

BOOK REVIEWS

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS. By Durward V. Sandifer. Chicago: Foundation Press, 1939. pp. xi, 443.

This is by far the most exhaustive and illuminating work yet published on its special topic. The author has examined the controlling documents of numerous arbitral tribunals—the governing treaty, the protocol, the rules and the decisions of the tribunals to establish the practice adopted with respect to the function of evidence in its various forms, documentary, testimonial and hearsay, its admission and evaluation, the order and time of its submission, the rights of adverse parties and the obligations to produce evidence, the “best evidence” rule in its relations to proof of nationality and to maps, the place of the affidavit, deposition and interrogatory, the matter of authentication and translation of documents, the difficulties connected with witnesses, the evidence of interested parties and judicial notice. A concluding chapter on rehearings and revision of awards, with or without newly discovered evidence, assembles most of the precedents. The bibliography of sources of international and domestic commissions is of much value.

In addition to his international materials, the author has examined the codes of civil procedure and rules for the admission of evidence in civil law and common law countries to determine how far the rules adopted by international tribunals may be said to find their source in municipal practice. The common law rules of evidence developed through the jury system and therefore limited the kind of evidence that could be presented, a fact not always conducive to eliciting the truth. This proved not adaptable to a procedure before *ad hoc* international tribunals charged with ascertaining the truth between two contesting governments. Hence the tribunals naturally developed a system of inquiry free from restrictive rules which in its apparatus for the submission and evaluation of evidence more closely resembles the civil law system but is in many respects indigenous. In its leaning toward the written form of presenting cases, in its reluctance to use oral testimony, in its admission of hearsay, in its rules concerning the production of evidence, including adversary notice, in the matter of burden of proof, in the power of the arbitrators to supplement party evidence, in the employment of experts, the international practice derives much from the customs of the civil law countries. Yet in the use of the *ex parte* affidavit, weak as evidence but for practical reasons almost indispensable in international proceedings, the common law has furnished a model. Notwithstanding the dangers of error which the system of free inquiry thus permits, the author concludes that the very nature of the institution requires an open door to the admission of all kinds of evidence with wide discretion in its evaluation. Outside the protocol, few restrictions should hamper the judges in arriving at the truth.

The experience of many tribunals and arbitral protocols, the rules of the Hague Conventions of 1899 and 1907 on the subject and the Statute and Rules of the Permanent Court of International Justice follow a recognizable pattern. The author's labors in criticizing and synthesizing the incidental practices developed by many tribunals in procedural rule and arbitral decision have filled out many of the details of the pattern which should be of great aid in the orderly administration of justice. The author's advice that the protocols ought to elaborate the rules of evidence more fully and leave less to discretion and analogy is sound. He has furnished a systematic presentation of the precedents on which both draftsmen and

arbitrators can draw. But in spite of the fact that arbitral protocols generally provide that awards shall be "final", there seem to be ways to reopen them and even secure the admission of new evidence on rehearing. Not all arbitrators have been "trained jurists". Mr. Bates, Umpire of the British-American Tribunal under the Treaty of February 8, 1853, was a banker from Maine.

Even though the author correctly states that the customary rules connected with evidence before international tribunals do not constitute international law, his own well-documented work may help to evolve such a structure on which both Foreign Offices and tribunals will rely. The book is a contribution of the first order.

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LAW, THE STATE AND THE INTERNATIONAL COMMUNITY. By James Brown Scott. New York: Columbia University Press, 1939. 2 vols. Vol. I, pp. xxiv, 613; Vol. II, pp. vi, 401. Bibliography. Index.

In the first of these two volumes, which bears the title "A Commentary of the Development of Legal, Political and International Ideals", Dr. James Brown Scott has subjected to an analytical examination the growth of legal and political philosophy in the course of two thousand years. This examination is undertaken on the basis of contributions made by those who, in the author's estimate, were the most significant and influential exponents of thinking in these fields from the classic days of Greece in the fifth century B.C. until the beginning of the seventeenth century. Following an introduction of 40 pages, there are six main divisions, each containing several chapters, corresponding to the accepted historical periods: The Greek Background; The Roman Heritage; The Christian Heritage, Ancient and Modern; The Transition from Medieval to Modern Thought; The Era of Reform; and, lastly, The Beginning of the Modern Age. The broad outlines of this impressive canvas are filled in colorfully with materials supplied by Socrates, Plato, Aristotle and the Stoics; by Cicero and Seneca; by St. Augustine, St. Isidore of Seville, John of Salisbury, St. Thomas Aquinas and Dante; Marsiglio of Padua, Machiavelli, Castiglione, Christopher St. Germain, Vitoria, Bodin, Ayala and Gentili; Thomas More, Calvin, Luther and Erasmus; Grotius, Bellarmine, Suarez and Hooker.

The second volume, which Dr. Scott regards as being "in effect a codification of the fundamentals of political science and jurisprudence, both national and international",¹ contains quotations and extracts from the works of the philosophers, jurists and their disciples analyzed in volume one. These quotations and excerpts are grouped according to the main subject-matter, *i.e.*, Jurisprudence, The State and The Law of Nations; each main division is subdivided into articles.²

Obviously, these two volumes represent many years of work and thought; it

¹Preface, p. vii.

²For instance, the section on The Law of Nations has some 50 subheadings, such as: Ancient *Jus Gentium* and the Law of Nations; Law of Nations and Natural Law; Nature and Scope of the Law of Nations; Changes in the Law of Nations; International Community; International Agreement; Arbitration and Judicial Settlement, *etc.*