

BOOK REVIEWS.

SHAKESPEARE'S LAW. By Sir George Greenwood, of the Middle Temple, Barrister-at-Law. Published by Edwin Valentine Mitchell, Hartford, Conn., 1920, pp. 48.

In a recent brochure entitled "Shakespear's Law," Sir George Greenwood, of the Middle Temple, Barrister-at-law, reviews this interesting topic with much legal acumen and, what is better, with equally sound common sense. In a Foreword he merrily flays the solemn editor of "a certain Legal Magazine" who had the impertinence, on the rejection of the manuscript of this little book, to lecture the author, this "septuagenarian member of his profession," on his knowledge of the law. The editor apparently deserves all that he gets. And in a final note Sir George repeats an insinuation apropos of what he finds a change in the attitude of critics as to Shakespeare's technical knowledge of the law, an insinuation suggested likewise many years ago by one W. A. R. in *The Albany Law Journal*, January 16, 1875. (See Furness, *Variorum "Merchant of Venice,"* p. 409.) This insinuation suggests that the denial of Shakespeare's knowledge of the law may be part of the defence of Shakespeare's authorship of his plays and is levelled notably against their assignment to Bacon. As, however, Sir George is avowedly not a Baconian, although the author of a well-known and popular book impugning Shakespeare's authorship of the Shakespearean plays, this matter is happily not really before us. It is fair to say that the body of this discourse might have been written by the most orthodox of "Stratfordians," to use for the nonce a detestable word derisively employed as to those who still spend pleasant hours in company with these plays unhaunted by "historic" or other doubts as to who may or may not have written them.

Sir George begins with an account of Lord Campbell's famous book, "Shakespeare's Legal Acquirements," in which the learned Lord Chancellor contended that Shakespeare was possessed of "a deep technical knowledge of the law" together with "an easy familiarity with some of the most abstruse proceedings of English jurisprudence." This was in 1859; and it seems not unlikely that his Lordship was considerably indebted to a smaller work by Mr. William Lowes Rushton, barrister of Gray's Inn, entitled "Shakespeare as a Lawyer," which had appeared in the previous year. Rushton's attitude of admiration for the accuracy of Shakespeare's legal knowledge was much that of Lord Campbell, howsoever his Lordship omitted the acknowledgment of any indebtedness to his predecessor. This matter of precedence is of little importance now. Subsequently Rushton published two other little works on this topic: "Shakespeare's Testamentary Language" (1869), and "Shakespeare's Legal Maxims" (1907); we can agree with Sir George Greenwood that both are worthy of study. Rushton makes a nice point when he reminds readers that even Lord Campbell is guilty of some slips in the law; therefore why condemn Shakespeare, who at least was not a Lord Chancellor?

Continuing his discourse, Sir George reminds us that as far back as 1821 Malone, one of the ablest of all Shakespeare critics, had pronounced that the poet's "knowledge and application of legal terms . . . has the appearance of technical skill"; whilst our own eminent American Shakespearian, Richard Grant White, like Malone, a lawyer, declared that "legal phrases flow from Shakespeare's pen as part of his vocabulary and parcel of his thoughts." Other witnesses are called, legal and lay; among them, the distinguished editor of Shakespeare, George Steevens, his bibliographers, the Cowden Clarkes, Mr. E. T. Castle, K. C., Professor Churton Collins and the Baconians, Lord Penzance, Judge Webb and Judge Holmes, of the Supreme Court of the United States. Though these latter, as interested witnesses, may perhaps be better ruled out of court.

A neat turning point is now found by the author in the change of view as to Shakespeare's legal accuracy in a pleasing citation of Sir Sidney Lee's "Life of William Shakespeare," edition of 1899, and of the same book as revised in 1915. In the earlier edition Sir Sidney simply followed earlier tradition, accepting "Shakespeare's accurate use of legal terms" without further question. In the latter, "the poet's legal knowledge" becomes "a mingled skein of accuracy and inaccuracy, and the errors are far too numerous and important to justify on sober inquiry the plea of technical experience." It is perhaps pertinent to interpolate here that Sir Sidney Lee's "Life of Shakespeare" was a good piece of biographical gathering, as first published, which has been spoiled by the overlaying of additional information as it has subsequently arisen at the expense of form and sometimes of consistency. Sir George certainly seems to have put his finger on a case in point; and a footnote of Sir Sidney's referring to a book by Charles Allen, of Boston, "Notes on the Bacon-Shakespeare Question," 1900, makes clear to us, it would seem, why Sir Sidney developed skepticism as to Shakespeare's legal knowledge. The sixth chapter of Allen's book is entitled "Bad Law in Shakespeare." It is made up of a series of objections to the use of certain legal terms, certain legal procedures and other like matters, so far as I can personally see, largely on the basis that these things do not comport with our contemporary definitions, our present practices and our American—or at least English—statutes of today. For example Mr. Allen objects to the sworn agreement of the young courtiers with their king in "Love's Labour's Lost,"

