

BOOK REVIEWS

TREATY RELATIONS OF THE BRITISH COMMONWEALTH OF NATIONS. By Robert B. Stewart. The Macmillan Co., New York, 1939. Pp xxi, 593. Price: \$5.00.

This excellent work, published under the auspices of the Bureau of International Research of Harvard University and Radcliffe College, consists of twelve chapters given to the political structure of the Commonwealth; the Dominion representation in treaty-making in commercial and other technical treaties prior to the World War; participation of the Dominions in the treaties of peace and in the League of Nations; treaty-making and procedure since the World War; Commonwealth ("inter-se") treaties; and some other matters. Appendices contain excerpts from many documents, and there is a bibliography and an index.

In 1926, the Imperial Conference at London proclaimed Great Britain and the Dominions to be "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations",¹ and, in 1931, the Statute of Westminster was passed by the Parliament in the United Kingdom, upon the request and consent of all the Dominions, "for the ratifying, confirming and establishing" of certain declarations and resolutions of the Imperial Conferences of 1926 and 1930.²

The British Dominions have acquired attributes of sovereign States: they have unlimited rights of jurisdiction, and their relations between themselves and with the mother country are based on the principles of full equality. The Dominions have also acquired a status of international persons: they have a membership in the League of Nations, the International Labor Organization, and the Permanent Court of International Justice; they exchange diplomatic representatives with several foreign States; and they make treaties under their own authority and responsibility, either through the instrumentality of the Crown or through their governments.

What is then the legal nature of the British Commonwealth and of the relationship of the Dominions with one another and with the mother country?

In the opinion of the author, "if the British Commonwealth has not at present become a personal union, the relations of its members in many respects closely resemble those of a personal union and are approaching more and more closely those of a personal union under a Crown divisible for all purposes."

Now, a "personal union" is a situation when two (or more) distinct crowns are held by the same individual, there being no association between the particular States themselves.³ Does the author mean to say that the

1. Imperial Conference Report (1926), Comd. 2768, p. 14.

2. 22 Geo. V c. 4 (1931). The valuable article by Hudson, *Statute of Westminster 1931* (1932) 46 HARV. L. REV. 261, is not mentioned in the book.

3. See I WHEATON, INTERNATIONAL LAW (6th ed. 1929) 115: ". . . a personal union is not, strictly speaking, a union at all. . . ." JELLINEK, ALLGEMEINE STAATSLERE (2d ed. 1905) 732: "Ist die Gemeinsamkeit der physischen Person des Monarchen keine von den Staaten absichtlich herbeigeführte, also im rechtlichen Sinne zufällig, so ist eine Personalunion vorhanden." *Id.* at 733: "Die Personalunion ist, . . .

British Commonwealth is not at all an association of its members, but is only their agglomeration under distinct crowns united in a common holder? In the first place, there are no such distinct crowns in the Commonwealth. Take, for instance, treaties made by individual members of the Commonwealth with foreign nations, in the "Heads of State" form. These treaties are made, "in respect of" a given member, by the only King known to the British Commonwealth: ". . . by the grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King. . . ." ⁴ Consider also treaties entered into by members *inter se*. These are always made by the governments concerned, and are never made in the "Heads of State" form. ⁵ Why? Because there are no distinct crowns in the Commonwealth! In case of treaties made in the "Heads of State" form by more than one member of the Commonwealth with foreign nations, the established rule is that they must not be regarded as regulating *inter se* the rights and obligations of the various members of the Commonwealth on behalf of which they have been signed in the name of the King. If each member had a distinct crown of its own, such a rule would have no sense.

