

BOOK REVIEWS

The Diplomatic Protection of Citizens Abroad. By Edwin M. Borchard. Published by The Banks Law Publishing Co., New York. 1915. Pp. 988.

Perhaps never before has this subject of diplomatic protection of citizens abroad received such widespread attention as at the present crisis in world affairs. For long months—too long in the minds of many—our President has striven through diplomatic channels to obtain that recognition of the rights of our citizens which international usage has hitherto granted. His long and patient attempt has resulted in failure. Diplomatic relations have been broken off; before this review appears we may have adopted the ultimate resource of armed force. Whatever may be the outcome, with the arrival of peace, diplomatic channels will again be open. The numerous claims which will arise for settlement will call into play many of the principles so clearly set forth in this book. No lawyer who intends to take part in this growing branch of the law can afford to be without this recent and notable contribution to the literature on this subject. Not only in the future, but now, is it an essential part of the education of the legal fraternity to know something of the nature, objects, and limitations of diplomatic protection.

To enumerate the subjects covered by this book would require more space than is at our disposal. Suffice it to say that here one will find a thorough and exhaustive treatment of the relations between the state and its citizen abroad, between the alien and the state of residence, and between the two states concerned. The quality of the book is vouched for by the high professional standing of its author, who is well known as an expert on international law, a member of the North Atlantic Coast Fisheries Arbitration at the Hague, former Assistant Solicitor of the Department of State and recently appointed Professor of Law at the Yale School of Law. The volume is written in an unusually clear and attractive style, its topical analysis is excellent, and the citations of authority are of the greatest variety and almost countless in number. An appendix of sixty-two pages contains a most extensive bibliography of the treatises and source-books of forty-seven different nations, classified topically in each case. The whole work bears witness to great industry and to pains-

taking care, and on every page supplies the reader with the materials for verification, criticism, and further research.

In producing this book in which the principles governing the status of citizens abroad are so clearly and comprehensively discussed, Dr. Borchard rendered a valuable service to the advancement of the science of international law.

W. W. GAGER.

The Elements of International Law, with an Account of its Origin, Sources, and Historical Development. By George B. Davis. Fourth edition revised by Gordon E. Sherman. Published by Harper & Bro., New York and London. 1916. Pp. 668.

This is the fourth edition of a text-book first published in 1889, by a man who, as Judge-Advocate-General of the Army, had a considerable experience in the practical application of international law and, in particular, the law of war on land. As the book was not written for lawyers, it would not be fair to judge it from the lawyer's point of view. It is well written, but in many of its chapters is so general in its statements, that the lawyer cannot profitably use the book. The chapter on national character has apparently not taken into consideration the important federal statutes of June 27, 1906 and March 2, 1907, nor the important circular of the Department of State of July 26, 1910, with respect to the effect of long-continued residence abroad on the status of native citizens. The Act of 1907 also furnishes new statutory criteria, of which the book apparently takes no account, for the loss of citizenship by naturalized citizens.

The editor of this edition undoubtedly must have found it difficult to bring up to date a book written for another day. Perhaps the best that was possible, was to add some notes and to print in extensive appendices (pp. 503-639) the more recent international documents of importance, such as the Geneva Convention, the Hague Conventions, with their tables of ratifications, the Declaration of London—whose hopeful promises for neutral rights in the conduct of naval war were soon frustrated by the principal naval belligerent in the present war—and other documents and editor's notes of current interest. On the question of merchant vessels armed for defence (p. 601) the learned editor cites certain extracts from the case of *The Nereide* (1815)

9 Cranch (U. S.) 388, and concludes "that merchant vessels are under no circumstances subject to attack on the ground that they are armed for defence." This seems hardly reconcilable with the practice followed by American privateers during the War of 1812, nor with Chief Justice Marshall's views on the status of the armed merchantman. *The Nereide* (p. 430).

While Judge Davis' chapters on the law of war and neutrality are still useful contributions, well adapted to college courses, the law student has been furnished with better elementary text-books, particularly those of Hershey and Wilson. For the older cases and literature, the footnote references of Davis may still be found useful. The book is well indexed.

EDWIN M. BORCHARD.

The Public Defender; A Necessary Factor in the Administration of Justice. By Mayer C. Goldman, of the New York Bar. Published by G. P. Putnam's Sons, New York. 1917. Pp. ix, 96.

This well-written little book presents in orderly style and in an interesting way the arguments in favor of a state-paid attorney to defend indigent defendants accused of crime. The arguments presented are general, and no specific details concerning the administration of the office are advocated. The question is a live one and has received some attention in the JOURNAL OF CRIMINAL LAW. It may be noted that committees of the New York City Bar Association and of the New York County Lawyers' Association have reported unfavorably upon the plan. Their reason seems to be that accused persons are adequately safeguarded under the present system.

