BOOK REVIEWS

The Jurisprudence of the Jewish Courts in Egypt. Legal Administration by The Jews under the Early Roman Empire as Described by Philo Judaeus. By Erwin R. Goodenough. New Haven, Yale University Press, 1929. pp. vii, 268. $3.

One of the most important of all Western communities in the extent and diversity of its influence, was the great city of Alexandria, founded by Alexander himself at the mouth of the Nile and for many centuries the capital of the science, art, literature, wealth, and later the religion of the Western World. Political and social institutions created there still determine our organization, and ideas formulated there still dominate our thinking. It will not be difficult, therefore, to believe that the law of such a community in all its aspects and elements is of first rate importance.

That law we have recently been enabled to examine in the way in which lawyers are particularly glad to do it—by the study of the constantly increasing mass of concrete examples of its application. First hand material is daily being disentangled from rubbish heaps and deciphered by papyrologists, and the systematization and analysis of these materials has recreated a life which we hitherto have known imperfectly and inaccurately from the fragments of Alexandrian literature. It has further enabled us to observe the Roman law in its living operation on a mass which resisted and modified it and was partially absorbed by it; in all probability it will be through the East-Mediterranean law as it developed in Alexandria that we shall ultimately gain anything like a full understanding of Roman law.

A special phase of Alexandrian law was the law of the Jewish community in that city—a community which was so exceptional in its relation to the city itself as to be very nearly unique. It was apparently autonomous—we shall probably be safe in describing it as quasi-autonomous. At any rate, if the Jews rightfully there had what was called Alexandrine citizenship, they had it in a way somewhat different from other groups who were also denominated Alexandrines, and their citizenship was especially different from that of Greek Alexandrines.

That the Jews had courts of their own is highly likely, and that in those courts they administered a law which was *ex professo* a Jewish law is to be assumed and is almost demonstrable from the scanty references in the Talmud. But the large increase of material afforded by the papyri has given substance and color to what was before a vague outline. Many doubts are still unresolved and many questions still unanswered, but we may now speak with some assurance on points about which we could formerly scarcely guess, and the need of combining with this material an intensive study of the literary sources has become urgent.

It is for that reason that an investigation such as that undertaken by Professor Goodenough deserves cordial welcome. Philo the Jew was a notable member of the Alexandrian community and has become still more important for posterity by the fact that so much of his work has survived. As he was particularly interested in justifying to a sophisticated Greek and Roman society Jewish institutions, in which legal elements were indissolubly associated with morality, ritual, religion and philosophy, we should expect to find a rich background from which we might gain valuable, if fragmentary, material for a study of contemporary law.

Professor Goodenough goes still further. He thinks that Philo consciously presents to us the specific legal system actually in operation in the courts of the Jewish *politeuma*, the state within the Alexandrian state, and that this is so particularly in one of Philo's books generally known as *De Specialibus Legibus* I-IV, which is apparently a commentary on the Decalogue and a defense of the Mosaic legislation. He finds the demonstration of his thesis in noting how in these works of Philo, the traditional Jewish law, as laid down in the Pentateuch, has yielded to the fact that it was being applied in a community Greek in speech and culture and ruled by a Roman viceroy.

It is an interesting and defensible theory, but we can hardly call it demonstrated. There is nothing in the facts of Philo's life to indicate that he had ever exercised any magisterial function in the community or had himself taken part in judicial determinations. But more than this negative fact, there are several suggestions that he had in mind an ideal system of which the Mosaic legislation was both the source and the model. Where he departs from the traditional exegesis of the Pentateuch, it is in the interests of a philosophic idealism. He speaks as a legislator with his "Let this be done," or "This should be the case," but he is legislating for a cosmopolis, not setting forth the law of Alexandria.

This is the theory generally held by students of Philo, and it is certainly supported by such statements as *De Specialibus Legibus* II, 73, and, we may say, by the subject matter of the entire first book *De Specialibus Legibus*. Professor Goodenough sets himself vigorously to combat the accepted view but I cannot find that he does so with success. It is obvious, however, that even if Philo was merely constructing a philosophic Utopia grounded on the Pentateuch, his words and his concrete illustrations would necessarily be of his own time and place, and, even without specific magisterial experience, an educated man in an ancient community would have a certain familiarity with law. By a cautious weighing of this material we may gain a great deal and Professor Goodenough's examination of the *De Specialibus Legibus* would be amply justified if it dealt merely with these implied and almost covert allusions.

To do the work thoroughly demands legal competence, as Professor Goodenough is aware, and he modestly deplores his deficiencies. "Any maid in Pilate's court," he says (p. 5) "will recognize in my speech the crude accent of Galilee." The maid, by the bye, was of the High-Priest's household, not in Pilate's court, and the little lapse here noted is not without significance. Professor Goodenough insists on relying on his memory and his memory is treacherous, as the memories of learned men are apt enough to be, sometimes in direct proportion to their learning. At any rate the lapses in this book are sufficiently numerous to suggest that the author has imposed on himself something less than the Roman *exacta diligentia* in finding authority for his statements.