"To keep those *statutes*
That are recorded in this schedule here,"

because "a statute," he informs us, "imports a legislative act," and there was none such here. Apparently he is unaware of the familiar "Statutes Merchant" "Statutes Staple," in which the world equals rule or regulation, as Sir George happily reminds him. Again, Mr. Allen comments seriously on the provision of the will of Portia's father by which each suitor submits to the test of the caskets, and failing, must renounce wedlock. "This testamentary prohibition in restraint of marriage, with no means of enforcing it, would seem to have been the invention of a story teller rather than a lawyer," comments Mr. Allen. Precisely. And still again he quite as

solemnly suggests that conduct such as Portia's in impersonating Doctor Belario "if it were possible under our system, would be good ground of disbarment here." to any lawyer, we may assume, a party to it. Apparently they take these matters quite seriously in Boston.

It would be absurd to take up the demolition of objections of this capitious and unimaginative kind, did we not keep before us, as does Sir George very pertinently, that the foremost contemporary biographer of Shakespeare has been actually misled by such stuff into the statement: "No judicious reader of 'The Merchant of Venice' or 'Measure for Measure' can fail to detect a radical unsoundness in Shakespeare's interpretation alike of elementary legal principles and of legal procedure."

Besides the trifles mentioned above and the more important matters involved in the two plays just named, Sir George discusses several other points raised by Allen and others before him, meeting the issue in some cases, avoiding it in others; for he plainly constitutes himself as of counsel for the defence throughout his pamphlet, howsoever he confesses in the end, *ad huc sub judice lis est*. In "Richard III," Queen Elizabeth (Woodville) asks

"Tell me, what state, what dignity, what honor
Canst thou devise to any child of mine,"

precisely as Celia in "As You Like It," speaking of her father to Rosalind, her cousin, says: "And truly, when he dies, thou shalt be his *heir*." Now neither "demise" nor "heir" is employed correctly and technically in either of these passages, obviously and simply because there is no reason on earth—out of the mind of an unimaginative pettifogger—why they should be so employed. Neither Celia in the Forest of Arden nor the queen of Edward IV may be supposed by the wildest flights of the imagination to have been learned in the law. These and many similar cases in Shakespeare of careless colloquialisms, where such is the veritable utterance of every-day life, may be set down to the dramatic instinct of the poet. They have no reference whatever to "good law" or "bad."

Another group of Shakespearean examples of law and legal procedures is referable to the poet's sources. One of the peculiarly English traits of Shakespeare is the manner in which he uses his materials. As a dramatist he unerringly rejects whatever will destroy his dramatic purpose, correspondingly retaining every stroke which will tell. This is obvious. But his conservatism lies in his retaining, by reason of a certain faithfulness characteristic of him, many details in the old stories from which he derives his plays, which neither tell for nor against the dramatic effect.

Thus Shakespeare found a wager which we should consider as grossly *contra bonos mores* today, in Boccaccio's "Decameron," his source for "Cymbeline," a wager which in modern England would never be enforced by law and which upon this basis it would be absurd to have drawn up by legal covenants. But the law of this play is not even the law of Boccaccio's late medieval Italy; it is the law of the mythical realm of Cymbeline, King of Great Britain when Augustus reigned in Rome; and argument as to Shakespeare's knowledge or ignorance of what the English practice of his

day might have been—to say nothing of contemporary law in Massachusetts—is preposterously irrelevant.

It has been said that the history of Shakespeare criticism consists largely in one triumph after another of the poet over the ignorance of his commentators. Take for example Queen Katharine's words to Cardinal Wolsey in *Henry VIII*:

"I do believe,
Induced by potent circumstances, that
You are my enemy, and make my challenge.
You shall not be my judge."

Mr. Devcmon, of the Maryland bar, we are informed, objects to this because, under our common law, it is the juror alone, and not the judge, who is subject to challenge. But in the *Variorum "Merchant of Venice"* (p. 417) will be found an interesting passage from a letter addressed to the late famous actor, Lawrence Barratt, by John T. Doyle, in which we learn that Spanish law permits the challenge of a proposed *juris-consult*—or master as we might designate him—"for consanguinity, affinity or favor." And be it remembered that Katharine was of Spanish birth. I shall return to this letter of Doyle; for the nonce it may be remarked that we cannot affirm Shakespeare's knowledge of a nice point such as this; but the recurrence of many such as to the law and other topics, creates a presumption that Shakespeare was accurate where accuracy seemed imperative, and careless of matters irrelevant to the subject in hand.

But clearly there are many legal references in Shakespeare which are not referable merely to his sources, and which are only properly to be understood by a happy combination of legal learning and antiquarian lore. Sir George Greenwood contributes to our knowledge with just this happy combination in his justification of Shakespeare's use of the term *single bond* where Shylock says:

"Go with me to a notary, seal me then
Your single bond."

