 26, 1853, 6 Op. ATT’y GEN. 130: "A public creditor, like a private creditor, has a general right to receive payment out of the property, income, or means of his debtor. A special pledge of this or that source of revenue ... renders such source of revenue ... a specific lien ... which the government ought not, in justice to the creditor, to abolish, lessen, or alienate, until the debt has been satisfied. But a public creditor [debtor (?), A. S.], like a private one, even as to debts not secured by hypothecation of specific property ... ought not to deprive himself of the means of payment; as the two governments, that of Texas and of the United States, abundantly indicated."

Add: J. WESTLAKE, INTERNATIONAL LAW 77: "Of course the last clause [of the Resolution of 1845] could not, as against third parties, free the United States from any liability that might be incurred by them through an absorption by which Texas was deprived of her main source of revenue, the constitution of the Union prohibiting the States from raising a revenue by custom duties." Cf. also this writer’s 1 TRANSFORMATION DES ÉTATS 257, 258, 258, 271.
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F. denies the existence of a rule of International Law to the effect that the cessionary State is bound to take over a proportional part of public debts of the old State.

2. Does F.’s own historical survey of the practice of States warrant his conclusion?

(i) Treaties of 1648-1790: F. states that the treaties of 1648 regarded “maintenance of the liability of the ceded States” for some debts as a “matter of course” but that the language of provisions concerning some other debts, was “that of a voluntary agreement” (35-37). F. further admits that cessions within the Holy Roman Empire were subject to the rule of succession, in accordance with “principles of German public law” (37-38), and similar “principles” were applied in case of Swedish treaties of 1719 and 1720 (45). With regard to “Treaties with France, 1679-1713,” F. states that in one case there was “a voluntary agreement” which “does not contain the recognition of rules of law or equity”, in another case, on the contrary, “doctrine of equity is recognized”, in a third case “allocation is to take place au moyen du present traite, not under a general doctrine” (39); in still another case “the doctrine that burdens should follow the benefits” is “recognized . . . and its language is very strong” (40).

With regard to the treaty of 1707 between Russia and Denmark, F. explains that “the allocation of the debts . . . was not regarded as a legal obligation towards the creditors, but merely as something that normally, though not necessarily, would be agreed upon by the ceding and the cessionary States” (53).

With regard to “debts of local bodies,” F. refers to the treaty of 1772 between France and the bishop of Liege, which distributed debts of dismembered communities, and states that while “the language of this article does not contain a clear recognition of a rule of law; on the other hand it appears that the contracting parties regarded the distribution . . . as a normal, and perhaps even a customary procedure” (55). The author also quotes several other treaties (55, 56, 58, 59, 61, 62) where debts were distributed or taken over. Farther on, he discusses “Writers, 1763-1790”: Vattel who, with these or other qualifications adhered to the principle of succession in case of cessions.8 and others.

On the other hand F. quotes “as illustrations of the fact that distribution of debts was not the general practice before 1720” (45), and of the “negative practice followed in Europe after 1763” (51), several treaties in which no allocation of debts was provided: cessions of some cities by the German Emperor to France (1679), of Newfoundland to Great Britain (1709) (42), of Azov and Kiev (?) by Turkey to Russia (1712) (45), of a “great part of what now forms Rumania and Jugoslavia” by Turkey to Austria (1718) (45), of Canada and other territories outside Europe to England (1762-1763), conventions providing for “border settlements” (1765 et seq., p. 49) and other cases of “minor cessions” (1768 et seq., p. 50), of cessions of Bukovina by Turkey to Austria (1775) and of various territories by Turkey to Russia (1774) (50), and secession of the American Colonies from Great Britain (53).

The conclusions of the author for the whole period are as follows: “There is no clear indication that maintenance of what would today be called public revenue pledges was regarded as obligatory under international law” (69). “The usages (concerning local debts) lacked not only general application and recognition, but also sufficient uniformity to justify the statement that they had developed into rules of international law” (71); “it does not appear that general debts were ever taken over” (71).

We stop here for a moment.

8 On p. 68, exposing theories of Adolph Posse, F. writes: “Debts owed by the States are debts of the States, not of the State.” What does “States” mean? “Stände”? It would have been better to translate “Stände” by “Estates” or “Orders”.

In order that public debts may be "taken over" at least two conditions are necessary. The one is that there are in existence such public debts, the other is that such public debts are legally burdening the territory taken away from the State.

Turkey, at the time, had no "public debts" at all. It began to have public debts only in the fifties of the nineteenth century and only by the treaty of Paris of 1856 Turkey was "admitted to participate in the advantages of the Public Law and Concert of Europe". Thus all cessions by Turkey before 1790 are not, in any way, "illustrations of the fact that distributions of debts was not the general practice".

On the other hand if distant colonies and possessions are not legally burdened with public debts of the State which owns them (e.g., debts of the present United Kingdom are not legally burdening, in any way, any of the dominions of the British crown) then neither are cessions of such colonies and possessions "illustrations" of the absence of a "general practice" (which does not concern them).

And similarly if there were at the time no "general debts" in a given State, but only these or other kinds of "local debts" of different character, then naturally State practice of the time would lack "sufficient uniformity". The absence of this "uniformity" was due to a great extent to the absence of uniformity in the legal security of the debts themselves.

