BOOK REVIEWS.


In introducing these three volumes of upwards of seven hundred pages each to the readers of this Law Review, I can do no better than quote from an article of Dr. Alejandro Alvarez on "New Conception and New Bases of Legal Philosophy," published in the October-November, 1918, number of the Illinois Law Review, page 181. "An investigation of the lines of development of the law in the past, in the present, and with an orientation of the future requires an appropriate method. This method should be historical and comparative and should be supplemented by observation of contemporary life. A true philosophy of law is possible only when it is based on a judicious investigation of institutions athwart the ranges of time and space, and the influences bearing on them through surrounding social phenomena. It is only upon this condition that juridical life can be really understood, with its enchainment of influences, their successive modification, the relations of cause and effect which bind them together, and their governing law."

The three volumes before us are a pioneer attempt to present to American readers enough material, original and secondary, to enable them to obtain an idea not only of the vastness of the field attempted to be covered, but of the great principle of unity in diversity which a study of comparative or ethnological jurisprudence brings to light.

The first volume is divided into four parts. Part 1 deals with general literature and contains references to ancient and primitive law and institutions. The selections made are from the Iliad and the Odyssey, Plutarch's Lives, Caesar's Commentaries, Tacitus' Germania and the great Icelandic Saga of Njal. The legal practitioner will find it difficult to understand how general literature may furnish material for his professional investigation. He is accustomed to look to statutes and judicial decisions as the only sources worthy of his attention. But it has long been well known that man is unconsciously making a record of all of his thoughts and deeds in his literature and the rules of his life in society cannot help being reflected therein. Many years ago I studied the biblical literature with this thought in mind and found in many of its parts, not intended to be legal records, most interesting and instructive legal material; for instance, the story of Adam and Eve in the Garden of Eden is full of ancient law, the book of Job is a perfect mine of legal doctrine and procedure. A student of the evolution of law will neglect nothing, for every record of human thought may contain material useful to his science.

The second part is devoted to modern observations on retarded peoples.
and contains interesting chapters on customs of Australian, Esquimo, American-Indian and African negro tribes in which the germ and counter-part of many rules familiar to civilized society may be found.

The third part is devoted to ancient and primitive laws and codes and includes extracts from ancient Accadian, Assyrian, Hebrew, Egyptian, Cretan, Hindu, Germanic, Anglo-Saxon and Welsh codes. A few Suras from the Koran might well have been included in this part and it might be suggested with reference to the chapter on the Pentateuch that many of the selections referred to therein are neither primitive laws nor codes, but are either records of legal transactions which should have been included in part 4 or works such as should have been included in part 1 devoted to general literature.

Part 4 contains a most interesting collection of ancient and primitive legal transactions from Egyptian, Babylonian, Grecian, Roman and Germanic sources and as well as Egyptian, Babylonian and Assyrian legal documents. As the editors well knew and pointed out in their preface, the field to be covered was so extensive and limitation of space so obvious that they had consciously to commit various sins of omission and commission. No doubt any other editor or editors would have made a somewhat different collection of materials, just as the authors of a case book for students at law will differ both as to arrangement and selection of material, but Professors Kocourek and Wigmore enjoy the distinction of being the first to make a collection of this kind for the American student and it will be easy enough for their successors in this field to add to the material collected by them.

Volume 2, devoted to Primitive and Ancient Legal Institutions, is intended to supplement the first volume. The latter gives the raw material, the second volume presents studies of modern scholars who have devoted themselves either to a general survey of the whole field or to particular problems presented by special topics. The second volume is introduced by four admirable sections written by some of the greatest of the modern masters. The first section on the Evolution of Law, by Prof. Josef Kohler, is a very short but very profound and inspiring presentation of the subject of evolution of law. Professor Kohler is himself one of the most distinguished contributors to the development of this science and one of the founders of the science of comparative jurisprudence. The second chapter on Ethnological Jurisprudence was written by Dr. A. H. Post, whose enormous learning and diligence have gathered for us material from every corner of the earth, by means of which we may study the development of legal ideas among all peoples, ancient and modern, primitive and advanced.

Part 1 is devoted to the subject of the Law and the State and contains material on such topics as the Evolution of the State, Religion and Law, Evolution of Criminal Law and Methods of the Law's Growth. Much of this material has been drawn from the writings of two men to whom above all others students of twenty-five years ago, among whom the reviewer is enrolled, owe their introduction to this modern and fascinating science—Henry Sumner Maine and Fustel DeCoulanges. "Ancient Law" and the other pioneer work of Maine, and the "Ancient City" of DeCoulanges were for us, the young men of that day, the great pioneer works clearing a new path through the wilderness of legal thought.
The third part is devoted to the legal category of Things, including property, commercial institutions, pledge, suretyship, contract, interest and succession.

Part 4 is devoted to the subject of Procedure and concludes with a chapter by Dr. Gabriel Tarde on the Evolution of Procedure, which briefly but pointedly sums up the ideas developed in the prior chapters.

The third volume is divided into three parts. Part 1 containing three chapters on Criteria of Legal Evolution and Methods of Its Study, wherein there is an attempt to classify social types, to present a scientific method of generalizing from the data of legal evolution, and, third, to present a critique of method in the study of the law's evolution. It is obvious that unless there is some principle of valuation and comparison, the study of the legal phenomena of all the peoples of the world would be nothing more than a tabulation of differences and similarities. But as legal ideas develop in accordance with some need and toward some end, subject at all times to the transforming processes to which every change in the conditions of human life is contributing, there must be sought some method by which the direction and the character of the change may be appraised, and this is a study of the "progress" of legal ideas.

The second part deals with the factors of legal evolution. After two chapters dealing with the subject in general, there are chapters treating on the influence of geography on law, the economic foundations of law, the biologic factors, the racial, religious, psychologic, political and social factors. Here the reader may find a vast outlook upon an endless vista opening up to him from the narrow confines of the legal fields in which most lawyers are by force of circumstances fenced in. In these sub-divisions, the influence of Herbert Spencer, whose genius for the organization of evolutionary philosophy is in our day not sufficiently recognized, is everywhere apparent. The chapters by Miss Semple on the Influence of Geographic Environment on Law, State and Society; by Rudolph Jhering on the Struggle for Law and the original and illuminating study on Rudimentary Society Among Boys, by Mr. John H. Johnson, are especially valuable. Essays by Houston Stewart Chamberlain and Emile Reich, of very questionable value have been included and a rather superficial paper by Lord Bryce might also have been omitted.

One learns from these studies the absurdities of chauvinism and the stupidity of which no people is free of considering itself God's own people and everybody else as more or less undesirable "furriners" whose institutions, customs and laws are, by virtue of their divergence from the standard of perfection set by one's own, undesirable. Nothing, neither religion nor ethics nor any other doctrine, teaches the unity and the essential brotherhood of mankind as well as the study of comparative ethnology and particularly that branch of anthropological science which has come to be known as comparative ethnological jurisprudence.

