# BOOK REVIEWS

*The Law and Procedure of International Tribunals.* By Jackson H. Ralston. Stanford University, Stanford University Press, 1926. pp. xl, 512.

A new edition of Mr. Ralston's work will be found very useful to practitioners who have to deal with matters of an international character. This edition brings the work down to date and includes, in an appendix, the Statute and Rules of the Permanent Court of International Justice. It is a practical rather than a theoretical work and its value largely consists in the author's marshalling in clear and logical fashion the body of international precedents which have arisen through the decisions of arbitral tribunals since the time of the Jay Treaty, which may be said to have been the real father of legal arbitrations. Up to that date the precedents are vague, largely moral or political and there existed almost no body of judicial precedents which could form a basis for actual law and practice. It was only throughout the nineteenth century that international arbitration has been recognized by statesmen, writers and lawyers as a normal and natural method to determine international controversies. The Institut du Droit International of a generation or so ago devoted itself to the study of a possible international court with a plan of procedure which "was to a considerable extent followed when an international court of arbitration was finally organized."

There have been many notable cases of arbitration, especially between the United States and Great Britain, such as the Bering Sea Fisheries, the Venezuela Guiana Boundary, the Canadian Boundary, the North Atlantic Fisheries and the present commission which is disposing of all Anglo-American claims arising prior to the Great War. The *Pious Fund* case with Mexico and the *Venezuelan Preferential* case were important steps. Finally, in 1907, an agreement with regard to international disputes was signed by forty-six different countries and arbitration became a world-sanctioned institution. The last, however, and final step toward the judicial settlement of international disputes was reached with the institution of the Permanent Court of International Justice.

It has been objected by opponents of international arbitration and of the World Court that there is no sufficient body of international law to justify a general submission of international disputes. The author has amply shown that there has grown up through arbitrations within the last century a large body of legal precedent which constitutes law in as real and true a sense as in the case of our constitutional or administrative law. These arbitral tribunals have on the whole been careful to decide in accordance with generally recognized principles of international law and have followed and developed existing precedent. They have carefully formulated certain doctrines such as those relating to the denial of justice, the exhausting of legal remedies, the effects of local laws, of stare decisis, etc. The difficult questions of domicil and citizenship have been dealt with.

Among the many questions promoting international friction have been those relating to the validity of acts performed by de facto governments. In the most recent case on the subject, which involved the validity of certain concessions made by the so-called Tinoco government in Costa Rica which had been refused recognition by the United States, Chief Justice Taft was chosen as arbitrator by Costa Rica and Great Britain. He examined with great care all the precedents relating to this question and concluded that the Tinoco government, despite the non-recognition by the United

States, had been a de facto government with power to create rights and incur national liabilities. The Chief Justice also held that:

"The non-recognition by other nations of a government claiming to be a national personality is usually appropriate evidence that it has not attained the independence and control entitling it by international law to be classed as such, but when recognition, *vel non*, of a government is by such nations determined by inquiry, not into its de facto sovereignty and complete governmental control but into its illegitimacy or irregularity of origin, their non-recognition loses something of evidential weight on the issue with which those applying the rules of international law are concerned."

The limitations upon sovereignty and responsibility for the acts of officers are fully set out and the very numerous precedents examined by the author. The peculiarly troublesome question as to the liability of a titular government for the acts of an unsuccessful revolution have given rise to much controversy, especially between the United States and South American states and a body of judicial usage has been built up in this regard. The question of prescription of claims in international law forms the subject-matter of a chapter. The laws of war and maritime law are also separately treated.

