done related to permanent instrumentalities of commerce. It has been held, however, that the test would not bring under the Federal Employer's Liability Act an employee who was engaged in the construction of a new instrumentality of commerce: an instrumentality which was in the future to be used for interstate commerce, but which had never been devoted to it. Pederson v. Del., Lack. & West. R. R., *supra;* Bravis v. Chicago, Mil. & St. Paul Ry. Co., 217 Fed. Rep. 234 (1914).

It has also been held under the same test that the employment was not interstate, where the employee was mining coal intended for future use in interstate commerce, Del., Lack. & West. R. R. v. Yurkonis, 238 U. S. 439 (1914); where a switchman was engaged in removing coal cars from the storage yard to the track alongside of the coal chutes into which it would subsequently be unloaded for later use by engines engaged in interstate commerce, Chicago, Burlington & Quincy R. R. Co. v. Harrington, 241 U. S. 177 (1915); or where the employee assisted in placing cars containing supply coal upon an unloading trestle, Lehigh Valley Railroad Company v. Barlow, 244 U. S. 183 (1916).

The character of the employment in the principal case is certainly as remote from interstate commerce as was the employment in Chicago, Burlington & Quincy R. R. v. Harrington, *supra*. Consequently, the principal case was properly controlled by that case unless it could be said that the crane was a permanent instrumentality of commerce within Pederson v. Del., Lack. & West. R. R., *supra*. This, it is submitted, would not be warranted by the facts.

BOOK REVIEWS

THE UNITED STATES OF AMERICA. A Study in International Organization. By James Brown Scott, A.M., J.U.D., LL.D. Oxford University Press, New York City, 1920, pp. xix, 605.

The fallacy of this elaborate and expensive volume is sufficiently indicated in its title. The United States is *not* a study in international organization and never was. Nearly three-quarters of the present State boundary lines were laid out by theodolite and compass, operated by the national surveyor; only one of the States ever fought a foreign war or ever possessed those prerogatives of sovereignty in relation to sister States which the great states of the world regard so jealously. In the words of Madison, whom Dr. Scott so delights to quote, spoken on the floor of the Constitutional Convention: "The States never possessed the essential rights of sovereignty. These were always vested in Congress. The States at present [1787] are only great corporations having the power of making by-laws, and these are effectual only if they are not contradictory to the general confederacy."

The title of the central chapter of the volume, "Prototype of a Court of International Justice," is equally misleading. The "Prototype" referred to is the Supreme Court of the United States. But as Dr. Scott is clearly aware, the Supreme Court is the judicial branch of a government vested with coercive powers over the individual citizens of the States composing the Union; and,

furthermore, possesses the right to pass upon the validity of State action in the interest both of private rights and of the superior authority of the central government. Does Dr. Scott look forward to the early establishment of an international tribunal of this character? If not, however, what is the point of this chapter—or, indeed, of the entire volume?

Dr. Scott would have his readers carry away the impression that the Supreme Court relies in the case of controversies between the States in their corporate capacities, exclusively upon the "coercion of law" to secure the enforcement of its decrees, and that this coercion is something automatic and quite distinct from physical coercion. In this connection the reader is referred to the recent decision of the court itself in the case of Virginia v. West Virginia, 246 U. S. 565 (1917). Dr. Scott makes a few casual references to this important case, but not in relation to this point.

But even if the doctrine of Virginia v. West Virginia were precisely the contrary to what it is, that fact would afford little support for Dr. Scott's thesis. For the vast proportion of cases which have been decided by the Supreme Court involving the rights and powers of the States have been either private actions or suits for injunctions against state officials, and in such cases the coercive power of the court has never been for a moment in doubt. Does Dr. Scott expect to see an international court instituted with power to jail for contempt of court national officials who defy its writs of prohibition?

Toward the end of this same chapter (XIII) Dr. Scott writes: "A court of the Society [of Nations] will necessarily be a court of limited jurisdiction; but with the growth of confidence in that tribunal its jurisdiction will be enlarged in the way pointed out by the Supreme Court itself; that is to say, by an agreement to submit to the tribunal questions hitherto considered political, questions which, by the very act of submission, become judicial. Gradually, as the result of experience, the usefulness of the court will be thus enhanced." Perhaps so; but it hardly required a volume of more than three hundred thousand words to convey the possible truth of that conjecture.

