

BOOK REVIEWS.

THE GREAT EUROPEAN TREATIES OF THE NINETEENTH CENTURY. Edited by Sir Augustus Oakes and R. B. Mowat. With an introduction by Sir H. Erle Richards. Oxford University Press, 1918. Pp. XII, 403. Price, \$3.40 net.

This volume will be of great use to international lawyers and students of treaties in furnishing them with ready reference to all of the great treaties from that of Vienna in 1815 to those of San Stefano and Vienna in 1878 and 1879. Several treaties entered into during the twentieth century have also been added. Ten excellent maps, a chronological table of documents and events and a good index add to the value of the book. The treaties are presented in chronological order, preceded by excellent summaries of the historical events that led to the adoption of the treaty. The introductory chapter on the conclusion of treaties in its technical aspect contains much interesting and useful information on the forms, the method of exchange of powers, the signature, the ratification of treaties, their classification and interpretation. The statements made by the authors in this chapter will take rank as high authority on these points. The book presents the original material from which the usage and practice of nations, which are the substantial basis on which international law rests, may be studied at first hand.

David Werner Amram.

THE LAW OF WAR AND CONTRACT INCLUDING THE PRESENT WAR DECISIONS AT HOME AND ABROAD, by H. Campbell. Humphrey Milford, Oxford University Press, 1918. Pp. XX, 365. Price, \$6.00.

The book of Professor Campbell is one of several that have appeared in recent years on this topic and that must be of great practical importance for some years to come while the problems of contract arising out of the war are being worked out in the courts. No field of the law has been affected so deeply by the war and the decisions on the subject are not always reconcilable. Professor Campbell's book reviews the field down to August, 1917, and summarizes the law, especially as laid down in the English cases. The value of the book is somewhat impaired for the American lawyer because of the comparative neglect of American decisions. The most important subject dealt with by the author is that in chapter 3 on Executory and Executed Contracts. The rules applicable to these two classes differ in many important respects, especially in cases of sales of goods and in Prize Court proceedings. The subject of contracts with war clauses is perhaps most exhaustively treated.

David Werner Amram.

A SOURCE BOOK OF MILITARY LAW AND WAR TIME LEGISLATION. West Publishing Co., St. Paul, 1919. Pp. XVIII, 858. Prepared by the War Department Committee on Education and State Training as a source book of military law for law schools having units of the Students Army Training Corps.

The usefulness of this book has been impaired by the Armistice, although it may still be consulted profitably by those who may have occasion to review

as historians the American legal enactments and decisions arising out of the Great War. Of more direct interest to the bar will be found the collection of judicial opinions, especially those relating to the effect of war on contracts, the latter particularly being valuable as supplementary to the work of Professor Campbell on *The Law of War and Contract* elsewhere reviewed in this number, which is deficient in precisely this material, namely reference to American decisions.

David Werner Amram.

EFFECTS OF THE WAR UPON INSURANCE WITH SPECIAL REFERENCE TO THE SUBSTITUTION OF INSURANCE FOR PENSIONS, by William F. Gephart. New York, Oxford University Press, 1918. Pp. VI, 302. Price, \$1.00.

Professor Gephart's study of the *Effects of the War on Life, Social, Marine and Fire Insurance* cannot fail to be of interest to all who are concerned with social problems. Profound changes will result in every form of social arrangement, and these in turn will necessarily affect the problems of insurance not only from the legal but also from the actuary's point of view. The insurance legislation adopted during the war whereby the government has become the greatest insurer in the world may interfere with the further development of private enterprise in this field. On the other hand, the restoration of peace conditions and the disaffection engendered by the government control may seriously affect government insurance in the years to come. Whatever may be the reader's theory, he cannot fail to obtain valuable information from a perusal of Professor Gephart's book.

David Werner Amram.

POLITICAL LEADERS OF PROVINCIAL PENNSYLVANIA, by Isaac Sharpless. New York. Macmillan Co., 1919. Pp. 248. Price, \$2.50.