The most useful and interesting portion of this work, however, consists less in its treatment of substantive law than in its dealing with procedural questions. This it does very fully. The organization and functioning of arbitral commissions; the parties to such arbitrations and the citizenship of claimants; the procedure involved in the presentation of claims and counter-claims, are given in detail as are matters of evidence and the character of evidence before such commissions. The method of its presentation forms a useful chapter because this is a matter quite unfamiliar to the common law lawyer and the methods in vogue before arbitral tribunals savor much more of the civil than of the common law. The fact that a very great part of the world is governed by the civil law while the English speaking people practice the common law has been urged as an obstacle to international justice. This our author proves from the actual practice to be unfounded:

"The truth is that a very large proportion of the fundamental principles of our common law jurisprudence has come into existence from the civil law and that English lawyers were students, or even, in the canonical courts, practitioners, of the Roman law. Of the remaining principles a very considerable proportion are such as would naturally be approved in any country as appealing to the universal sense of right. This leaves a relatively small and unimportant number of differences, and these relating assuredly not to broad principles. The principal points of difference or possible clash between the two systems have been pretty well developed and may be put under headings of (1) treatment of matters of evidence and procedure, (2) succession to landed estates, (3) citizenship and domicile. . . . Under common law we have built up an intricate system of rules of evidence deemed necessary, though this be doubtful, because of our more general use of jury trials; and of this the civil law knows practically nothing. Usually arbitrations have recognized the civil law as controlling in matters of evidence, and it has yet to be proven that the elaborate common law evidential rules further justice any more than the plain and straightforward practices of the civil law."

It is impossible to do justice to the matter contained in this book of over five hundred pages in a short review. It is the only work in English that I know of dealing in detail with the important question of practice and procedure before international commissions. The vast number of cases disposed of by the Mixed Tribunals under the Versailles Treaty and by similar tribunals in this country since the War has given opportunity to many practitioners to familiarize themselves with matters of international law. It

is evident that more and more judicial settlement rather than diplomatic controversy and actual war will be resorted to as a method of settling disputes. It is of importance that the Bar and the public should understand that there exists a great and well reasoned body of precedent through which most justiciable controversies can be adequately dealt with.

The old view that international law was but a body of rather vague principles strung together under the head of international comity or politeness and founded upon the speculations of academic writers can no longer be maintained by intelligent people. International law is law in the approved and best sense of the word. It is founded on actual judicial usage and precedent. It is pragmatically sound because it has worked and its highest development has come in our time in the founding and functioning of the Permanent Court of International Justice.

FREDERIC R. COUDERT

*Cases on Criminal Law.* By William E. Mikell. Second Edition. St. Paul, West Publishing Company, 1925. pp. xxvi, 799.

The first of the American Casebook Series was Dean Mikell's *Cases on Criminal Law*, published by the West Publishing Company in 1908. This volume is the foundation of the second edition now under review, and the changes which have been incorporated into the new edition are in no sense fundamental. They consist chiefly in the addition of new cases, of which there are more than 100. But some 30 of these are in substitution for cases in the earlier edition which, according to the author's preface, experience had shown to be less valuable for class discussion. The net effect upon the size of the volume is an increase of 200 pages. There have been, also, some rearrangement of material within certain of the chapters and slight modifications in the chapter headings. The only new subject matter is a section entitled Proof of the Homicide in the chapter on Homicide.

But in noting the relative slightness of the modifications in topical arrangement and in subject matter, the reviewer should not be thought to depreciate the value of the new edition. On the contrary he approves of all the changes. In every instance better teaching material has been substituted for the cases dropped out; the new cases have strengthened the chapters into which they have been introduced, and the rearrangements of sections and the modification of titles have made for logical sequence and clarity. The new edition is a more useful teaching medium than the old. As a very minor criticism regret may be expressed that the author did not see fit to include in the footnotes, many of which have been amplified by the citation of late cases, references to pertinent notes and articles in legal periodicals.