The third and last chapter is devoted to the processes of legal evolution and contains a study of some of the leading interpretations of the concept society. We are here led into the highest ranges of our study in which minor variations and details disappear, and the subject is treated from the point of
view of one who is able to draw the diagram of social evolution in a series
of great though by no means simple or symmetrical curves. The subjects
treated in this part are the Evolution of Social Structures, Social Integration
and Differentiation, Degenerate Evolution, the Evolution of Civil Law, the
Perpetual Evolution of Law and what is perhaps the most modern and sug-
gestive of all of these admirable contributions, a paper by Prof. John H.
Wigmore on “Planetary Theory of the Law’s Evolution,” which relates the
science of law to the other sciences and lays emphasis on the great funda-
mental fact of the close inter-relation between all the phenomena of life, the
complexity of whose interaction is compared by the writer most ingeniously to
the complexity of the system of forces under which our planetary system is
driven on its infinite path through space toward an infinitely distant goal.
In reading this and other chapters in this part, notably those of Professor
Ward and Herbert Spencer and Professor Picard, one feels that after a long
and torturous journey, a peak has been reached from which something like a
comprehensive survey of legal phenomena may be obtained, but that there
are higher reaches toward which the investigator must now be prepared to
struggle.

Every law student should consider his legal education forever unfinished
and especially so if he has failed to devote some time, taken if necessary
from the severely practical and exacting duties of professional life, to the
consideration of that field of legal thought which is presented in these three
splendid volumes, for the production of which Messrs. Kocourek and Wig-
more deserve our most grateful appreciation and upon the publication of
which Messrs. Little, Brown & Company, of Boston, are to be congratulated.

David Werner Amram.

A HISTORY OF CONTINENTAL CRIMINAL LAW. By Carl Ludwig Von Bar and
others. Translated by Thomas S. Bell and others, with an editorial
preface by John H. Wigmore and introductions by William Renwick
lvi, 561. Price, $4 net.

No part of this fine book exceeds in interest the chapter given in an
appendix on pages 497-547, containing Professor Von Bar’s theory of punish-
ment for crime. After reviewing the accepted theories, both absolute and
relative, he finds them all unsatisfactory and offers as a substitute the theory
that criminal law is in effect a public disapproval of an act offensive to the
moral sense of the community. He points out that the real sanction is neither
retribution nor deterrence nor reformation and that whatever its secondary
effects may be, the primary purpose of punishment is active and public dis-
approval of the act of the criminal. Read in the light of this theory, the
history of criminal law assumes a consistency which the application of any
of the other theories fails to produce.

Professor Von Bar’s observations on such varied topics as the relation
of Christian ethics to criminal law, the indeterminate sentence, private prose-
cution, the relation of the degree of punishment to the crime, the problem of expediency and justice in punishment, the relation of crime and tort, the violation of police regulations, etc., satisfy the reader not only because of the author’s keen insight and practical judgment, but because of the philosophic consistency which results from the application of his theory to the consideration of these varied topics and aspects of criminal law. No one who is interested in the criminal law and its development can afford to ignore this splendid contribution of Professor Von Bar to the science of the subject.

This volume is the sixth in the Continental Legal History Series published under the auspices of the Association of American Law Schools. It is divided into two parts, Part I being a general history of the criminal law, Part II the history of the theories of criminal law. In the first part, the emphasis, as might be expected from the nationality of the author, is laid especially on the development of Germanic law. The Roman law and the Mediæval Church law are given some consideration. The French law and the laws of Scandinavia, of Switzerland, the Netherlands, Belgium and Austria are likewise touched upon and the history of the criminal law of all other European countries is practically ignored. The criminal law of the British Isles has been amply treated elsewhere. The criminal law of Italy is treated in another volume of this series, namely, volume 8 on the History of Italian Law, by Carlo Calisse. The criminal law of Spain has been omitted because, according to the editorial preface, no history of Spanish criminal law has been published, not even as part of a work in general history, except DuBoys’ History of Criminal Law in Spain, published in French in 1872, which is of the older type and unsuitable for the present work. Presumably the same is true of the criminal law of Portugal, although we are not informed as to the present state of its bibliography. No reference is made to the criminal law of Modern Greece or of the Balkan States and the omission of all reference to the criminal law of Russia is difficult to explain. However, it is not the function of criticism so much to point out omissions as to appraise that which has been done, and one may speak with something like enthusiasm of the present work. A comparison of this with the earlier books, full of learning, choked with detail but without an historical background or uninspired by a philosophy of legal development cannot fail to assign to Professor Von Bar a place in the first rank of legal historians. The Anglo-American lawyer naturally thinks of Stephens’ History of the English Criminal Law, which, as pointed out by Professor Wigmore, read together with Pike’s History of Crime in England, presents an account such as no other single country possesses except perhaps Italy. It is astonishing how much of the literature of the law has become obsolete except as source books of fact and theory since the development of the modern school of investigators, which in its latest form combines all of the efforts of the critical, historical and evolutionary theories fused with the doctrine of the most modern moralists in what is coming to be called sociological jurisprudence.

The criminal law is notably yielding to the impulse of the new point of
There is a marked change not only in the academic but also in the public attitude toward crime and criminals. The treatment of crime as a disease, for the examination of which psychopathic laboratories have been established, the segregation of that class of offenses specially cognizable by the Juvenile Courts and supervised by the Probation System, the theory of the indeterminate sentence, the establishment, so to speak, of all the comforts of home in the prisons and reformatories, the introduction of systems of self-government in penal institutions, all these innovations, which would have shocked the professional mind of fifty years ago and which are looked upon askance by the conservative present-day representatives of the thought of that time, mark the channel through which the new thought as to crime and penalty is flowing. Professor Von Bar finds it impossible to agree with much of this new thought. He looks upon the indeterminate sentence as "a foolish modern movement" as a result of which the judicial sentence loses its influence because the crime results not in a definite punishment being the fixed mark of public disapproval, but penalty is dependent upon discretion of officials not manifest to the public and not publicly verifiable. It seems to me that it is not at all necessary for the purpose of Professor Von Bar's theory that the indeterminate sentence should be abolished. Public disapproval expresses itself in conviction and sentence and the relation of the crime to the length and character of the sentence may well be left to a certain extent to judicial character and official discretion.