Lawyers will be interested in this volume of essays of old Pennsylvanians bearing typical Pennsylvania names, among whom are three Chief Justices—David Lloyd, James Logan and John Kinsey—the last of the Quaker Chief Justices, John Dickinson, one of the few of that earlier day who were trained in the London Inns of Court, the draftsman of the Articles of Confederation and one of the most influential men of his day, and Isaac Norris, President Judge of the Court of Common Pleas. Their distinction rested in their deeds as men of affairs, and churchmen, rather than in their decisions as judges. President Sharpless has presented an interesting picture of these old-time, canny, shrewd, tolerant and honest Quakers. They were pacifists in a day of militarism. They wore their hats in court and compelled Governor Keith to legalize their practice by a rule of court. They refused to take an oath but insisted upon offering testimony after a simple affirmation. They never lost touch with actualities and never allowed their religious sentiments to stifle their common sense. As James Pemberton put it, "Christian charity teaches us to forgive our enemies and Christian prudence to beware of them." In addition to the persons named, many others more or less prominent in those days are referred to. The book is cordially recommended to all those interested in early political history and particularly to Pennsylvanians who desire to obtain a more intimate acquaintance with the leaders of a day long gone by.

David Werner Amram.

LEAGUE OF NATIONS:

JAMES MADISON'S NOTES OF DEBATES IN THE FEDERAL CONVENTION OF 1787 AND THEIR RELATION TO A MORE PERFECT SOCIETY OF NATIONS. By James Brown Scott, New York, Oxford University Press, 1918. Pp. XVIII, 149. Price \$2.00.

A REPUBLIC OF NATIONS. A study of the Organization of a Federal League of Nations. By Raleigh C. Minor. New York, Oxford University Press. Pp. XXXIX, 316. Price \$2.50.

THE STRUCTURE OF LASTING PEACE. By H. M. Kallen, Ph.D. Boston, Mass., Marshall Jones Co., 1918. Pp. XV, 187. Price \$1.25.

THE LEAGUE OF NATIONS TODAY AND TOMORROW. By Horace M. Kallen, Ph.D. Boston, Mass., Marshall Jones Co., 1919. Pp. XX, 181. Price \$1.50.

CONTRIBUTIONS TO THE INTERNATIONAL LAW AND DIPLOMACY. Edited by L. Oppenheim, M.A., LL.D. The League of Nations. Longmans, Green & Co., London, 1919. Pp. XII, 84. Price \$2.00.

THE SOCIETY OF NATIONS. By T. J. Lawrence, LL.D., J.P. New York, Oxford University Press, 1919. Pp. XI, 194. Price \$1.50.

During the past three years no subject has more actively and intensely engaged the attention of men interested in the re-establishment of normal economic and political relations between states and peoples than the establishment of a League of Nations through which such relations might not only be re-established but made permanent and secure without fear of interruption and destruction by the recurrence of war. Again, as in the period following every great similar crisis in the world's history, men have hoped for peace and statesmen and philosophers have had the same millennial dream of swords beaten into ploughshares and spears into pruning hooks. Notwithstanding the numerous and well-recognized practical difficulties in the attainment of this result, social-minded men have not hesitated to offer their solution, their plan for a political structure through which society as a whole might function as a great world-wide in-group in a day when ex-hypothesi there would be no out-group and hence no possibility of conflict. William Penn, peace-loving Quaker, published in 1693 his scheme for "An European Dyet, Parliament or Estates" to which disputes between nations should be referred, thus suggesting as Dr. Sharpless pointed out in his book on Political Leaders of Provincial Pennsylvania, elsewhere reviewed in this number, an institution which has come into being in our own days, namely the Hague Tribunal.

Dr. Scott, after a study of Mr. Madison's Notes of the Debates in the Federal Convention of 1787, has come to the conclusion that this convention was in fact as well as in form an international conference whereby the thirteen sovereign states were able to form the Union. The method by which this result was reached may be studied through Mr. Madison's notes and they are, therefore, offered by Dr. Scott to all those who are interested in the establishment of such

an international organization today. Of course, Dr. Scott is aware of the enormous difference between the relation of the thirteen states and the relation of the various states of the world today. The thirteen states were in effect homogeneous as compared with the nations and states of the earth; nevertheless, Dr. Scott believes that a model for a new world organization may be found in the labors of the Convention of 1787.