"Bonds have usually a condition annexed to them that on the person bound paying so much money, or doing some specified act, the bond shall be void. A bond without a condition is called a *single bond*." (*Encyclopædia of the Laws of England*, ii, 374, ed. 1906.) It would seem then, at first blush, that Shylock's bond was not a *single bond*, but one in which Antonio was bound on failure to pay to suffer the loss of a pound of flesh to Shylock. Sir George's explanation, however, is that this is not a condition upon the performance of which the bond was to become void, but a penalty attached, if he failed to pay. (*"Shakespeare's Law,"* 25.) So, too, in the matter of the king's guardianship in *"All's Well That Ends Well."* It will be remembered that in consequence of her cure of the king's illness, Helena, the daughter of a celebrated physician recently deceased, is granted the privilege of choosing whom she will for a husband. She chooses the young Count of Rousillon, by whose mother she had been reared and whom she had long secretly loved; but the young scapegrace objects to a match on the basis of such an inequality in rank. Whereupon the king replies:

"Tis only title thou disdain'st in her, *the which*
I can build up
 If thou canst like this creature as a maid
I can create the rest: virtue and she
 Is her own dower, *honour and wealth from me.*
 Take her by the hand,
 And tell her she is thine: *to whom I promise*
A counterpoise: if not to thy estate,
A balance more replete."

Here on authority of the dictum of "Coke on Littleton" the "the lord could not disparage the ward by a mesalliance," this passage has been pronounced "bad law"; but the above words carefully read make clear the power of the King, as the fountain of honor, "so to ennoble 'the spouse' as to make Helena 'of equal rank with his ward.'" Sir George's interesting commentary on a passage in "The Merry Wives of Windsor" in which occur the technical words: *warrant, witness, waste, fee simple, fine and recovery* will repay careful perusal, showing as it does a nice acquaintance with these technicalities as in use in Shakespeare's day, howsoever they are placed somewhat inappropriately in the mouth of Mistress Page, one of the merry wives of Windsor.

I should like, were there space, to comment on the quibbles of Portia in the famous trial scene, on the absolute correctness of its proceedings as they are presented in accordance with Latin, not English conditions. (On this see especially Doyle's letter alluded to above.) And I should like, too, to follow Sir George in his able exposition of how in "Measure for Measure," Shakespeare's sources and the Elizabethan law, making the taking of a woman for a wife *per verba de presenti* a legal marriage, explains the difficulties of the situation of Claudio and Juliet as of Angelo and Mariana in that most serious and beautiful play; but I want to present this subject in an aspect somewhat wider before I leave it.

Now it is not the lawyers alone who have been impressed with the technical knowledge of Shakespeare. The physicians, the alienists, the naturalists, the student of history, the lover of the chase, even pedagogues, find themselves amazed, each after his kind, at the quality of Shakespeare's specific knowledge in matters of detail. And the reason is not so far to seek. In Bagshot's illuminating phrase, "Shakespeare's was an experiencing genius." What to the lawyer, the doctor, the pedagogue is a matter painfully acquired by specific study, is to his intuitive genius the flash of a moment. It is this in which largely his greatness, his comprehensiveness subsists. I shall never weary of repeating that there is absolutely nothing mysterious about Shakespeare except his genius, and this I repeat because it is so necessary that we remember it. The inference that Shakespeare must have studied law because he has *finer* and *recoveries* down pat, is just as rational as that which makes him a falconer because *tiercel gentle, jesses, haggard, eyas*, and the rest of the technical words of hawking are always correctly employed by him. He has been made a schoolmaster because Page's son in "The Merry Wives" can correctly decline *hic, hæc, hoc*; though even this will not make him a Latinist.

With every respect for the learning and argumentative acumen of Sir George in this and his other able works, I submit that we cannot wrest the secret of Shakespeare's greatness along the line of an investigation into his expert or inexpert knowledge of any technical art. This is the raiment he wears, not the real man within; and his masks were many, howsoever the essential man beneath remains ever the same, in his unmatched grasp of those larger things which cannot be weighed in scales and adjudicated on the basis of precedent.

I cannot make out whether under Sir George's definitions I am a lawyer or not. I was once a student of the law, and admitted to the bar. I have not practiced, and I have endeavored to get beyond the merely legal way of thinking about things. Has it ever occurred to some of our distinguished members of the bar that history, science and philosophy would be impossible were their processes confined to the processes of the law; were their proofs dependent on the limitations set for legal evidences? The existence and foundation of courts of equity go to prove this repugnance for the rigidities of conventional legal process; for there must be an appeal to something wider than mere precedent. It is somewhat to be expected, then, that we should find a large proportion of those who are visited by "historic doubts" as to Shakespeare and others, who are troubled about "problems" where no actual problems exist, should be lawyers or men of legal cast of mind. To such, the weighing of evidence is more interesting than the exercise of the historic imagination; to such, trivialities bulk large and obscure realities; and they theorize about matters the determination of which is utterly unimportant to gods and to men.