(2) For the period of 1790-1830, F. states that the "French, rather than general European practice" (80) recognized the rule of succession and gives an enumeration of the numerous treaties in question (80-86), as well as provisions of the Recessum Imperii of 1803 (86) and of other treaties (87-96). He concludes that while "no rule of law was recognized" (102), however, provisions of some treaties "do not entirely exclude the construction that such passages contain an implied recognition of a rule of law" (102), but such "recognition was not universal" (103). Reviewing other treaties of cessions in which the principle of succession was applied (106-107), F. concludes that this practice "was based on principles of justice, not upon a strict rule of law" (108). In the period of 1814-30 the "French practice" had developed the principles "to a high, though not absolute, degree of uniformity" (119) and numerous treaties (119-144) so followed these principles, but F. is eager to qualify his conclusions by saying that these or those provisions in the treaties were "the result of a special stipulation, not of the application of a fixed rule of law" (126, 131, 135), and while "general principles of public law" are admitted by F. to exist, he denies that these principles are rules of International Law (151).

The "French" principles were not applied, states F. (80), in the following treaties: 1793—concerning Poland (107); 1810—Russia and Austria (107); 1791, 1792, 1800, 1812 and 1813—Turkey with Russia and Austria (107); 1810—Russia with Sweden; 1813—Russia with Oldenberg (107); 1803—Sweden and Mecklenburg (107); 1812—between the two Lippes (compare also 80 and 106-7); 1819—cession of Florida by Spain to United States (147); nor was any allocation of debts provided for in a number of boundary treaties (144).

The conclusions of F. for the whole period are as follows: "It cannot be said that allocation of local debts had become a universal practice by 1830" (177),

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9 Cf. this writer's La Succession aux Dettes Publiques d'États (Paris, 1929) 40 et seq., 97 et seq.
11 Cf. this writer's 1 Transformations des États 135 et seq.
12 Cf. this writer's La Succession aux Dettes Publiques (Paris, 1929), passim and especially 61 et seq., 106 et seq., 120 et seq., 125 et seq.
"while it is true that the practice of distributing central debts in case of cession began during the period of the Holy Alliance, it remained exceptional before 1830" (179). "Negative practice was almost universal between 1790 and 1830 in treaties which were not connected with the great Continental settlements" (179). When allocation of debts was made, "most treaties used language which indicated that their provisions were the result of voluntary agreements arrived at . . . by the application of certain doctrines and the observation of tradition and precedent" (180); one treaty is even "construed as containing a recognition of a rule of law" (181).

We stop here again.

F. qualifies the "positive" practice of the period as "French, rather than general European practice". If "French" practice means practice of only those treaties to which France was a party, his statement is not correct; otherwise, it is misleading. It was "French" practice, when victorious France had itself (!) to take over the debts of the ceding States. But it was also practice in numerous other continental treaties to which France was not a party; and the rules concerning the distribution of the Netherland's debts and general declarations concerning the matter were adopted in 1831 by the London conference, in which France had comparatively very little weight.

Poland: by the treaty of 1797 debts of Poland were distributed between Russia, Austria, and Prussia (113) and when in 1807 the Prussian part of Poland was ceded to Saxony and Russia, the treaty of Tilsit provided that the cessionaries had to take over the debts attributable to this part of Poland (114-115).

Austria-Russia, March 7/19, 1810: F. should have more carefully read this convention (M. N. R. 252), the preamble of which states that this "acte de cession et de démarcation" is made "conformément au . . . traité de paix conclu à Vienne le 2/14 Octobre 1809". This last treaty (ib. 210 at 213) provided in art. 5: "Les dettes hypothéquées sur le sol des provinces, cédées et consenties par les Etats de ces provinces, ou résultant des dépenses faites pour leur administration, suivront seules le sort de ces provinces."

Cessions by Turkey go out for reasons given above; so also boundary treaties and cession of Florida.

Cession of Finland by Sweden to Russia, 1809; Swedish debts did not burden Finland, which was, from the fiscal point of view, a separate unit.

Sweden and Mecklenburg, 1803: On p. 80, F. says that this cession (among others) "did not apply the financial principles" ("embodied in the system of French treaties"). But on pp. 107-8, he states that "by the provisions of art. 13, Mecklenburg was to assume all obligations toward the Germanic Empire, and other public burdens incumbent upon Wismar, because 'the contracting parties . . . find it just that burdens should never be separated from the right of usufruct'. Article 13, therefore [?] was based on principles of justice, not upon a strict rule of law."

Russia-Oldenburg, 1813 (108): Russia ceded to the Duke of Oldenburg Jever. Does F. know what and where Jever is? Jever, as stated in the preamble of the act (M. N. R. 296) was "schon ehemdem mit der angränzenden Grafschaft Oldenburg lange unter einer Regierung vereinigt gewesen"; was ceded "als freyes Aloldum" (art. 1, p. 297); and art. 3 provided: "So wie das Herzogthum Oldenburg nach Vorschrift des Art. 6. des Cessions-Tractats vom 14 Jul. 1773 ohne Unsere und der Agnaten Einstimmung mit hypothecarischen Schulden nicht belastet auch sonst auf irgend eine Art verlustt oder geschädigt werden darf, so soll diese Vorschrift auch fortthon auf die mit denselben vereinigte Herschaft Jever angewandt und eine derselben zweider laufende Verfügung als mills und nichtig betrachtet werden."