So, for example, he seems to believe that the *strategus* of the Egyptian administration was the Roman executive (pp. 20, 34, 37), and he draws inferences from that fact. But the Roman executive in Egypt was the prefect—in Greek, *hegemon*—and the *strategus* was a subordinate official, generally a Greek or a Grecized Egyptian who continued the title and the functions of the Ptolemaic organization. He refers to a prohibition by Tiberius, "in 11 A. D.," against "recourse to magicians whether privately or in the presence of witnesses." (p. 38) The date was 16 A. D. and the passage of Suetonius (Tib. 63) to which he refers (n. 29) speaks only of *haruspices* and forbids only secret consultation. Heinemann does not say that the "Attic drachma was worth four times the shekel" (p. 45), but quotes Josephus as saying that the shekel was worth four Attic drachmas (Ant. III, § 194), a statement amply supported by extant coins. Again there is nothing in the passage which the author quotes (*De Sp. Leg.* II, 123, quoted p. 52, n. 80) which justifies the assertion that Philo regarded Gentile slaves as "truly slaves."

Dr. Goodenough assumes the Alexandrian Greeks would have been ignorant of an asylum which was anything more than an altar (p. 41). But the right of cities and entire islands to be asylums was just at that very time a burning question at Rome (Tacitus Ann. II, 60 *et seq.*), and the general notion of asylum included the whole sacred enclosure, the *temenos*. Similarly he mistakes the character of the asylum used by fugitive slaves (p. 54). It was not "a sacred statue" (p. 54, n. 90) but specifically the emperor's statues. The practice of fleeing to such statues had apparently begun at about this time but it secured little for the slave except a certain public reprobation of the master. It was not till the time of Antonius Pius (Gaius 1, 53) that on proof of cruelty a slave who had thus sought refuge could legally demand to be sold to another master, just as Philo proposes. What the author means by "Ulpian's legislation" in this connection (p. 54) is hard to make out.

Again, when Dr. Goodenough says (p. 56) that "classic Greek law gave the eldest son a double portion of the inheritance," he is contradicted by the references in his own note (n. 99). Nothing is better known than that the usual Greek rule was equal sharing among sons and exclusion of daughters, Crete being a striking exception in the second respect but not in the first. As far as Jewish law is concerned, while Deuteronomy 21, 7, apparently has a special case in mind, it is none the less a fact that it was early generalized and the general rule is taken as axiomatic in the Talmud. Philo, as the author correctly notes, is inconsistent in his defense of the practice, a phenomenon not unknown in commentators on sacred texts.

The *dimoiria*—not *dimoirion*, as Dr. Goodenough has it (p. 57)—of Ptolemaic law was, according to Kreller (ERBR. UNTERSUCHUNGEN, pp. 153 *et seq.*, quoted p. 57, n. 100), this same double portion. Kreller's examples fall somewhat short of proof of this fact and if Professor Harmon, as the author declares (*ibid.*), is about to publish a more complete demonstration, it will be very welcome. But it is likely to be a development deriving from Pharaonic Egypt and Philo's rule is easily to be assigned to the accepted Jewish understanding of the passage in Deuteronomy.

Dr. Goodenough's conception of marital property at Athens is hard to understand. A woman's "possessions" did not "belong to her husband" (p. 58). She had no possessions except her dowry and of that the husband had only a usufruct. And on the next page, Heinemann is declared to have "recognized that this treatment of a girl by her brothers is quite in accordance with Greek custom." But Heinemann says on the contrary that Philo's grant of a part of the inheritance to women went beyond Greek law and points out that in other respects Philo is giving all daughters the peculiar status of an Attic *epikleros*.

In regard to Roman law, also, Professor Goodenough has, it is to be feared, not examined his statements closely enough. He cites the *Lex Cornelia* as authority for the penalty for false witness but the passages he mentions (p. 179, n. 92) refer to the forging of wills. It is hardly worth while speculating on the "Greek source" for "Ulpian's law" (p. 181), when Ulpian specifically says, as Professor Goodenough's quotation itself shows, that he is citing a rescript of Serverus and Caracalla. When the author refers to the Digest to prove that by the *Lex Fabia* kidnapping of free men was a capital crime (p. 156, n. 38), he is doubtless not aware that, as the same Digest title shows (D. 48, 15, 7), it did not become so till the third or fourth century and in Philo's time it merely involved a money fine. We happen to have the exact words of the *Lex Fabia* preserved in the *Collatio*, XIV, 2 and 3.

Finally we may note that the author's frequent references to "lynching" somewhat miss the point of the incidents on which he bases his assertions. That Philo would have watched the lynching of an apostate with perfect equanimity is likely enough. His zealous outburst (p. 33) has, as Dr. Goodenough correctly says, all the color and ring of this peculiar type of fanaticism. But it was not an uncommon element of many legal systems, ancient and modern, that certain penalties were assigned to popular execution. It was involved in every declaration of outlawry, *sacer esto*, and we may recall specifically the Athenian statute by which every citizen swore to kill a traitor with his own hand if need be (Lycurgus c. Leocr. §§ 127-131, Andocides, De Myst. § 95). That is to say lynching is "wild" justice and this sort of thing is "folk" justice, perfectly legitimate, since it is a part of the regularly established sanctions.