In his general history of the criminal law, Professor Von Bar first considers the Roman and German elements which were fused in the later Germanic criminal law, notwithstanding the fact that the principles of the Roman law were fundamentally different from those of the Germanic law. According to the Roman conception, the individual has no rights which the State is bound to respect, whereas, according to the Germanic conception, personal rights follow the German individual everywhere and his rights as against the State are based on an ideal of which contract and statute are merely the expression. Decrees derogatory of the individual rights are null and void. The predominance of the Roman theory in the modern German State seems to be one of its notable characteristics. Following the consideration of the Roman and early Germanic elements, Professor Von Bar traces the change made during the Middle Ages through the influence of the power of the Church, its right of asylum and its use of the penalty of excommunication. In discussing the ideal of divine justice, he points out that the Church favored the infliction of severe punishment notwithstanding its doctrine of love and mercy by referring to the Mosaic criminal law of retaliation as a direct divine command intended for the secular authorities and not for the Church. Of course, in so doing, the Church overlooked the fact that the Mosaic law had among its own followers been long superseded by a much more humane Talmudic law and that it was logically indefensible to assume that a general command of the biblical law should bind the State and not the Church. But as a result of this theory, the Church looked on complacently while justice was being administered by the secular authorities with ruthless fanaticism, since the latter were relieved of all doubts as to their own infall-
bility. Criminal justice was gruesome and bloody, but it enjoyed the universal approval of churchmen as well as laymen, since it was believed to be part of the divine order of things. Thus Professor Von Bar concludes that "the influence of the Church is responsible for that dominant aim (often extravagant) in later practice and legislation to make men moral, resulting in measures of moral police grossly overstepping the appropriate limitations of State interference. The idea of an external power like the Church intruding upon the moral life of the individual, observing, protecting and punishing, had become familiar. What had earlier been done by the Church became later the province of the police power of the city or State. Thus the Church laid the foundations for the later omnipotence of the State." Notwithstanding these unwholesome influences on the criminal law, Professor Von Bar points out that the Church made one permanent service to the German peoples by upholding the idea of an absolute objective law superior to all individual rights and, on the other hand, a better valuation of the subjective side of crime, of individual guilt. The one aspect signified the equality of all before the law; the other implied the idea of reformation, that the punishment would benefit the offender. And Professor Von Bar concludes that "to the Church in the main we owe our thanks for these elements which, although only secondary, are nevertheless very important." It is impossible, within the limits of this review, to follow Professor Von Bar in tracing the further history of the criminal law to modern times. The book is most earnestly recommended to the reader in search of this information.

The second part of the book deals with the history of the theories of criminal law, many of which seem, judged from our point of view, fantastic and even grotesque, but it must always be remembered that theory at any time represents the effort to account for the reason for things in the light of current knowledge, and it is to the imperfections of the science of an earlier day that we must look for the insufficiency of its theory. Occasionally a philosophic genius may, in spite of the limitations of knowledge, by a transcendent mental effort or extraordinary spiritual insight evolve a theory out of harmony with the science of his day, but acceptable to the world of a later time. Among the great theorists of modern times Professor Von Bar finds in Hugo Grotius not only the founder of modern international law, but also the propounder of the first modern theory of criminal jurisprudence. In tracing the history of criminal theory from Grotius to modern times, Professor Von Bar unconsciously adopts the thought that the philosopher's theory in effect reflects the circumstances of his own life. This is especially brought out in his consideration of the influence of Spinoza's life upon his work.

Professor Wigmore, in an editorial paragraph on pages 494-495, refers to Doctor Quiros' book, Modern Theories of Criminology, published in Modern Criminal Science Series, 1911, as supplementing the work of Professor Von Bar and tracing the progress of criminal theory from 1880, when Von Bar's history ends, to the date of the publication of Doctor Quiros' book.

David Werner Amram.
CLASSICS OF INTERNATIONAL LAW. Published by the Carnegie Institution of Washington.


These eight splendid volumes are a further contribution of the Carnegie Institution to our knowledge of the literature of international law. The works of Balthazar Ayala and Richard Zouche published in this series were reviewed in the June, 1918, number of the University of Pennsylvania Law Review. There has also been published a volume by Giovanni da Legnano, a copy of which has not yet come to the attention of the reviewer.

Victoria was one of the great predecessors of Grotius and his book is a report of lectures delivered by him in 1532 at the University of Salamanca. Hugo Grotius will always be known as the founder of international law because he had the genius to bring together all of the existing elements of that science and set them forth in his book, De Jure Belli ac Pacis, published in Paris in 1625. But, as a matter of fact, the science of international law had been growing for centuries, not separated, however, from cognate fields of knowledge. Among those who had greatly contributed to its development, Grotius mentions Victoria, Ayala, Legnano and Gentili (whose work will appear in a subsequent volume of the Classics of International Law). Victoria was born toward the end of the fifteenth century at a time when the modern world of thought was being framed under the influence of the discovery of America, the rounding of the Cape of Good Hope, the invention of printing and that great intellectual movement known as the Renaissance. Victoria was a theologian and a member of the Order of St. Dominic. Notwithstanding the bias that this might have given to his thought, he was a man of progressive spirit far in advance of his time. He held to the opinion
that princes, like their subjects, were amenable to the rule of law, that the Pope's power was not unlimited, that there should be one law for Christian and infidel, and that the public conscience had no right to coerce the individual conscience. He repudiated all theories based on the alleged superiority of the Christians to infidels or on their right to punish idolatry or on the mission which might have been given them to propagate the true religion. He held that the title of Spain to the new world resting on discovery was good only with regard to uninhabited regions and that the Indians were, both from public and private point of view, the real masters of the country and, therefore, the title of Spain was defective. And he held that notwithstanding infamous vice and morals and bloody practices of the Indians of the New World, the Spanish had no just cause for establishing their domination by force of arms. In view of opinions current in our day as to the white man's burden, these views of the Dominican theologian expressed early in the sixteenth century are astonishingly progressive. He laid down three rules of conduct for rulers which are well worth the quotation made of them by Mr. James Brown Scott in his report in the Year Book of the Carnegie Endowment for 1918. Mr. Scott calls attention to the fact that these rules seem to have an exact counterpart in the policy of President Wilson. “First. Granting that a ruler has the authority to wage war, he ought not to seek occasions and causes of war, but ought to have peace with all men. Secondly. Granting that a war has arisen from just causes, the ruler ought to wage it not for the destruction of the opposing nation, but for the prosecution of his own right and the defense of his own country and in such a way that peace and security may eventually be obtained. Thirdly. At the end of the war, the victor should use his victory with moderation and Christian modesty and ought to consider himself as a judge between the wronged nation and the nation doing wrong and not as a prosecutor.” No quotation can more perfectly illustrate the truth that international law is not a creature of modern times and was not, as so many people believed, invented by the peace conferences at The Hague since 1899. In this connection reference may be made to an excellent article on the work of this author and his influence by Colman Phillipson in 15 Journal of Comparative Legislation (N. S.), 175.

Samuel Rachel was born in Holstein in 1628 and his work was published while he was Professor of the Law of Nature and International Law at the University of Kiel. In his introduction to the text, Professor Von Bar, whose great work on History of Continental Criminal Law is reviewed elsewhere in this number, points out the difference between his views and those of Grotius, Zouche and Gentili. Rachel emphasizes most emphatically the existence of a law of nations that unites all of them by a common bond, and he urges most impressively that those deserve the highest recognition who have urged on nations and their rulers the establishment by general treaty of a Supreme College of Fetials (a league of nations) charged with the settlement of all disputes arising between nations so that war can be waged only when a nation will not comply with a judgment of the college or refuses to recognize its authority altogether. He calls attention to the fact quoted by Professor Von Bar with what now seems to be prophetic insight that such a
tribunal was especially commendable or necessary for settling the disputes of German States among themselves and of German States with foreign countries. For in truth the German States form a single realm, but that unity was being imperiled by internal strife and by the incursion of foreign powers. Today that unity is gone and who shall say how or when it will be restored. Von Bar concludes that Rachel was a conscientious author intent on a practical purpose, but at the same time not without optimistic, idealistic traces.