Lippe-Detmold ceded to Schaumburg-Lippe in 1812 Alverdissen, Schaumburg-Lippe paying 52,000 Thalders in consideration of this cession (108).
The period of 1830-1878 begins with the formation of the Kingdom of Belgium. While F. is always eager to state that these or those proposals, or stipulations were based only on justice, or on usage (194), he admits, however, that "soundness of principles" (194) was recognized, and "strong language" was used (195) and that the theory that all public debts constitute a mortgage (?) upon the soil of the debtor country was officially "adopted" (197) by the London Conference.

With regard to "Italian practice", F. insists that distribution of debts had a "voluntary" character (210, 211) and the language used in the treaties "does not prove" (210) that a rule of law was recognized or that allocation of debts was "regarded as mandatory under law" (213).

With regard to German practice, F. states that "of the three wars of 1864, 1866, and 1870, only the war of 1864 with Denmark was followed by a general distribution of debts" (223). He admits, however, that in the treaty of 1866 which only dissolved the condominium of Austria and Prussia over Schleswig and Holstein "redistribution did not become necessary" (225) and that pensions granted in Holstein by the Austrian government were maintained (226) and that treaties between Prussia and Bavaria and Hesse provided that Prussia enters into all financial obligations of the ceding states owed within the minor areas ceded to Prussia (226).

So far as treaties with Turkey are concerned F. declares (242) that "the best construction would seem to be that the treaty recognized a moral, not a legal obligation" (242), but admits that "it seems impossible to argue that the Powers recognized the Russian distinction between conquerors (not liable to assume debts of the annexed territory) and other cessionaries" (243).

Then follow "minor cessions in Europe" (245) and "colonial treaties of European powers" (247) which do not provide for allocation of debts, but sometimes contain provisions concerning compensation of the ceding state through payments in money.

The treaties of Latin American republics with Spain (251) "provided for no allocation of central debts of Spain" but contained provisions for assumption of debts owed by, or charged to, Spanish treasuries in South America (251).

The treaties of the United States with Mexico (1848) and Russia (1867) compensated the ceding States in money (258).

F. concludes that "the financial settlements agreed upon in treaties of cession were frequently at least as much influenced by the political character of the territorial arrangements as by professed doctrines and alleged rules of law"; "as territorial changes were increasingly regarded as divisions of nations, theories of identity which regarded the ceded area, or rather its population, as identical with the original debtors of the debt, became more frequent" (314); "general distribution of all bonded debts of ceding states . . . became the prevailing practice in major cessions on the Continent. It did not, however, become universal Continental practice, and never became the practice outside of Europe. It was hardly ever applied to minor cessions, and it did not become a recognized rule of law" (315). "In the absence both of general express recognition and a sufficient uniformity of usage and practice, the developments of the period failed to lead to the creation of new rules of law on the treatment of debts in case of cession" (318).

We stop again.

F. admits that during the period "general distribution of bonded debts" became the prevailing practice in major cessions on the Continent of Europe. But he denies that it became universal Continental practice. Why so? Because "minor cessions in Europe" (245) did not provide for allocation of debts.

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*Add: M. Jonckbloet, La Liquidation entre le Royaume des Pays-Bas et le Grand-Duché de Luxembourg (The Hague, 1871).*
What are these "minor" cessions? First: different boundary regulation conventions, which it is simply misleading to qualify as treaties of cession (245-6); second: "minor cessions" proper—for how "minor" they were, compare e. g., Russia-Prussia, 1835, where Prussia purchased a piece of land from Russia . . . for 3480 thalers (246)—where no provisions were made concerning public debts; third: other equally "minor cessions" when provisions concerning public debts . . . were made (246-7).

"It never became the practice outside of Europe" (315). This statement is either incorrect or misleading.

The treaties of Latin-American republics with Spain did provide for assumption of debts owed by, or charged to Spanish treasuries in South America (251). These treaties did not provide for allocation of "central debts" of Spain. But these "central debts" of Spain were not a charge upon Spanish colonial possessions. All debts which were a charge upon these possessions were taken over.

Treaty of Guadalupe-Hidalgo between the United States and Mexico (1848) provided for payment by the United States to Mexico of fifteen million dollars "in consideration of the extension acquired by the boundaries of the United States"; besides, debts of Texas were maintained.

The United States purchased from Russia—Alaska in 1867 and paid 7.2 million dollars, and Alaska was a "possession" of Russia, and as such not a "part" of the Russian Empire itself. But even as a "part" of the Empire, it made less than one per centum of the fiscal patrimony of Russia!

But, says F., there was absence of general express recognition of a rule of law, and he suggests here and there in his text that actual practice is one thing and "recognition" of this practice as mandatory, is a different thing. They are. But universal practice and "strong language" (195) in different international acts, make together something more than "voluntary" settlements, or "actual practice".

Alsace-Lorraine (1871): That was practically the only real case, where the rule was not followed: victorious Germany refused to take over, with Alsace-Lorraine, a proportionate part of the French public debt: "General debts of France were not mentioned in the treaty" (227). But that is what the treaty of Versailles of 1919 provided in art. 255: "As an exception to the above provision and inasmuch as in 1871 Germany refused to undertake any portion of the burden of the French debt, France shall be, in respect of Alsace-Lorraine, exempt from any payment under article 254"; and in art. 256: "In view of the terms on which Alsace-Lorraine was ceded to Germany in 1871, France shall be exempt in respect thereof from making any payment . . . for any property . . . of the German Empire . . . ."