We may say then that Professor Goodenough has not taken his responsibilities in these matters quite as seriously as they deserved. The subject matter of his book is highly important and interesting to legal historians and it is to be hoped that he will continue to dig in this scarcely used quarry, and to apply to his results a slightly severer censorship.

Berkeley, Cal. MAX RADIN.

Year Books of Richard II: 13 Richard II (1389-1390). Edited by Theodore F. T. Plucknett. London, Spottiswoode, Ballantyne and Co., Ltd., 1929. pp. xlix, 205.

When the black letter year books were being printed in the sixteenth century, for some reason those of the reign of Richard II were passed over. Again in the nineteenth and twentieth centuries when the editors of the Rolls Series and of the Selden Society turned their attention to the year books, they chose to do their work in periods much earlier than that of Richard II. Until 1914, therefore, there was no year book from that reign in print. In that year the Ames Foundation brought out the year book for 12 Richard II. Professor Plucknett's book is the second volume in what may now be regarded as a definite undertaking to fill a real gap in the list of printed year books.

In regard to external features and matters of arrangement generally, the editor very sensibly has followed the example set by the Selden Society year books. In the matter of handling the text, however, there is a noticeable divergence. Instead of the usual composite text made up from a number of manuscripts, Professor Plucknett has preferred to give for each of his cases the actual reading of a single manuscript, and to indicate the variations of other manuscripts by footnote variants. In translating the cases into English, use is made of the whole apparatus.

In another particular, and one for which the editor is in no way responsible, this newest of our printed year books differs markedly from those of an earlier period which have been re-edited within the present generation. That is a difference in content. The irrelevancies so common in the year books of the first two Edwards are lacking. The reporters of the earlier reigns found time to report much that was in lighter mood and vein, personalities and non-legal observations. From materials of this sort in the year books of Edward the Second's time Mr. Bolland was able to paint an interesting and lively picture of Sir William Bereford, chief justice of the court of common pleas. Professor Plucknett would doubtless find it hard to paint a similar picture of any one of the judges of the time of Richard II were he to depend upon these later year books for his information. In the interval the reporter has come to be concerned only with things legal. When the year books first appeared the lay lawyer was a newcomer in English society. He had everything, or nearly everything, to learn even in the technicalities of his own profession. In connection with the early reports, at many places and on many points, one must be prepared, as Maitland said, "to read elementary lectures on general jurisprudence to the acutest lawyers of the age." Such a criticism would hardly apply to the legal profession as we see it in Professor Plucknett's pages. We may not be justified in inferring that what was said and done by lawyers in the courts at the end of the fourteenth century differed materially from what was said and done a hundred years earlier, but the reports certainly suggest it. There is in them a seriousness, an almost complete attention to the business in hand and to nothing else, that is frequently lacking in the older year books. As law reports strictly speaking, they are doubtless of a somewhat higher type than their early predecessors; as historical documents in a larger sense they are hardly as interesting or as illustrative of life in general.

For illustrative material, as often for the facts of a case and usually for the judgment, we are forced to go to what has now very rightly come to be regarded as the complement of the year book, the plea rolls of the same period. In many, if not most instances, the discrepancies and omissions of the year book report make the printing of the record in the plea roll necessary for a real understanding of the case. Professor Plucknett, following the example set by Pike and adopted by the editors of the Selden Society year books, has supplemented the report with the plea roll whenever possible. In fact, not the least arduous part of his task nor the least valuable part of his book is represented by the large amount of authoritative matter from the rolls which he has given us.

To show the relation of year book to plea roll, and to illustrate the greater definiteness and detail of the latter, *Onyng v. Morys* (pp. 153-158) may be used as an example. The year book report of this case is useful as bearing on a point of law which as stated in the head note is: "In trespass for entering a house, where the plaintiff alleges that he is in by lease from the defendant but does not produce a deed, the defendant can allege that the lease was conditional and that he entered for breach of the condition, also without producing a deed." The account in the plea roll is of value not only to the legal historian, but constitutes also source material of the finest kind for the social and economic history of the times—and also of its morals. In it the facts are discussed with such candor and lack of reserve that one is almost led to wonder why it has not come under the ban of the self constituted censors who decree what shall circulate as readable matter in Cambridge. Briefly the facts are that the bishop of London had leased to plaintiff for forty years at an annual rental of 13/4 a house in St. Paul's cemetery, with the condition that the house should be used only for respectable callings and by respectable persons. The successor of the lessor ejected the plaintiff on the ground that the premises were being used for immoral purposes. A barber, a smith, a fishmonger, a porter, a chaplain and seven other men took part in the raid, and, if we may believe the story of the lessee, who brought an action of trespass against them, carried off his goods and chattels to the value of forty pounds. In addition to the plaintiff four women were occupying the house—*communes meretrices* the bishop called them, women of unblemished character the lessee insisted. The complainant claimed that raiders carried off "22 marks, 2s. 3d. in a purse, 260 'perles' (beads), a piece of gold plate, a filet of 'perles' (a beaded head band), a pair of Paternosters in amber (a complete chaplet), a fur of black budge, a hood of scarlet, 4 ells of cloth, an 'erpikle' (an ornamental comb) of silver gilt, cloths of silk and linen, a shirt, 95 precious stones called 'doublettes de Garnades' (counterfeit jewels of garnets and glass), a silver spoon, 4 pleats of Grymyle, a roll with 7 psalms (the seven 'penitential' psalms—conscience also must have its solace), cloths of linen and wool." Apparently a variety of cheap ornament and imitation jewelry was not unknown in fourteenth century England; seemingly also there was at least an approximation of correctness in the bishop's surmise.