I sometimes wonder if Shakespeare was after all so clever in these small things as some of us would think. It is said that he knows all about a horse, and the chase, the falconry and the popular names and habits of birds, insects and flowers; how could he help all this, country lad that he was? Of sports, too, he was a master. As to human passions, conduct, character, deportment—humanity was his subject matter, he studied it all day and much of the night, and we must grant him an observer. Even in this matter of the law, his father was litigious and his father's son after him, as the discoveries of Professor Wallace have gone further to prove. A clever man can learn almost as much in personal contact with the courts as a duller youth in a law school. The difference between a specialist and a genius is that the specialist is usually burdened with his learning; the genius, with twice as much, is still lightly armed and at ease. Until we cease applying the technical standards of our own littleness to the stature of greatness, we shall not understand men like Shakespeare. It is better to read him than all these clever brochures about what he knew, what he was, or who he was not, and this extends to comments like this of mine on their cleverness. If the personal opinion of one who is not sure whether he is a lawyer or not is of any moment in a case such as this, I should say that Shakespeare's knowledge of the law, like his knowledge of everything else, was that of a man who saw life directly, not life refracted through books; it was accurate to an amazing degree where he had occasion to fix his gaze; careless, where carelessness affected no damage to his art, and gen-

erally far above that ordinary level of information which we demand of other men. The accumulation of every scrap in his works that has to do with the law, technically or otherwise, and the weighing of it all with reference to his age, his sources, the lore back of it and the rest, would be a delightful piece of work, but it would bring us no nearer a verdict. There is much in life, in art, in criticism that must ever remain in a state, *pendente lite*.

Felix E. Schelling, Ph. D., Litt. D., LL. D.

*Professor of History and English Literature,
University of Pennsylvania.*

LE DROIT INTERNATIONAL PUBLIC POSITIF. Par. J. de Louter, Professeur de Droit international public à l'Université d'Utrecht. Published by the Carnegie Endowment for International Peace. Oxford University Press, New York City, 1920, 2 vols., pp. xi, 576, vi, 509.

This is one of the publications of the Carnegie International Peace Foundation. The author has occupied the chair of international law at the University of Utrecht for more than twenty-five years and has written much on international law and political science. He has frequently served as commissioner on administration of the Dutch East Indies. It was his work *Staten Administratief Recht van Nederlandsch-Indië*, published some twenty years ago, that brought him favorable recognition among scholars in this country. In 1910 he published this work on international law at the Hague under the title of *Het Stellig Volkenrecht*. He used the word "stellig" ("positive") to emphasize his doctrine that public international law is "positive law," that is, distinctly outside the sphere of mere philosophy or morals. At that time this had a special significance because Dr. Thomas Baty, the distinguished English barrister, only the year before had published his *International Law*, in which he had opposed a permanent international court because it would be governed by merely "legal" principles. Dr. Baty was answered not only by de Louter but also in France by Léon Bourgeois, the wide-famed statesman, in his *Pour la Société des Nations* (1910), embracing his speeches delivered at the First and Second Hague Conferences, urging acceptance of principles to constitute a recognized *corpus* of positive public international law. It now belongs to history that the Second Hague Peace Conference did go so far as to render obsolete most of the books on the subject then extant.

In consequence of the erudition, clarity and modernity revealed in the work of Professor de Louter, the Trustees of the Carnegie Foundation engaged him to prepare in French a new edition to form part of the International Law Series that the Foundation was then preparing for publication in that language. The outbreak of the World War threatened to end the enterprise, but the Trustees prevailed upon the professor to continue his work, with the understanding that he should limit his doctrinal exposition of the subject to the period immediately before hostilities began. This, as he says in the Preface, was "presenter une image fidèle du droit positif en vigueur

au moment même où il devait subir une épreuve fatale." In explaining the apparent futility of now publishing a treatise of the law as it was up to 1914 "mais bouleversé et à peu près détruit depuis lors" he expresses the hope that he is presenting public international law such as it will be when "il est prêt à se relever pour recommencer une carrière honorable et utile."

While some specialists will not agree with all the views of the author, there is bound to be common accord that the work contains evidences of painstaking and limitless research, impartial consideration of the divers authorities in other lands and many languages and a just appreciation of their weight. Few periods, and, indeed, still fewer countries, have escaped the reach of his erudite mind and indefatigable energy.

For the United States, Kent's Commentaries are cited on the second page and in the very first note, followed through the two volumes by quotations from many other authoritative writers and distinguished statesmen, including Franklin, Webster, Sumner, Wheaton, Woolsey, Lieber, Wharton, Choate, Root, and others not so well known—some being cited many times. John Bassett Moore, our leading international jurist, recently selected as one of the judges of the Permanent Court of International Justice, is frequently quoted with marked approval.

A most valuable feature of the work is this great mass of supporting authorities, constituting firm and indestructible pillars for the whole work,—textually and exegetically. The logical order, the cogent reasoning, the interesting anecdotal and historical references employed to elucidate the various propositions advanced in clear and cultured modern French will strongly appeal to serious readers, whether lawyers or laymen. The author seeks no model for his plan of treatment. There are but three divisions of the work: The first is the *Introduction*, comparing various definitions and marking the traditional eras—Prior to 1648, From 1648 to 1815, and From 1815 to 1914. The next is *Droit matériel*, embracing subjects and objects of international law and basic treaties, and the third is *Droit formel*, comprising the organs or instrumentalities of international affairs, conflicting interests, war and neutrality.