Edward S. Corwin.

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A TREATISE ON INTERNATIONAL LAW. By Roland R. Foulke. The John C. Winston Company, Philadelphia, 1920. Two volumes, pp. 481, lxxxviii; 518, lxxxvii.

To those who desire to escape from the thralldom of theoretical international law, law as it should be but is not, on the one hand, and of intensely practical case law pure and simple on the other, Mr. Foulke's work will be welcome. To those who are technicalists, phraseologists, and specialists in international law and to those who are looking for important technical contributions to the science, the books will doubtless prove unsatisfactory. The author makes no pretense of original research or especially new contribution except in the "more logical arrangement" of the subject matter "than that commonly found in the writers." On the other hand, he lays no claim to an attempt to popularize international law; but in spite of his intentions he very nearly succeeds

in effecting this, in his opinion, unfeasible result. The author has most diligently gone through a large mass of the most important writing, particularly that in the English language, which has come in recent years from leading authorities both in their commentaries and in special articles. But he has missed practically all contributors to the science on the continent of Europe and makes no mention of any writing in the Spanish or Italian languages. He deals with authorities and not with source material. He shows no extended use or analysis of cases, and he frequently satisfies himself with the expression of his own opinion or that of his authorities rather than by any examination of the facts of the case. He gives the volumes the air of a very general work, analytical it is true and critical toward opinions or accepted phraseology of writers, but he evidences little actual independent research or minute study that would make the work in any true sense technical or authoritative. He has stated his generalizations from this wide reading in clear, concise, and attractive style, that will not only hold the attention of the reader, but will relieve his mind of the confusion so common to the student of more pretentious and somniferous volumes dignified as commentaries by some learned professors, judge, specialist, or, perhaps more truly, publisher.

Mr. Foulke evidently belongs to the school of realistic writers in this phase of politics, and he has rendered a distinct service to legal literature by the common sense, and in fact daring, presentation of an intensely technical subject which has been unduly befogged for the ordinary student by the stilted historic phraseology and method of treatment adopted by the distinguished commentator from his equally distinguished predecessor. It is with a sigh of relief that one takes up a work like this that breaks with the stereotyped style, arrangement, and copied thought of centuries of craftsmen in this exclusive, but important, field of theirs. Truly it seems to require a Sir Isaac Newton, a Sir William Thompson or an Edison to brave simplicity or the chance of error. Every man engaged in the practical applications of so-called, or rather hoped-for, international law in foreign affairs, particularly men in the diplomatic, consular, and other government services where a general acquaintance with international law is valuable or required, will welcome this honest attempt of Mr. Foulke to make the subject intelligible to the average mind.

The great war, which seemed at one time to have swept away the entire fabric of international law and accomplishment during many ages, really did far less damage than is generally supposed by the uninformed. The international faithlessness of the political highwayman, Germany, and the imprudent, self-centered, and self-interested action of some of our associated powers in the war gave a great blow to international agreements, precedents, and ideals; but the remarkable action of the government of the United States in putting the entire force of its municipal law and its physical power behind international law gave it a more effective sanction than it has ever received in modern times. No similar instance of such magnitude is known to human history and the place that our countrymen have taken in upholding the principles of law as they existed give them a peculiar right to aid in their present re-establishment and their expansion and interpretation in the days to come. It is no longer possible for a distinguished professor of the University of Berlin to sneer at international law as a defunct and archaic science or to laugh at the feeble efforts we seemed

to be making back in the days when the Belgian treaty was scrapped, and the Lusitania was sunk. The war left practically untouched a large body of the accepted law, such as that regulating international intercourse; it added many new principles and interpretations of old principles, and the outcome of the war has given a greater stimulus than ever before in this country to the study of international relations and among them, of that phase of international relations commonly known as international law. The ordinary American has awakened for the first time to the consciousness that we have always been engaged more or less in all important world affairs, but engaged without entanglement. He is now concerned as to whether we shall desert the advice of Washington and other fathers of their country and become enmeshed and entrammelled beyond recall. He desires information for his leading in world politics and he desires some knowledge of international law. To this man Mr. Foulke's work will be very helpful, for it states the main facts of the law clearly, simply, and in a readable manner, even though the arrangement of the book is perhaps more novel than logical.