Textor published his work four years after Rachel, but apparently makes no reference to it. Textor was a German from Wurtemberg whose family name of Weber was Latinized, as often happened amongst scholars of that time. Professor Von Bar in his introduction calls attention to the interesting fact that Textor was one of the great-great-grandfathers of Goethe. He was first Professor of Jurisprudence at Heidelberg and an assistant judge in that city at the time when his work appeared. He was opposed to arbitrariness and the rules which egotism and servility dictated. He touches upon many important problems in his work, such as the rights to the sea, problems of constitutional law and international commerce. He insists with strong emphasis on the need to conform to the law of war and that since war does not take place directly between individuals but rather between the authorities of the State considered as an entity, an armistice concluded between such authorities binds their respective subjects immediately and hence does not require special publication, and he also declares that an armistice concluded between the commanders and limited in time or space does not need ratification. He is an honest man who characterizes as most false the opinion of certain politicians who argue that treaties are to be observed only as long as they may seem useful. He discusses the proposition that one party to an alliance may not withdraw from it at an inopportune moment or without weighty and just cause because the dissolution of an alliance requires the consent of all the parties thereto. Professor Von Bar in his introduction points out these and many other matters on which Textor has expressed notable opinions.

When we come to consider the last of the four authors whose works lie before us, we enter into an entirely different atmosphere. Vattel belongs to the modern world. His book is written in an entirely different spirit. The volume of interesting learning cited from ancient and mediaeval authorities diminishes and the philosophy of the eighteenth century makes its appearance in their place. Vattel is a modern, legal philosopher whose work has had a notable, direct influence in the modern world and especially in the United States. In the opinion of Professor Lapradelle, Vattel is entitled to the distinction of having been the first to clear the way for the complete conception of the modern state founded on the consent of its citizens, members and subjects together of a sovereignty which receives only from themselves in virtue of their original adherence, the authority necessary to impose laws upon them for the common good. His advance from Grotius is pointed out in Professor Lapradelle's introduction in his formulation of the laws of war and of neutrality. His views have frequently been quoted with approval by the Supreme Court of the United States, and, in the opinion of Mr. Fenwick
in his notable articles on Vattel in the *American Political Science Review*, volume 7, page 305; volume 8, page 375, "Vattel's treatise of The Law of Nations is quoted by judicial tribunals in speeches before legislative assemblies and in the decrees and correspondence of executive officials. It is the manual of the students, the reference work of the statesman and the text from which the political philosopher draws inspiration. Publicists consider it sufficient to cite the authority of Vattel to justify and give conclusiveness and force to statements as to the proper conduct of a state in its international relations." Mr. Fenwick, however, considers that Vattel is no longer authoritative, saying that "the practical rules which represent the application of abstract principle to the intercourse of states have changed," and that, therefore, Vattel has little value in our day for the practical lawyer and statesman. The changes which Mr. Fenwick points out have taken place in such great fields as the right of expatriation, the status of aliens, the internationalization of great rivers, the security of foreign investments and especially the laws of war and neutrality. But it cannot be denied, as is pointed out by Mr. Phillipson in his article on Vattel in "Great Jurists of the World" in the Continental Legal History Series, that he produced a work of first magnitude through which he modernized the whole business and theory of international law and translated the philosophy and theories of greater men than himself into the domain of practical international politics. In England, it is true, Vattel was severely criticised, especially by Jeremy Bentham, and likewise in France and in Russia; as against this, however, in the United States since before the Revolution, when his work met with the approval of Franklin, down to most recent times, he has been constantly quoted with approval. A sharp criticism of Vattel appears in "The Nation," Vol. 108, p. 16. He is charged with wilful misrepresentation of Grotius, whom he pretends to follow. The critic condemns Vattel for fathering the theory that although no state may commit wrong, no one but itself may decide whether the wrong has been done.

This Series of Classics of International Law has been a contribution made apparently without the hope of gain or reward by the Carnegie Institution. It has been paid for out of the Fund. The books have been distributed gratis to all those who might have the ability and the opportunity to use them. In the Director's report we are informed that there are now in hand works of Wolff, Pufendorf, Gentili, Bynkershoek and Suarez which will be published during the coming year. It will be gratifying to all those who are interested in international legal problems, an interest which necessarily will grow stronger and stronger in the near future, that these splendid contributions to the earlier literature of the subject may be expected in the near future.

David Werner Amram.
This splendid volume is a further contribution made by the Carnegie Endowment to the literature of international law. It presents the official correspondence leading up to the first peace conference in 1899, the principal addresses delivered at this conference and the final act resulting in the adoption of various conventions (1) for the pacific settlement of international disputes, (2) with respect to the laws and customs of war on land, (3) for the adaptation to maritime warfare of the principles of the Geneva Convention of August 22, 1864. It also contains the official correspondence leading up to the second peace conference in 1907 and résumé of the proceedings of this conference and its final act. It contains the draft convention relative to the creation of a court of arbitral justice and the several conventions adopted (1) for the pacific settlement of international disputes, (2) respecting the limitation of the employment of force for the recovery of contract debts, (3) relative to the opening of hostilities, (4) respecting the laws and customs of war on land, (5) respecting the rights and duties of neutral powers and persons in case of war on land, (6) relative to the status of enemy merchant ships at the outbreak of hostilities, (7) relating to the conversion of merchant ships into warships, (8) relative to the laying of automatic submarine contact mines, (9) concerning bombardment of naval forces in time of war, (10) for the adaptation to maritime warfare of the principles of the Geneva Convention, (11) relative to certain restrictions with regard to the exercise of the right of capture in naval warfare, (12) relative to the creation of an international prize court, (13) concerning the rights and duties of neutral powers in naval war. Finally, it contains a declaration prohibiting the discharge of projectiles and explosives from balloons and the proceedings of the conference on the subject of limitation of armaments. There are two tables of signatures, ratifications, adhesions and reservations to the two conferences and ample indexes to the volume.

The amount of material from which the editor was obliged to make his selection was great to the point of embarrassment. The selections made show the discriminating touch of the expert. We have here all of the official proceedings and the important debates, addresses, reports and governmental instructions and diplomatic correspondence that were accessible and useful for the purpose of interpreting the final acts of the conference. These documents bear the same relation to the final acts as the congressional debates and reports of committees do to the final form of the acts of Congress. With the exception of the editor’s admirable introduction and footnotes, the volume consists entirely of official documents, material buried in the French Procès Verbaux and Actes et Documents, much of which material is practically inaccessible. The editor assures us that a companion volume will be issued which will contain a number of other earlier documents to which reference was made by the delegates in drafting their conventions and declarations, but which are too numerous to be included in this book. The publication of this
additional volume will bring into the collection many related documents “which the investigator is now obliged to seek in a variety of sources.”