Says F. (439): "The German delegation complained that the treatment of Alsace-Lorraine constituted an exception from general international law . . . ." The Allies answered, that "the stipulation constituted an exception in favor of France of [from?] a general principle admitted in the treaty which was justified on the ground that Germany had adopted the same attitude in 1871" (440). F. admits that "the arguments of the Allies were on the whole sound" (440),14 but he makes a distinction: the Allies asserted "an exception from a 'general principle', not from a strict rule of international law" (440). In any case the treaty of Versailles disapproved in a solemn manner the "attitude" of Germany in 1871.

(4) For the Period of 1878-1918, F. reviews the Chilean controversy (321), the Cuban controversy (329), the cases of Panama (346), Nicaragua (352), West Virginia15 (354), Bosnia and Herzegovina (356), the treaty of Lausanne of 1912 (358) and the treaty of London of 1913 (360).

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14 Cf., however, this writer's 1 Transformations des Etats 179 et seq.
15 To cases quoted by F. should be added Virginia v. West Virginia, 11 Wall. 30 (U. S. 1870); Hartman v. Greenhow, 102 U. S. 672 (1880).
He concludes that "after 1878 general distribution of debts was restricted to the Turkish treaties",19 "certainly no rule of law requiring such distribution was generally recognized", however, "it must be admitted that the prevailing Continental usage which had grown up since 1830 found considerable confirmation before the World War" (425).

The Chilean controversy was concerned primarily with the legal character of the guarantees which Peru had given, before 1879, for her loans. With regard to Cuban debts F. says (329-30): "That neither two hundred years development of usage, nor the various abstractions (?) and theories of writers had created recognized rules of international law . . . was shown . . . in (this case)." But this case is one of debts with regard to which precisely the (international) validity of their charge upon Cuba was challenged by the United States.”

The point was whether these “Cuban” debts were really Cuban debts. This question has nothing to do with the “two hundred years’ development of usage”, the more so as similar questions a hundred years before were decided in the same way.18 In his opinion of July 26, 1900, Attorney-General Griggs declared, that “upon the separation of part of a country from the sovereignty over it, debts created for the benefit of the departing portion of the country go with it as charges upon its government” (345).

Panama declared in 1903 its intention to assume a part of Colombia’s exterior debt (348). In 1909 a Tripartite agreement was made between the United States, Colombia and Panama, providing for certain payment by Panama to Colombia, “in consideration” of which payment Panama will be “released” from liability to the bondholders; this agreement remained abortive because of failure of Colombia to ratify it (349). In 1914 by a treaty between United States and Colombia, United States paid to Colombia twenty-five million dollars, Colombia recognized independence of Panama and it was provided that “the Government of the United States will . . . take the necessary steps in order to obtain from the Government of Panama the despatch of . . . agents to negotiate . . . with the Government of Colombia a treaty of Peace . . . with a view to bring . . . the adjustment of all questions of pecuniary liability as between the two countries, in accordance with recognised principles of law and precedents” (351).

In the case of Nicaragua10 a lump sum was paid by the United States to Nicaragua (352).

When United States purchased Danish territory in the West Indies (353), besides paying twenty-five million dollars as purchase money, United States assumed local debts (353).

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10 And debts of Virginia? Adde also: “An act to provide for the division of Dakota into two States. . . .” 25 S. L. c. 180 (1889), p. 676, § 6 (at 678): “It shall be the duty of the constitutional conventions of North Dakota and South Dakota to appoint a joint commission, to be composed of not less than three members of each convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said Territory and agree upon an equitable division of all property belonging to the Territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the Territory, which shall be assumed and paid by each of the proposed States of North Dakota and South Dakota; and the agreement reached respecting the Territorial debts and liabilities shall be incorporated in the respective constitutions, and each of said States shall obligate itself to pay its proportion of such debts and liabilities the same as if they had been created by such States respectively.”

17 Cf. 1 Sack, Transformations des Etats 141 et seq., 157 et seq.

18 1 Transformations des Etats 145 et seq. Whether these doctrines concerning validity of the charge were correctly applied in different cases is another question (cf. 1 Transformations des Etats 150). But these cases, in which the validity of the charge was challenged, do not concern the principle itself of succession into valid debts.

(5) The great peace treaties and development since 1918, F. exposes provisions of the treaties of Versailles, St. Germain, Trianon, Neuilly s. Seine, Sevres and Lausanne, which all prescribed distribution of debts of the ceding States (433). "In historical importance [these treaties] rank with the great settlements which have followed the European wars since 1914" (431). But F. points out that: "The wording of the treaties, both in the treaties of Lausanne and Neuilly and in the Central European treaties does not indicate anywhere a recognition of rules of law providing for distribution of debts in case of cession" (476). "The variations and irregularities which the peace treaties contain are another piece of evidence for the view that the treaties fail to recognize definite rules of law or absolute principles" (488).