The author says, however, that the "episode", at the time of abdication in December, 1936, concerning the passage of the law in the Irish Free State recognizing the change of throne as of December 12, a different date from that recognized by the other members, ⁶ "is generally regarded as making clear *beyond all doubt* the multiple capacity in which the King now acts." ⁷

It is true that such a discrepancy might have been due to the fact that the Irish Free State considered itself, rightly or wrongly, as having a distinct crown of its own. The fact, however, is that the Irish Free State did not dream of doing anything of the sort. ⁸ Or this discrepancy might have been due to the fact that the Irish thought themselves entitled to form their own view, in respect to themselves, or even to everybody under the sun, as to the date of passing of the one and single Crown of the Commonwealth. But both the constitutional rule as to succession to throne and the actual practice followed by all the other members of the Commonwealth show not only that there is but one crown, but also that its passing is one event common to all the members. ⁹

im Rechtsinne keine Verbindung von Staaten, sondern eine staats- und voelkerrechtliche *communis incidens* des Tragers der hoechsten staatlichen Organstellung bei voelliger gegenseitiger Unabhaengigkeit der betreffenden Organschaften selbst."

4. See Hudson, *The Style and Titles of His Britannic Majesty* (1928) 22 AM. J. INT. L. 146 *et seq.*

5. P. 334. See also p. 359: "Agreements between members of the Commonwealth are never made in the heads-of-States form. Rather, they are made in the form of agreements between governments."

6. P. 380: "In the Union of South Africa it was held [by whom?] that the Crown ipso facto passed to George VI with the signature of the instrument of abdication, Dec. 10, 1936, rather than with the Declaration of Abdication Act the following day. . . . In Ireland, on the other hand, the [act no. 57 of 1936, *infra* note 8] recognized the change of throne as of December 12, 1936. . . ." *Cf.*, as to South Africa, *infra* note 9.

7. P. 380, citing, as the only authority, "The Round Table, Vol. XXVII (1936-1937) p. 472." (Italics in the text supplied.)

8. There is no such thing as an Irish king. Since 1936, Ireland does not recognize the King as the head of its internal government, act no. 57, and, as to external affairs, act no. 58 gives a somewhat indefinite (p. 260) amount of acquiescence to the King—of the *British Commonwealth*: ". . . the king recognized by those nations [Australia, Canada, Great Britain, New Zealand, and South Africa] as the symbol of their cooperation." See pp. 15, 16, 259 *et seq.*

9. The Declaration of Abdication Act, Dec. 10, 1936, 1 Edw. VIII, c. 3, states that "following upon the communication to His Dominions of His Majesty's said declaration and desire, the Dominion of Canada, pursuant to the provisions of § 4 of the Statute

What is then the legal nature of the Commonwealth? Its members agreed to be "united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations", and that "any alteration in the law touching the Succession to the Throne or the Royal style and titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom."¹⁰ Clearly they formed an association of States, not one created *ad hoc* for some specific and temporary purpose, but one meant to be quasi-permanent in character.

An association of States may be a more or less integrated one. It may cover different fields: foreign relations in their entirety, or in some of their aspects only; internal matters, such as military establishment, currency, customs duties, etc. Such common matters may be conducted by a special common agency, or they may be left in the hands of one or each of the associate States, to be carried out in accordance with principles mutually agreed upon.¹¹

The organization of the British Commonwealth surely is, in this regard, quite unlike any other historic type of association of States. In the characteristically British way, a few matters only were defined and described in written words. There is, however, first, the fundamental fact that the members are united and associated together. This appears to mean not only that a war between the members is unthinkable, but also that all their controversies *inter se* are a matter for the Commonwealth itself.¹²

Second, there are common matters of and for the Association. One of these matters is that of their common Crown. This implies that nationality of citizens of the members, as subjects of one King, is also a matter of, and for, the Commonwealth.¹³ Furthermore, legislation by the members in certain matters has been declared to be of concern to all of them,¹⁴ and the principle has been adopted that in the conduct of their foreign relations the members should act with due regard to the interests of other members.¹⁵

The Commonwealth has also common agencies: the Imperial Parliament, and the Judicial Committee of the Privy Council. While the members are free not to avail themselves of services of these common agencies, these agencies do exist and are being used. Creation of a special tribunal for adjudication of controversies between the members is in contemplation.¹⁶

Thus, whatever the future development of the British Commonwealth may be, today it appears as a quasi-permanent association of its members, under one Crown. Being, as it is, *sui generis*, the Commonwealth belongs,

of Westminster, 1931, has requested and consented to the enactment of this Act, and the Commonwealth of Australia, the Dominion of New Zealand, and the Union of South Africa have assented thereto." The request and consent of the Irish Free State were lacking.