It is in the *Introduction* that the author reveals his special doctrinal views upon the "positive" basis of public international law. He makes a delightfully logical distinction between "origin" and "source" and signals the confusion that has at times arisen from treating them as synonymous. "La métaphore est empruntée à la naissance des fleuves et rappelle aussitôt qu'on ne parle pas ici de la véritable *origine* de l'eau, que reste cachée dans le sein de la terre, mais simplement de l'endroit où elle vient à la lumière qui en baigne la surface" (I, 42). He gives notice that he will not deal with law in the meaning of origin, but only "source," as indicating "sa forme perceptible, où le droit international se manifeste." Few writers have equalled the attractive manner in which the author has presented the phases of the relation of international law and other sciences and the historical development of the subject. Where he admits lack of unanimity of opinion he presents the conflicting authorities fairly and dispassionately. He stands for the doctrine: "L'arbitrage n'est applicable qu'aux conflits juridiques"

(II, 191) and devotes many pages to outlining the formative steps for an international tribunal along the lines considered at the Second Hague Conference.

It is gratifying to know that many of his ideas correspond with those which last year Mr. Root successfully urged before the Committee invited by the Council of the League of Nations to prepare a plan for the Permanent Court of International Justice, the judges of which have but lately been elected.

Among the particularly interesting sections are those covering "Les Conflits" (II, Secs. 37-41), under which the history of peace efforts is narrated. Here the author shows an extraordinary familiarity with legal literature in this country by citing the two works of Thomas Willing Balch, the scholarly Philadelphia lawyer-author, on *Emeric Crucé*, the great French advocate of arbitration of the seventeenth century, and the translation of his little work called *Le nouveau Cyné* (II, 113). Not many, even in America, know of these two privately printed and highly prized books. It is not surprising, therefore, to also find a thorough consideration of peace efforts in this country, including the founding of the still active *American Peace Society* in 1828 as an enlargement of similar societies in three states in 1815, founded by David Dodge and Noah Worcester, and references to the pamphlet of William Ladd, published in 1840, proposing a conference of delegates from all civilized nations to fix international law by treaty and assure peace by the creation of an international court of justice (II, 114). It is a striking coincidence that the man who then vainly urged these ideas in Europe and the man who successfully urged them in 1920 had the same given name—Elihu Burritt and Elihu Root.

The author is not of those who believe war can be abolished, but he quotes with approval Parieu, the great French pacifist: "La paix éternelle est impraticable mais indéfiniment approximable" (II, 220). As to the steps in that direction, particularly by restriction of armaments, now so apropos, the reader will nowhere find a more interesting and learned historical review, including every shade of opinion the various governments and publicists have entertained (II, 109-126). The reason for the failure of the Second Peace Conference on the armament question is simply put: "*Une mutuelle méfiance empêcha toute entente des puissances européennes quant à la restriction éventuelle de leurs forces navales*" (II, 323). Attention is called, however, to the treaty between Argentina and Chili in 1902, renouncing naval construction then in progress, agreeing to diminish their squadrons and declaring a naval holiday for five years. This led to the erection of the peace monument on the mountainous boundry line between the two countries known as "The Christ of the Andes."

The author evidently found it difficult to confine his work to the status of international law in 1914, for in many instances he has referred to the Great War. As to neutral territory being crossed by belligerent troops, he says in a note: "En 1914, les armées allemandes traversèrent la Belgique malgré ses protestations, malgré sa *neutralité permanente et garantie*" (II, 423). Under the heads relating to submarine and aerial war engines, he has also deemed it permissible to utilize data of the late conflict.

No reader of this work can fail to be impressed by its many high qualities, but he will experience some chagrin and be put to unnecessary trouble by the lack of index, list of authorities, explanation of abbreviations and adequate table of contents. There are also a few mistakes in the names of authors cited and occasional errors in spelling. As illustrations—"Sumner" is cited as "Summer," "Willing" is given as "William," and "impracticable" is spelled "impracticable." These features are regrettable in so valuable a work, and somewhat surprising in view of the manifest expense of production and the typographical reputation of the Oxford University Press. The need of index and list of authorities is really great enough to warrant publishing them as an addendum, which it is hoped will be done.

William W. Smithers.

Philadelphia, Pa.

THE AMERICAN PHILOSOPHY OF GOVERNMENT. Essays by Alpheus Henry Snow. G. P. Putnam's Sons, The Knickerbocker Press, New York City, 1921, pp. III, 485.

This volume, which is made up of a number of essays published by the author from time to time during the period extending from 1906 to 1919, takes its title from an essay reprinted from *The American Journal of International Law* for April, 1914, and now given the first place in this collection. But the author's theory of this so-called "American Philosophy" permeates all the essays and constitutes the fundamental basis for the conclusions reached.

