

BOOK REVIEWS

THE ORIGIN OF THE STATE. By ROBERT H. LOWIE. New York: HARCOURT, BRACE & Co. 1927. pp. v, 117.

The student of the history of law and politics will find this volume invaluable in supplying both data and understanding of their primitive condition. The book should become the starting point of any further discussions of the problems connected with early political organization; its emphasis, as the title indicates, falling upon the political rather than the juridical aspect. Lowie holds that unless we arbitrarily define the state in terms of modern political entities, the evidence goes to show historic continuity of function and structure so that we are entitled to speak of a state in connection with primitive societies. By means of a rich and critical assemblage of evidence he shows the inadequacy of the two chief types of theory which deny the ascription of political order to such groupings. While admitting the value as a secondary contribution of Oppenheimer's contention that the state arose through conquest and exploitation of the conquered, he convincingly exhibits the insufficiency of the theory to cover all the facts, dwelling particularly on the evidence which shows that prior political organization and some degree of administrative skill on the part of the conquerors are involved in those states which on the surface corroborate Oppenheimer's theory. The other chief theory criticized is that advanced by Maine who would make personal bonds, connected with blood relationship actual or imputed, the exclusive source of organization in primitive groups. He proves, conclusively to my mind, that the territorial tie was also operative and that the bonds formed by local propinquity must be taken into account even in dealing with the organizing and controlling force of the blood tie. One chapter of the book, incidental to its main purpose, is a successful refutation of the theory which makes sovereignty a universal characteristic of political organization. Another chapter, dealing with associations formed on the basis of sex, age, military or magic prowess, etc., shows their role in the constitution of political authority. In this discussion he qualifies a view previously advanced by him which would give these associations preponderating efficacy, while he now admits that they sometimes weaken territorial bonds.

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THE LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION. By PHILIP C. JESSUP. New York: G. A. JENNINGS Co. 1927. pp. xxxviii, 548.

This is a well-organized treatise on a subject which has acquired a renewed interest through the adoption and attempted enforcement of the Eighteenth Amendment and through the efforts of the League Committee of Experts and other scientific bodies to draft a definitive code of rules on the subject. Four chapters of the present work (IV-VII) deal with the issues arising out of the prohibition laws and the resulting treaties, and the last (IX) deals with the numerous suggestions for codification and embodies the author's proposals for modification of the existing drafts.

Professor Jessup starts from certain principles or theses to which he adheres throughout. The first is that there is a profound distinction between (1) territorial waters, in which the State, subject to the privilege of innocent passage, may ex-

ercise rights analogous to those exercised on its land, and (2) certain acts of control or jurisdiction which for special reasons, such as customs control or self-defense, it may exercise, with the implied acquiescence of other states, outside these territorial limits. Thus, Chapter I deals with "The Three Mile Limit." The author marshals the evidence obtained from the practice of the maritime states in their municipal law and in international controversies and settlements and reaches the conclusion that the three-mile territorial zone constitutes the rule of international law. To the reviewer, this conclusion is not successfully controvertible. Those lawyers who have doubted it insist upon the claims to a wider zone made by Italy, Spain, Russia, and other countries, but it is believed that they overlook the fact that these claims, whenever an issue has arisen, have been successfully contested. Even the claim of the Scandinavian countries to four miles may be said to rest on special circumstances and prescription and in a practical issue, during the late war, was successfully denied. It may be interesting to note that the cannon-shot theory proposed and accepted as a limitation on claims over coastal waters is now used as an argument for their extension.

Chapter II deals with jurisdiction and control on the high seas adjoining territorial waters, and again the municipal and international practice of the maritime countries is invoked as evidence on such subjects as "customs jurisdiction and control" and "neutrality and national safety." The Hovering Acts, which in Great Britain and the United States permit entry on incoming vessels for customs inspection twelve miles out, are explainable by the tacit acquiescence of other powers to such control for the limited purpose in question. *Church v. Hubbard* is not, it is believed, necessarily irreconcilable with *Rose v. Himely* (p. 84). Marshall's assent to the extra-territorial seizure in the former case was limited to the special circumstance of a barren and unfrequented coast where law enforcement might otherwise have been impossible. The State Department and those courts which have refused to apply *Church v. Hubbard* to extra-territorial seizures of rum-runners on the American coast, seem to the reviewer correct.