The author's work is divided into four parts and twenty consecutive chapters, the final one of which is a summary of the entire two volumes. It has the usual division into consecutive sections, of which there are 1092 in the entire work. Each chapter also is preceded by preliminary remarks and concludes with a summary of its contents. It has a good index to both volumes which is fortunately included in each volume and there is likewise added to the last volume a table of international persons with the dates of their recognition, which is a somewhat convenient if not wholly accurate catalogue.

In most cases abundant citation is made of recent authorities and of such monographic literature in English as the author has found serviceable to himself or regards as valuable for the student who wishes to inquire into the subjects more fully than the text is able to treat them.

One rather rejoices at the free-lance spirit and daring way in which the author "hustles" out of his vocabulary those stereotyped and customary words, *sovereignty, state rights, law,* and so forth, upon which no common agreement as to the actual concepts for which they stand has ever been reached by political theorists, nor seems capable of being reached. He finds that, like Mr. Norman Angell, he can safely simply deny their existence and every one will feel as much relieved as he does, for we all know the greatest need of every science is a commonly accepted terminology and accurate definition of terms. It is a much more serious matter, however, to shuffle entirely out of consideration disagreeable or troublesome subjects that rightly claim treatment in any manual that goes into a student's hand, because they can be dismissed as extraneous to the subject. The impression conveyed to the mind of the informed reader after meeting a number of these instances is that the author's acquaintance with some of the great movements of international affairs is limited. For instance, practically every publicist who has attempted a work of these dimensions: Vattel, Hall, Westlake, Lawrence, Phillimore, Oppenheim, Pradier Fodéré, Fiori, Martens, Calvo, have given space, and by no means a small amount of it, to the very important international processes of arbitration, mediation, and good offices. Even a handbook for students such as Admiral Stockton's four hundred pages on international law assigns eleven pages to these topics. Our

author dismisses arbitration in not only an inadequate but a misleading single page, and neither good offices nor mediation find any mention in his index or in the text. The curt dismissal of the accomplishments of the Hague Conferences and the Hague Convention with a few sentences (pp. 232 and 259n), only serves to demonstrate the author's disregard of the international results of these remarkable gatherings and what they have meant to the furtherance of arbitration treaties. "A few swallows" may not "make a summer," but there are few summers without a swallow, and the swallow is the harbinger of the coming summer. The man who today dismisses all belief in and regard for the principle of judicial settlement of international disputes is a long way from the Root-Phillimore propositions and from Mr. Harding's aspirations for a world court. He is certainly not a forward-looking recorder of even the events of the past, for the contributions of the United States to the practice of arbitration and its firm establishment in numerous well-known cases (to-wit Mr. J. B. Moore's voluminous work on the subject) is conspicuous among the nations.

Again the treatment of envoys (Vol. I, pp. 201 *et seq.*) is inadequate for a work of this scope and in some respects is misleading. The note No. 16 on page 205 contains completely erroneous and mistaken statements which will confuse instead of enlighten a student. The extensive notes in the volumes are, however, generally illuminating and sometimes more valuable than the text.

In many respects, the mechanical execution of the volumes is excellent, and the index is a good one. Mr. Foulke's work merits the careful consideration of the legal profession and of internationalists in general, though he writes not as a publicist but as a lawyer.

James Curtis Ballagh.

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A TREATISE ON THE LAW AND PROCEDURE OF RECEIVERS. By Henry G. Tardy, of the California Bar. Bender-Moss Co., San Francisco, 1920. Two volumes, pp. xxxv, 1230; 1231–2307.

While this purports to be a second edition of Smith on Receivers, yet its extended scope makes the original book scarcely recognizable. The rapid development of the law with respect to so many phases of Receivership since the publication of the First Edition has tended to make it more or less obsolete, so that its rewriting in the present form is most timely and renders it a valuable and much-needed textbook on the subject. That portion of the book devoted to the discussion of Receiverships with reference to private corporations is particularly helpful to the lawyer because of its comprehensive treatment of matters of practical importance. The text is replete with exposition of the development of this form of equitable relief which the modern method of transacting business by means of corporations demands and which is so wisely afforded to corporate creditors. The author has taken great pains to reconcile divergent decisions and to lay before the reader the weight of authority. The annotations are extensive and cover a wide range of cases both in the English courts and in those of the various states of the United States.

