

## BOOK REVIEWS.

THE MONROE DOCTRINE: Its Importance in the International Life of the States of the New World. By Alejandro Alvarez. New York: Oxford University Press, 1924, pp. 560.

In spite of all that has been said and written concerning the Monroe Doctrine it still demands thoughtful study and interpretation. Profound differences of opinion regarding its significance exist among Americans and Europeans, as well as among Latin-Americans. We need particularly to make the effort to understand the attitude of the latter towards this historic declaration in order to understand their attitude towards the United States. The danger of a widening difference of views and interests between this country and the countries of the South of us, is very real. They find it excessively difficult to understand us and are often irritated by what seems our utter failure to understand them. The reiterated pronouncements and assurances of our statesmen concerning our national policy towards Latin-America have served rather to increase this distrust and irritation. Our interpretation of the Monroe Doctrine often seems to imply an alleged right of hegemony on the part of the United States over the other American countries.

The Carnegie Endowment for International Peace has rendered, therefore, a great service in making possible the publication of this compendium by Doctor Alvarez. Doctor James Brown Scott, Director of the Division of International Law of the Endowment, well says in his preface to the book that the best commemoration the Endowment could make of the one hundredth anniversary of the Doctrine which has made for peace would be "a collection of expressions of opinion by Latin-Americans regarding the Monroe Doctrine and expressions of prominent North Americans upon the same subject."

Doctor Alvarez, the distinguished Chilean publicist, has performed this task admirably, together with an historical introduction that enables one to apprehend more intelligently the attitude of Latin-Americans on the subject. Doctor Alvarez was peculiarly suited for this discriminating work of selection as he has devoted his main activities to the study and appreciation of Latin-American affairs as attested by his numerous publications, notably *Le droit international américain*. It is of interest to note his belief that the principles contained in Monroe's message "are not merely a policy of the United States, but a *legal international doctrine*, because they have been affirmed by all the States of the New World." He also believes that under the aegis of this Doctrine, the Western Hemisphere has evolved its own system of international law distinct from that of Europe.

In this volume, therefore, is to be found a rich mine of ore to be worked over by those eager to know how Latin-Americans interpret the Doctrine as well as the views of some of the leading statesmen and publicists of the United States. It should be consulted together with the excellent work by Albert Bushnell Hart entitled *The Monroe Doctrine, An Interpretation*.

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LAW AND MORALS. By Roscoe Pound. The University of North Carolina Press, 1924, pp. iii, 146.

The little book before us represents a course of three lectures delivered by Dean Pound at the University of North Carolina on the McNair Foundation. The passage in the will of Rev. John Calvin McNair, the founder of the lectureship, relating to the foundation, reads as follows:

" . . . They (the Trustees) shall employ some able scientific gentleman to deliver before the students . . . a course of lectures, the object of which lectures shall be to show the mutual bearing of science and theology upon each other, and to prove the existence of attributes . . . of God from nature. The lectures . . . must be prepared by a member of some one of the evangelic denominations of Christians. . . ."

Substitute law for science and morals for theology, and the Rev. McNair's purpose is admirably carried out in Dean Pound's lectures. And surely one of God's attributes is justice; and the Law of Nature, of which Pound treats considerably in the present lectures, is nature. Hence as the Law of Nature School in Jurisprudence developed the idea of Justice, an attribute of God was proved by nature.

Having satisfied, as we hope, or shall we say appeased, the shades of Rev. McNair, we may proceed to a discussion of the valuable and informing lectures of Prof. Pound.

To those who are familiar with Dean Pound's writings the book under review will not cause any surprises, except that Dean Pound's omniscience is always a new surprise to the reader of every new production of the author.

We thus have in this little book Pound's classification of the development of law into 1. Primitive Law, 2. Strict Law, 3. Equity and Law of Nature, 4. Maturity of Law, 5. Socialized Law, as against Maine's division into fiction, equity and legislation. The two divisions are not contradictory or incompatible. They are based upon different motives or principles of classification. Maine is primarily interested in those factors which cause the changes in the law, the factors which are responsible for the general progression of the law, say, from status to contract, or any other progressive tendency of the law which might be denominated as modern in contradistinction to ancient or primitive or mediæval. The factors or causes which keep the law in *statu quo* Maine does not stop to consider. Pound, on the other hand, considers the periods or stages of law, hence he has to recognize the stationary as well as the progressive.

