BOOK REVIEWS

IMMUNITIES AND PRIVILEGES OF INTERNATIONAL OFFICIALS—THE EXPERIENCE OF THE LEAGUE OF NATIONS. By Martin Hill. Carnegie Endowment for International Peace, Washington, 1947, pp. xiv, 281. $2.50.

In this country there is an increasing interest in the legal status of international organizations and the privileges and immunities of their officials. The location here of the Headquarters of the United Nations makes this subject especially timely. Our courts have recently passed upon the question of the immunity, under the 1945 International Organizations Immunities Act,[1] of the chauffeur driving the Secretary General of the United Nations,[2] and upon the liability to income taxation of the salary of a League of Nations official working in Princeton during the war.[3] This book by a former member of the League of Nations Secretariat sets out in some detail the experience of the League in the field of immunities and privileges of international officials, and comments more briefly upon the position of officials of some of the international organizations formed during World War II. It is a useful contribution to the growing literature upon the subject.[4]

After a brief introductory chapter the author discusses the agreements of 1921 and 1926 between the League of Nations and Switzerland, which amplified the terse language of the Covenant and worked out in detail the status in Geneva of officials of the League and of the International Labor Office. He then turns to the agreement of 1928 between the Permanent Court of International Justice and the Netherlands Government, which clarified the immunities accorded judges and employees of the Court. Next comes the status of League officials performing functions outside Switzerland, with which is connected the problem of travel documents and facilities. Other chapters deal with the status of League officials with respect to their own home countries in such matters as taxation, jurisdiction, and military service obligations, for which problems no completely satisfactory solutions were found. Following the conclusions drawn by the author from the League's experience, there is a final chapter discussing the postwar regime with respect to international officials, which centers upon the United Nations and the specialized agencies related thereto. More than half the volume is devoted to a collection of documents regarding immunities of international officials.

In reading the book one point which stands out is the difference between Article 7, paragraph 4, of the Covenant of the League, providing that

1. 59 STAT. 669; discussed by L. Preuss in 40 AM. J. INT'L L. 332 (1946).

2. Westchester County v. Ranollo, 187 Misc. 777, 67 N. Y. S. 2d 31 (City Ct. of New Rochelle 1946), discussed by L. Preuss in 41 AM. J. INT'L L. 555 (1947).

3. John Henry Chapman v. Commissioner of Internal Revenue, 9 T. C. No. 87 (1947).

4. For further discussions, see S. BASDEVANT, LES FONCTIONNAIRES INTERNATIONAUX (Paris, 1931); L. Preuss, *Diplomatic Privileges and Immunities of International Agents*, 25 AM. J. INT'L L. 694 (1931); J. Secretan, *The Independence Granted to Agents of the International Community*, BRIT. Y. B. INT'L L. 56 (1935); Kunz, *Privileges and Immunities of International Organizations*, 41 AM. J. INT'L L. 828 (1947). The older United States practice is indicated by IV HACKWORTH, DIGEST OF INTERNATIONAL LAW 419 *et seq.* (1942).

"Representatives of the Members of the League and officials of the League . . . shall enjoy *diplomatic* privileges and immunities";[5] and Article 105, paragraph 2, of the United Nations Charter, which provides that representatives of members and officials of the United Nations shall enjoy "such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization." Mr. Hill shows how the reference in the Covenant to diplomatic privileges and immunities resulted in the League officials receiving the same treatment as Switzerland accorded the diplomatic corps in Berne. One consequence worked out in practice was the recognition of two categories of League officials, higher and lower, who received greater and lesser degrees of immunities corresponding to those enjoyed by the two categories into which Swiss practice divided the personnel of foreign diplomatic missions in Switzerland.[6] In view of the fact that the United Nations and most of the post-war specialized agencies substitute for the concept of diplomatic privileges and immunities that of privileges and immunities necessary for the discharge of functions,[7] it is interesting to see that the author, apparently favorable to the extension of immunities, says on this point:

> "The grant of *diplomatic* privileges and immunities to League officials made it possible to apply to them from the outset a body of existing law and practice covering most of the essential requirements of an international service. . . .
>
> ". . . Both in size and in the character of the functions performed, the League organizations differed considerably from an ordinary diplomatic mission. The scope of the privileges and immunities of individual League officials in Switzerland and the Netherlands being decided by wholesale assimilation of classes of officials to classes in the diplomatic hierarchy, full immunities have been extended to a great number of persons without reference to the question whether the character of their functions warranted a protection going beyond immunity in respect of official acts. . . .
>
> "The whole question of the status of international officials ought to be based on the requirements of their special functions, which in some respects differ from those of diplomatic agents."[8]

Building upon the experience of the League and other organizations in adapting the traditional diplomatic privileges and immunities to meet the needs of international officials, it may be hoped that there will be worked out in practice for the United Nations and specialized international agencies a regime of privileges and immunities which is based upon the actual needs and functions of international officials.