It is interesting to read the Russian Circular Note of Count Mouravieff proposing the first peace conference in the name of his master, the Czar Nicholas II. It may well be doubted whether the purpose of his Majesty was other than the establishment of a new Holy Alliance. Not only the religious note in the epilogue of Count Mouravieff’s circular, but the following words in the opening address of Mr. De Beaufort at the Peace Conference give color to this theory. Mr. De Beaufort said: “In taking the noble initiative which has been acclaimed by the whole civilized world, it was the desire of his Majesty, the Emperor of all the Russias, to realize the wish of one of his most illustrious predecessors, Emperor Alexander I—that all the sovereigns and all the nations of Europe might agree to live together like brothers and to help each other in their mutual needs.” It is true that Count Mouravieff’s circular is free from the religious emotionalism of the invitation issued by Alexander I, but it is hardly open to doubt that the impulse which prompted Nicholas I to call the Peace Conference of 1899 came from a religious emotionalism differing but little from that which found more definite expression in the statement of his predecessor.

Although the resolutions adopted by these two peace conferences remained very largely a dead letter during the Great War, they represented a very deep and sincere desire on part of the peoples of the world, if not to put an end to war entirely, at least to mitigate its horrors. Perhaps the Great War has taught us that it is impossible to mitigate the horrors of war, and that the only solution is the abolition of war entirely as a means of settling international disputes.

With this thought we open another volume recently published by the Carnegie Endowment, being


The following quotation from Mr. Carnegie’s letters to his trustees deserve repetition:

“When civilized nations enter into such treaties as named, and war is discarded as disgraceful to civilized men, as personal war (duelling) and man selling and buying (slavery) have been discarded within the wide boundaries of our English-speaking race, the Trustees will please then consider what is the next most degrading remaining evil or evils whose banishment—or what new elevating element or elements if introduced or fostered, or both combined—would most advance the progress, elevation and happiness of man, and so on from century to century without end, my Trustees of each age shall determine how they can best aid man in his upward march to higher and higher stages of development unceasingly; for now we know that man was created, not with an instinct for his own degradation, but imbued with the desire and the power for improvement to which, perchance, there may be no limit short of perfection even here in this life upon earth.”

The Carnegie Endowment is performing service of inestimable value and the worthy iron master whose wealth made this possible deserves to be remembered, as he will be, for all future time.
An examination of the financial statement of the Executive Committee published in this report shows the great range of the activities of the Endowment in fostering every movement which makes for international peace, for the diffusion of knowledge of the ideals of internationalism and for the publication of old and new works on international law.

David Werner Amram.


"The Essentials of American Constitutional Law" is a work of high literary and scholarly merit, from the pen of an eminent Pennsylvania lawyer and teacher. It is a worthy companion of the numerous books upon constitutional law and history, which Professor Thorpe has previously given to the world.

The treatise is brief, sententious, philosophical. The reader is therefore not always sure of the meaning intended, but doubts of this character, when they arise, will heighten the interest of supplementing lectures and encourage search of definite solutions in the decisions of the courts. That is to say, the treatment stimulates thought and research.

On page 1 we are told that "The supreme law of the land is the Constitution, and acts of Congress and treaties made under its authority." On page 2 the supremacy is in the Constitution, but on page 135 the answer to the question, "What is constitutional law in America?", is "the decisions of the Supreme Court, as from no other source, one must derive any authoritative interpretation." This, of course, is the orthodox American view, but in a series of philosophical legal essays, such as this work is, one may expect some recognition of the fact that generally throughout the world judicial supremacy does not follow from written constitutions. Professor Thayer, in bringing out this point in a masterly essay, showed that American judicial supremacy is not due to logic, but to a perpetuated colonial state of mind. Yet the original state constitutions did not provide for judicial supremacy, and there was no grant of it in the federal constitution. Madison declared that judicial paramountcy "was never intended and can never be proper." In the first Congress he said, "I beg to know upon what principle it can be contended that any one department draws from the constitution greater power than another, in marking out the limits of the powers of the several departments." If a student, already possessing a thorough knowledge of the English constitution, were to approach the study of the American written constitution without knowledge of its actual working, he would deduce from the creation of three co-ordinate departments three sources of authoritative determination, forming together constitutional law. A congressional statute would then be a binding precedent upon the courts. Ought not a philosophical treatise to show why this natural and logical deduction does not square with practice?

Our author is too good an historian to assert that judicial supremacy was adopted in 1788, but would agree with Professor Taft ("Public Ledger,"
June 20, 1918), that we have had "115 years of judicial decision . . . by the Federal Supreme Court." It is quite true that it is the established American doctrine, in spite of the masterly criticism by Gibson, the greatest of Pennsylvania jurists, and in spite of a rising storm of protest which has already effected changes in a number of state constitutions, some of them violative of correct principles of government. Professor Thorpe may accordingly say that his present function is to set forth the law, not the processes by which it became law.

That being the case, we would expect him to treat sovereignty as American courts treat it, not as political scientists under foreign influence treat it. American courts have consistently held that sovereignty is divided, and that a citizen here lives under two sovereigns, the state and the nation. Each of these collective bodies is a person with organs for expressing its will, its sovereignty, and each is supreme in its own sphere. But Professor Thorpe, while claiming that the judiciary alone authoritatively interprets the national constitution, yet denies that sovereignty is divisible and repudiates the precedents in court decisions which continue the use of such terms as "residuary sovereignty" (page 12). The word "sovereignty" is constantly recurring, but sometimes it is the sovereignty of the people (page 12), a fallacy according to President Wilson; sometimes it is the sovereignty of the nation (page 15), said to be unlimited (page 16), and the national government is said to be a sovereign government (page 38). In another place it is said, "Only the United States and the several states possess sovereignty" (page 47). These inconsistencies are inevitable in those writers who try to apply a theory derived from centralized states to a federation like the American or the Swiss. The present war has shown the dangerous and non-moral character of the theory of unlimited sovereignty, and the Entente nations are seeing the necessity of a league of nations, in which each will give up something of its sovereignty to the sisterhood of nations. Thus Dr. D. J. Hill, more conservative than the advocates of the League to Enforce Peace, nevertheless urges in his last book the need of a "renunciation, to some extent at least, of absolute sovereignty." I think therefore that Professor Thorpe, professing to accept the authority of the courts, was bound to accept the judicial doctrine of divided sovereignty.

The author writes of the Eleventh Amendment as a withdrawal by the sovereign of part of the original grant to the federal judiciary, but there is good judicial authority for the assertion that the Eleventh Amendment was nothing but the reversal "by the highest authority in this country" (Hans v. La., 134 U. S. 1), of an erroneous judicial decision. He thinks the adoption of the Sixteenth Amendment removed limitations on the power of Congress with respect to direct taxation. "It is the first departure in America from the doctrine of limited government" (page 24). Yet can it be doubted that it was intended to reverse the much criticized Pollock decision, which was itself a reversal of a line of judicial decisions? All these criticisms, however, might be levelled against almost any other work upon the same subject, unless written by a reformer, a progressive or a foreigner. Professor Thorpe does not appear in any of these roles in this book, which fails even to mention the advanced measures of popular government, but he has given an
admirable presentation of the accepted doctrine. His concluding chapters upon Fundamental Rights and Citizenship are especially helpful. The work deserves wide use.