Professor Minor goes a step further. He advocates a Federal union of nations based upon our American system and recommends the surrender to the Federal Government of the world all those political and military powers which would make it possible for disputes to arise between the nations on the ground that the dispute is political and not legal and, therefore, not justiciable. Professor Minor seems to desire such international government only to the extent that it may prevent war. To the lawyer treating the problem as a legal one, Professor Minor's contribution is of most compelling interest.

Dr. Kallen in his two books has likewise reached the conclusion that the solution of the problem may be found in the existence of a Federal government through which the organized opinion of mankind may express itself through a world-law. His first book, *The Structure of Lasting Peace*, closes with the consideration of a scheme for federalizing the sovereign states of the world. In his second book, *The League of Nations Today and Tomorrow*, he develops this thought, working out many details of the organization and functioning of the international government.

Professor Oppenheim delivered three lectures at the University of Cambridge for the purpose of drawing attention to the links which connect the proposal for a League of Nations with the past, to the difficulties which stand in the way of the realization of the proposal and to some schemes by which these difficulties might be overcome. His thought is fundamentally the same as that of Professor Minor, namely that the purpose of the League of Nations is to prevent war. Instead of advocating a new creation, he proposes that the Peace Conference at the Hague be recognized as the nucleus out of which the new world organization may be developed. And then he concludes in his third lecture with a number of interesting details and suggestions as to the appropriate method for the administration of justice and mediation within the League. A great international court of appeal is proposed by him which in effect would be the ultimate power holding in check the conflicting forces of mankind. He objects to any schemes for the federalization of the states of the world and insists, on the other hand, on the absolute independence of the constituent states. He emphasizes the elements of conciliation and judicial administration. Whether a scheme such as is suggested by Professor Oppenheim is possible with the retention of so-called sovereign rights by the various states may well be doubted. It would be analogous to the attempt to establish a system of civil law conceding to each individual his sovereign right to do as he pleases.

Dr. Lawrence has written a book for the purpose of informing the general reader, rather than as an appeal to the technical expert. He points out what has taken place between states in past times in order to enable his readers to form opinions concerning the possibilities of improvement and the lines along which such improvements may be made. He points out that there is in fact today in existence a real society of nations and that it was on the point of developing certain judicial and legislative organs when the war broke out, and he finally suggests what he considers to be the true line of further advance and the best

means of marching along it. He suggests an international committee to work out the details of a new world order, another committee to revise and codify international law, an international congress to receive the reports of these committees and in the meantime an international authority to be created at once to decide disputes which cannot be settled by diplomatic means.

A fundamental difference between the English and American approach toward the problem may be traced to the difference in their political origin. The American writers seem to have no difficulty in accepting the idea of federation of the world states. The Englishmen gravely doubt or politely ignore the possibility of such federation. The surrender of sovereign rights has become familiar to Americans through the relation of our states to the Union under the Constitution, whereas to the Englishman the surrender of sovereign rights is apparently unthinkable. There are many Americans who share this view. There is, of course, a vast difference between the theoretical and practical aspect of the problem. One may concede theoretically that without the relinquishment of national sovereignty a League of Nations will be almost powerless and yet be unwilling to relinquish such sovereignty through fear of the exercise of world power by a League of Nations composed of national elements, many of which might be found profoundly antagonistic to us. It is this fear perhaps that lies at the bottom of the opposition of many of our conservative leaders, the fear that we will be exposing ourselves to the danger of foreign rule by relinquishing our sovereignty to a League of Nations.

The reader of these books cannot arise from their perusal without a sense of the profound gravity involved in the consideration of the problem to which each of the writers has addressed himself and to which each of them has made a thoughtful and even impressive contribution.

David Werner Amram.

CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, YEAR BOOK, Washington, 1919.

The volume contains the usual reports of the executive committee, secretary, and directors of the divisions of Intercourse and Education, Economics and History, and International Law. The reports of the financial officers are added as well as a list of publications. The frontispiece is an interesting photograph of Hon. Andrew D. White.