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5. Italics supplied.

6. Although such a distinction is drawn in some of the post-war international organizations, it does not appear in the United States Act referred to in note 1, *supra*.

7. Indeed, the United States Act cited *supra* note 1, goes further, section 8(c) providing explicitly that no person shall by reason of the Act "be considered as receiving diplomatic status or as receiving any of the privileges incident thereto other than such as are specifically set forth herein." It should be noted, however, that the Headquarters Agreement between the United Nations and the United States, signed June 26, 1947, does provide diplomatic immunities for representatives of the Members of the United Nations stationed at the Headquarters: see 17 STATE DEPT. BULL. 27 (July 6, 1947); see also N. Y. Times, Dec. 21, 1947, p. 1, col. 3.

8. Pp. 96-98, 100.

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COMPARATIVE LAW. By H. C. Gutteridge. Cambridge University Press, 1946, pp. xvi, 208. $3.00.

This work by the distinguished Professor Emeritus of Comparative Law at Cambridge University, holder of three French honorary doctorates, carries the subtitle: "An Introduction to the Comparative Method of Legal Study and Research." The reader is thus advised that the book is not an introduction to foreign (civil) law—a meaning often read into the confusing term "Comparative Law." The book is more, however, than a mere technical study, as the subtitle may suggest.

The opening chapter, "The Province of Comparative Law," is the essay written in honor of Roscoe Pound which one may find also in *Interpretations of Modern Legal Philosophies*. The author discusses critically various definitions of Comparative Law, and concludes that it should be considered a method of study and research, not a distinct branch or department of the law. He thus agrees with the prevailing opinion. Professor Gutteridge believes that, as a method of study, Comparative Law does not lend itself to definition otherwise than by an indication of the purposes for which it may be employed. He considers the distinction widely made between "Descriptive Comparative Law" and "Applied Comparative Law" useful, especially because it brings into relief the fact that Comparative Law includes more than a mere description of the laws of foreign countries. For him comparative work in law reform and unification is the most vigorous and productive application of the method. Others may see its greatest field in foreign law practice or modern legal education. The fields are many which may compete in this respect.

In the second chapter, "The Origins and the Development of Comparative Law," a comprehensive account of the historical development, especially in Europe, is given. Things move fast now in the field and the activities in Latin America should be noted also. For the United States, the author refers to comparative law work at Tulane University and adds that certain other American universities, *e. g.*, the University of Chicago and the University of Michigan, have taken steps to promote legal training on a comparative basis, but that "it would seem that in most of them little or nothing has been done up to the present." Suffice it to note that, according to the 1947 report of the Committee on International and Foreign Law of the Association of American Law Schools, sixteen member schools have offered courses in either foreign or comparative law. Professor Gutteridge mentions the activities in earlier years of the Comparative Law Bureau of the American Bar Association to which notably a number of code translations are due; he lists the *Continental Legal Histories* and other series published by the Association of American Law Schools; he refers to the *Guides to the Law and Legal Literature* of foreign countries brought out by the Library of Congress. He criticizes, quite properly, the fact that the valuable *Guides* have not been kept up to date. It has been announced now by the Library of Congress that, for Latin America, the *Guides* will be kept up to date through the selective bibliographies in the various chapters of the *Handbook of Latin American Studies*. What Professor Gutteridge says about developments in his own country will be read with special interest. Plans are mentioned for the creation of an Institute of Legal Research which would be the center of comparative law work. It has been announced since that the plans have materialized. An Institute of Advanced Legal Studies has been established by the University of London. It has received the valuable civil law library of the late Dr. Charles Huberich, American lawyer.

The "Value of Comparative Law" is discussed in a chapter following the historical account. The opening statement is to the effect that Comparative Law has gained a foothold in the domain of law, but that its position is by no means secure and that comparative studies must often be carried on in an atmosphere of hostility or, at best, "in a chilly environment of indifference." "Most practitioners in England, as elsewhere, view Comparative Law with doubt and suspicion," says the author (p. 23). We think that this gloomy picture belongs to the past. In this country at least, comparative law work of practical value and the increasing need for experts in foreign law have dissipated "hostility" if there was any. General interest, on the other hand, should not be expected for a field which is still young as well as special. The author discusses in detail the possible value of comparative law work in the various departments of the law. Two special studies, "Comparative Law and Conflict of Laws" and "Comparative Law and the Law of Nations," follow. They are well known, the first being the paper read in 1944 before the Grotius Society and the second the article which appears in the *British Year Book of International Law* for the same year.

