BOOK REVIEWS.

TRADADO DE DERECHO INTERNATIONAL. By S. Planas Suarez, Envoy Extraordinary and Minister Plenipotentiary of Venezuela. 2 Vols. 8vo. Hijos de Reus, Madrid, 1916.

The study of international law is attracting considerable attention among the Spanish-speaking peoples. Calvo was an Argentine: and the names of Torres Campos, Olivart and Perez Triana are well known to the modern jurist. The author of the work before us is a comparatively young Spanish American, who for some years past has represented Venezuela at the Portuguese capital. Suarez is a name of honor in the history of the law of nations, and Dr. Planas Suarez well sustains its reputation.

We do not know what text-books may exist in Spanish on the subject of public international law, but Dr. Suarez' volumes furnish an admirable conspectus of the topic. His exposition is clear, and although his style is not argumentative, his conclusions are in the main so sound and sensible that in point of doctrine the book is very rarely at fault. It might indeed have been wished that he had oftener presented his own reasoned opinions on the more disputed topics. He cites original documents very fully—a useful feature—and quotes at length from authors of reputation, particularly Merynhec and Nys. But we should have liked a little more of his own ideas, which would evidently have been of value to science.

In the same spirit of conciseness, he does not encumber his pages with much reference to concrete cases, or illustrations from actual practice. With some logical justification, he seems to hold that a statement of the law does not require, and will not be improved by, any complication with the details of actual occurrences. If such and such is the international rule, then we may tell the student so, without informing him what Sweden did in 1856, or what France desired to do in 1885. This treatment might in less able hands tend to dryness; but Dr. Suarez' work is certainly free from that defect. At the same time, we doubt whether the *atmosphere* which (as he himself is careful to point out) is of the essence of international law, can quite successfully be imparted by such a system. He is of opinion that international law, resting, as it must, on the free play of instructed public thought, cannot, at any rate for the present, be bound down by the narrow clauses of a code. Anything which reposes on broad general understandings is incapable of elaborate and rigid formalism. The letter killeth; and international law is a thing of organic international life. But to impart the spirit of this life, it seems to us that abundance of concrete illustration is almost essential.

The occasions on which we should differ from Dr. Suarez in doctrine, are, as we have said, very few. Perhaps the most conspicuous of them, from a practical standpoint, would be his approval of the practice of blockading the ports of insurgents, who are not recognized as belligerents. His defense of this idea seems to us little more than a play upon words. The state is entitled and bound, he says, to put down rebellion by any coercion

necessary—bombardment, blockade, what it likes. This is totally to ignore the fact that blockade operates on the high seas, where it has no right to attack foreign vessels. It cannot preserve itself by attacking its friends. Only war, foreign or civil, can justify that. Therefore blockade involves or infers a recognition of belligerency. Nations cannot be exposed to having their ocean traffic interfered with, unless there is a known and declared war in progress. The author seems indeed to confuse it with a municipal closure of ports. On an allied point we think Dr. Suarez is dangerously ambiguous, when he says that in the presence of an internal commotion a friendly state ought to preserve the most perfect and strict neutrality, and "not to permit or consent to the acquisition by the revolutionary party of anything which could in any way enable them to sustain the conflict." It is difficult to conclude from this whether he means that the same support must be withheld from the government as well. Hall thinks that such "neutrality" is incumbent upon the foreign state, apparently on the ground that insurrection is part of the organic phenomena of state life, with which it would be unfriendly to interfere. But such a view fails to realize that it is not the mass of individuals within its borders, but their organization that constitutes the state. It is the organism which is entitled to the respect and support of foreign nations—and the organism as it exists. If a nation has seated a particular government in power, foreign states are entitled to assume that it represents the nation in calling on them for help, just as it represents it in all other matters. Otherwise no organized and settled culture would be entitled to such help as against the explosions of internal barbarism and violence. And, as Dr. Suarez only names "the revolutionaries," it is possible that he uses the term "neutrality" as meaning "similar care to abstain from assisting the enemies of the government as it would be bound to exercise if it were a neutral and that government a belligerent." But from what he says at page 118 (Vol. I), it is evident that this is not his meaning. He holds that one state must not stir a finger to save the constitution of another from military tyrants. The fact is, that authors are, not unnaturally, prejudiced against the assistance which has often been accorded by foreign states to *bad* governments. To hold that they must refuse their moral or material support to *all* governments involves the absurd consequence that a foreign ambassador must not afford an asylum in his hoted to the president or monarch to whom he is accredited, and with whom he is actually discussing business.