In many law schools the time allotted to Criminal Law is only three hours per week for half a year. A casebook of nearly 800 pages cannot be completely covered in such time and the teacher must use his individual discretion in selecting the portions of the casebook to be taught. The second edition of Mikell's *Cases* is better adapted for such selection than was the first edition, both because of the greater number of cases and because several of the sections which in the original edition contained too slight an amount of material for adequate presentation of the topic have been amplified. The book is almost evenly divided into two parts, the first half dealing with general principles, the second devoted to a consideration of specific crimes. Some teachers no doubt will prefer to change the arrangement and teach first the specific crimes of assault, battery and false imprisonment—topics with which the beginning law student is at the same time gaining some familiarity in studying Torts.

Criminal Law is an excellent subject for introducing a student to an analytical study of cases and an historical view of the common law method of the development of law. But the reviewer never finishes teaching the subject without feeling that the class has been offered a very inadequate picture of the living law. Interpretation and application of criminal statutes, problems of practice and procedure in criminal trials, cases involving probation, the indeterminate sentence and theories of penology, form a very important part of the grist which the courts are daily grinding. Yet these subjects are completely ignored in the law schools in the course on Criminal Law—at least in so far as text material in the casebooks is concerned. It is to be hoped that the casebook of the future will be able to present a truer picture of the field of modern criminal law and that the curriculum will provide adequate time for its study. Until such a book shall be written, Dean Mikell's *Cases* will doubtless continue to be, as the first edition has been in the past, the most widely used, and the most usable, collection of cases for law school teaching of the subject.

THOMAS W. SWAN

*Arbitration and Business Ethics.* By Clarence Birdseye. With a Foreword by Charles L. Bernheimer. New York, Appleton & Co., 1926. pp. xiii, 305.

This little book is devoted not only to Commercial Arbitration, but also to Common Law Arbitration, Statutory Arbitration, Industrial Arbitration and Other Examples of Arbitration—and Business Ethics. Such are the headings of the five parts into which the book is divided. The discussion of these several types of arbitration is found in the space of 177 pages, including the last chapter in which the author makes a twelve page recapitulation of his preceding twenty chapters.

"Strict or pure commercial arbitration," according to the author, is found only in self-governing commercial organizations, such as exchanges, and in trade associations. A permanent tribunal is a necessary element. By-laws providing for the sanction of expulsion or suspension to abide an award form another essential element. Rules providing for the arbitration of future disputes are also indispensable. Economic considerations, such as costs and delays of court litigation, "do not have much or any weight in connection with strict commercial arbitration. The activating motives are of a much higher nature."

Contrasted with this strict Commercial Arbitration, with its "ocean liner perfection" is the crude Common Law Arbitration. Parties attempted only spasmodically to settle a dispute by such arbitration as came under the common law rules. Their attempts were chiefly "to avoid litigation with its expenses and delays," and such arbitrations were without "any suggestion of higher business ethics which lie at the very foundation of strict commercial arbitration of any time or clime." These attempts to arbitrate were "merely a temporary and really worthless makeshift, and might well earn the contempt of the judiciary."

The author's treatment of Statutory Arbitration embraces a reference to the English Arbitration Act, a summary of difficulties deemed incident to procuring legislation in the United States to change common law rules and a twenty-nine page report of the history of arbitration in the New York Chamber of Commerce (1768–1926), and a reference to arbitration statutes recently enacted in the United States.

In discussing Industrial Arbitration the author reports on the industrial reorganization following the English Industrial Revolution of 1760, the advent of the "factory system," the development of labor unions, and the

fact that while "arbitration was and almost invariably has been banned by the trade unions" its development may be looked for out of the employer-employee trade agreements. It is the author's plea to resort to "true industrial arbitration instead of old-fashioned collective bargaining." The plans of the Bethlehem Steel Corporation and of Hart, Schaffner & Marx are reported in part.

The last part, entitled Other Examples of Arbitration, embraces a brief report of the practices of the United States Chamber of Commerce, a reference to arbitrations under Rules of Court, a report on the Jewish Court of Arbitration and a reference to the existence of the American Arbitration Association. The functions of officials like fence-viewers are treated in a two-page chapter entitled Official Administrative Arbitration by Non-Judicial Functionaries. Conciliation and Commercial Courts and Small Claims Courts are referred to in separate chapters of five and three pages respectively.