Professor Gutteridge's book closes with three studies on the unification of the law, a field where comparative work is especially important. These chapters, "The Movement for the Unification of Private Law," "The Nature and Characteristics of Unified Law," and "The Mechanism of Unification," are particularly valuable because of the author's almost unique experience in the field. Professor Gutteridge was the British delegate to the Geneva Conferences on Bills of Exchange and on Cheques; he was the adviser on English law in the drafting of an International Law of Sales by the Rome Institute for the Unification of Private Law; he helped in preparing the treaties which England has with France and Belgium on the reciprocal enforcement of judgments—to name only a few of his activities. His knowledge of the difficulties which confront attempts to unify the law of countries with a different legal system makes his treatment of the subject particularly instructive. Professions of faith in the unification of the law or parts of the law abound; technical studies from expert hands are rare.

The nucleus of the book under review deals with the "Process of Comparison." The sources of foreign (civil) law are discussed as are the materials for comparison. The author stresses the limited number of works in English. To the works listed: Burge's *Foreign and Colonial Law,* Amos and Walton's *Introduction to French Law,* Walton's *Egyptian Law of Obligations,* Schuster's *Principles of German Civil Law,* Dr. Ivy Williams' books on the *Swiss Civil Code,* one could add, *e. g.*: Sherman's *Roman Law in the Modern World,* Burdick's *Principles of Roman Law and Their Relations to Modern Law,* Goirand's *Principles of French Commercial Law,* Esquivel Obregon's *Latin-American Commercial Law,* and Burdick's *Bench and Bar of Other Lands.* Also more code translations exist than are listed.[1]

Regarding differences between the civil law and the common law, Professor Gutteridge singles out two topics for special discussion: the position of the case in the civil law systems, and statutory interpretation. He stresses what is not fully realized everywhere—the importance which

1. Besides the German, Swiss, and French Civil Codes, the civil codes of, *e. g.*, Spain (Walton), Argentina (Joannini), Brazil (Wheless), Mexico (Wheless), the Philippines (Sinco and Capistrano), Japan (De Becker), China (Riasanovsky; Hsia, Chow, Chang) have been translated, as have the commercial codes of most countries of the world. See COMMERCIAL LAWS OF THE WORLD (Anglo-American ed. 1909) Most translations are not, however, up to date.

court decisions have in the civil law notwithstanding the absence of the doctrine of *stare decisis*. He points to the difficulties which may result from the differences in rules of statutory construction in the interpretation of uniform laws or international conventions.

The educational aspects of work in Comparative Law are dealt with in a special chapter: "Comparative Law and Legal Education." Professor Gutteridge thinks that past failure of Comparative Law to secure wider recognition in the law school curriculum is due to a variety of reasons, most of which have no relation to its merits as an element in the training of students. The educational merits are indeed rarely questioned. In this respect, one may quote Dr. Wu's reference to the Chinese saying: "A man who has seen few things is surprised at many. When he sees a camel, he exclaims: Look, what a terrible tumour on the back of the horse." [2] For Professor Gutteridge, the main obstacle to the development of comparative law work in the law schools lies in the fact that the curricula are already tightly packed with subjects for examination. If this was true for the accelerated wartime program, a curriculum spread over more terms can be kept elastic enough, it is thought, to offer the opportunity for comparative law work. Demand for such instruction, quite natural on the part of a much-traveled, world-conscious student generation, will subsist because of the growing needs and opportunities in the foreign law field.

Professor Gutteridge thinks that no need exists on the undergraduate level to elevate Comparative Law to the dignity of a separate subject. "It should be perfectly feasible," he says, "to dovetail comparative instruction into one of the courses devoted either to the usual English law subjects, or, perhaps, to one of the cultural subjects, such as jurisprudence or conflict of laws" (p. 136). One must remember in this connection that, in England, Roman law is still included in the curriculum. The course is used largely as an "introduction to a general familiarity with the basic conceptions of most continental systems, such as an educated English lawyer ought to possess." [3] Without such instruction it appears questionable whether comparative teaching of a standard subject of the domestic law can convey knowledge of the basic conceptions of the civil law as compared with the common law. The emphasis will be on teaching the subject, not foreign law. Teachers of Jurisprudence may not wish to make allowance to Comparative Law in excess of what is justified from the viewpoint of Jurisprudence. Conflict of Laws, classified as a "cultural" subject, is overtaxed in the United States at least where interstate conflict problems, often affected by provisions in the Federal Constitution, require extensive treatment and absorb much of the time allocated to the course. Discussion of a number of conflicts problems on a comparative basis, if it enlarges the view on the problems thus treated, does not provide acquaintance with the general concepts of the foreign law.