10. Preamble to the Statute of Westminster, 1931, 22 GEO. V, c. 4.

11. I SACK, TRANSFORMATIONS DES ÉTATS (Sirey, 1927) 98-100, 103-104, 129-133.

12. See pp. 338 *et seq.*, 351: "Inter-Commonwealth agreements and art. 18 of the Covenant." See also p. 328: "Nor are inter-Commonwealth disputes international."

13. Report of the Imperial Conference (1929) §§ 72-79. See Internat. Concil. (1931), no. 272, p. 548 *et seq.*

14. *Id.*, §§ 80, 83-122; Confer. (1930) Summary, (e). See also Internat. Concil., *id.* at 573.

15. Pp. 245-246.

16. Report Confer. (1929) § 125; Confer. (1930), Summary, (d); *cf.* Internat. Concil. (1931) no. 272, pp. 565, 571.

however, together with the historical types of real unions and confederations of States, in the class of composite State organizations, which can be described as that of *associations or unions of States*, as distinguished from "personal" unions, on the one hand, and federal States, on the other.

The above dissenting opinion should not be taken as in any way tending to minimize the high qualities of Dr. Stewart's work. His book is a most valuable contribution to the subject, and gives a lucid exposition and a thorough analysis of the different matters with which it deals.

Alexander N. Sack.†

PENNSYLVANIA ORPHANS' COURT COMMONPLACE BOOK. By David G. Hunter. George T. Bisel Co., Philadelphia, 1939. (2 Volumes.) Pp. iii, 726; i, 727-1525. Price: \$20.00.

The thirty-three years spent by the author in the making of this Commonplace-Book was time well spent. During most of that period Mr. Hunter has been law clerk and of latter times chief law clerk of the Orphans' Court of Philadelphia County. All of the judges on that bench when his work was started have passed to their reward. Their places have been worthily filled by their present successors.

To know the author is to know his work. Painstaking care and patience give both their very form and character. During the period of its compilation both students and lawyers, young and old, accomplished and otherwise, have been accustomed almost daily to ask his opinion and follow his advice on all conceivable matters incident to practice and procedure before the Orphans' Court as well as the substantive law applicable thereto. Such will no longer be necessary.

The scope of the work is disclosed by its table of contents and index. Alphabetically arranged, they are planned to lead the reader by ready reference to the precise point involved. Thereunder no attempt is made to evolve a lengthy treatise, but rather an accurate abstract of the decisions and statutes under the headings. These are immediately followed by the citations of cases in point, lower courts on the right, appellate courts on the left. The author does not try to enlarge, explain or comment on the law. He states it concisely and adds the authorities. Here lies its value.

From a careful examination the reviewer has been unable to find any important subject under this branch of the law that has not been most thoroughly covered and annotated by the author. Those chapters relating to Contests of Wills and Vested and Contingent Interests are of peculiar merit because of the method employed by the author in summarizing the salient features of the subject without in any way losing sight of important aspects. Volumes could be written on these subjects alone. Volumes have been written. The work in hand gives to the student the essentials and authorities necessary to a complete grasp of the subject.

From the standpoint of the reviewer the work would be more complete had it included a table of cases, even though to have done so might have increased its size. As the author suggests, when his "arrangement becomes familiar to the reader" the work will "afford a quick reference to the leading cases, and lighten the burden of search for the obscure ones." This is its purpose. How well it has been accomplished the reviewer has learned already from personal experience.

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No student of this branch of the law can afford not to read it from cover to cover. No lawyer who practices in the Orphans' Court can afford not to consult it in any case of importance. It is a work worthy of one recognized as the leading authority on the subject in this Commonwealth.