Charles Comly Norris, Jr.

PENNSYLVANIA STATUTE LAW—1920 (complete). West Publishing Company, St. Paul, Minn., 1921. Pp. xxxviii, 2736, $15.

The busy lawyer owes a debt of gratitude to the editorial staff which has made possible this volume of twenty-eight hundred and sixty-eight pages. In the bounds of a single volume are included the Constitution of the United States, the Constitution of Pennsylvania, with index, and the complete wording of every statute now in effect in Pennsylvania, with citation and notation of all amendments, and notes as to the source of the statute. The acts are arranged under topic headings, based on the subdivisions in Pepper and Lewis' Digest of Laws of Pennsylvania, with many cross reference sub-headings added through the body of the book. The numbering of the section headings runs consecutively throughout the entire volume, instead of beginning anew at each topic, which facilitates reference to sections.

The volume contains also a chronological table of acts, 1683 to 1920, in which every act is analyzed, section by section, with references to the sections of the volume in which it appears, or with a citation of the act which amended or repealed it, in case it has been amended or repealed.

By far the most valuable portion of the book to the Pennsylvania lawyer is the four hundred and sixty-nine page general index at the end of the volume. Here under a minute topical cross-index which must contain nearly one hundred and thirteen thousand sub-headings, the subject matter of the entire body of Pennsylvania statute law is analyzed, with references to the places in the text where the acts in each subdivision of each subject may be found. This cross-index of the Pennsylvania statutes has been much needed in the past by the practicing lawyer, who often found it difficult to put his finger on the statute law on a desired subject through the less complete index of the digests. That difficulty should now be a thing of the past.

The work, however, contains a number of inaccuracies, chiefly in printing unconstitutional statutes without indicating that they have been declared void. Some of the recent Supreme Court decisions declaring Acts of the Legislature in violation of the Constitution have been noted both in the chronological table of acts and in printing the act itself in the book (for instance, 251 Pa. 134; 253 Pa. 442; 255 Pa. 67; 261 Pa. 458). In at least one instance a void act is printed in the body of the volume without such notation, although the decision holding it unconstitutional is referred to in the Table of Acts (Act of April 24, 1917, P. L. 95, dividing the State into Judicial Districts, declared unconstitutional in Noecker v. Woods, 259 Pa. 16, 1917).

A few of the cases where an unconstitutional Act has been printed without reference to the decision declaring it void are: Sec. 861 of the book, "Lien of Attorney," Act of May 6, 1915, P. L. 261, declared void by Laplacca v. P. R. T. Co., 265 Pa. 304 (1919); Sec. 14599—"Prior Conveyances to Husband Validated," declared unconstitutional in part by Elder v. Elder, 256 Pa. 139 (1919); Sec. 4534—"Courts of C. P. in Philadelphia County Consolidated," Bachman v. McMichael, 242 Pa. 482 (1913); Sec. 4546, Proviso limiting jurisdiction of Courts of C. P. in Philadelphia County to $100, repealed by Constitution of 1874, Art. V, Sec. 6 (see 1 Purdon 635). And lower court decisions declaring Acts unconstitutional have not been noted at all, (64 Pitts. 690; 14 Just. 253; 64 Pitts. 521).

In order that the lawyer who uses the volume may rely on its accuracy, it would seem desirable that the publishers should have a more thorough search made of the recent Pennsylvania decisions, and distribute the results in the form of a supplement.

Robert Dechert.

PROBLEMS OF LAW, ITS PAST, PRESENT, AND FUTURE. By John Henry Wigmore, Charles Scribner's Sons, 1920, pp. 136.

These lectures were delivered by Professor Wigmore at the University of Virginia on the Barbour-Page Foundation. One of the conditions of the Foundation is "that the lecturer present . . . some fresh aspect or aspects of the department of thought in which he is a specialist." And the lectures before us satisfy this requirement. In fact, it may be said that any discussion of the fundamentals in law present to an audience of lawyers or laymen in this country a fresh aspect of the subject. When the present writer read the following sentence from the second lecture of this book to a law student, "Why do we go to the legislator to ask for an abstract declaration of a desired rule of law, but to the judge for a concrete application of some existing rule to a dispute between specific persons?" (page 65), his characteristic answer was because the division of powers between the legislature and the judiciary is the basis of our government as provided in the Constitution. The further question whether such division is, to use terms made popular by the Greek Sophists, φύσει or νόμῳ, by nature or convention, essential for the complete success of each function or merely a matter of historical accident, which may have had its *raison d'être* when it displaced the previous arrangement, but has outlived its usefulness and the time is ripe for a new re-adjustment—this did not occur to him as a legitimate or profitable inquiry. The first and second lectures are precisely concerned with such inquiries as would probably seem to a practicing lawyer academic or so revolutionary as to be beyond the pale of practical interest.