This theory regards our system as finding its most definite statement in the Declaration of Independence, and as intended to safeguard primarily the rights of the individual. "To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed." These governments are therefore in the nature of the agents of the governed, and their authority is properly circumscribed and limited by the underlying consent, and may not be construed as extending to unjust ends: the courts constitute the natural and safest machinery for establishing these limitations, and this explains their power in the American system to invalidate legislation which exceeds the authority of the Government, the people's agent.

In these principles the author finds a basis for the delimitation of the country's colonial power—that it may be exercised in the nature of leadership for the benefit of our possessions, but not in an imperial fashion for our own advantage.

He also derives important conclusions with respect to international relations, contending that the fundamental purposes and ideals of our institutions cannot be preserved by federation with other states established upon a different underlying theory, especially if to such federation is given compulsive power. Rather, it is contended, is it to be desired that the international relations should be conducted under a looser association functioning preferably by way of conciliation instead of by way of arbitration or judicial determination, and exercising such authority as it exerts by a process which the author calls "Judicative Conciliation." By this term he describes ad-

vice to states involved in a controversy based upon a thorough inquiry by another state, or by other states, conducted in judicial fashion.

Throughout the essays runs the same thought that, in the long run, co-operation without the compulsive feature will produce a nearer approximation to a solution of the international problem than the closer union of a league. Thus with singularly apt description of the choice which seems to confront the world the author says in an essay reprinted from *The World Court Magazine*, of April, 1918:

"After the present great war is ended, a time is certain to arrive for considering the problem of international reorganization and reconstruction. The question will be, whether to maintain and perfect the existing co-operative union of the nations, or to change it into a universal federal state or into a universal confederation or league of nations. The first of these courses seems most expedient. This would necessitate a gradual development of the existing co-operative union by a long series of international conferences, each endeavoring to remove obstacles to international co-operation and to provide more and more effective organs and processes for directing the nations towards the observance of the co-operative principle. Through such a continuous development, co-operative union of the nations might be found adequate to produce the nearest approximation to international justice, order and peace of which the human race is capable."

In dealing with the power of the courts to invalidate unconstitutional legislation, the contention is advanced that the due process clause has been pressed far beyond its intended scope and should be restricted to "a taking away on account of wrong-doing," a contention novel more by way of positive suggestion than by way of negative criticism. There is, of course, full recognition that this point of view is of academic interest only, in view of the decisions; and the tendency of these decisions away from the safeguarding of contractual and property rights to a greater concern for the social interests of the individual and the community is helpfully discussed.

In addition to the essays which deal primarily with the author's analysis of his theory of the "American Philosophy of Government" and with the conclusions he derives therefrom in relation to the problems of dependencies and international relations, the book includes essays on Shantung, the German Colonies and the Mandatory System, as well as essays on the Law of Nations, the Proposed Codification of International Law, and the Alien in the Community.

Henry Wolf Bickel.

*Law School,
University of Pennsylvania.*

THE LAW OF THE SEA. A Manual of the Principles of Admiralty Law for Students, Mariners and Ship Operators. By George L. Canfield and George W. Dalzell. With a Summary of the Navigation Laws of the United States by Jasper Yeates Brinton. D. Appleton & Co., New York City, 1921, pp. xvi, 315.

Appleton's new publication in its "Shipping Series," the *Law of the Sea* has been in the hands of the public for a sufficient length of time to justify an appraisalment of its value as the manual it professes to be.

The editors of the series, Emory R. Johnson, whose labors in transportation and shipping questions have taken such wide scope, and Ray S. MacElwee, whose great success in dealing with the adjuncts of transportation and shipping, are to be congratulated in receiving from the hands of Messrs. Canfield and Dalzell such a worthy addition to the series.

The book attempts to treat briefly all phases of the law as applied to a ship, from its keel laying to its final end, including the responsibilities of the contractor and future owner in the building of a ship until its launching, and all of the legal incidents, resulting from the operation of the ship, either by corporate owners, or owners of shares, and their various relations with master, crew, cargo, freight, charterers and underwriters.

The legal results of employment of a ship, arising not only out of contract, but out of tort, and those situations and legal consequences which flow from the ancient doctrine involved in General Average and Salvage are covered in more or less detail.

The prototype of the book is to be found in its English forerunner, *Maritime Law*, published in England by Mr. Albert Saunders, whose treatment of the same subject is perhaps more adapted to the needs of the student or layman than the method employed by the authors of *The Law of the Sea*.

Mr. Saunders employs a narrative form and tells the story of a ship from a contract with the builder until it becomes a wreck. The narrative takes the ship from the initial contract of the builder and follows its launching, through the formalities of mortgage and registration, to the point where it is loaded and has begun its adventure, meets with a collision, or encounters other perils of the sea, where all the possible contingencies, in their legal aspects, are discussed, either from the standpoint of owner, charterer, shipper, consignee, master or crew, or third person. Nine voyages are related in narrative form, affording an opportunity for the discussion of voyage charters, time charters, bottomry bonds, general average, maritime liens, and all of the varied and difficult situations, with which a ship and its master and owners have to deal in the course of maritime business. Following this narrative, the reader not only has the benefit of a clear appreciation of the methods by which complicated questions arise, but is able to follow the solution of the questions through the different rules and remedies afforded by the maritime law.