In his introduction Professor Plucknett has commented on a number of cases marked by either peculiarities of fact or of legal interest. Such comment, fortunately for readers in general, has now come to be regarded as part of the equipment of a properly edited year book. So also has an English translation of the French text. This translation would seem to be the most thankless part of the labor of editing a year book. Only those who have themselves struggled with the vagaries of year book French can appreciate the difficulties, at times almost insurmountable, of turning it into good English. Some passages simply can not be satisfactorily translated; in places the meaning can only be guessed; a literal translation is quite out of the question. We like Professor Plucknett's translation; it is free enough to be altogether intelligible and easily read; as far as we can judge from such comparisons as we have made with the original it lacks the stilted form of that original and yet conveys the same ideas.

It is with no thought of adversely criticizing what we regard as a successful piece of work that we take this opportunity of correcting one little slip which the editor has now twice failed to discover.[1] On page 124, Hankford's statement that the rule that no man should be impleaded concerning his freehold without the king's writ is regarded as the statement of a tradition as to the statutory origin of that principle as expressed in *Glanvill*, xii, 25. Whatever may have been the origin of the rule, by Hankford's time it was statutory. It is chapter 18 of the Provisions of Westminster and chapter 22 of the Statute of Marlborough.

James Barr Ames, if he were alive, would doubtless be glad that the Foundation which bears his name has published this volume, which means that both the Foundation and Professor Plucknett should feel satisfied with this Year Book of 13 Richard II.

New Haven, Conn. GEORGE E. WOODBINE.

The Transfer of Stock. By Francis T. Christy. New York, Baker, Voorhis & Co., 1929. pp. xxi, 1071. Supplement, pp. 34. $15.

In 1884 President Lowell and his cousin and former law partner, Francis Cabot Lowell, prepared an interesting and scholarly volume dealing with transfers of shares.[1] Since then colossal business expansion has been accompanied by a corresponding increase in the use of the corporation as a business device. This development has witnessed a startling growth in the proportionate amount of "share capital" as contrasted with borrowed funds employed in corporate financing. For this phenomenon two factors are primarily responsible (there are other contributing causes): (1) the evolution of an investor-consciousness that during a period of such business expansion corporate shares constitute not only a more profitable but also

[1] See also Plucknett, *New Light on the Old County Court* (1929) 42 HARV. L. REV. 639, 646, n. 26.

[1] LOWELL AND LOWELL, THE TRANSFER OF STOCK IN PRIVATE CORPORATIONS (1884).

a safer investment than bonds,[2] and (2) the four-fold increase since 1920 in the proportion of share dividends to cash dividends,[3] as a result (at least in part) of the Supreme Court's decision in that year that share dividends are not taxable as income.[4] Five-million-share days on the New York Stock Exchange are now almost commonplace and, despite the high percentage of speculative transactions, stock transfer agents are being overwhelmed by the increase in recorded transfers. In view of these facts it is indeed amazing that the volume under review is the first comprehensive treatise on transfers of shares to have been published in the forty-five years following President Lowell's work on the subject.

The need for such a book is great, for there is perhaps no corporate activity which involves so much risk and so little advantage to a corporation as the recordation of transfers of its shares. Mr. Christy has filled this need admirably: his work is a clear, complete and unique exposition of the mechanics of such transfers and of the approved procedure of stock transfer agents as well as a presentation of the multitudinous legal problems involved therein. If the volume has any major weakness it is to be found in its treatment of the legal rather than the "practical" aspects of the subject. When the author invades the realm of legal theory, he is seldom effective; the first two chapters, which in large measure attempt to set forth what a "share" really is and how "it" is created, are quite inadequate. Moreover, one must regret the infrequency with which the author has even attempted to bring the light of his experience and ability at the Bar to bear upon tangled situations resulting from conflicting or ill-defined legal theories. For example, except for an occasional statement (usually inaccurate or misleading), Mr. Christy has entirely avoided the very important and complex problem of the legal consequences of the issuance of certificates in violation of various common types of prohibitions or regulations found either in statutes or in the articles of association or the by-laws. Whether such certificates are within or without the province of a transfer agent would seem to be of the utmost importance.