This fresh aspect of the subject Prof. Wigmore presents in a fresh way. He is not satisfied with suggested solutions for a valid reason—because they are not true or are inadequately stated.

The main problem of the first lecture is that of the evolution of the law. And here Prof. Wigmore finds fault with all solutions presented hitherto for two main reasons. They are not true, because they ignore facts inconsistent with the theory. And secondly, assuming the formula of the law's evolution, as given, say, by Maine or De La Grasserie, to be correct, it is not enlightening as long as we do not know the causes which made this particular development necessary. To take an example, Maine formulates the development of the law in respect of forms of expression, as following the order, judgments, custom, legislation. Wigmore points out that this is true in some cases and not in others. This being so, the formula can not express a law of development inherent in the law itself or in human nature even in those cases where it holds true. And hence to be of any philosophic or scientific value it is necessary to point out the causes which made necessary the changes which actually took place. This, he realizes, is no easy task, for the causes determinative of the forms of legal institutions if compared with the forces determining the motions of a body in a planetary system, are infinitely more numerous and more complex than the

latter, and any geometrical symbol of social evolution, such as a straight line, a spiral, a circle, and so on, suggested by various thinkers, falls short of being a true approximation on account of its extreme simplicity.

This is a sound criticism, though the moral is not, and Prof. Wigmore does not intimate that it is, that such generalizations as those of Maine are useless. For on the one hand the philosophic impulse of restraining the unbridled variety and multiplicity of facts by confining them in a unitary formula is a human characteristic which can not be curbed, and it is foolish to postpone the exercise until the formula is sure to be adequate, for it never will be adequate. And in the second place, a theory or formula once stated is always an approximation to a truth, however partial, and forms the starting point for a closer and more comprehensive approximation subsequently. The wholesomeness of Prof. Wigmore's criticism is that it is a warning against accepting a familiar theory because it is familiar and brilliant and because it is inconvenient to have it upset.

The second lecture raises and discusses interestingly and in non-technical manner the question, no longer new, of the part of the judge in making law as opposed to finding it, and boldly pleads for more discretion on the part of the judge in the face of statute and precedent. An exception, Prof. Wigmore admits, must be made in those departments of law where stability is imperative, as in property and contract. But elsewhere the only justification for the present lack of freedom of the judiciary is the interest of the law's certainty, and this, Prof. Wigmore says, has notoriously not been secured. The law is as uncertain as it can possibly be. To be sure, if more freedom is to be given to the judge to ignore precedent we must be sure that this freedom will not be abused through wilfulness or incompetence, and Prof. Wigmore assures us that we have and shall have as good judges as we desire. This, however, will not settle the whole problem. Legislation is not all what it should be. A statute is bound to be general and abstract, whereas justice is necessarily concrete. This is in the nature of things and can not be remedied. But it is possible to legislate skillfully or in slipshod fashion. All depends upon the character and qualifications of the legislator. And Prof. Wigmore pleads for legislation by experts. "Make experts," he says, "of the legislators (1) by reducing their numbers, (2) by giving them longer terms, (3) by paying them enough to justify it as a career for men of talent, and (4) by making their sessions continuous."

The third lecture is devoted to a discussion of America's part in the world-legislation of the future. By reason of the ever-growing amount of international trade and commerce, the national differences in the private law cause much inconvenience, which may be obviated by making uniform those parts of the law dealing with international private relations. A good deal has already been accomplished in this direction. America is at a disadvantage by reason of the fact that the federal government can not bind the States, and has therefore so far been playing a minor role and could not actively participate. The uniformity that has been reached is to be put to the credit of the other nations, who naturally gave preference to their own systems of law, and America has to accept a foreign arrangement or stay out.

To create a more active participation on the part of the United States in the future, Prof. Wigmore advocates that the States make use of the power