

and Lord Hardwicke.<sup>18</sup> Equity does not ordinarily protect public and social interests, but private interests, usually in property. It will enjoin public nuisances, it is true, but only at the suit of the Attorney-General. Care for the economic and beneficial use of the land does not lead equity to prevent the utmost destruction by a tenant in fee simple,<sup>19</sup> and if it be said that no individual has a standing to complain against him, this argument cannot apply to a tenant in tail, who is equally free to commit waste without limit to the injury of succeeding remaindermen as well as the public welfare. It can hardly be contended that the public is not affected by waste by a jointress in tail,<sup>20</sup> but must be protected against the destructiveness of a tenant in tail after possibility of issue extinct.<sup>21</sup> Any such distinction must rest on the nature of the ownership of the waster, and not on economic welfare. There is no more social and economic interest behind the relief for equitable waste than that for legal waste or trespass or libel or most other torts, where society finds it advantageous to protect individuals from unjustified harm. In both equitable and legal waste the defendant has injured the *corpus* of the plaintiff's real estate, but in equitable waste the cause of action may be cut off by a justification (privilege or defense), due to the nature of the defendant's tenancy. The law court interpreted this defense as complete, but equity having regard to the settlor's reasonable intention<sup>22</sup> and the duration of the tenancy construed it as extending only to reasonable use. Obviously, the equitable side of the dispute is right, but the divergence between the two courts cannot be explained economically.

In spite of such shortcomings the book is a distinct step forward in equity textbooks. It is not a digest; it deals with principles, and it should do much to bring the conclusions of scholars to the attention of the courts. In particular, the numerous references to law review articles are very valuable. It should be helpful to practitioners in suggesting new views of equitable principles, and to students who have not been trained in case-system schools in presenting to them many of the most significant decisions.

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THE LEAGUE OF NATIONS: THE PRINCIPLE AND THE PRACTICE. Edited by Stephen P. Duggan. Boston: Atlantic Monthly Press. 1919. pp. xv, 357.

This volume consists of a collection of essays, by sixteen contributors, on various topics of major interest in relation to a league of nations. The editor, Professor Duggan, one of the moving spirits of the League of Free Nations Association, has accomplished the purpose of eliciting a dispassionate discussion of some of the most pressing international problems of the day. Whether he has obtained substantial support for the particular Covenant now under examination by the world is more problematical. The essays were prepared

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exercise of that power, when it tends only to a private damage." *Skelton v. Skelton*, 2 Swans. 170, 172.

<sup>18</sup> "The question does not concern the interest of the public, unless it had been in the case of the King's forests and chases; for this is merely a private interest between the parties." *Perrot v. Perrot*, 3 Atk. 94, 95.

<sup>19</sup> Clark, § 186.

<sup>20</sup> *Skelton v. Skelton*, 2 Swans. 170, incorrectly cited for the opposite conclusion by Professor Clark in § 187, note.

<sup>21</sup> *Williams v. Day*, 2 Cas. in Ch. 32.

<sup>22</sup> The Michigan cases cited by Professor Clark in § 188 hold that the testator intended an estate without impeachment of waste, as defendant's counsel contended, and give equitable relief accordingly. His probable intention to give complete immunity is not disregarded on any economic grounds, but is at most erroneously construed not to exist.

immediately after the first draft of the Covenant and before the publication of the Treaty of Peace. Inasmuch as many provisions of the Treaty are difficult to dissociate from the Covenant, probably more trenchant comments would have been obtained by a slight postponement in preparation.

The book, like ancient Gaul, is divided into three parts. Part I, entitled the "History, Philosophy, and Organization of a League of Nations," contains eight chapters of miscellaneous content, including a general introduction by the Editor, the historical background of "the" League, international coöperation during the war, essentials of a league for peace, the national state, organization and operation of "the" League, limitation of armaments, and administrative unions. Part II assembles six chapters under the generic head, "International Coöperation as Applied to Concrete Problems," and includes discussions of national self-determination and the problems of small nations, economic internationalism, the problem of backward areas and colonies, control of international waterways and railways, labor in the peace treaty, and freedom of the seas. Part III consists of two chapters on American policy, — the policy of diplomatic isolation, and the Monroe Doctrine in relation to the League.

Differences of approach, training, credulity, or opinion probably account for a considerable variety of conclusion among the collaborators as to the efficacy of a league or this league in settling those problems which now so often lead to war. The Holy Alliance being regarded as a precedent, advocates of the League seek to distinguish the Alliance from the League (p. 33), whereas the more skeptical point out their essential similarity (p. 65). The editor (p. 7) believes that the increased recognition of the principle of nationality as applied at Paris makes war less likely; other contributors point out (pp. 36, 85, 161) that the spirit of separatism is at variance with the political development of the world, which has been directed toward federation. Some find encouragement in the proposals for disarmament; others are doubtful of their fulfillment. Some regard the mandatory system for severed colonies as a source of hope; others see in it a thin disguise for annexation.