C. H. Maxson.

The Position of Foreign Corporations in American Constitutional Law.

When Chief Justice Taney in the case of the Bank of Augusta v. Earle, 13 Peters 519 (1839), set forth the principles which have been looked upon as the original source of the law of foreign corporations in the United States, he was merely giving expression to the economic philosophy of his time, although he was ostensibly proceeding to lay down accepted principles of law according to the rules of legal logic. Since his day, the courts have been using his legal phrases for a long time unaware of the fact that they were changing in meaning. Today we find ourselves conscious of the fact that these legal gestures no longer represent the realities which inspired their original use and we are confronted with the necessity of revising our entire system of legal reasoning and, indeed, of introducing a new legal phraseology so as to bring our law into harmony with modern economic doctrine. In view of the fact that we are now in a conscious state of transition, the difficulty of stating the law relating to foreign corporations is apparent. On account of this fundamental change of legal theory, coupled with a certain fixity of legal terminology, we are embarrassed in our search for authoritative rule, we are unable to forecast the decision of courts and the task of giving advice is made correspondingly difficult. Mr. Henderson's essay, which was awarded the Addison Brown prize in the Harvard Law School in 1916, reviews the history of the American law of foreign corporations from its early beginnings in the colonial period down to the days of Chief Justice Taney and thenceforward to our own times. He points out the development of the theory which culminated in Chief Justice Taney's opinion and then suggests a revision of this theory more serviceable in the solution of the urgent problems of our own time. He discusses with fine insight the difficult problems which are summarized in such legal terms as "personality," "consent," "legal entity," "jurisdiction" and the like, and he considers the effect of the fourteenth amendment, the Commerce Clause and the Privileges and Immunities Clause in their application to the functioning of foreign corporations. He shows that the device of the corporation is not an expression of any inherent philosophic quality in the group, but nothing more than a convenient technical device, a device whose sole purpose was the protection of actual human beings with actual property and common interests. It is to the tendency to overlook this fact that we must look for much of the difficulty that has arisen in corporation law. After all, the rights and liabilities of a corporation are no more abstract or created by law than the rights and liabilities of an individual. One of the
difficulties in the case of the corporation which does not exist in the case of
the individual is to determine where the corporation is for the purpose of
ascertaining its rights and liabilities in so far as they depend upon geograph-
ical loc-tion. Chief Justice Taney said "that a corporation can have no legal
existence out of the boundaries of the sovereignty by which it is created."
And the unwholesome effect of his theory may be traced in many directions.
Mr. Henderson comes to the conclusion that on a sound view of the Consti-
tution as a whole, the right of a corporation to bring suit on an equality with
individual citizens is one of the privileges to which corporations are entitled,
while the right to conduct business within the state on the equality of indi-
vidual citizens is not such a privilege. Hence a corporation of another state
can demand as of right recognition not only in the Federal Courts but in the
courts of every state in the Union on a basis of substantial equality with
individual citizens. Mr. Henderson points out that there have been strong
intimations that the Supreme Court of the United States is prepared to hold
this doctrine.

His work as a whole is highly to be recommended. It is another of the
many contributions now being made which tend to establish the unity of the
problems of human life by showing that these problems are not merely legal
and therefore to be segregated and studied apart from other problems of
society. It is only through the study of society in a large way and through
the coordination of the results of study in many different fields that a better
understanding of why things are as they are can be reached. The author of
this essay has performed a valuable service in illuminating this corner of the
field of jurisprudence with light from the principles of economics, psychology
and history.

David Werner Amram.

LEMUEL SHAW, CHIEF JUSTICE OF THE SUPREME JUDICIAL COURT OF MASSA-
CHUSETTS, 1830-1860. By Frederic Hathaway Chase. Boston and New

Upon opening this book, the reader is confronted with a portrait of Chief
Justice Shaw, which to the student of physiognomy speaks most eloquently of
the man and his character. It is a face rarely seen in these days—grim,
rugged, serious even to solemnity, massive, determined. The head is set upon
a heavy, solid body. The whole picture gives the impression of rocklike
imperturbability. Chief Justice Gibson, of Pennsylvania, if his portraits tell
the truth, had a face of similar quality and there are ancient men in English
judicial robes hanging in the gallery of portraits in Sharswood Hall who
might have been blood brothers of Lemuel Shaw.

After having reflected thus on the portrait of this man to whom levity
seems impossible, it is interesting to come upon a statement in the book that
he particularly enjoyed playing lion with his little granddaughter and bursting
fouth from under a table at her with a leonine roar accompanied by approp-
riate contortions of his big, ugly, solemn face. It is evident then that there
was more in Lemuel Shaw than the portrait painter has presented to us. But
although his biographer suggests in the chapter on his appearance and manner, his characteristics and his home life, that he was a very human man who lived a very simple and uneventful life, it is to his exceptional qualities that we naturally turn for the purpose of determining his value to the society to which his public life was devoted.

His part in the development of the law can be best understood by those, and they include all serious students, who have been obliged to refer to his numerous opinions from 1830 to the end of his career in 1860. During these thirty years he expounded the law with unsurpassed ability. He is perhaps at times too verbose and, from the point of view of our hurried days, his opinions are too long, but Shaw was never content merely to state a doctrine and refer to decided cases in its support but he restated the principle and based his opinion on reason rather than authority. In fact, some of his opinions, even the very long ones, do not cite a single authority in support of his views.

Of all the great Massachusetts judges, Mr. Justice Holmes, of the Supreme Court of the United States, is facile princeps. One will look in vain among the reports for that combination of learning, wisdom and that deep sympathy, which comes from a profound and undogmatic philosophy of life, in the writings of any other jurist of that state, and in some respects Mr. Justice Holmes seems unequaled in the entire annals of the American judiciary. His opinion, therefore, of the quality of his predecessor, Chief Justice Shaw, cannot fail to be impressive. He says, in commenting on the opinion of the Chief Justice in the case of Brown v. Kendall, 6 Cushing 292, “in such a matter, no authority is more deserving of respect than that of Chief Justice Shaw, for the strength of that great judge lay in accurate appreciation of the requirements of the community whose officer he was. Some, indeed many, English judges could be named who have surpassed him in accurate technical knowledge, but few have lived who were his equals in their understanding of the grounds of public policy to which all laws must ultimately be referred. It was this which made him, in the language of the late Judge Curtis, the greatest magistrate which this country has produced.”