Chapter III, "Sovereignty over Territorial Waters" deals with merchant and war vessels within the marginal sea, the extent of jurisdiction exercised by the riparian state, the immunities attaching to innocent passage, entry in distress, and the issues arising out of the conflict of laws. Ships in port occupy an important place. The author has adopted Professor W. W. Cook's views on "jurisdiction." The fictional "territoriality of vessels" should possibly not be characterized as "unsound at best," for it helped to decide the *Lotus* case (1927) before the Permanent Court of International Justice. It often serves a useful purpose, and Lord Finlay's suggestion that a ship is a chattel only and not a place can hardly command support. Few cases have been more completely repudiated than *Queen v. Keyn*, which was followed by an Act of Parliament maintaining British jurisdiction over crimes committed within the territorial sea. The author has made an excellent analysis of the cases in the various countries raising the issue between the alleged immunity from and liability to the jurisdiction of the local courts.

In the chapters discussing the issues arising out of the enforcement of the prohibition laws the statutory, judicial and diplomatic history are considered. The author considers first (C. IV) questions of enforcement within the three-mile limit and particularly the transportation of liquor under seal after the decision in *Cumard S. S. Co. v. Mellon*.¹ This involved much diplomatic correspondence with

¹262 U. S. 100, 43 Sup. Ct. 504 (1923).

foreign countries, the important parts of which are quoted. The author then considers separately (C. V) the numerous decisions of the United States courts passing upon seizures of rum-runners outside the three-mile limit, prior to the conclusion of the treaties with foreign countries conceding such privilege (in exchange for the foreign vessel's privilege of bringing in ship's liquor under seal) within one hour's steaming from shore. Chapter VI leads naturally to the discussion of these treaties and their negotiation. Their terms and operation are considered at length, together with the bill introduced in Congress for their more effective enforcement. Chapter VII then discusses the court decisions interpreting these "liquor treaties." The Supreme Court's dictum in *Ford v. United States (The Quadra)*,² to the effect that even if the seizure had been made outside the limit of one hour's steaming the failure specially to plead to the jurisdiction constituted a waiver, may be subject to question.

Chapter VIII deals with "Bays," which were wisely reserved from the previous discussion of territorial waters. Bays and gulfs have so special a status, due to the frequent claims for territoriality raised with respect to particular bays and to the probable difficulty of asserting that the "ten-mile line" has become a rule of law, that it seemed appropriate to consider independently the various theories advanced in support of the territorial bay generally, such as the "headland" theory, the "sight" theory, and others. An exhaustive account of the arguments in the North Atlantic Fisheries Arbitration is included. Then follow separate statements of the territorial claims advanced with respect to numerous bays and gulfs located in various parts of the world.

Finally, in a chapter (IX) entitled "The Law of the Future" the author considers in the light of numerous drafts of codes proposed by learned societies and bodies, the rules that might be suggested to the countries of the world for treaty adoption. Professor Jessup's critical comparative discussion of the several drafts, and his own proposals, at the head of his comments in the earlier part of the book, are not the least valuable contributions to the volume.

The work is clearly written. While much has been published on these subjects, the author has thought the matter through and exhibits a lawyer-like capacity for the critical analysis of general statements. Without pedantry, he has marshalled sufficient evidence in support of his theses to carry conviction, while treating fairly any opposing evidence. He does not appear to have omitted anything of material value, though Godoy's views (*La mer cotière*) are not without interest. An occasional typographical slip has been noted.³ The work is well-indexed and presents a good appearance. It deserves a hearty welcome.

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THE INSURANCE COMMISSIONER IN THE UNITED STATES. A Study in Administrative Law and Practice. By EDWIN W. PATTERSON. With a foreword by FELIX FRANKFURTER. Cambridge: HARVARD UNIVERSITY PRESS. 1927. pp. xviii, 589.

This is a comprehensive study of state regulation of the business of insurance in the United States. The volume centers on the state insurance commissioner, and analyzes his powers and duties, and the judicial control of his functions. In a

² 47 Sup. Ct. 531 (1927).

³ P. 97, for "Anglo-American" read "Spanish-American"; p. 139, for "274" read "137"; and at pp. 179, 185, 186, 253.