An appendix of 110 pages contains a reprint of 100 ordinances of the cloth workers of the City of London (1587) (number 46 concerns the settlement of disputes), a reprint of the Objects-clauses of certain business organizations, a reprint of the arbitration clause used by the Moving Picture Industry, a reprint of the arbitration statutes of Illinois, New York, New Jersey, Oregon and Massachusetts, the United States Arbitration Act, a reprint of the Hart, Schaffner & Marx Labor Agreement, the Anthracite Agreement of February 17, 1926, and some arbitration forms used by Chambers of Commerce and Trade Associations.

The book is chiefly a platitudinous glorification of business organization. "Business ethics," "commercial honor and good faith," "service," "co-operation," "uplift," "altruistic and ethical spirit," "larger" and "higher" "interests," "lend a hand" "spirit," "sacredness of contracts," "get-together spirit," "manhood rights," "honorable dealing," and like expressions become an obsession. They crowd out any critical or thorough treatment of the subject. The following paragraph, which is the author's sixth element of Commercial Arbitration, may be cited as typical:

"Sixth, underlying and enveloping and giving life and vision to the foregoing elements, is the ethical and guild spirit which was responsible for the original birth of the organization. That spirit grows and is strengthened as the decades pass by, and as new generations gain control who were reared under the better conditions of the new collectivism, and who have not personally experienced the evils of the older individualism which finally found an unwilling combination of discordant trade rivals. That spirit works increasingly for better business ethics and methods, for the sacredness of contracts, for mutual confidence of fellow members' integrity and good faith, for loyalty to the organization and its ideals, for a realization that the whole is greater and better than any of its parts, for a united effort to make the future better than the past, and to lend a hand."

WESLEY A. STURGES

*A Selection of Cases on the Law of Municipal Corporations.* By Charles W. Tooke. Chicago, Callaghan & Co., 1926. pp. xliv, 1335.

The purpose of Professor Tooke's collection of cases on Municipal Corporations is to provide for a course of "sixty semester hours" amounting to two hours a week throughout the school year. In the reviewer's opinion this is not too long a time to be devoted to the subject of Municipal Corporations. It is, to be sure, a quite special subject. On the other hand, questions involved in this topic give rise to an immense amount of litigation;

they involve most of the interesting problems of public law; and they call for a knowledge of methods of local government. To a well equipped common lawyer, unacquainted with the contents of this topic, some of the results are surprising; especially the unusual doctrines for liability of a municipal corporation for injuries inflicted by its employees.

This collection includes over eight hundred cases. It is safe to say that a teacher cannot adequately carry a class through more than six cases in an hour, and the average would fall much below that. It is obvious, therefore, that the teacher who uses this collection in a course of sixty hours must select a few from the whole number of cases. It is probably an advantage to be able to make such a selection and to refer a class for further study to cases in the casebook which are not taken up in class.

There is, however, this danger in such a procedure—that the teacher will omit topics in preference to choosing among many cases a single topic. Professor Tooke's selection of topics for discussion is so excellent that it would be a pity to omit any of them.

As an example of his method one might turn to chapter three, Incorporation and Incidents of Existence. The greater part of this chapter is devoted to organization under general statutes. The rest of the chapter is concerned with the very important topic of dissolution of local corporations and the reincorporation of local districts, or the annexation of territory to an existing corporation; together with the effect of such changes on the rights and obligations of the corporation. One hundred and thirty pages or, say, seven hours are devoted to this chapter. This is certainly not an undue amount of time to give to the difficult subjects considered, and yet it is one chapter out of thirteen.