Mr. Robert Ferrari, who is a distinguished advocate of the plan, believes it should be the duty of the Defender to act for a prisoner even though he should believe him to be guilty (see his article in the JOURNAL OF CRIMINAL LAW, May, 1915). From the language used by Mr. Goldman on page 67 of his book, his idea seems to be that the Defender should not defend a prisoner under such circumstances. Inasmuch as the plan contemplates work in the lower as well as in the appellate courts, Mr. Ferrari's idea seems impracticable because of the immense amount of business with which the Defender would be burdened. If, as Mr. Goldman advocates, a discretion be vested in the Defender as to what cases he will defend, that officer will partially usurp the

function of the court in deciding the guilt or innocence of the prisoner. Many distinguished lawyers hold that a private attorney is not justified in refusing to defend merely because of his personal conviction that his would-be client is guilty, since that is a question for the court to decide. Such reasoning should apply with more force to a public officer of this character.

True to the style of the enthusiastic reformer, Mr. Goldman writes rather contemptuously of the "cure-alls" urged as substitutes for the Public Defender plan. To the reviewer it seems that Mr. Goldman may be living in a glass house, for he evidently claims more advantages for his plan than he is justified in doing.

In August of last year the Institute of Criminal Law and Criminology recommended a committee to consider the question of the Public Defender. The report of this committee will be well worth reading.

A. E. HOWARD, JR.

International Realities. By Philip Marshall Brown, Professor of International Law at Princeton University. Published by Charles Scribner's Sons, New York. 1917. Pp. xi, 233.

This is an exceedingly suggestive and stimulating work. In its preface the author tells us that he has set himself "the task of endeavoring to ascertain the fundamental values in international relations," and he frankly expects that "the points of view advanced will be subjected to considerable criticism." "I feel," he adds, "that I shall have accomplished my purpose, however, if discussion shall have been provoked."

In Chapter I, entitled "International Realities," which contains a candid examination of the principles lying at the base of international law, our author tells us that "the basic principle which establishes judicial precedents and crystallizes international law as a science is that the interests of nations must be mutually respected because of what Gareis well terms 'anticipated advantages of reciprocity as well as fear of retaliation.'" "This powerful sanction, this compulsive force of reciprocal advantage and fear of retaliation, is nothing else in its essence than the Golden Rule as formulated by Thomasius: 'Do unto others for thine own sake what thou wouldst that others should do unto thee, and, in so doing, accept a law from which thou canst not escape.'" While appreciating, to the full, the merits of Thomasius as one

of the great lights of jurisprudence in the late seventeenth century, we prefer the Golden Rule as recorded by Saint Matthew and Saint Luke. The only safe rule for nations, as for individual men, would seem to be found in an ideal in which self-seeking is not the final cause.

In the interesting chapter on "Nationalism," our author tells us that "the United States, owing to its peculiar constitution, is not able effectively to safeguard the rights of aliens as guaranteed by treaties and international law"; but the United States Supreme Court has amply demonstrated the power of the government to protect aliens fully. Cf. *Truax and the Attorney General of the State of Arizona v. Raich* (1915) 239 U. S. 33. While as to the treaty-power, the same court, in the early days of its existence, took occasion in the case of *Ware v. Hylton* (1796) 3 Dall. (U. S.) 199, to lay down a constitutional principle from which it has not departed. The question at issue was the force of the treaty of peace with Great Britain as against a state law sequestering debts due British subjects. Mr. Justice Wilson said:

"But even if Virginia had the power to confiscate, the treaty annuls the confiscation. The fourth article is well expressed to meet the very case; it is not confined to debts existing at the time of making the treaty, but is extended to debts heretofore contracted. It is impossible by any glossary, or argument, to make the words more perspicuous, more conclusive, than by a bare recital. Independent, therefore, of the constitution of the United States, which authoritatively inculcates the obligation of contracts, the treaty is sufficient to remove every impediment founded on the law of Virginia. The state made the law; the state was a party to the making of the treaty; a law does nothing more than express the will of a nation; and a treaty does the same."

In Chapter III we have a vigorous discussion of "The Rights of States." Professor Brown, in commenting on the vexed question of sovereignty and adverting to the cases of Cuba, Panama, and Egypt, thinks that "to speak of any of these states as 'half-sovereign' is to render the theory of sovereignty ridiculous." But while admitting the force of our author's criticisms, it is difficult to perceive how some of the lesser states can be better characterized; indeed, the French term *mi-souverain* and the German *halbsouveräne* have obtained a firm position in the

literature of the subject, as is well illustrated, as to the latter, in Professor Liszt's standard work *Das Völkerrecht* (ed., 1910) p. 51.

Chapter IV on "The Limitations of Arbitration" calls attention to the weakness of arbitration under circumstances often of the deepest importance. We think, nevertheless, that Professor Brown somewhat underrates the power of arbitration itself. When employed with the right spirit behind it, it would seem of incalculable value and destined to be adopted in coming times as an indispensable factor in maintaining world-peace.

In the chapter on "International Administration," attention is called to the many forms in which international action is "essentially administrative"—as in the universal postal union, the telegraphic union, the international union for the protection of industrial property, etc.