We do not think that our author is justified in treating private international law as "the relations of states with regard to parties relating to the private affairs of their respective subjects, regarded as individuals," or "the sum of the rights which each state concedes to foreigners for their persons and goods" (Brentano-Savel). The former definition would fit precisely questions of the protection of subjects abroad—which is clearly a matter of public international law, and it is difficult to see how it would cover questions of the voluntary recognition of the right of syndics in a foreign bankruptcy to sue in a different jurisdiction—which clearly is one of private international law. The latter definition is much more like the truth—but Dr. Suarez does not seem to note that it is a very different one from the first: It says what each state does, the other says what all states

must do. And it is inadequate—private international law is by no means concerned only with foreigners; it deals with transactions concluded abroad, with persons resident abroad, with things situate abroad, and with events transpiring abroad. Another academic matter is a certain confusion, which we think exists in Dr. Suarez' presentment of the relations of compound states, between confederation and alliance. Alliance rests solely on contract; confederation goes somewhat further. Unlike federation, it leaves the international personality of the component states subsisting. But it is a truncated personality. It is difficult to grasp the distinction, or to state it in words. But it certainly exists. Probably it derives its force from the attitude of outside states. Within its powers the confederate government may act towards its component states in a way which would be shocking to the world at large, if they were independent states which had entered into certain contractual engagements. Probably the test of the difference between an alliance and confederation is:—Can the confederate organ act in any conjuncture by armed force in the territory of a confederated state without war?

The authors remarks on Bluntschli's dangerous theory, according to which the more highly civilized state has a right to control the less advanced, are marked by a masterly insight. Such a theory is just the old Cromwellian syllogism: "(1) The saints are appointed to inherit the earth; (2) we are the saints." His distinction between true protectorates and colonial "protectorates" is very clear. Such "protectorates" are designed merely to prevent the peoples of the "protected" states from acquiring the rights of citizens. It is to be regretted that the English Bench is inclined to allow itself to be blinded by Foreign Office certificates, and to regard the "independence" of these states as (what it notoriously is not), a real thing. Parliament expressly legislates for British "protectorates"; this fact is alone sufficient to contradict the Foreign Office dogma. It could not legislate for Costa Rica. If the peoples of "protected" states have not the protection of international law, they certainly should have that of British subjects, if the principles of the common law are still to have real weight.

On the strength of recent occurrences in Portugal and China, some writers have advanced a theory according to which a revolutionary government is not to be recognized until some sort of formula has been gone through, embodying the popular sanction. Dr. Suarez seems to agree with them; but it is the merest formalism. As Brusa remarks, the prevailing view is that as far as the law of nations is concerned, changes in the constitution of states are legitimate, although not consented to by any direct vote of the inhabitants. (Rev. de D. I. XV, 122.) If a new government has made itself supreme, facts dictate that it shall be recognized. Only sentiment can deny it—the sentiment of a Holy Alliance or of a modern parliamentarian. It is futile to ask the conqueror to show the mandate of the "constitutional body" which is its own creation, or to demand that it shall clothe itself with the formula of the constitution which it can destroy. The reason why such a mandate was required as a condition of recognition, in the cases of Portugal and China was that the revolutions were so completely and immediately successful that foreign nations were deprived of the usual test of fitness for recognition, *i. e.*, the overcoming of opposition. There was virtually *no* opposition; and foreign nations vaguely felt that there was something

wanted. Consequently they insisted on this foolish confirmatory ritual. There is no real rule that the common forms of parliamentary or cabinet government are essential to enable a nation to change its form of government. If they were not observed, foreign nations would, in the end, have no choice but to enter into relations with the new régime. Norway, to please Europe, elected a king. China, to please Europe, collected an assembly. Neither was under any necessity to do so in order to face the world as a sovereign independent state. The novel doctrine is indeed driven to admit that it may be necessary to treat with the new government. But it despairingly insists that all its actions must be "strictly provisional" and regarded as subject to be upset. No such scheme of international relations could work for a day; and it is only put forward because it is perfectly easy for the supreme power to furnish any formal plébiscites that suit the occasion.