MANUAL OF MAINE PROBATE LAW AND PRACTICE, by Ralph Webster Leighton, Boston, Little, Brown & Co., 1919.

Intended as a practical handbook on the probate practice of Maine, there are chapters on wills, duties of executors and administrators, trustees, descent and distribution. Chiefly an abridgment of the revised statutes on these topics, and of the more obvious points in the Supreme Court decisions, it will have, as was no doubt expected, only a local and limited use.

SELECT CASES AND OTHER AUTHORITIES ON THE LAW OF TRUSTS, by Austin Wakeman Scott. Langdell Hall, Cambridge. Published by the Editor. 1919. Pp. XIII, 842.

Not even case books of classical authority are exempt from the universal rule that all things must pass. Ames' Cases on Trusts has been the standard collection for nearly forty years, but, as Professor Scott notes, there has been

considerable development of the subject of trusts during the quarter of a century since the appearance of the second edition of Professor Ames' book and this has necessitated certain changes in emphasis and arrangement. Since the change had to come, it is gratifying to note that this book is prepared by one who studied under Ames and who everywhere shows his indebtedness to that distinguished scholar. Professor Scott has reprinted many of the notes contained in Ames' book as corrected by his manuscript annotations and he has added many valuable notes of his own. This book is the result of a natural evolutionary process according to which the earlier work has been transformed under the influence of the development of the subject matter. It may be taken for granted that the book will have a most favorable reception by teachers of the subject, especially those, and they include all who have taught with effect, who have used the classical book of Professor Ames.

David Werner Amram.

THE CONFLICT OF LAWS RELATING TO BILLS AND NOTES. Preceded by a Comparative Study of the Law of Bills and Notes, by Ernest G. Lorenzen. Yale University Press, New Haven, Conn., Oxford University Press. Pp. 337. Price \$5.00.

In reprinting his essays from the Illinois Law Review and the Minnesota Law Review and enlarging them by including the law of Latin America and of Japan, Professor Lorenzen has placed within reach of the student a very comprehensive study of the comparative law of bills and notes, bringing out sharply the conflict that may arise from divergent legislation on the subject. The book is characterized by the painstaking, scholarly thoroughness of the author and is to be recommended to all those who may participate directly or indirectly in the commercial expansion which will follow the war; for it will be of very great importance to all such persons to understand the rules relating to commercial paper and the foreign variations from what the Anglo-American lawyer may consider the normal. Whether it will ever be possible to establish a uniform law throughout the world is at present highly problematical, more particularly when we consider that it has, up to date, been impossible to avoid conflict of laws between the American states under the uniform Negotiable Instruments Act.

David Werner Amram.

SPIRIT OF THE COURTS, by Thomas W. Shelton. John Murphy Co., Baltimore, 1918. Pp. XXXVII, 264. Price \$1.50.

It is a pity that Mr. Shelton's book will not be read by the persons for whom it is intended, namely, the general public who need to be instructed. It deals with the problem that has received the attention of lawyers, notably during the last decade, namely the improvement of the judicial administration of justice in the United States. It is doubtful whether the general public can or will take an interest in this matter so as to exercise a salutary influence. Lawyers know that the public has a grievance. They have been made aware of remedial measures suggested by thoughtful, scholarly and conservative men and it is their duty to influence the legislatures to grant the relief. Mr. Shelton has contributed as

much, if not more, than any other individual toward the spread of knowledge and the promotion of an interest in the problem, and his thought is that the reform should come from the Congress of the United States through an Act authorizing the Supreme Court of the United States to make rules of common law practice for the Federal Courts. Such rules once established and enforced throughout the United States by the Federal Courts would ultimately by reason of their superiority to local rules influence the legislatures everywhere to invest their own courts with similar powers and thus do away with many of the abuses and faults of our present system.

David Werner Amram.

LOAN AND HIRE. Notes on the English law of lending and hiring. By T. Baty, D. C. L., Maruzen Co. Ltd., Tokio, Sweet & Maxwell, London. 1918. Pp. VIII, 178.