R. M. Remick.†

CRIME AND SOCIETY: AN INTRODUCTION TO CRIMINOLOGY. By Nathaniel F. Cantor. Henry Holt and Company, New York, 1939. Pp. xiii, 459. Price: \$3.00.

The author of *Crime and Society* has been associated for several years with the New York State Central Guard School at Wallkill State Prison, is the author of another book on the same general subject entitled *Crime, Criminals and Criminal Justice*,¹ and, between that publication and the one under review, spent some time in the first-hand study of penal administration in Europe.

The present volume is written as a textbook in criminology for college students, and, according to the author, differs from other books now available in the addition of much new material and in its organization.

Many teachers, public officials, and laymen concerned with criminology would recognize the practical value of a book which deals comprehensively and systematically with the various aspects and problems of crime and crime control in the light of the latest research and experimentation. Mr. Cantor has attempted to supply such a book, but, in this reviewer's opinion, with only partial success. Assuredly, no book on the subject would seem satisfactory to everybody; and the author of this one can be commended for the diligence, sincerity, and courage that he has brought to his task.

The book is divided into five parts, entitled as follows: Perspectives, Practice, Conflict, Reform, and Limitations.

The first part is appropriately concerned with definitions and approaches. The next three parts deal in the main with the operational aspects of crime control and the philosophical conflicts that confuse public policy and public administration. In the last part the author examines "the framework of modern society within which the control of crime and the treatment of offenders is being undertaken." The first and last parts of the study are of considerable value. The section on the Police, consisting of ten pages, is probably the least satisfactory.

The organization of the material involves much repetition. For example, three statistical tables² are repeated in toto. Intent as an element of crime is discussed in three places.³ Practically every step or aspect of criminal law administration is discussed from much the same angle at two or three widely separated points; and the discussions when compared do not always reveal consistent thinking or contribute to clarity. They suggest hasty and unsystematic writing. The confusion is not diminished by the frequent introduction of sweeping but loosely phrased generalizations.

One may cite the following excerpts as examples of many that are both repetitive and confusing:

"No one knows what can or cannot be done with juvenile and adult offenders. . . . Whether imprisonment deters the potential

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1. 1932.

2. At pp. 115-117, and again at pp. 256-258.

3. At pp. 175-179, 183-187, and 277-282.

offender or reforms the actual offender, and in what degree, is simply not known." (p. 124)

"But the prison system which we have inherited from the nineteenth century may be as irrational as the inquisitorial tortures of the Middle Ages. . . ." (p. 220)

"The prison system is approximately one hundred years old. There is nothing sacred about it. It will probably be surrendered as a major method of punishment or treatment." (p. 235)

"The prison system is not the final answer to how we shall dispose of the offender. Most prison programs can be severely criticized. Nevertheless, one can hardly question the difference in spirit between modern prison programs and the public hangings for several hundred felonies in England about 100 years ago. I venture the belief that 100 years hence students will view the early twentieth century prison system with the same horror with which we look back upon the period of corporal punishment, mutilations, and public hangings." (pp. 237-38)

"Reform through incapacitation by means of a penitentiary or prison sentence may be less desirable than the possibly more effective method of non-institutional reform." (p. 245)

"No one knows how to treat penal inmates. The 'repeater' rate in the United States is, conservatively stated, around 60 per cent. The best way to find out what to do is to try various methods. I, for one, believe dynamic case work to be a promising technique which should be experimented with." (pp. 318-19)

The book under review does not reveal in sufficient measure the essential qualities of a useful textbook—precise statement, clear writing, logical arrangement, balance, proportion, and a comprehensive summation of the available factual material. On the other hand, the volume is readable, provocative, and in a measure informative; and, in spite of its shortcomings, it may be of value to that part of the serious reading public which is still relatively unenlightened with respect to the newer ideas and movements in the field of criminology.

Arthur C. Millsbaugh.†

THE JUDICIAL PROCESS IN TORT CASES. (Second Edition.) By Leon Green. West Publishing Co., St. Paul, 1939. Pp. xxi, 1356. Price: \$6.00.