It would seem that this method is perhaps a better one for the layman and student without other guide than the arrangement chosen by the authors of *The Law of the Sea*—an arrangement that relegates the question of remedies to the last chapter in the book, where they are treated *en masse*, without reference to the other portions of the book. The book is somewhat of a step forward, however, in American publications touching the subject, and it is to be hoped that it will be followed by a more exhaustive treatise, invoking the method used by Mr. Saunders with such notable success.

America has too few authoritative books on shipping and its allied subjects. The student, or the active practitioner, finds it necessary to rely for exhaustive treatment upon the English standard authorities: Lowndes on

General Average; Marsden on Collisions at Sea; Carver on Carriage of Goods by Sea; MacLachlan's Merchant Shipping—to name only a few of the standard English works—all of which should be replaced in America by books of equal standing, devoted to a discussion of the law in America, which differs in so many essentials from that of England, and is now only to be found in the Supreme Court and Federal reports, or in the early State reports, where, before the founding of the present judicial system, so many important commercial questions found their solution.

It is not desired to be over-critical, but when a book is designed for students "without guidance" and put forth "with the expectation that (it) will be used as a class text book," inaccuracies should be noted.

The first chapter states that there are several district courts in each state—whereas in twenty-two states of the Union there is only one district, and hence only one district court.

The definition given of a contract, as being maritime "when it relates to the ship as an instrument of commerce and navigation" might well mislead the student "without guidance." A more accurate definition would be that a maritime contract is one touching rights and duties appertaining to commerce and navigation.

"Damaged cargo" is given as an example of a tort, whereas in fact, in most actions, recovery founded on damage to cargo is based on contract. "Limitation of Liability" is treated as a doctrine which developed out of the necessities of the case, and no thought is given to the fact that considerations of public policy led to the enactment of statutory exemptions, differing in different countries, but all forming the basis of the limitations of liability enforced in the Admiralty Courts of various jurisdictions with varying incidents and results.

In treating of General Average, the authors express surprise at the failure of other courts of law to adopt the principles, and this in view of the fact that there is a strong tendency at present to dispose of the doctrine of General Average as being extremely cumbersome, and expensive and dilatory in practice.

Some inconsistencies appear, even in the first chapter. For instance, in the discussion of maritime law generally, in one paragraph the law is stated as being "less susceptible of statutory modification than the common law," and the effect of careless legislation with its necessary local effect, and its tendency to divert business into other channels is decried, and yet in the following paragraphs it is stated that our maritime laws must be re-stated and reformed.

Although the Index is a good one, unrelated matter is often found under the wrong paragraph heading; for instance, a paragraph dealing with "Enrollment" or "Registration" treats of the law regarding the citizenship of pilots and officers.

On the whole, the book supplies a need and will be found most useful to those who desire to secure a comprehensive grasp of the subject of which it treats. The book may not rank as high authority, but it is to be hoped that it will be the precursor of others which will.

A word should be said for the appendix, containing as it does an admirable "Summary of the Navigation Laws of the United States." It is the only summary of the kind so far published, and one which should be of great aid to those who have to deal with a subject which is in so much confusion, owing to the form of its growth through the many revisions and re-enactments of Congress.

William J. Conlen.

Philadelphia, Pa.

THE LEAGUE OF NATIONS AND THE NEW INTERNATIONAL LAW. By John Eugene Harley, Assistant Professor of Political Science in the University of Southern California. With an Introduction by Theodore Marburg. Oxford University Press, New York City, 1921, pp. ix, 127.

In this little book Professor Harley has attempted to set out, as he expresses it, the effect of the League of Nations on International Law. It would be more accurate to say the effect of the operation of the League of Nations on International Law. The League itself can have no effect at all; it must function as an organization before it can make any impression. This may sound hypercritical, but it is just the criticism which may be leveled at current international legal writings. They are wanting in accuracy and logical precision. The learned professor has therefore been led into the obvious error of over-estimating the potency and effectiveness of the League and ignoring the practical question of whether it does or will survive as an effective agency in international life.

The conclusions of the book are well summarized in Chapter XI, somewhat as follows: The defects in International Law prior to the adoption of the League of Nations were: (1) Lack of agreement as to correct conception of International Law; (2) Inadequate methods of developing International Law; (3) Unwillingness of the nations of the world to join together in giving effect to the law and providing sanctions to uphold it; (4) Inadequate machinery for administering international law and settling disputes between nations; (5) Doubt whether the theory of international law formulated in the seventeenth century was adequate for the world of 1920. The learned author concludes that the Covenant of the League of Nations cured these defects, upon which we may observe: (1) It is impossible to see how the Covenant can or will reconcile the fundamental theories of International Law which are matters of individual opinion and can only be resolved by argument, analysis and reasoning, if they can ever be resolved at all. To give the Covenant such an effect would outdo German control of thought in its palmy days. (2) The statement that the Covenant removes the remaining defects is simply saying that because the Covenant has been entered into therefore the League does and will have sufficient power to control international conduct, an assumption entirely unwarranted by any facts existing in the world today.