The book frequently contains a foot-note paragraph of citations for some vague text statement where the cited cases in fact decide a variety of disconnected propositions. About twelve hundred separate cases are cited throughout the volume, over three-quarters of which are referred to more than once, and a large number of these are mentioned as many as eight or nine times in scattered references. This plurality of citation indicates the existence of two defects, which an examination of the treatise confirms, namely, that much of the authority invoked is merely dictum, and that various portions of the text are highly repetitious. Occasionally even conflicting statements are to be found; for an illustration contrast the allegation in Section 264, page 467 that "he [a shareholder who has been refused a transfer] cannot bring a bill to compel transfer and also ask damages for the refusal to transfer" with the first sentence of Section 271, page 489, "In a suit in equity to compel a transfer of stock, damages suffered by reason of the refusal to make the transfer are incidental to the equitable relief, and may properly be demanded in the same action."

Notwithstanding these few blemishes, the book is of enormous value. It reveals and illumines countless latent problems; it conveniently assembles a vast quantity of scattered information, particularly with reference to federal and state legislation, on such topics as sales and distributions by executors and administrators, inheritance tax waivers and affidavits, trans-

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[2] VAN STRUM, INVESTING IN PURCHASING POWER.

[3] A REPORT ON STOCK DIVIDENDS, submitted Dec. 5, 1927 by the Federal Trade Commission in response to Senate Resolution 304.

[4] Eisner v. Macomber, 252 U. S. 189, 40 Sup. Ct. 189 (1920).

fers by guardians, and stock transfer taxes. About one-third of the 928 pages in the body of the book is devoted to an appendix setting forth certain legislative enactments, the rules of the New York Stock Transfer Association, the Uniform Stock Transfer Act, the rules of the New York Stock Exchange and of the New York Curb Market as to the delivery of securities, and various recommended forms.

Transactions for the recordation of a transfer of shares frequently provoke friction and indignation. Much of this turmoil is the result of inadequate knowledge, on the part of those desiring transfers, of the legal and formal difficulties involved. As an avenue of escape from such unnecessary controversies, this book will be gratefully received, and one may confidently predict that it will soon be regarded as the bible of stock transfer agents.

New Haven, Conn. ALEXANDER HAMILTON FREY.

Cases and Readings on the Law of Nations. By Edwin De Witt Dickinson. New York, McGraw-Hill Book Co., Inc., 1929. pp. xxii, 1133. $6.

Cases and Other Materials on International Law. By Manley O. Hudson. St. Paul, West Pub. Co., 1929. pp. xxxv, 1538. $6.50.

The almost simultaneous appearance of two new case books on international law, edited by such outstanding men as Professors Dickinson and Hudson, is of more than usual interest and importance to teachers of this subject because of the fact that they are the first collections to be made since the World War. The 1922 editions of the selections of Evans and of Scott were made too early to include the many important developments in the subject since that time. Russia has given courts, both here and abroad, much to think and write about, and prohibition has taught us much about the law of territorial waters, to say nothing of the ordinary run of cases involving international law which may be expected to follow the termination of any important war. A large number of international tribunals and commissions have been at work disposing of thousands of claims, and while the bulk of decisions emanating from them have been of little general importance, they have, nevertheless, made a distinct contribution to the development of international law. That the editors have made full use of this material is evidenced by the large percentage of cases decided since 1918 to be found in both volumes.

Both of these volumes, like Professor Hyde's text, purport to present the subject "chiefly as it is interpreted and applied by British and American Courts." Neither, however, has entirely ignored continental material—both volumes containing decisions by continental courts—which is a considerable departure from the practice of previous editors. Another departure in the form of quotations from authoritative texts is liberally used in Professor Dickinson's work. These quotations are carried in the text and are given equal prominence with the cases quoted. A psychological objection to this occurs which may or may not be important. The average American law student usually takes up the study of international law with the notion that there is something fundamentally different between it and the law with which he is familiar; that international law is probably not even law at all, but some system of international morality which is being presented to him under the guise of law. To this average student no thoughts of the nature and origin of law have ever occurred; to him law begins and ends in the pronouncements of courts in published cases. If it is a correct assumption that to the average law student international law as a legal subject is suspect, then it would seem that anything which might tend to lessen the emphasis on international law as law in the same sense that the law of contracts is law should be avoided. This objection, of course, would be valid only in so far as the law students are concerned; where the subject is taught in schools of political science it would probably be advantageous in lessening the feeling of unfamiliarity which a mere selection of cases would engender in the academic student.

The most radical departure, however, and the one most calculated to provoke discussion, is the treatment, or rather lack of treatment, of the law of war and neutrality. War and neutrality, as such, are entirely omitted from Professor Dickinson's volume, while Professor Hudson disposes of both in a mere hundred and sixty-eight pages of a fifteen hundred page book. It is to be understood, of course, that much that deals with the effects of war is to be found in both books in chapters not dealing with war and neutrality as such. Previous selections of cases have uniformly devoted approximately one-half the work to pacific relations of states and one-half to belligerency and the relations growing out of it. It is interesting to compare the different reasons assigned by the editors for the change. Professor Dickinson omits war and neutrality in his volume because experience has convinced him that an introductory course should be concerned only with a more intensive study of a few fundamentals, that the law relating to war and neutrality and other subjects which he deems governed by "essentially political standards of conduct" should be left for advanced courses. On the other hand Professor Hudson devotes so little space to the subject because it deals with matters unlikely to arise in the average present day lawyer's practice and because of the improbability that the next generation of lawyers will have any greater contact with such matters.