The volume before us traces the story of Shaw’s ancestry and youth, his early life and study of the law, his experiences in the practice of the law, his work in the public service and at the Constitutional Convention of 1820. His appointment to the bench came to him in his fiftieth year and thereafter his career is written in the reports of the Supreme Court of Massachusetts. His biographer devotes several chapters to the consideration of Shaw’s contribution to the solution of the slavery problem and his part in the development of the law, particularly of public service corporations, of torts and of crimes. An interesting final chapter is devoted to more personal and intimate matters and an excellent index closes the book.

A Pennsylvania lawyer cannot help regretting that the life of our great Chief Justice Gibson is still unwritten. Indeed the judicial history of Pennsylvania has been sadly neglected notwithstanding the fact that a rich fund of material here awaits the labors of the conscientious biographer.

David Werner Amram.
BOOK REVIEWS


This volume contains ten addresses delivered on various occasions between 1906 and 1915 by a lawyer whose marked characteristic seems to be distrust of new ideas. It may be taken for granted that all proposals for change are not desirable without assuming that all proposals for change are undesirable, yet one cannot escape the conclusion from reading these addresses that Mr. Guthrie instinctively assumes the latter position. To him everything that is old and well-established is sacro-sanct. His method of appraising new ideas and his judgment thereon are, therefore, necessarily unscientific. The value of his writing consists in its exposition and illustration of that attitude of mind not uncommon which in the midst of the hurly burly of the modern world and its tremendous currents and cross-currents of new thought shuts itself within the sheltering walls of inherited ideas and refuses with Podsnapian gesture to recognize the force of current opinion. These addresses breathe a spirit of conventional patriotism and glorify all of the legal myths which we have inherited from an earlier day. Mr. Guthrie panegyrizes Magna Carta as a great popular document. He looks upon it as the guarantee of trial by jury. He talks about "the plain people of England" as though they had anything to do with the wresting of Magna Carta from the reluctant King John and he startles us with the statement that "the framers had grasped the great truth that jurisprudence is a science." One reads these things with a certain degree of pleasure in no way related to one's belief in their truth or soundness. Perhaps the value of Mr. Guthrie's views on the legal and governmental problems that he discusses can be best gauged by reading his address on Catholic Parochial Schools, in which he argues in favor of granting to denominational schools moneys out of the public funds because such schools are rendering a public service. He does not seem to be conscious of the fact that the public service rendered by such schools is questionable, since, unlike free, undenominational public schools, they are teaching and perpetuating that dogmatism which has in all time past stood in the way of that more perfect union which it is the aim of humanitarian and undenominational philosophy to secure.

In his address on Nominating Conventions, he recommends that the nomination of candidates in a political convention should be made part of the fundamental law of the land so that the legislature may not abridge it by adopting the Primary Election system or any other method of nomination. He looks upon the nominating convention as in its essence fundamental to the perpetuation of representative Republican government.

Finally attention may be drawn to Mr. Guthrie's view that the Mayflower Compact was in effect the first American Constitutional Convention, that in its phrase "to enact, constitute and frame such just and equal laws . . . for the general good of the colony" we are to find the germ from which has since developed our whole system of constitutional jurisprudence. This further illustrates how mistaken zeal blind to historic truth may, through misplaced emphasis and mistaken interpretation, go far toward perpetuating errors which scientific and historical investigation seek painfully and persistently to correct.

David Werner Amram.

This most recent edition, the fifth, of Professor Schouler's work on the law of personal property, is, like the earlier editions, elementary in its character. The scope of the work is so comprehensive, treating as it does of the nature and general remedies of the law relating to the leading classes of personalty, that the author of necessity can deal with principles only, and not with details. Leading cases only are cited, and the reader is frequently referred to the standard works on the special topics for a citation of the mass of decided cases left unmentioned.

In some portions of the new edition, there seems to be an effort made to bring the work down to the present date by annotation of recent cases and by reference to modern legislation. In the chapter on Partnership, however, the author refers to the Uniform Partnership Act, now the law in many states, as follows:

"There is a movement on foot in this country to codify the law of partnership by means of what is known as the Uniform Partnership Act, which may be enacted into law as was the Negotiable Instruments Act."

The chapter on Assignments is an admirable elementary statement of the principles underlying this phase of personal property law, and the chapters on Chattel Mortgages, Money, and Interest and Usury are original in their development and worthy of study. The citations are representative and reliable, and are ample proof of the skill and industry of the author.

Williams's volume on "Personal Property," which has more than seventeen editions, naturally calls for a comparison. In its scope and subject-matter, the English work is a manual for English students in conveyancing. Schouler's work has become the standard text-book on the law of Personal Property for the American law student and practicing lawyer. The latest edition, which, it is interesting to note, was personally edited and prepared by Professor Schouler himself forty-five years after the work was originally published, maintains the high standard of reliability attained by its predecessors.

L. E. Levinthal.


Every alumnus of the Harvard Law School will be glad to have a copy of this most interesting volume prepared by members of the Harvard Law School Faculty with the assistance of some of its graduates. The story of the school from its humble beginnings in the Second College House to its present grandeur in Austin Hall, from its feeble academic effort under Parker and Ashman to its nation-wide and, through the friendly channel of Professor Redlich's investigations, world-wide influence under Langdell, Ames, Gray and other masters living and dead, from the effort of Stearns to purchase a complete law library with $681.74 to the present monumental collection of upwards of a hundred and fifty thousand volumes, cannot fail to be a source of pride and inspiration to all those who have been privileged to participate in
its life as teachers, students and benefactors. The imposing list of distinguished alumni of the school testifies eloquently to its influence on the bench and bar and public service not only of the United States, but of Canada, Japan and other foreign jurisdictions. Every university law school of prominence has or has had on its faculty graduates of the Harvard Law School.

The editors of this volume have well understood that Harvard's chief claim to distinction lay in its possession of Langdell, who was dragged from the obscurity of a successful career at the New York bar into a professorship in the Harvard Law School and whose portrait appropriately faces the title page of this volume. Harvard secured Langdell through the insight of President Eliot, to whom America owes more than it now realizes. Langdell introduced into Harvard, in the face of constant and most vigorous opposition, a new method of studying law. It was, in fact, whether Langdell was conscious of it or not, a resurrection of a method used in the Medieval law schools of Italy and in the Jewish law schools of Babylonia. This is not the place for further discussion of the "case system" of instruction. The subject is fully presented in this volume and the literature relating to this and other topics in American legal education amply referred to in the bibliography in the appendix.

In publishing its history, Harvard Law School has again taken the lead, and I have no doubt that other law schools will in course of time follow Harvard's notable example.

The publishers of this volume are to be congratulated, not only upon the splendid presentation of the subject matter, but likewise upon the most attractive appearance of the book. The illustrations are particularly interesting and it is only to be regretted that the fine portraits of the earlier members of the faculty were not supplemented by portraits of the more recent and present incumbents. No doubt they, being the authors of this book, modestly forebore the publication of their portraits in the same volume with those of the distinguished masters to whom they pay ample tribute in these pages. The little group of pictures opposite page 172 must for the time being take the place of more formal and desirable portraits of Dean Pound and his associates.

David Werner Amram.