Similarly, Dr. Suarez will not admit that the right of a state over its territory can properly be termed "property." The state does not "use" the land; it only governs it. But if we admit, as we must, that so far as other states are concerned, it can do precisely what it likes with it, it seems hypercritical to deny that so extensive a right is very like ownership. It *could* establish collectivism and become, even in constitutional and municipal law, the sole owner of the soil. In international law is must be owner or it could not make itself municipally such in this way.

Nor, again, do we think it incumbent on a state, as the author does (I, 153) to verify the constitutional powers of the minister who proposes to conclude a treaty with it. International law has nothing to with constitutional subtleties. One state is entitled to regard the foreign office of another as invested with full power. Possibly, in some instances, the want of power may be so notorious (as in the case of the American Union) as to prevent a foreign state from relying on the mere word of a minister, however solemnly given, and in however trivial a concern. But we cannot think that a foreign power is put upon inquiry as to the distribution of power according to another state's constitution. It would probably interpret its provisions wrongly—and anyway they are not its concern.

It has sometimes been objected to the work of Latin publicists, that they are apt to mistake eloquence for principle. Dr Suarez does not do that. With Professor Ribeira of Lima, he condemns *"el sofisme . . . en que se considera como deber juridico de un pais determina lo que solo tiene el cerácter de deber moral y como derecho en los que lo exigen, et interés o conveniencia màs o menos generales y la concomitancia de beneficios que constituye uno de los aspectos de la solidaridad humana, que no es siempre el derecho, ni puede confundirse con este."* Nor does he allow the interests of commerce and progress to interfere with the principle that the state must have entire control over the waterways traversing, and airspace overhanging, its territory. It is difficult to appreciate Nys' standpoint, when he pleads that a large liberty of flying must be imposed by international law in the interests of "progress." How is it possible that progress can be restricted because international law allows each individual state the liberty of deciding for itself whether it will be flown over? Surely modern states are large enough, as fields of exercise, without its being necessary for the purpose of science that the aviator should have liberty to fly over foreign

soil! Probably the present war has given the *coup de grâce* to any such idea. In many respects it will act as a wholesome corrective of loose thinking. Theorists were previously much inclined to lay down rules which were more appropriate to a world of angels than one of common-place, and sometimes selfish, people. Foreign judgments "ought" to be enforced: it was improper to harbor an unspoken distrust of the courts of Tunis or Tiflis. Motor traffic "ought" to be received: anyone injured by a motor "had his remedy" (though he might have no means of recognizing the wrongdoer): the air should be "free" and open to transit* (which it would be practically impossible to supervise, and which would enable people with impunity to drop unpleasant or dangerous articles on the surface). The hard facts of every-day life, which make it sometimes imperative to avoid the *possibility* of harm were disregarded. War, at any rate, brings us face to face with facts.

Enough has been said for the reader to gather that Dr. Suarez is a careful, stimulating and concise author. For those who are unfamiliar with any language other than Spanish, he will prove a trustworthy and illuminative guide, and the translation of important documents which he gives will be invaluable. To the reader to whom Spanish is a *langue d'occasion* the book may be recommended as giving in a compact form the latest results of juristic thought—though, as Dr. Suarez rightly says, the extraordinary facts of the present world conflict cannot be quoted as establishing or as abrogating any rule. The whole course of the struggle considered juristically, is colored and rendered abnormal by Germany's initial contempt of law. As Ellery Stowell has remarked, this is the cardinal reason why the Allies have been unchecked, and have finally been aided by America.

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*The Roman text *"liber est aër; communis est aër"* only meant that the substance of the atmosphere, like the water of the sea, is common property, and no action lies for its abstraction: not that the airspace was open to general navigation.