Not all the chapters in the book have equal merit. The ablest, in the reviewer's opinion, is that of Prof. John Bassett Moore, on "Some Essentials of a League for Peace." He makes it clear that the Holy Alliance was also a league of nations, with the same professed objects as the proposed league. The reader will be interested in comparing the preambles of the two documents. The inquiry, "Are you in favor of a league of nations?" Mr. Moore regards as quite as sensible as the question, "Are you in favor of 'alliance' or 'contract' or 'correspondence'?" and he shows that the phrase "league of nations" bears no relation either to the preservation of peace or the observance of law. The desirability of a "league" depends upon "the object in view and the character of the engagement by which it is sought to be attained." The centralization of legislative, judicial, and executive powers in a small executive body he regards as dangerous. He observes that while "preponderant force will end a war," it cannot be relied upon to insure peace; that the "balance of power" is a natural measure of self-preservation; that the responsibility for war is most difficult to determine. His conclusions are usually fortified by convincing illustrations from history. For the cultivation of a mental attitude that will think first of amicable processes rather than of war "it will be necessary to rid the mind of exaggerated but old and widely prevalent notions as to the functions and mission of the state, of superstitions as to 'trial by battle,' of the conceptions that underlie the law of conquest, and of the delusion that one's own motives are always higher, purer, and more disinterested than those of other persons, to say nothing of the passion for uniformity that denies the right to be different" (p. 81).

The great difficulty in accepting the Covenant as a harbinger of peace is the fact that previous covenants with the same benevolent objects have proven

dismal failures, and the fact that international economic conditions in the modern world promote competition and rivalry rather than peace. The competition for the control or monopolization of raw materials, such as oil, or of particular trade-routes and markets, exercises far greater influence on international relations than do particular forms of government. The *causes* of war, as several contributors point out, are hardly studied or affected by the Covenant and are left to operate in all their virility. Having fermented to the point of belligerency, the League then proposes to effect a peaceable settlement. The method having consistently failed heretofore in the larger political issues, we shall await with interest the discovery and production of those new factors which are now to make it a success. The difficulty in the solution of the problem seems to lie in the fact that the struggles for power and for peace cannot long run consistently parallel. For us Americans this Covenant has a special significance. The problem it raises may be reduced to a simple yet vital issue, and is nothing less than this: Shall we resume our independence or shall we intrust the conduct of our foreign affairs to another Power?

The book is remarkably free from those emotional invocations which in the popular discussion of the league of nations have consumed so much intellectual energy. The chapter on the development of the American policy of diplomatic isolation is noteworthy. The chapter on "labor" bears little relevancy to the subject of the book. The more recent social and industrial movements in Europe and elsewhere are not discussed at all. The Covenant itself is considered only incidentally in its bearing on the various topics discussed; many of its most intricate, obscure, or nebulous provisions, which have received critical analysis in recent months, are not considered. The relation of the Covenant to the Treaty, as already observed, is hardly mentioned. For these reasons the title of the book may seem rather misleading, although that hardly detracts from the importance of the work. Appendices reprinting past proposals for a league of nations, beginning with that of the Abbé Saint-Pierre (1713) and bibliographical notes to the various chapters, add measurably to the value of a book which must be considered a serious contribution to the literature of the subject.

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#### JUDICIAL CONTROL OVER LEGISLATURES AS TO CONSTITUTIONAL QUESTIONS.

By Jackson H. Ralston. Washington: Law Reporter Printing Company. 1919. pp. 80.

It is important to notice how this pamphlet happened to be written.

The American Federation of Labor, at an annual convention held in 1918, passed the following resolution:

"Whereas, The sole right to make or unmake laws is vested in legislative bodies or the direct vote of the people by the Constitution of the United States; and

"Whereas, The preservation of this right is essential if we are to remain a self-governing people; and

"Whereas, Courts of the United States without constitutional authority or legislative sanction have assumed the power to invade the prerogatives of the legislative branch by unmaking and rendering invalid laws enacted by the people or their legislative representatives, the exercise of this power setting aside on many occasions the desires and aspirations of the people as expressed through legislation, even when such measures had the approval of the majority of the people, their legislative representatives, and the President of the United States, an action which would be impossible in any other democratically governed nation; therefore, be it