It is difficult to disagree with two such distinguished scholars, but it seems to the reviewer that the study of the law of war and neutrality has a place in any introductory course in international law and should receive considerable emphasis in such a course. In the first place public international law is a highly specialized subject and few indeed are the students who take the subject with any idea of using it in the practice of law. It is also doubtful whether any appreciable number of students would pursue an advanced course in the subject. In fact it is more probable that the majority of law students who take international law do so for the purpose of broadening their general legal knowledge. For this reason it would seem desirable that an introductory course in international law devote sufficient space and time to the law of war and neutrality to afford the one-year student some basis for forming an intelligent opinion on matters relating to war so much discussed in time of peace. War is not gone from the earth, despite the Kellogg Pact, and when it comes the nation cannot have too many men versed in the law of war and neutrality to serve as leaders of public opinion. It must be noted here that Professor Hudson's chapter on neutrality and neutral rights is far from satisfactory for the purpose suggested. Particularly is this true of the subdivision on interference with neutral trade, a matter of decided importance to the American student. With the exception of *The Adula*, all of the cases chosen arose out of the World War, apparently upon the assumption that the British Prize Courts' unilateral "development" of the law relating to neutral rights has made obsolete all that some of us once thought was the law governing the conduct of neutral trade in time of war. Lord Stowell is entirely supplanted by Sir Samuel Evans; Garner is freely cited in the footnotes, but nowhere is any reference found to the sage advice of John Bassett Moore's *International Law and Some Current Illusions.*

Space forbids any detailed comparison of these two books, but it may be said in general that Hudson's book deals with a considerably larger number and variety of topics than does that of Dickinson. The latter usually, though not always, treats the major subjects found in both works in greater detail. For example, he devotes thirty-six pages to the important matter of the relation of international law to municipal law, while Hudson relegates it to a footnote. Hudson, on the other hand, devotes thirty-two pages to consuls, while Dickinson disposes of the subject in five pages. This is illustrative of Dickinson's concentration on matters which may be deemed fundamental, and of Hudson's wider scope and greater regularity of emphasis. For those who may be interested, it should be noted that Professor Hudson devotes a chapter to "International Regulation of Commerce and Industry" as well as considerable space to the League of Nations and World Court. In view of Professor Hudson's well known enthusiasm for the League and all its associations, however, it must be said that he has shown commendable restraint in the amount of space allotted to them.

In arrangement Hudson's book follows the general framework of Scott's collection, with a fairly complete change of terminology and some shifting of subheadings into chapter headings. The arrangement of Dickinson's book seems preferable to this reviewer, though arrangement can be so readily modified to suit the needs of the individual instructor that it can hardly be made the basis of criticism. Both volumes contain highly selective footnotes, but the notes in Hudson's book are less full than those in Dickinson's, particularly as to non-case material.

No opinion will be ventured upon the relative value of the two works. Both represent much thought and labor and merit the cordial reception they will doubtless receive from the profession. No man can edit a selection of cases acceptable to all his colleagues, and teachers of international law will probably select the one or the other according to whether they prefer Professor Dickinson's method of concentration on fundamentals, or whether they desire, with Professor Hudson, to cover the larger field with the resultant impossibility of concentration.

Mechanically the Hudson volume seems preferable. The index to Dickinson's book is highly inadequate and leaves much valuable material unnoted. The wider margins of Hudson's book prevent the unwieldiness felt in handling that of Dickinson. Hudson carries forward Scott's selected library on international law considerably augmented but notably omits the *Recueil des Cours* of the Hague Academy.

Houston, Texas JOHN P. BULLINGTON.

The British Year Book of International Law. 1929. New York, Oxford University Press, 1929. pp. vi, 338. $6.

The tenth *British Year Book of International Law* contains, like the previous volumes in the series, many papers of interest and some of outstanding merit. It includes, in addition, a much-needed index to the ten volumes.

Dr. H. Lauterpacht makes an interesting examination of *Decisions of Municipal Courts as a Source of International Law.* After indicating the really large scope of decisions of municipal courts involving the principles of international law, he considers the nature of the law applied in such cases. "Can rules of international law administered by municipal tribunals be regarded as international law proper," he asks, "or are they in fact rules of municipal law?" His failure to admit that, although in substance the rules applied are the principles of international law, they are at the same time, in a purely formal sense, administered by municipal courts only as the law of the land, leads him into further difficulties. He admits (p. 80) that the basis of international law is the consent of states, and insists that consent to a particular rule may be implied from a municipal decision of a country's courts as well as from a pronouncement or act of its executive, but adds inconsistently (p. 85) that "when the decisions in question originate from courts of a large number of states and relate to a matter which lies within the particular province of these states, they will create customary international law binding also upon such states as had no occasion to signify their adherence to this rule." The paper suffers from the belief held by its writer (and shared by many lawyers) that the courts "make" law. As far as international law is concerned the belief can be true in only a very limited sense, *viz.*, that from the concordant practice of the municipal courts of many individual states may eventually arise a customary rule of international law. Even here it would not be strictly true to say that any court has "made" international law. Dr. Lauterpacht's paper is nevertheless extremely suggestive.