F. quotes the treaty between the Allies and Poland of 1919 which provided: "Poland agrees to assume responsibility for such proportion of the Russian public debts . . . "; and treaty between France, Italy, Japan and Rumania of 1920, which stipulated: "La Roumanie assumera la responsabilité de la part proportionnelle afferente à la Bessarabie dans la dette publique russe . . . "." This article [says F., 542] does not contain any recognition of a rule of law. "That the Allies did not recognize such a rule of law [general distribution of debts] would seem to appear from the statement of Mr. Bomard [Lausanne Conference]."

For this period "the historic treatment is not exhaustive" (431) and F. refers for additional details to this writer's work, published in 1927. But he should have given at least some reference to, if not an analysis of, the following important acts, subsequent to 1927:


**Turkey.** Adde to § 221 et seq.: Arrangements between Turkey and its creditors: June 13, 1928, and Jan. 19, 1929. Adde to the "Ottoman loans secured on the Egyptian tribute" (for which F. equally simply refers, p. 499, to this writer's book published in 1927); the important Agreement between Great Britain and Egypt of March 17, 1929, Treaty Series (1929) No. 7; M. N. R. G. (3d series) 489, which seems to be in accord with the conclusions given in this writer's book (pp. 109-128, especially 127-128), rather than with the decisions of the Egyptian Mixed Tribunals of first (1925) and second (1926) instance (cf. criticisms, op. cit. p. 114 et seq.). Adde also to ch. 26: Dr. Douchain Michetach, La Repartition de la Dette Publique ottomane (Belgrade, 1925); Herve Alphand, Le Partage de la Dette ottomane (Paris, 1928); Harry N. Howard, The Partition of Turkey (U. of Okla. Press 1931) 308 et seq.

ence] that the repartition was a great favor . . . to Turkey and that en principe a debtor always remained responsible for his debts” (469).

There could be a lot said about this method of proving non-existence of a rule of International Law. Reference could be made to different international acts to show what was “regarded”, or “recognized”, as a “mandatory” rule.

It is, however, sufficient to quote what F. says himself in other parts of his book:

“International law, like all other human command has no inherent absolute validity, and all attempts to prove such validity, or to base legal results [?] on its absence, are necessarily futile” (601).

“International law has not reached the degree of perfection which systems of the more organized communities have achieved” (805).

“... a right of ceding States to demand from cessionary states an allocation of their debt burdens . . . as a principle, though not as a rule of law, found widespread recognition before 1878 . . . Since 1918 it has been clearly asserted by the Central Powers, and as a principle has been admitted even [?] by the allies” (823-830). “Great Britain has been a party to the Peace treaties, which embody primarily Continental tradition” (883).

“The Continental theories were rigid theories of positive law . . . the English and American theories, because of the inclination to regard international law as a system of positive morality, advocated doctrines of justice, rather than inflexible rules of positive law . . . This difference in theory was a potential source of controversy” (312).

3. The historical survey made by F. shows that the “principle” of allocation of public debts in case of more or less substantial cessions represents the universal usage of all the civilized nations of the world for the last centuries. Whether this universal usage represents a “customary rule of International Law” or not would depend upon tests applied. There is no universal consent on such tests. But universal usage, even accompanied with “variations and irregularities”, is something more than simply occasional practice.

F., however, goes farther than stating his doubts as to whether this universal usage represents a customary rule of International Law. He seeks to theoretically prove that such a rule does not exist.

“If a public debtor is a person in international law, and if only a part of the territory is lost . . . the debtor under both municipal law and international law remains entirely [?] under [?] its old sovereignty, and only the old sovereign may become responsible for public inside interference.”

“The debtor continues to be an organization [?] in the territory and under the laws of the old sovereign; the cessionary acquires only a part of the territory of the debtor, and usually [?] only a part of its members and assets . . . It is conceivable, but highly improbable, that the law of the cessionary [?] may regard [?] the ceded portion as the original [?] debtor” (667).

“Cession . . . of a part of the territory of the debtor does not affect the substance of the debt, but may, though not necessarily, affect the quality of the debt and the substance of auxiliary rights” (735).

In case of “unsecured” debts “the injuries which the cessionary state may cause to the creditor in case of cession are to be classified as public outside interference with the performance of contract obligations. As the interference concerns money obligations, it is indirect, not direct interference; and as it concerns performance and not maintenance, it is interference with quality, not with substance. The effect may be either that default is actually produced, made certain,

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21 The privileges and immunities which attach to sovereigns and their agents when in foreign territory are universally recognized, but the most eminent authorities have differed as to their basis and their source. Would F. deny that there are “mandatory” rules of International Law on this subject?
or made more likely. In all these cases the market value of the debt may be affected” (776).

“In case of debts which are secured by auxiliary personal promises, but not by absolute rights, the injury is normally to be classified as outside public direct interference with the performance of auxiliary obligations, while the ultimate effect upon the main obligation, if such effect is caused, belongs to the class of outside public indirect interference with performance” (777).

“These statements on the protection of debts and contracts in general show not merely that the non-protection of the quality of public debts in case of cession is in accordance with more general rules of international law, but indicate [?] also what lines a future legal reform should follow” (795).22

4. After having stated “the law”, F. declares that “one of the intended functions of this book is to enable tribunals to find the law more conveniently” (886), and warns the “lawyers” as to the shortcomings of past writers: “One of the gravest shortcomings of past theoretical treatments is that writers . . . hardly succeeded in enabling lawyers to give reliable advice to their clients on the possibility of protection” (894), “Existing legal protection is overstated” (598); “demand for future improvement will appear much smaller than it actually is” (598); “solution will be in actual legislation which will override existing law, both municipal and international” (598).