The subject of Powers, in chapter seven, is covered in about three hundred pages; again, not an undue space for such a topic. One of the sections in this chapter is devoted to zoning ordinances. The editor begins with the building regulations adopted for the city of Washington in 1791, and deals throughout with the modern and very pressing problem of regulation of the character of buildings by zones. Sixty pages are well devoted to this subject.

The editor appears to accept the general view that the powers of a city may be divided into two classes: public, and private or commercial. It may be doubted whether this division is sufficient to account for all the facts. It is probable that we must recognize a division of the public powers of a municipal corporation into governmental and non-governmental powers. In some particulars the municipal corporation is acting directly as an agency of the state government employed by that government to accomplish certain of its functions, such as policing its territory. Other functions are purely local, and while public, do not call for any exercise of governmental powers. Such are the maintenance of a fire department and of public libraries and hospitals. Until this distinction is accepted there will be great difficulty in dealing with state control over governmental agencies.

Under the head of Municipal Revenue, Section Taxation, the editor has included various cases of required private service, such as the requirement of keeping the sidewalks clear. There are also questions on the power and obligation of the city to raise money by taxation for various purposes. The general doctrines of the law of Taxation are not here covered, but the subjects taken up are most desirable for examination in a course on Municipal Corporations.

Where so large a field has been covered it seems that the editor might have gone with more thoroughness into the question of the laying out and

building of highways. The omission of cases on this point is the only criticism that can be made on the subject-matter of this book; and every teacher must delimit his own subject in his own way. The selection of cases is excellent and the editing of the cases has been carefully done. The collection should prove a most useful text for teaching the law of this most important and difficult subject.

J. H. BEALE

*Diplomatic Correspondence of the United States Concerning the Independence of the Latin-American Nations.* Selected and Arranged by William R. Manning. New York, Oxford University Press, American Branch, 1925. Vol. I, pp. xxxii, 665. Vol. II, pp. xxix, 666–1427. Vol. III, pp. xxviii, 1428–2228.

In these three volumes the editor, Professor Manning of Texas University, has brought together under the auspices of the Carnegie Endowment for International Peace, approximately 1,200 documents of diplomatic correspondence between the United States and Argentina, Brazil, Central America, Chile, Colombia, France, Great Britain, Mexico, The Netherlands, Peru, Russia, Spain and Uruguay, between 1809 and 1830, relating to the independence of the countries of Latin-America. While some of the documents reprinted are to be found in the American State Papers, Foreign Relations, and some in Congressional documents, many of them are taken from manuscripts in the archives of the Department of State. It is regrettable to know from the editor's preface that some documents connected with our foreign relations are not now to be found in the archives, and only surmise can now be indulged as to what became of them, such as that they were burnt by the British in 1814. It is lamentable that in a country as young as this archives are so defective. The correspondence now published is arranged by country of origin, beginning with the United States and then following the order mentioned above. Each document is supplied with a note of its source and some account of the writer. Each volume is supplied with a calendar of the documents printed in it and the work contains an index of some 35 pages. It cannot be doubted that the documents will serve to illumine the diplomatic history of the United States and of Latin-America during an important period in American history. The editor appears to have done his work with scholarly care and equipment.

E. M. B.

*La Conception Anglaise de la Saisine du Douzième au Quatorzième Siècle.* By F. Joüon des Longrais. Paris, Société Anonyme du Récueil Sirey, 1925. pp. 488.

When F. W. Maitland became Downing Professor of the Laws of England at Cambridge, he chose for the subject of his inaugural lecture, "Why the History of English Law is Not Written." He pointed out the immense mass of sources for legal history which England possessed, and paid deserved though somewhat reluctant homage to the significant contributions to our knowledge of English legal history which had been made by foreign scholars, particularly Frenchmen and Germans. The present volume furnishes additional evidence of the energy and learning with which continental scholars are investigating this difficult subject. Professor Joüon des Longrais has since 1913 devoted his research to the English notion of seisin and the present tome embodies part of the results of his studies.