Dean Green pointedly remarks in his foreword: "Nearly all, if not all, significant conflicts in judicial decisions and in legal thinking result from a want of adequate classification. Without it there can be no dependable analysis." The present reviewer's discussion¹ of the first edition of this work gave the details of Dean Green's classification, and only the changes therein will be noted below. However, it should be reiterated that the author completely departed from the classification along doctrinal lines in the tradition of Smith, Ames and Bohlen; his emphasis is factual. One illustration of the difference in treatment will suffice: instead of a chapter devoted to the principles of "legal cause", the cases dealing therewith are found together with others treating such subjects as Occupancy,

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 1. Polikoff, Book Review (1932) 80 U. OF PA. L. REV. 929.

Ownership, Development of Land² and Traffic and Transportation,³ depending upon the factual nature of the conduct involved.

The author contends that "The assembly of materials on a rather large number of different subjects permits comparisons between the [judicial] processes employed in them", and therefore a more adequate training for the practice of law than a presentation according to doctrinal concepts. Of this, the reviewer has stated:

"The very virtue of the case system lies in the fact that, properly utilized, it furnishes the student with an opportunity for intellectual acrobatics. And whether this mental stimulus, created by a series of diverse fact situations and diverse legal theories (which are adequately presented in any good case book) culminates in the formation of mere dogma, or whether it creates an understanding of legal science, depends far more upon the ability and the viewpoint of the instructor than upon the arrangement of cases in the particular book used."⁴

In the eight years which have elapsed since this was written, the reviewer has learned the trials and tribulations of the practitioner at his desk and in the courtroom—and his opinion remains unchanged: this casebook, as any other good casebook, will convey to the student only as much understanding of the judicial process and only as little reverence for doctrinal language as the instructor will cause it to convey.⁵

In his new foreword, Dean Green observes: "Legal theory is as practical as are the methods of a housewife, a department store, or a railroad system", and "no mere acquaintance with definitions and formal rules will suffice" for an understanding of such theory. The dean might have gone so far as to state that the lawyer must often be medical doctor, engineer or electrician before doctrinalist. His warning on practicalities is indeed sound, and the instructor must not lose sight of this fact: with this or any other good casebook, the success of its use depends on him more than on mere chapter headings.

The new edition contains significant changes from the old. It is probably mere coincidence, but suggestions made in the reviewer's discussion⁶ of the first edition have taken shape in such changes. The classification headed Threats, Insults, Blows, etc. has been divided into eight subjects instead of four. The material previously entitled Conduct with Reference to Women has been given the more appropriate caption Fright and Nervous Shocks.⁷ The chapter on Keeping of Animals has rightly been reduced to the status of a mere subsection, and combined with Fences within even less space than before devoted to animals alone. The chapter captioned Traffic and Transportation has been divided and subdivided into fourteen subjects instead of four. These reclassifications and subclassifications of the subject matter will do much to help the student "hold it in focus".

2. C. 4. *Andrews v. Kinsel*, 114 Ga. 390, 40 S. E. 300 (1901), author's p. 612.

3. C. 9. *Palsgraf v. Long Island R. R.*, 248 N. Y. 339, 162 N. E. 99 (1928).

4. See note 1 *supra*.

5. Dean Green does not fail to note that the success of his volume "is bound up with an unrelenting effort on the part of the instructor to master" the subject matter. P. ix.

6. See note 1 *supra*.

7. C. 2, § 8. The reviewer previously commented that masculine as well as feminine plaintiffs have invoked the judicial process, seeking recovery for the physical consequences of emotional disturbances. *Fleming v. Lobel*, 59 Atl. 28 (N. J. 1904); *Huston v. Freemansburg*, 212 Pa. 548, 61 Atl. 1022 (1905). Dean Green explained to him the earlier classification as follows: "The fright doctrine grew out of hurts to women—in most instances pregnant women—and is still closely restricted to that class."