F. devotes chapter 34 to “Methods of Improving Legal Protection.”

F. recommends the “creation of a permanent [!] body, politically independent and composed of independent experts for the handling of debt settlements whenever opportunity arose . . . it would stand above the parties” (892); “such a body would also be best fitted to develop principles which could be followed in subsequent cases. It might declare such principles in connection with the individual settlements; or, if the urgent demands which a settlement involves do not leave sufficient time for a simultaneous consideration of legislative consequences, principles which would be followed in subsequent settlements might possibly be stated in advance.23 Such advance statements in the field of international finance would increase certainty . . . These rules would form what might properly [?] be called international financial law . . . gained . . . by purely legislative considerations based on actual protection of interests [?] and principles of justice” (893).

“If the establishment of a public permanent financial commission, of the kind discussed above, is found [?] impossible, creditor organizations might themselves create such a body . . . ” (897).

“Through the influence of their combined action, creditor organizations might prevail upon ceding and cessionary States to grant them the privilege of being consulted in regard to any change in their rights, or to allow them to be represented in the negotiations regarding settlements” (897-8).

22 On the same p. 795, n. 152, F. declares: “In the case of Luther v. Sagor & Co. [1921] 3 K. B. 532, which concerned tangible property belonging to a Frenchman [?] which had been confiscated by Soviet Russia, the subsequent acquisition of the property by an Englishman was recognized, although the recognition of the confiscation interfered with the right of France [?] to recover property which had been confiscated contrary to international law. It does not appear that France has protested against the interference [?] of Great Britain.”

This popular case has nothing to do with any Frenchman or France; the plaintiff was Luther Company (formerly Russian, subsequently) an Estonian corporation.

23 Cf., e.g., p. 870: “In so far as practical suggestion can be made in advance, it would seem that the following procedure is the simplest and at the same time contains the highest [1] degree of guaranty for final justice.

“(1) By the application of all relevant [1] considerations, the quota should be ascertained which the ceded area . . . or which the successor States are to have. . . . This quota would necessarily be approximate, since absolute accuracy is impossible to achieve.

“(2) After the quota has been fixed, it is entirely a matter of convenience . . . whether . . . or whether . . .”
F. also gives several suggestions concerning "Clauses in Loan Agreements" (899): 24

"It is advisable . . . to make provision in the loan agreement for the creation of charges and revenue pledges . . . because the cessionary state or states will be much more likely to pay the debt where it is clear that the debtor State has intended to allocate to its payment specific revenues . . . " (901). 25

"It is possible to increase protection by securing, and providing therefor in the loan agreement with a State, guarantees of municipal governments and local bodies, where the local guarantors, as is probable, remain in existence after State succession has taken place, the advantage of having additional guarantors becomes obvious [?] for they remain [?] obligated to pay the debt in the case of default on the part of the cessionary [!] state or states" (901). 26

"While such a stipulation [to arbitrate, in a loan agreement] would have only moral force in cases of state succession where the debtor state goes out of existence, it might influence the cessionary state or states to submit the dispute to arbitration, when it is seen that the debtor State itself was willing to submit it to arbitration" (902). 27

"Where it is known [!] that the debtor State has physical assets in the State of the creditor or in some other State, a provision might be included providing for a waiver on the part of the debtor State of its immunity from suit in countries where it has physical assets. 28 In case of cession 29 such a provision would be stronger than in other cases of State succession, where the debtor State has ceased to exist; but even in cases where the debtor State goes out of existence, and where the cessionary State or States acquires its property such State or States might be morally bound to allow suit" (903). 30

"In view of the difficulties arising from conflict of laws, it seems that the loan agreement should contain a stipulation in regard to the law which is to govern the interpretation and performance of the agreement. It is quite possible that protection would be increased by giving the debt an additional status in a neutral

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24 Cf. The International Law Association, 31st Conference (1922) 372-3, Mr. W. F. Hamilton, K. C.: "I can assure you that, as a rule, the people who lend money are very well able to take care of themselves." P. does not even mention Prof. Hyde's paper, The Negotiation of External Loans with Foreign Governments (1922) 17 A. J. I. L. 525 et seq.

25 Supposing the "cessionary State" gets that territory which does not have any revenues charged or pledged, or, on the contrary, that territory in which all "pledges", and no other substantial, revenues have their situs. What will the cessionary State "much more likely" do in each of these two cases?

26 And what if these "municipal governments" are not in the territory which is taken from the old State? And why does the municipal government ("guarantor") "remain" obligated to pay the debt, if it is in the territory ceded? Cf. on guaranties the opinion of the Attorney General Griggs, Spanish Railway Concessions (1900) 23 Op. Atty'Y Gen. 181. Is the cessionary State or the old (ceding) State liable (as principal debtor) to pay the debt? Or both?

27 What are F.'s authorities or reasons, for these "might"'s and "likely"'s? And how can an arbitration clause help in case of "State succession", when "the law", which F.'s book enables "tribunals to find more conveniently" (886), is that "quality of public debts in case of cession is not protected (795).