Chapter VII on "The Dangers of Pacifism" acutely analyses the tendencies comprehended in this term. In Chapter IX on "Democracy and Diplomacy," Professor Brown doubts "the desirability for us of having a permanent, classified, diplomatic service, offering, as the army and navy, a life career"; but he thinks "that a classified, permanent, diplomatic service—at least at the present stage of the country's development—is decidedly unwise and undesirable." We are inclined to think that our author's views would not find confirmation in the experience, for example, of such a country as France, where in a government assuredly of the people diplomatic service offers an attractive life career to men of the best abilities. In our own case, it would seem that an expected permanency in service would greatly enhance the attractions of diplomacy to men of ability.

Professor Brown's concluding chapter on "The Substitution of Law for War" treats a great subject in a clear and interesting fashion, and his book has much value at such a time as the present when the fundamentals of international law can not be too widely examined and discussed.

GORDON E. SHERMAN.

A Treatise on The American and English Workmen's Compensation Laws. By Arthur B. Honnold. Published by Vernon Law Book Company, Kansas City, Mo. 1917. 2 Vols. Pp. xxii, 1905.

So rapid has been the spread of the theory that society and not the individual shall pay the cost of industrial accidents that

a subject which six years ago was of no real interest to the ordinary practitioner of this country, now justifies the devotion of two large volumes containing nearly one thousand pages each to its practical, rather than theoretical aspect. Germany enacted a sick insurance statute in 1883; England adopted its first compensation act in 1897; but with the exception of the Federal act of 1908 applying to certain government employees and the first New York act of 1910 held unconstitutional in the *Ives* case, the history of workmen's compensation in this country dates from 1911. Between 1911 and the end of 1916, acts were enacted in thirty-two states. As compensation cases in all probability are the first that come to the young attorney, and the most frequent that come to the lawyer in general practice, the value of this comprehensive text-book of compensation cases is easily apparent.

The thoroughness with which the author has searched his authorities is truly remarkable. He has not relied simply upon reported decisions of courts of last resort, but has quoted authorities not easily available and not digested in the current legal reference books. Herein lies the great merit of the work. It is encyclopedic rather than analytic in character. But the fact that here are decisions of industrial accident boards and of compensation commissions and opinions of various state officials upon new points of law where precedents are lacking makes the work a practical handbook on the subject. The manner in which the author has arranged the mass of material does credit to his ingenuity and skill. An excellent index makes the matter easily available.

Some errors in proof reading such as the misspelling of "liability" on page 333 have crept in, and it is difficult to understand why, when the index and table of cases refer to pages, the inconvenient system has been adopted of placing the section rather than the page number in the upper outside corner of each page of the text. In general, however, the mechanical appearance of the work is beyond criticism. The defects in the work itself are such as inhere in all books on the digest plan, where the very completeness with which the authorities are covered leads to error. The search for the particular precedent causes the author to forget the general proposition of law. Thus, for example, on page 107 the author cites two decisions of compensation commissioners as authority for the proposition that Part B of the Connecticut act applies to employers of less than

five persons who have not rejected it. The real authority for this point was the decision of the Supreme Court in *Bayon v. Beckley* (1915) 89 Conn. 154, cited elsewhere in the book, but as the author shows elsewhere the act was amended in 1915 so as to exclude an employer of less than five in the absence of a definite acceptance of the act.

The entire second volume is given up to a reprint of the texts of the various state compensation acts, the Federal act, and the English act, together with a synopsis of the present German law. The bulk of the work is doubled by this reprint which adds little to the value of the work. The lawyer for whom the compilation of authorities contained in the first volume is primarily designed will have little use in his practice to refer to this part of the work, while those who may desire the exact texts of the various acts may obtain them in other and more proper places. Moreover, as the acts are constantly being amended, a labor of this character is decidedly ephemeral. As many state legislatures meet in the year 1917, this part of the work will be largely out of date before the year is half gone.

A more complete discussion of the historical background for this kind of legislation might have been desirable. And the time is fast approaching when a scientific discussion of various questions involved in practically all compensation acts such as the question when an accident arises "out of" and "in the course of" employment will be of more value than a book of the digest character. But until precedents have accumulated in each jurisdiction, probably the author was wise in following closely his purpose, which he has so well accomplished, of supplying that *sine qua non* of the practising lawyer, namely, a case in point.

CHARLES E. CLARK.

American Bar Association Reports. Vol. 41. Published by The Lord Baltimore Press, Baltimore. 1916. Pp. 923.

Der Gedanke der Internationalen Organisation (1300-1800). By Dr. Jacob Ter Meulen. Published by Martin Nijhoff, The Hague. 1917. Pp. xl, 397.

German Legislation in Belgium. Seventh Series. By Charles Henry Huberich and Alexander Nicol-Speyer. Published by Martin Nijhoff, The Hague. 1916. Pp. 491.