The entire subjects of Relational Interests and Abuses of Governmental Power and Process have now been reduced to text analysis; the author has eliminated case treatment thereof from this volume. Under the former caption are found the important subjects of defamation, unfair competition, etc. Dean Green recommends special handling of these topics in an additional course in torts. It is primarily this treatment, or lack of it, which reduces the number of case pages from 1875 to 1342, for which many a book-laden student will be thankful, as also he will be for the clearer type of the new edition.

Dean Green certainly has the knack of selecting cases. The new edition properly contains many decisions rendered by the courts since the first went to press.⁸

It is not a fault that so many of the author's cases—new and old—originate in the State of New York. Two of three recent Pennsylvania cases which the reviewer (provincially) sought were found, *Harris v. Lewistown Trust Co.*⁹ and *Delair v. McAdoo*.¹⁰ The third,¹¹ however, may be in one of the footnotes, which seem to overlook no major jurisdiction on any point of interest. The footnotes have been kept up to the minute, and are one of the finest features in both editions.

The collection keeps pace with the novelty of situation which comes with the times. The development of ice hockey into a national sport,¹² new electrical safety devices,¹³ shatter-proof glass for automobile windshields,¹⁴ the used-car dealer who turns back the speedometer,¹⁵ statutory trends typified in the new "assured clear distance" cases:¹⁶ the law of torts has touched all these and more; so has Dean Green.¹⁷

The new cases seem to be arranged with special care. Striking examples of arrangement and rearrangement are found among the nuisance, child intruder, passenger guest and multiple tort groups of cases.

This edition, as the first, reads like a novel; and it is improved by the changes, most of which are above noted. In the hands of the right instructor, this casebook is indeed capable of portraying the judicial process in the field of tort law.

Harry Polikoff.†

8. Among those which will excite the interest of any student or lawyer are: at p. 346, *Brackett v. Bellows Falls Hydro-Electric Corp.*, 87 N. H. 173, 175 Atl. 822 (1934); at p. 483, *Rohlf v. Weil*, 271 N. Y. 444, 3 N. E. (2d) 588 (1936); at p. 576, *Shanney v. Boston Madison Square Garden Corp.*, 5 N. E. (2d) 1 (Mass. 1936); at p. 635, *Emery v. Rochester Telephone Corp.*, 271 N. Y. 306, 3 N. E. (2d) 434 (1936); at p. 778, *Smith v. Peerless Glass Co.*, 259 N. Y. 292, 181 N. E. 576 (1932); at p. 1069, *McCann v. Anchor Line*, 79 F. (2d) 338 (C. C. A. 2d, 1935); at p. 1091, *Tri-State Transit Co. v. Martin*, 181 Miss. 388, 179 So. 349 (1938). However, both the old reliables and the new stars in the original line-up are retained. See Polikoff, *Book Review* (1932) 80 U. OF PA. L. REV. 929, at 932.

9. 326 Pa. 145, 191 Atl. 34 (1937), p. 591.

10. 324 Pa. 392, 188 Atl. 181 (1936), p. 1011.

11. *Herr v. Simplex Paper Box Corp.*, 330 Pa. 129, 198 Atl. 309 (1938).

12. *Shanney v. Boston Madison Square Garden Corp.*, 5 N. E. (2d) 1 (Mass. 1936), cited *supra* note 8.

13. *Brunell v. Mountain States Power Co.*, 81 F. (2d) 305 (C. C. A. 9th, 1936), p. 615.

14. *Baxter v. Ford Motor Co.*, 168 Wash. 456, 12 P. (2d) 409 (1932), p. 790; see Bohlen, *Fifty Years of Torts* (1937) 50 HARV. L. REV. 1225, at 1234.

15. *Jones v. West Side Buick Auto Co.*, 231 Mo. App. 187, 93 S. W. (2d) 1083 (1936), p. 1192.

16. *Swan v. Dailey-Luce Auto Co.*, 221 Iowa 842, 265 N. W. 143 (1936), p. 963.

17. Although the author discarded the single airplane case which appeared in the first edition, he substitutes a long, excellent footnote exploring this new field, at p. 1077. Harms of appropriation in the radio field are likewise treated at p. 1296.

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