Another familiar feature of Pound's thinking that is found here, is his proneness to view any theoretical feature of the jurisprudence of a given school as determined by the needs of the period and not by logical or metaphysical necessity. This is of course a pragmatic point of view, but it makes a certain kind of reader uncomfortable when he is told in effect, "Don't trouble to criticize these views on the basis of their logic, as this is no better and no worse than that of their opponents. Their point of view is to be judged solely with relation to the needs of the place and the time in which they lived. Thus in a period of growth there is an infusion of morals into the law, and the philosophy of the period subordinates law to morals. In a

period of stability when the need is for a systematization and consolidation of the new material brought into the law in the preceding period of growth, the law becomes self-sufficient, and the jurisprudence of the time insists on the differences between law and morals rather than on their similarity."

It is true that our logic is apt to be determined by our wishes, but it is also true that some of us do our best to reason independently of our wishes, and this is precisely what distinguishes scientific and philosophic thinking from loose every day thinking. What the relation of law is to morals, or rather what the relation of law to morals should be, is a question capable of discussion, if not of definitive answer, irrespective of time and place. There is never a time when law and morals should be divorced. The analytic study of the law is one thing, an analytic theory that law has nothing to do with morals is an absurdity, and has never been taught in this bald form by any one, as can be seen from the book under review.

Pound equates the analytical school of the nineteenth century with the theory of the Sophists. Both held that law is by convention. It seems to the present writer that the similarity is merely verbal. When the Sophists said law is convention, they meant that it had no basis in nature. They went so far as to say that justice itself is convention, and that by nature might is the sole determinant and regulator of conduct in relation to one's fellow-man. When the analytical jurist today says that law gets its authority from the state, he differentiates between law and justice, and also between proximate and remote sources of law. Justice is a remote source of law and should guide the state in its enactments.

The author discusses the subject of Law and Morals under three heads. In the first lecture he gives a historical view of the actual relation between law and morals in the five periods into which he divides the life of the law. In brief the proposition is that law and morals were undifferentiated in the period of primitive law; they were separated in the period of the strict law; law was subordinated to morals in the period of growth which followed the strict law, and which is characterized by the introduction of Stoic doctrines into the Roman law in the writings of the Classical jurists, by the development of the court of chancery and principles of equity in England in the seventeenth and eighteenth centuries, and by the theories of the Law of Nature on the European Continent. Law and Morals were again separate in the nineteenth century, which was a period of stability and maturity of law. And finally in our days, a period of unrest and growth, we are again coming back to a dependence of law, not indeed on morals merely, but on the social needs and desires of men, which the various social sciences put us in a position to understand. This bald manner of stating the result is richly illustrated and effectively presented in Pound's book, to which the reader is referred.

In the second lecture the author presents the analytic view, which considers the ideal law as self-sufficient and to be kept separate from morals. Especially valuable in this lecture are the author's defense of the separation of the functions of the judge and the legislator on which the analytical jurist insists, as well as the criticism of the analytical point of view on other grounds (pp. 48 ff.). Pound's discussion of the delimitation of the boundary

between law and morals (pp. 68 ff.) is also admirable, like all the other discussions in the book, for its reasonableness and fairness and freedom from all bias.

Finally in the third lecture the author discusses the views of the philosophers, both those who belonged to the Law of Nature School and those, including Kant, Hegel, the Neo-Kantians and the Neo-Hegelians who, without identifying law with morals, nevertheless insisted on their close connection. Especially valuable here are the criticism of the natural law doctrine (pp. 95 f.), and the description of the new socializing tendency of the law, which began at the close of the last century and is strong today (p. 108 f.).

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LA LUTTE JUDICIAIRE DU CAPITAL ET DU TRAVAIL ORGANISÉS AUX ÉTATS-UNIS. Le boycottage, le picketing et la grève de sympathie en tant qu'instruments du contrat collectif de travail et de la boutique syndiquée. Par Edouard Lambert et Halfred C. Brown. (Tome 6. Bibliothèque de L'Institut de Droit Comparé de Lyon.) Paris, Marcel Giard, 1924. pp. xiii, 469.