The other eventuality, not further discussed by Professor Gutteridge, is a separate course where an introduction is given to basic conceptions of the civil law systems and where such topics are discussed from various fields of the law, including Conflicts, as are best apt to bring out fundamental differences between the systems. The course will be more than merely "cultural" if topics of practical interest are chosen for discussion. Limitation of the comparison to one legal system, Scots law, Roman law, or the French civil code, as suggested by Professor Gutteridge, is not necessary in the separate course. As many countries as possible may be

2. John C. H. Wu, *The Quest of Justice*, 33 IOWA L. REV. 4 (1947).
3. DE ZULUETA, THE ROMAN LAW OF SALE III (1945).

covered for the topic chosen, beginning with the Roman law rule, if there is one, and ending with the provisions in the modern codes, European, Latin-American, Far Eastern.

Professor Gutteridge points to the language problem in teaching the comparative law course. For the separate course as sketched, knowledge of a foreign language is not necessary. Wigmore's *Panorama of the World's Legal Systems,* the volumes in the *Continental History Series,* the introductory works mentioned and the code translations are available, as are a few monographs and the numerous law review articles on special topics. To these add the inexhaustible reservoir of decisions from jurisdictions such as Louisiana, Quebec, Puerto Rico, the Philippines, South Africa, Scotland, and foreign law cases in common law jurisdictions, with which to demonstrate and illustrate differences in the legal systems.

For post-graduate study and research, on the other hand, knowledge of a foreign language is necessary. Recent developments have opened new avenues. With funds available to American students, under the Fulbright law, for the pursuance of their studies abroad, the American law schools may expect to be asked more than before to provide advanced training in foreign law to students conversant with a foreign language. At the same time the schools may anticipate increased demand for introductory courses to the civil law on the part of students planning to pursue legal studies abroad.

Professor Gutteridge's work could not be more timely. It constitutes a valuable aid to those who are connected with comparative law work. The book has an appendix prepared by Dr. Lipstein, which lists for most civil law countries their law reports and law reviews with the customary abbreviations. This volume has been published as the first in a new series: *Cambridge Studies in International and Comparative Law.*

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DICTIONNAIRE JURIDIQUE ANGLAIS-FRANCAIS. By Raoul Aglion. Brentano's, New York, 1947, 257 pp. $7.00.

Speaking of the possibilities, remote at the present time, of compiling an International Juridical Dictionary, Professor Gutteridge says:[1]

> "Its value would be almost incalculable. It would be a potent instrument in breaking down the barriers of mutual ignorance which at present split the lawyers of the world into separate units and tend to produce a spirit of national self-sufficiency which does much to hamper the development of the law."

Meanwhile, partial attempts are useful. Professor Aglion, legal adviser to the French Embassy, is breaking almost fresh ground. He belongs to that small but influential number of French lawyers who have mastered the intricacies of Anglo-American law, hurdling the almost insuperable barrier of legal language. Twenty years ago he published a book in French on the Trust, and his professional work has kept him in constant touch with the common law. French studies of comparative law, under the influence principally of Levy-Ullmann and Lambert, have been numerous. Students must often have wished for a book like this, since the general dictionaries are practically useless and often misleading. But this book falls somewhat short of what is needed. The author recognizes this him-

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1. GUTTERIDGE, COMPARATIVE LAW (Cambridge, England, 1946) 124.

self—it is "necessarily incomplete" (p. 29)—and he supplies blank pages for the user to fill in his own additions.

It would have been preferable for the author to do so himself. He could have done so in the same space by omitting the great number of obsolete and archaic words only a few of which he so labels, some strange indeed to an American lawyer (I cannot answer for British colleagues), such as "abearance," "abactor," "abandum," "aberemurder," "abjudicate," to cite only those on the first page. There must be several hundred scattered through the book, one or two of which are not even in the *Oxford Dictionary,* although in *Bouvier* or *Black.*