28 Only?


30 And what if these "physical" assets are removed to another country? And how large should their amount be?

31 Only? And in what cases should such "suit" be instituted? And against whom? If the ceding State does not pay all (?) or part (?) of the old debt? Or if the cessionary State does not pay its part?

32 Suit for what? And in what case?
system of law or in the system of law of the creditor. While the obligation arising from such a stipulation would have only a moral effect in any case of State succession in which the debtor State ceased to exist, it is not improbable that the ceding or cessionary states would respect such a provision” (903).

“A stipulation might be included providing that the creditor shall be consulted in regard to any change affecting rights, with respect to either substance or qualities, in the event of state succession” (903-4).

Those are some of the “suggestions” of F. The best which could be said about them is that they are extremely naive.

In the last section of his book F. suggests insurance [! against State succession:

“As in the case of accident, protection by means of insurance might be considered for risks from State succession in so far as they belong to the class of outside interference” (904). F. admits, however, that “Risks of state succession, up to the present time, have never, to the knowledge of the author, been handled by insurance organization” (905).

The last lines of F.’s book are as follows:

“Whatever risks are involved in state succession may be considered in the rate of interest. As in the case of insurance, calculations [!] may be extremely difficult, both with regard to the probability of state succession and its extent, and the degree of legal and actual protection available . . . Even if calculations are possible [!] . . . it is quite possible that the very fact of the existence or necessity of an extreme interest rate may exclude the bond from the class of marketable investments” (905).33

5. And still the work of F. has a very great value. For reference purposes the historical part of F.’s book is invaluable. The literature of all the periods is given in an exceptionally generous manner. Numerous pages are based on unpublished and very interesting new material. The material used, digested and checked by F. is enormous. This treatise is one of the most scholarly works written on any subject of international law. Professor Feilchenfeld is to be congratulated for his colossal work and the students of International Law will appreciate his courageous efforts to shed new light on a very difficult question.34

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33Cf. also the following quotations: “The owner has property, while the creditor has only a right to acquire property” (625): “If Mexico wished to use for military purposes land near the United States border owned by nation[al?]s of the United States, she should pay the United States or its nationals for measures which increased her military strength as compared with that of other nations” (638, n. 27). “The market value of a debt . . . may be affected not only by disappearance of rights, and actual or probable non-payment, but also by the opinions of third [?] persons on its value” (643). “As the market value of a debt is measured by the willingness of other persons to buy the debt . . .” (645). “If a typical loan agreement is studied, it will be seen that most of its provisions clearly are not governed by international financial law, but by municipal law. For instance, the constitutionality of the loan issue, the effect of liens and mortgages, and the powers of trustees are not to be governed by a vague international, but by definite provisions of certain systems of municipal law . . .” (651, n. 7). “If debts are owed by a unit, or by what is commonly called an organization . . .” (661), “the cessionary acquires only a part of the territory of the debtor, and usually [?] only a part of its members and assets” (667).

34This writer wishes also to express his personal appreciation of the several remarks with which his works on the same subject were favored by his learned opponent. F. mentions (571) the review on this writer’s treatise by Dr. Th. Baty in (1927) 27 YALE L. J. 273. In this flattering and able review B. criticized this writer’s “position” on the ground that this writer “resorts to the extraordinary expedient of denying that a new government can be regarded as successor to the sovereignty of the one it disposes of, if it affects to draw its sanction from a different source—God or the People (p. 66). Such an argument demonstrates the weakness of his position . . . and is by itself sufficient to show the doctrinaire character
That there is a growing recognition of the interest and importance of the law of Reorganization of Corporations is beyond question: there is a real contrast in this respect to the tendency on the part of the Bar in the past to defer studying the complexities of this method of reviving financially embarrassed enterprises—so lengthily and discouragingly set out in many of the cases—until absolutely necessary. It has become clear that the law of equity receiverships and reorganization can no longer be regarded as the specialty of the few but that a knowledge of this basic subject must be had by all corporate lawyers. Whether or not called upon to participate in the actual functioning of an Equity receivership and reorganization, no counsel can competently advise upon the current functioning of a solvent going concern unless he be equipped with a knowledge of the laws and customs affecting that same concern when insolvent. In addition, the present crisis is again drawing practical attention to this phase of corporate law.

This practical importance of the subject is, we believe, a sufficient justification for increased emphasis upon it. It is, however, by no means the only or the most important one. As yet enough stress has not been laid upon the fundamental quality of this branch of the law, but rather, on the contrary, has there been a feeling that it is a specialty which has no interest for the general student. Reorganization law is not a specialized subject. Its principles are as deep as Equity and its history in the past two decades presents the particularly interesting aspect of a fundamental law in motion. The Federal Courts of Equity, especially in the period of receiverships just after the War, have given to us a most interesting example of the faculty of Equity to adapt itself to the changing economic needs of the country by the adaptation of old principles to achieve new and sometimes startling results. Indeed the accusation has been made that these results are obtained sometimes not through the application of old fundamentals but through the creation of new principles exceeding the function of an Equity court. The present times are probably about to see new and equally forward looking developments. Up to the present, the Rock Island Case, holding that a creditor of a great railway company can be perpetually enjoined by decree, and without sale, from pursuing any remedy against his debtor other than to participate in a Reorganization Plan in which he is to receive stock for the principal of his claim, is perhaps the most radical and therefore the most contested in legal thought. Around it and other aspects of this field has grown an interesting literature of Bar Association lectures and Law Review articles (all referred to in the Cases and Materials), but as yet, so far as is known, no Cases and Materials. In filling this gap Messrs. Douglas and Shanks have rendered a valuable service.