It is difficult to understand what the professor means by the "new" international law. International law as a system, science and inquiry into

international conduct is centuries old, and the change in a few rules would not warrant us in speaking of a new international law.

We find all the conventional forms of the international law writers observed. We are informed on the first page that Grotius is well called the father of international law, statement which seems essential to the completeness of any treatise on this subject. We also find the usual appendix comprising about one-half of the work, and containing reprints of documents already accessible elsewhere. This habit of reprinting undoubtedly reduces the labor of the author but seems to be of no other use.

The book is an enthusiastic expression of the impractical and visionary, although highly ideal, in international relations. War is one of the vices of mankind and cannot be expected to cease until the underlying causes of war, to wit, ignorance, selfishness, international rivalries and the like, have been removed. To accomplish this will require an education of the common people of the world extending probably over centuries. To say that it has been accomplished by a writing on a few pieces of paper is to fly in the face of reason and all human experience.

Roland R. Foulke.

Philadelphia, Pa.

COMMERCIAL LAW CASES. By Harold L. Perrin, Professor and Head of the Department of Law of the College of Business Administration, Boston University; and Hugh W. Babb, Assistant Professor of Law at the College of Business Administration, Boston University. George H. Doran Company, New York City, 1921, 2 vols., pp. xxi, 536, xv, 414.

Another case book. Intended by the authors to cover two years' work in Commercial Law, it might very well serve for a three years' course. In fact, it is most unlikely that it could be handled by most colleges in fewer than three years. From a student's point of view, a book that promises such long usage has much in its favor. The cost of law books is always a hardship; hence, the outlay of only \$7.50 at the beginning of a student's course for a book to be used during two or three years is an important asset of this new publication, one that should recommend it to the teaching staff, other things being equal. Moreover, it is noteworthy from an academic standpoint in its presentation of a whole business law course within the cover of a single book. A single-book presentation of business law awakens in the student a sense of the unity and continuity of the subject as can never be done by a series of case books on specific subdivisions.

This kind of treatment of legal subjects for non-legal students is greatly needed. The law is approached too technically and too specifically in most business schools of collegiate grade. I take it that the purpose of law in these schools is not primarily to give the students the discipline afforded by legal training, any more than it is to make lawyers of them. A business law course in a business school should have two aims; to give the student such a general knowledge of the law as he has of history or of economics; and, secondly, to give him such definite, practical information as

will enable him to conduct his business legally, and so to avoid the pitfalls of the law. The very fact that the authors of *Commercial Law Cases* have brought a whole business law course under a single cover seems to be a recognition on their part of the needs of our business schools.

It is not surprising that closer investigation of their book results in disappointment. It would be no easy matter to reduce a course to such a minimum of pages with entire success. A minor defect, perhaps, but one that has a psychological effect, is the physical appearance of the book. As one goes from page to page, one is overwhelmed with the details—headings innumerable in black type that are not the main subjects at all, but are sub-subjects, and far more conspicuous as to type than the larger headings under which they belong. Students working for the first time in law and using this book would think of the subject as just so many disconnected segments, hundreds of them, in black type, through these two volumes.

This disjointed effect is seriously aggravated in another way. The book contains both text and case, but neither one is structurally related to the other. If this is only a case book, then I suggest that the so-called text go. It takes up space that might be given to other cases or that could be eliminated altogether to reduce the size of each volume. The only justification for explanatory matter would be to correlate subjects and parts of subjects, and that it fails to do adequately. Its presence is detrimental to the unified effect which the authors have no doubt tried to produce. It seems to be merely an insert that brings the student to a halt when he wishes to push on.

As an inclusive, compact case book, *Commercial Law Cases*, it is commendable. Its cases are carefully selected and they cover the subjects. College students might well substitute the one book for their more numerous case books. But the text is not full enough or valuable enough to take the place of lectures, outlines, class-notes or another text. The student could use it simply as a condensed, well-arranged case book. For the business man who has not had college training in commercial law, the book has even less value. The text is not full enough, and the court decisions are, for the most part, too long. Both for the student and the layman a summary of the court decision, emphasizing the point of law involved, should be included. I wish the authors might see fit to change this into a narrative which brings in the cases as an integral part of the story, a book of distinct scholarship and collegiate grade. What is needed is a law book that is interesting; that is historic in treatment; and that will recognize the needs not of the lawyer but of the business man. Professors Perrin and Babb have made a good start in publishing so comprehensive a case book. A comprehensive text and case-book in one is the present need.

Wendell Phillips Raine.

*Assistant Professor of Business Law,
Wharton School of Finance and Commerce,
University of Pennsylvania.*