Aglion does not shirk difficult terms. Where words are susceptible of translation, he has translated them; of others, he gives a brief description, admirable in most cases, *e. g.,* of such difficult concepts for the Continental lawyer, as "vested," "vested in possession," "estoppel," "quitclaim deed," "escheat," "surplusage," "perpetuity," "trust," *"in pais,"* and hundreds of others. Occasionally, these descriptions are too brief or not so happy, *e. g.,* "business corporation" is translated as *"société de commerce,"* but the French *société* includes partnership; *"société anonyme"* would be nearer. Occasionally, when he goes beyond explanation and adds an accessory rule of law, he appears to have been led into error. Understandably, too, he shows himself more familiar with English than with American law, both in the dictionary and in the very illuminating introduction on the methods and history of our law. While it is perhaps true that there has been more codifying legislation in the United States than in England, I fear a Frenchman would be misled by the statement that "nearly all the States have codified their law" and "pursuit of happiness" is described as "an expression used in the Constitution to designate the right to individual liberties" (i. e. the bill of rights). But I have found only a single glaring error, and that I attribute to the typist or printer swallowing a line: "Referee in bankruptcy" is translated as *"syndic,"* which corresponds to "trustee in bankruptcy." Otherwise, the typographical errors are few, for a work of this character. And the bookmanship is superb.

It is difficult to quarrel with an author's choice of method or selection of material. That is his own province. But what class of persons did Dr. Aglion have in mind to use this book? The general reader, the student or scholar, the inexpert translator, the expert translator? It is not clear.

It is difficult to predict, before actual usage, to what extent this book will aid a translator. It would be going too far to say that, of all translations, that of legal texts and documents is the most difficult. Nevertheless it presents special problems of its own. The literary translator needs only to catch the spirit of the original and render it in his own language in clear, well-styled, idiomatic phraseology. The result will turn more on the mastery of his own tongue than on the exact shade of meaning of the original. Technologists need not worry much about style (few indeed do) and their work is facilitated by many of the terms they deal with being common to all modern languages.

But the lawyer must render as near as may be the exact meaning of his text. He dare not indulge in a free translation, yet he must not sacrifice idiom, otherwise he will fail to achieve clarity.

The first question he must ask himself is: for whom and for what purpose is the translation being made? Method and language will vary according to the answer.

If the translation is merely for the general information of clients, students or the public, the lawyer can indulge in a freer version than he

would if it is for use in court or before public authorities or for a trial lawyer who must make himself acquainted with the foreign law or the exact meaning of a document in order to frame his pleadings and prepare his case.

Mr. Aglion's dictionary will be of great value to the inexpert translator who will be enabled by it to avoid some of the horrible examples with which he has too often regaled us in the past. Here it would have been preferable to err on the side of putting in too much rather than too little, since the general dictionaries are often grossly misleading on the law side. I cite at random from one of the latest and best: *"estoppel:* fin de non-recevoir; exception; non-recevabilité." *"fee-tail:* propriété objet d'un fideicommis."

But as to the experienced practitioner *utriusque juris,* I have some doubts. The method chosen, of a description of the term without any attempt at even a slightly inexact translation, will, I fear, be of less help to the expert who has to rack his brain to find a reasonably adequate idiom in his own language to translate a phrase the meaning of which is perfectly clear to him, but which the differences in the legal systems and verbal approach make difficult to render.

We must presume then that Aglion had principally in view the general reader, the inexpert translator and lawyers in conference. In this respect, the dictionary constitutes a scientific contribution to the law, enabling lawyers and business men of France to reach a better understanding with their Anglo-American colleagues. It should stimulate the compilation of a full law lexicon, including French into English, by an appropriate committee. It cannot be adequately done by one man alone, busy on other professional work. This urgently requires doing and I invite Dr. Aglion to organize and head such a committee. My advice, for what it may be worth, would be for such work, or for a second edition of the present dictionary: omit all clearly obsolete and archaic words except such as are of prime historical interest, all Scots law and purely civil law terms, or else identify them clearly; include in addition to a description of the tough nuts, an approximate translation; and include substantially every term in daily use by practicing lawyers.

Thumbing a dictionary induces doleful reflections. We have a legal system of which we are justly proud. Why continue to hide it from the outside world and our own people by the obscurity of archaic and misleading verbiage? The hybrid *"cestui que trust"* is being replaced by "beneficiary," but the confusing "infant" is still used along with "minor" in the same body of statutes. "Moveable and immoveable," now well understood, could well replace the present meaningless "personal and real property." The Supreme Court (in New York and England) is not supreme; superior courts are generally inferior courts, and so forth. Even modern statutes and agencies are given misleading titles: Workmen's Compensation, Social Security. Why should not lawyers have the wit to coin clear and simple new words? Bentham furnishes us a brilliant example, with his "international." But save us from appalling professorial neologisms. A wholesome change of much of our nomenclature is quite feasible, and would not only make our law more accessible to the outside world, but would improve its very structure. The chief task of this generation is the mutual comprehension and interpenetration of Common Law and Romanic Law. Professor Aglion has made a noteworthy contribution. May others follow his lead.

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