The influence of the Norman conquest upon law and politics in Great Britain is one of the commonplaces of history; from Normandy and Normans the English derived much of the Frankish and feudal custom that is still found deeply imbedded in the common law. When, however, it is sought to trace this Norman influence to its home land the student is baffled by a lamentable absence of documentary sources due to war and the vicissitudes of time. Indeed the abundance of records and documents of the later middle ages possessed by England makes all continental research seem difficult by comparison. Dr. Haskins has completed the difficult task of thoroughly exploring the Norman documentary sources for every shred of evidence bearing
on Norman institutions from a period shortly before the conquest of England
down to the loss of the duchy, and has embodied his researches in the
present volume. Charters and writs preserved in the archives of the re-
ligious houses, many of which are now brought to light for the first time,
or are for the first time scientifically examined, form the groundwork of this
study. There is a comprehensive description of all that can now be recov-
ered regarding the government in the Conqueror's period; the varying for-
tunes of the ducal administration under his less masterful successors is
studied from new material; and the persistence of Norman institutions, fiscal
and judicial, under the strong house of Anjou is carefully traced. In the
chapter on the early Norman jury new light is thrown on the possessory
assize in Normandy and the extent of the employment of the recognition in
the time of Geoffrey Plantagenet and Henry II.

All this is spade work of an extremely interesting character; the text is
reinforced with much original material, and there are appendices devoted to
special technical questions. It may be said confidently that no one hereafter
will venture to discuss the Norman conquest without consulting this volume.
The pity is that the book is written in a style that will commend it to a very
limited and learned class of readers. In the manner of a most elaborate doc-
tor's thesis, there is no attempt to lighten or brighten the pages; the text
of some chapters is overburdened with Latin charters; the distinguished
author would seem deliberately to have turned his back upon the cultured
public and to have addressed his fellow dons only. Maitland, Pollock, Ames,
and Thayer have shown that even the driest subjects may be given color
and atmosphere. Without some attempt in this direction the most learned
work is not likely to achieve more than a high place among the admirable
source books.

W. H. Loyd.

THE PRIVILEGES AND IMMUNITIES OF STATE CITIZENSHIP. By Roger Howell.
Baltimore: Johns Hopkins Press, 1918. Pp. 120.

This is one of the series of Johns Hopkins University Studies in History
and Political Science. It was undertaken at the suggestion of Prof. Westel
W. Willoughby. So far as is known, no previous attempt has been made to
treat the subject comprehensively, or to enumerate the rights which the citizens
of the several States are entitled to enjoy, free from discriminatory legisla-
tion, by virtue of the so-called Comity Clause.

A study of the History of the Comity Clause of the Constitution, "the
citizens of each State shall be entitled to all privileges and immunities of citi-
zens in the several States," is followed by a consideration of the general scope
of the clause and the rights which are and which are not protected against
discriminatory legislation. A chapter on discriminatory legislation under the
police power and one on power of the States over foreign corporations leads
to the conclusion that the privileges and immunities commonly spoken of as
secured by the Constitution to the citizens of the several States are, as a
matter of fact, in no way guaranteed by any provision of that instrument;
that the utmost that can be said in this connection is that no State may grant
those privileges and immunities to its own citizens and refuse them to those of other States. Properly speaking, therefore, there exists only one privilege or immunity of which it can be said that it may be demanded as of right by the citizens of every State in the Union. That one is equality of treatment, freedom from discriminating legislation. That this is so is far from being clearly recognized or stated by the courts, even at the present time.


This is also one of the Johns Hopkins University Studies in History and Political Science. It deals with a variety of interesting topics, such as Government of Nurnberg, Marriage Festivities, The Hochzeitsbüchlein of 1485, Wedding Regulations and the Reformation, The Reformation and Moral Legislation, Regulation of Christenings, Regulation of Funerals, Regulation of Clothing, Problems of Sumptuary Legislation.

The observations of this study have been directed upon Nurnberg, and in so far as Nurnberg was a typical community they have a general significance. The evidence assembled has exhibited the sumptuary ordinances as a serious legislative activity of a sovereign body that stood in the main currents of its time. In tracing the laws in their historic growth it has shown the intimate details of conduct over which such a government would press its control under the sense of paternal responsibility; and has served to illuminate the medieval view of the relation of the state and the individual at the points of closest contact. In setting forth the restriction which the city fathers of Nurnberg proposed, it paves the way for study of the interesting problem of its enforceability; equips one to proceed with a survey of its course in Nurnberg after the Reformation; and furnishes a basis for comparative observations of its development in communities differently governed and differently circumstanced.


In this essay the author examines and analyzes the doctrine of discharge of contract by impossibility of performance and reaches the conclusion that if subsequent to the formation of a contract, an event, the effects of which have not been expressly provided for by the terms of the contract, occurs and causes or is likely to cause such difficulty or delay in performance as amounts to mercantile impossibility or destroys the whole foundation of the contract, either party may claim that it was an implied term of the contract that on the happening of said event the obligation of the contract should be destroyed. The court will assent to such claim if it holds, first, that as a matter of construction the alleged implied term was a term of the contract and, second, that the event is of the nature above stated.

In regard to war as an interference with the performance of contracts, the contractor is entitled to consider that it will involve unreasonable delay in the performance of most mercantile transactions. Although war is to be
treated as of indefinite duration, yet as a matter of fact it can only be temporary, hence if at the outbreak of a war the time during which a contract with an enemy is to be performed is such that the war is reasonably likely to outlast it, the contract should be dissolved, but the converse proposition is not necessarily true.

The author's incisive examination of the cases old and new bearing on this question is recommended to all students of this branch of legal investigation.


This is a hand book prepared for use in the Extension Division of the University of Wisconsin. It presents the law of commercial paper in a series of paragraphs containing the rules of the Negotiable Instruments Law with the principles and rules of the law merchant. The work presents the rather unusual combination of accuracy and comparative freedom from technicality. It is not intended for the use of law students, but for those who intend to follow a business career and wish to acquire some knowledge of this important branch of commercial law. Professor Moore, who assumes the principal responsibility for this work, gives to it the weight of his acknowledged authority in this field. The index contains a reprint of the Uniform Negotiable Instruments Law of Illinois and Wisconsin. Although intended primarily for students in these jurisdictions, it may well be recommended as a text book in commercial courses elsewhere, to be supplemented, however, by the instructor's reference to variations in the rules of law in other jurisdictions.


This little book is published by Harvard University for use in the Students' Army Training Corps in the course on Military Law and Practice. In view of the demobilization of this corps, the book remains as one of the monuments of an interesting period in the history of American colleges. It may still be of value to any one interested in the subject of military law and unable or unwilling to examine the official manual for courts martial and the articles of war, the acts of Congress and the decisions of the courts which constitute the original sources of information. Professor Scott has obviously devoted much time and thought in making the selections for this book and in arranging his material.


This is a reprint of a study appearing in the *Columbia Law Review*, June, 1918, with some additional matter relating to "Unneutral Service" as set forth in an amendment to the German Prize Code. The article notes the principal decisions of the German Prize Courts up to February, 1918.