Sir Cecil J. B. Hurst contributes an enlightening commentary on *Engelke v. Musmann*, treats of the real reason for granting diplomatic immunities, and discusses whether members of an arbitration tribunal should enjoy a position of non-subjection to the local jurisdiction. Sir John Fischer Williams makes an analysis of *The Pan-American and League of Nations Treaties of Arbitration and Conciliation* and Professor Charles Cheney Hyde writes on *The Place of Commissions of Inquiry and Conciliation Treaties in the Peaceful Settlement of International Disputes.* Sir Skinner Turner contributes from his experience as Judge of H. B. M. Supreme Court for China on *Extraterritoriality in China* and Mr. George W. Keeton analyzes very ably, though not perhaps without some bias, *The Revision Clause in Certain Chinese Treaties.* Other papers include *International Law and the Property of Aliens*, an answer by Mr. Alexander Fachiri to a previous paper on that subject by Sir John Fischer Williams; *The Mandate for Palestine* by Norman Bentwich; and *International Responsibility of States for Judgments of Courts and Verdicts of Juries amounting to a Denial of Justice* by Professor James W. Garner.

Ithaca, N. Y. HERBERT W. BRIGGS.

The Divorce and Separation of Aliens in France. By Lindell Theodore Bates. New York, Columbia University Press, 1929. pp. 334.

This work is a manual upon the French law of divorce and separation of aliens. Besides a bibliography, it contains thirty-four chapters, in which are discussed all matters that may be of interest to English and American lawyers wishing to advise clients with respect to a French divorce. The author's efforts are mainly directed to an elucidation of the positive law of France, not to a discussion of questions of a theoretical nature. The work is of interest, however, not only to the class of persons for whom it was primarily written, but to all desiring some familiarity with the law and procedure of a civil law country, the subject of divorce being admirably suited to bring out some of the fundamental differences existing between Anglo-American and continental law in matters of practice and procedure and in the conflict of laws. In addition, the French law presents peculiar features of its own.

Of special interest to students of the conflict of laws are chapters IX and XIII, entitled respectively, "Jurisdiction in Private International Law," and "Grounds in Private International Law." In the matter of jurisdiction the reader will discover that there is no statutory domicil or residence requirement in France for purposes of divorce. We learn also that the French courts are said to be incompetent on principle in suits between aliens, but that jurisdiction may be taken, by way of exception, (1) if it is so provided by treaty; (2) if the parties have a present bona fide domicil in France; (3) if a refusal to take jurisdiction would be tantamount to a denial of justice; (4) on grounds of public order, if the offense occurred in France; (5) in case of voluntary submission to the jurisdiction of the court.

No divorce will be granted by the French courts unless the national law of the parties recognizes divorce, and the petitioner is entitled to a divorce under his national law and the *lex fori*. As regards citizens of the United States domiciled in France, the French law becomes exclusively applicable, on principles of *renvoi*, upon proof that the rules of the conflict of laws of the United States would refer the question to French law.

As a manual of the French law of divorce and separation of aliens the work deserves the highest praise. Not only is the information relating to the French law and practice full and reliable, but it is presented in a scholarly manner and a most readable style.

New Haven, Conn. ERNEST G. LORENZEN.

Some Modern Tendencies in the Law. By Samuel Williston. New York, Baker, Voorhis & Co., 1929. p. 167. $1.50.

Written with almost Einsteinian brevity this little series of University of Virginia lectures metabolizes some of the more important trends of the law in three short chapters. In its own reserved, original way it is a distinct addition to the Cardozo lecture contributions on the art of adjudication.

By illuminating examples drawn from his vast experience Williston gives us a fresh perspective on some of the ever-present problems of the law. His analysis of the query, what is law, indicates his wisdom by a refusal to give an epigrammatic answer; the treatment of the relationship of law and *mores* is worthy of Sumner; his subtle portrayal of the interplay of precedent and the many other factors which influence judicial behavior is masterful; the contrasting and evaluation of the comparative advantages and disadvantages of unwritten law, codification, restatement, analytical and sociological jurisprudence, the work of the teachers of law, and the contributions of science to the law is indicative of an extraordinary mental flexibility.

At times, however, his quest for certainty and predictability leads to an over-emphasis of precedent and principles. For those of us who have been more influenced by the repercussions of modern science and logic, the technique of deciding cases from general principles is open to examination. Often the judgment in a given case may involve the choice of one of several competing principles. Dissenting opinions are in many instances predicated upon this choice; and from the recent opposition to the Supreme Court nominations it would seem that the public is not quite as convinced as Williston that ours is a "government of laws and not of men."

It is gratifying to know that the creator of that *travaux d'architecte, On Contracts*, is disproving the Osler dictum and is continuing to produce objective evidence of his close and lucid thinking.

New York City OSCAR COX.

Manual to United States Board of Tax Appeals Reports. By Charles A. Roberts. New York, Harper and Brothers, 1929. Vol. I, pp. xviii, 1097.