The collection is thorough and well documented, the cases being up to the minute and the notes particularly interesting. It begins with a full treatment of his arguments.” As a matter of fact Dr. Baty attributed to this writer an opinion which is just the opposite of his.

In the parts of this writer’s treatise quoted by Dr. Baty, it was clearly shown (pp. 64-67) that those are the absurd but unavoidable conclusions which one is obliged to draw from the theory which this writer rejects and which on the basis of arguments relating to the sovereign nature of the State denies continuity in State debts. All these conclusions were put in French “conditional time” (pp. 66-67: pourrait, serait, resulterait, aurait, serait, saurait, etc.) in order to show what absurd conclusions should follow (p. 66 in fine: “Il resulterait de cette theorie . . .”)—if the above-mentioned erroneous theory were accepted. This writer agrees with Dr. Baty that “this desperate reasoning is by itself sufficient to show the doctrinaire character” of the theory—which this writer rejects and which is that of some of his opponents.
BOOK REVIEWS

of pre-receivership claims, of which the most emphasized are the current debts or Fosdick and Schall claims. Thereafter full and completely annotated citations follow on the Boyd case, intervention, committees, and like subjects; the Rock Island case being reached only at this time. Important as a knowledge of the Fosdick v. Schall rule may be, there is some question as to whether this is not too localized and relatively uninteresting a theme with which to broach the subject. Might it not be more interesting at the beginning to use materials (as opposed to cases) and to show how and why an equity receivership is desirable for and obtained by or against a failing enterprise? The theory of the creditor’s bill and the conflict between State and Federal jurisdiction seem a better introduction than Fosdick v. Schall; and the great fundamentals of the Boyd and Rock Island cases should be earlier met. These suggestions are, however, unimportant: the authors have pioneered well in a basic field that needs development.

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Judge Lindsey has endeavored to set forth the organization of the Permanent Court of International Justice, its functions and methods of work. By way of introduction, he gives a brief outline of the rise and progress of international law, the stage of development which it has attained and the relations which the Court is intended to maintain with the structure of international organization. The author sketches the efforts to evolve a court at the two Hague Conferences and the emergence of the Court as we know it after the Peace Conference. The book describes the structure and the competence of the Court and furnishes a compact analysis of each advisory opinion and of each judgment rendered by the Court in the first nine years of its existence. The work is not intended as a study in international judicature so much as an appreciation of the Court as a step in the progress of international society toward the substitution of legal methods in the place of the old ordeal by battle. The judicial experience of the author has aided him in presenting a well-balanced view of the Court within reasonable compass. His study leads him to the conclusion “that at last we have a true International Court in operation and normal functioning” and also “that its work is contributing broadly and vigorously to the development and the unification of international law” (p. 251).

Arthur K. Kuhn.

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At the present time, no field of knowledge is growing more rapidly in favor, both in colleges and universities, and among thinking people in general, than the study of international relations. Happily, the subject of this work is within the field of international relations. This book is a condensed and simple exposition of the mandates. The historical background which originated the creation of the mandates is fully discussed with sufficient clearness. Precisely, the author devotes Chapter 2 to the discussion of this point. The treatment is not exhaustive in comparison with the work written by Professor Quincy Wright, but the pertinent points regarding the mandates are fully covered. One may not agree
with the conclusion reached by Dr. Margalith to the effect that the mandates system represents a decided step in colonial administration. It is hoped that this book will influence further comparative study between the present administration of colonial governments and the mandates system as supervised by the League of Nations.

This book has special interest among countries that are still under the sovereignty of other states, such as the Philippines, India and Java. These countries are now struggling for greater participation in the administration of their governments. The mandates system is one of the solutions advocated by some students of world affairs. Unfortunately, this point is not fully discussed by the author.

The efforts of Dr. Margalith in presenting this book should be given due consideration.

Roberto Regala.

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In this interesting study, Mr. Fleming, an Assistant Professor of Political Science at Vanderbilt University, considers those treaties submitted to the United States Senate which have been either rejected entirely or ratified only after amendment by that body.

Of the nine hundred treaties submitted to the Senate since 1789, he singled out for preliminary consideration the one hundred forty-six amended and the thirty rejected entirely by it. Of this group he selects for analysis an adequate number of representative ones. After studying their historical background, and the Senate debates and the general public opinion concerning them, together with their effect on party politics, Professor Fleming presents a convincing case for the reduction of the Senate's authority in the ratification of treaties.

The book is concluded with a consideration of alternatives which have been suggested by leading publicists and political scientists, for the curtailment of this power. Of them all, the author prefers a procedure under which the Senate would not have authority to amend treaties but would have to ratify or reject treaties outright; in the latter case, it would state its reasons so that the Executive could have the advantage of them in negotiations for a new treaty.

The book is written in a clear, vigorous style. The development of the subject is logical and the author displays a wide knowledge not only of treaty procedure in the United States, but also of that employed in other countries. While its appeal is general, Professor Fleming's study will be of particular interest to students of American foreign relations.

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