His thesis he states about as follows: "Seisin is a general legal concept, more especially a concept of real property; at the end of the twelfth and

during the thirteenth century, as a result of the influence of Roman law, it put into definite shape a traditional and profoundly original notion of the bond which unites man to things."

This traditional notion was that the fundamental element in the idea of property among primitive peoples is use or enjoyment, manifested in some open and notorious fashion. This Germanic concept was dominant throughout Western Europe after the barbarian invasions. With the revival of the Roman law in the eleventh century, it disappeared on the continent, where the Roman contracted concepts of ownership and possession supplanted it. But in England the Teutonic notion survived.

After Henry II introduced the possessory assizes, however, a new problem concerning property arises, for now appear, contrasted, *jus* and *seisin*. Under the influence of Roman ideas, these terms were defined, *jus* as ownership of real property in the Roman sense and *seisin* as possession purely, with no element of title. So Bracton seems to say and Maitland and Holdsworth say the same. Here Professor des Longrais disagrees. He shows that *jus* is less than ownership in the Roman sense and that *seisin* is more than possession, containing certain elements of ownership. Both *jus* and *seisin* therefore are relative ownership, the former having more than the latter. "They are both," as he says, "cut from the same material," and they are both derived from the old Teutonic concept of ownership, modified by Roman influence. Later, seisin becomes the sole title to real property. Thus, England went her own way in law as in government. The author concludes, "The Common Law is the most complete and original effort of thought which the jurisprudence of the Middle Ages bequeathed to us, precisely because its untrammeled development was not hampered, after the end of the thirteenth century, by the rising tide of Roman ideas."

Based upon an exhaustive study of legal sources, the present volume is to be followed by another on the assizes of novel disseisin, mort d'ancestor and livery of seisin.

The author is in error, of course, when he says that the services for the fief in England do not have a political character; that they may be military, or agricultural. Services for a fief were not agricultural. Following Pollock and Maitland's statement in their *History of English Law*, Professor des Longrais states that the action of trespass was semi-criminal in its nature. He had unfortunately not yet received the brilliant articles of Professor Woodbine which demonstrate that the action of trespass was civil in nature and developed out of the assize of novel disseisin.

SYDNEY K. MITCHELL

*Académie de Droit International: Recueil des Cours, 1923–1924–1925.* Paris, Librarie Hachette, 1925–6. Vol. I, pp. xi, 658. Vol. II, pp. vi, 494. Vol. III, pp. 475. Vol. IV, pp. 485. Vol. V, pp. 485. Vol. VI, pp. 471. Vol. VII, pp. 524. Vol. VIII, pp. 554.

Since 1923 the Academy of International Law, established with the aid of the Carnegie Endowment for International Peace, has inaugurated a series of lectures given each summer at The Hague on various topics of Public International Law and the Conflict of Laws by professors from the several countries of the world. The courses, varying from one to twelve lectures in number, are given in French and have been attended by students and teachers from all parts of the world. The eight volumes here under review reprint the lectures delivered during 1923, 1924 and 1925 in so far as they have not already appeared elsewhere in periodicals or books or such collections as the Bibliotheca Visseriana. Most of the better known topics of international law during times of peace have been treated. It was appar-

ently deemed too early to invite discussion of subjects connected with the laws of war with assurance of the necessary detachment. Each of the volumes now published by Hachette contains two or more courses of lectures. Each course is supplied with the photograph of the lecturer and the bibliography of his more important works. Even those lecturers who published elsewhere are represented by photographs and bibliographies and an indication where the lectures may be found. The editorial work has been carefully done.

In such a varied collection of contributions, one can hardly criticize usefully. Probably only a small part of the contributions are entirely new or original, the authors having been selected, for the most part, because they had already established reputations as experts in the particular topics they were called upon to discuss. The collection of so many authoritative contributions in one place will serve a useful purpose to students of international law.

E. M. B.

THE REVIEWERS IN THIS ISSUE

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