This extended monograph, which constitutes the sixth of the series of studies published by the Institut de Droit Comparé de Lyon under the direction of Professor Lambert, is in a sense a continuation of two previous studies in the same series by J. Fouilland (*Allen v. Flood*), and by R. Hoffherr, (*Le Boycottage devant les Cours Anglaises*). Whilst these two studies dealt with aspects of English labor law, the present volume, product of collaboration between teacher and student, invites the attention of the French reader to the field of American labor law, closely related to, and certainly not less significant than, that of England.

From the significant jurisprudence which the courts in this country have been evolving in order to regularize the course of industrial warfare, the authors have drawn a central but restricted theme. Unable, through the inadequacy of the facilities at their disposal, to study the decisions of the American state courts or even of the inferior federal courts in any comprehensive manner, they have confessedly limited themselves chiefly to the decisions of the Supreme Court of the United States from 1908 to 1921 in which the regimen by which labor is to be limited in its struggles with capital is defined.

More precisely, the study before us is divided into three parts, the first prefatory and the third appendant to the second. In the first part, after a brief survey of the policies adopted by organized labor prior to 1908, a preliminary analysis of the diverse weapons or methods of industrial combat, connotated by or intimately connected with that rather unprecise term, boycott, is undertaken, and the scope of the study thereby limited to boycotts directed against employers by employees and to their frequent concomitants, picketing and sympathetic strikes. As counterpart to the foregoing, there ensues a sketch of the antecedents and purposes of the American Manufacturers' Association and more particularly of its filial, the American Anti-Boy-

cott Association, into which the Sherman Act is somewhat incongruously introduced with a view, it seems, to suggesting its availability as of 1908 for the defense of manufacturers against boycotting. Upon this background the facts, arguments and judicial conclusions in the Danbury Hatters' Case (*Loewe v. Lawlor*, 208 U. S. 274), and in the various somewhat indecisive proceedings between the Buck's Stove and Range Company and the American Federation of Labor which culminated in two judgments of the Supreme Court in 1911 (*Buck's Stove and Range Company v. American Federation of Labor*, 219 U. S. 581; *Gompers v. Buck's Stove and Range Company*, 221 U. S. 418), are depicted in considerable detail. The discussion of these cases is naturally followed by an account of the agitation for pro-labor legislation which they accentuated, in the course of which the provisions of the English Trades Disputes Act of 1906 and the appropriate sections of the Clayton Act are compared, somewhat to the disadvantage of the latter. A succinct resume of the relations between labor and capital during the war period concludes the first part. The second and most extended portion of the treatise analyzes in comprehensive detail the facts, arguments *pro et contra*, and the effects of the three important cases of 1921 in which the Supreme Court of the United States deliberately stated the policies of the federal law with regard to boycotting, sympathetic strikes and picketing and, in so doing, also defined the Clayton Act as declaratory of their previous decisions and affirmed their power to review state labor legislation in conflict therewith (*Duplex Printing Press Company v. Deering*, 254 U. S. 443; *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184; *Truax v. Corrigan*, 257 U. S. 312). The third and final section of the monograph discusses in a perhaps less elaborate fashion the cases subsequent to 1921, in particular, *United Mine Workers of America v. Coronado Coal Company*, 259 U. S. 344; *Pennsylvania Railroad Company v. U. S. Railroad Labor Board*, 261 U. S. 72; and the opinion of Amidon, D. J., in *Great Northern Railway Company v. Brosseau*, 286 Fed. 414,—and affects to find in the directions taken in these cases, as well as in the powerful dissents in the Duplex Printing Press Company and Truax cases, an indication that the decisions of the Supreme Court of 1921 and in particular the judgment of Mr. Justice Pitney in the Duplex Printing Press case represent the apogee of the judicial reaction against the policies and methods of union labor, which in the opinion of Professor Lambert will probably be tempered in the future.

The picture drawn by the authors from the foregoing materials is instructive and loses not by the high relief in which the decisions of the Supreme Court are delineated. The result is at least to thrust to the foreground the methods of interpretation which have been employed by that august tribunal in reaching its conclusions, not the least interesting of which is the use which it has made of sections 16 and 20 of the Clayton Act in consolidating its previous decisions. In general, the picture, though not always cohesive, is true and temperate, since the purpose of the authors is to inform the French public rather than to enter the lists of argument: in any event, it would lead us too far afield for the purposes of a review to discuss in any detail the problems which are involved. But this same didactic pur-