In this little book Dr. Baty has cut a cross section through the law of contracts, torts and property for the purpose of examining them, with particular reference to the English law of loan and hire. He sets forth the law in accurate and often in acute and frequently in sprightly manner. The material has for the most part been well worked over by others but Dr. Baty's presentation may claim our interest because of the vigorous and lively method with which the subject matter is handled.

David Werner Amram.

TRACTUS DE BELLO, DE REPRESALIIS ET DE DUELLO, by Giovanni da Legnano. Edited by Thomas Erskine Holland. Printed for the Carnegie Institution of Washington by the Oxford University Press, 1917. Pp. XXXVIII, 458.

This volume is the latest contribution to the Classics of International Law Series and is edited by the distinguished scholar and international lawyer, Dr. Thomas Erskine Holland. The book is produced in the sumptuous manner characteristic of this series. It contains an introduction by the editor containing a biography of the author, a bibliography of his writings and a general review and estimate of the work at hand. Then follow, a beautiful colotype from a photograph of a thirteenth century manuscript of the book preserved in a Bologna library, a carefully edited text of the manuscript and a translation by Mr. James Leslie Brierly whose notable translation of the text of Richard Zouche's book published under the same auspices was noted in a review published in June, 1918, in the *University of Pennsylvania Law Review*. Following the translation, there is a reproduction of the first (imperfect) printed edition of the work, with a prefatory note by the editor. A list of authorities cited by the author and consulted by the editor closes the work. No praise can be too high for work of this kind. Unfortunately, there is no index, the lack of which appears in many of the other publications in this series. It is sincerely to be hoped that the Carnegie Institution will publish a general subject and author index to the entire series. The present reviewer has on several occasions lost much time in looking up topics in this series and it must be apparent to the general editor that the absence of a comprehensive index seriously affects the value of the work for reference.

Legnano wrote in the latter half of the fourteenth century at a time when the laws of war were still in a rudimentary state. His book represents the very first beginnings of an attempt to set forth rules which in the course of five hundred years have grown into a great body of international law. It was written in 1360 while Bologna was threatened with attack by the army of Barnabo Visconti, and is dedicated to Cardinal Albornoz who exchanged his priestly duties for the command of armies and who is likened by the author to Ahab, King of Israel, who "changed his raiment and entered into war." The book is written by one who is not primarily a lawyer but rather as Dr. Holland says, "a canonist, astrologer, theologian and moralist constantly preoccupied with the claims of the papacy and the exceptional position of the clergy." In the days of Giovanni da Legnano, international law was unknown, in fact it may be said that there were no independent nations among whom international law could arise. All were subject to the Pope or the Emperor and some unfortunate peoples were subject to both. Society was organized on feudal principles and its unit was not the nation or the state but the barony or the petty lordship and authority rose to higher and higher sources until it ultimately was lodged in either the Pope or the Emperor. The only law that was recognized was *Faustrecht*—the right of the strongest to have his way.

The author's method in presenting problems is an interesting one, especially to those who are familiar with the modern case system of instruction in the law schools. He first asks a question based upon a supposed state of facts, for example, "Suppose mercenaries have been enlisted in Germany by an Italian city at a fixed salary, with an engagement for a year and while they are on the way, the city is forcibly seized by a tyrant. Can the mercenaries bring an action for the whole salary or for a ratable part or for what share?" Having stated his problem, the author cites authorities to prove that they can claim the whole. Then he cites authorities to prove that they can only claim a ratable part. And, after having thus thoroughly perplexed his students, he then offers a solution with reasons and illustrations.

One of the great misfortunes of our day is the huge accumulation of secondary sources. Text-books everywhere abound and the original sources are more and more neglected. The publication of this series of *Classics of International Law* is in line with the sound pedagogic principle that the student should handle his sources at first hand and reach his own conclusions as to their value and as to their place in the history and evolution of the law or of any principle that he is concerned in tracing out. Giovanni da Legnano's book will certainly not be classed among the best sellers but to the serious student of international law it will prove valuable as one of the remote sources from which the great modern current of that law may be shown to have taken its rise.

David Werner Amram.