A citator to the United States Board of Tax Appeals Reports has long been needed. With the rapid increase in the number of those decisions the need has become imperative. Since August 19, 1924, when the Board heard its first case, to April 1, 1930, it has by decision or final order disposed of approximately 30,000 cases, exactly 6,000 of them by written decision and upon the merits. To this rapidly increasing store of income and estate tax decisions by our most important tribunal of first instance in such cases there has been no satisfactory key in the nature of a citator. Roberts' *Manual* is the most ambitious attempt so far to meet that need.

The volume now at hand covers the first eight of the existing eighteen volumes of Board of Tax Appeals Reports. The second volume, the author tells us, is in the process of compilation. The avowed chief purpose of the *Manual* is to furnish an annotated citator which covers every significant decision of the Board of Tax Appeals. The author has not annotated in the ordinary sense of the word a large proportion of the cases, but in Volume I he does, nevertheless, seem to cover every significant decision in the first eight volumes of the official United States Board of Tax Appeals Reports.

We find that there are 487 written decisions in Volume 1 of the official United States Board of Tax Appeals Reports, 346 such decisions in Volume 5, and 275 in Volume 8. Many of those decisions cite no authorities, are upon a peculiar state of facts of no interest beyond the individual case, establish no principle of law, and quite obviously will never themselves be cited. Mr. Roberts calls these "routine" decisions and in the interest of space omits them from his *Manual*. For example, Mr. Roberts includes in his *Manual* but 357 of the 487 decisions in Volume 1 of the official Board Reports, 290 of the 346 decisions in Volume 5, and 232 of the 275 decisions in Volume 8. With the author's exclusion of cases one can scarcely quarrel. When in doubt about the importance of a decision or the possibility of its subsequent citation the author has included it in his *Manual* as a principal case. In this way he has included decisions of which not less than five per cent are of much the same character as those he has excluded.

Volume I of Roberts' *Manual* includes every Board of Tax Appeals decision published in the first eight volumes of the official Board reports which cites any earlier Board or Court decision and gives those citations. It further includes every Board decision which is itself subsequently cited in Volumes 1 to 16, inclusive, of the official Board Reports and in Federal Court Reports and Internal Revenue Bulletins through 33 F. (2d), 279 U. S., 49 Sup. Ct., 65 Court of Claims, and VIII Internal Revenue Bulletin No. 40, giving every such citation of each Board case. Obviously such a volume is of great utility to the student or the practitioner in the field of income and estate tax law.

It would be a mistake to say that this *Manual* is a bare citator. It is more than that. It gives in compact form a great deal of pertinent information about each case: the year of its decision, the date of death in estate tax cases, the taxable periods in other cases, the citation of the notice of acquiescence or non-acquiescence by the Commissioner of Internal Revenue, the official head note of each decision reproduced as reported in United States Board of Tax Appeals Reports, a notice, where possible, of affirmances, reversals and modifications, frequent cross-references to connected and comparative decisions and to other cases and rulings deemed worthy of note by the author, and occasionally editorial comment. Phrases of description or explanation of subsequent cases listed as citing a particular Board decision are the exception, however, not the rule. Editorial comment where given is often very good.

As a citator the book has one substantial defect. Where a Board case is authority for more than one point the *Manual* does not show upon which of the points the case is cited in the subsequent decisions. Thus some cases are shown as cited in as many as sixty, eighty-two and ninety-four later Board and Court decisions at the time the *Manual* went to press, but without any indication of the points for which they were cited. To discover that the user must examine each case in the list.

According to the author's preface, Volume II of his *Manual* will continue the citator and cover the United States Board of Tax Appeals decisions in 9 B. T. A. and subsequent volumes. It will also bring Volume I to date by giving all subsequent citations of Board decisions treated therein. Further features will be: the Table of Cases, alphabetically listing all significant Board and Federal Court decisions in income and estate tax cases; the topical Index to Leading Cases; and the Court Decision Citators covering all Federal Court cases cited in Board decisions. Such a volume will round out Mr. Roberts' work. Volume I alone is very useful. With Volume II added, Roberts' *Manual* will become well nigh indispensable to the student or practitioner of income and estate tax law. The volume at hand is an excellent example of the printer's art, and the handsome binding is sturdy enough to stand the wear of daily reference.

Washington, D. C. WARREN F. WATTLES.

1930 Supplement to Federal Income Taxation. By Joseph J. Klein. New York, John Wiley and Sons, Inc., 1930. pp. xi, 311. $3.

This supplement to the very useful work of Dr. Klein has been prepared with the same degree of thoroughness and accuracy as distinguishes the basic text. It seems most unfortunate that any authoritative work on income tax procedure and practice must necessarily be out of date almost as soon as it is published. The author does his duty when he periodically brings the work up to date by preparing a supplement that closely follows the basic text. This Dr. Klein has done, and the many practitioners who are using the original work advantageously will find the same need for the 1930 Supplement. After saying this, one feels like adding the pious hope that Dr. Klein may be induced to republish his text in biennial editions so that the busy practitioner may have one final authoritative work to consult.

Chicago, Ill. GEORGE E. FRAZER.