

will (whatever that may mean). In the seventeenth century writers often referred to the "law of God and nature"; in the eighteenth century Jefferson represented the prevailing thought by referring to the "laws of nature and of nature's god." It was Pascal who slyly pointed out that the concept of nature had after all no support except a kind of subjective buoyancy: "I greatly fear that this nature is itself only a first custom, as custom is a second nature." What we need is a book showing how man has created nature in his own image. Not the least valuable part of such a book would deal with the underlying influences (philosophical, psychological, or whatever they might turn out to be) which have led to a revival of interest in natural law during the last quarter century.

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*International Adjudications. Ancient and Modern, History and Documents, together with Mediatorial Reports, Advisory Opinions, and the Decisions of Domestic Commissions, on International Claims.* Edited by John Bassett Moore. Modern Series, Volumes 1-3. New York: Oxford University Press. 1929-1931. pp. xxvii, 564.

THE appearance of these volumes marks an event of the first importance in the field of law, history and letters. Judge John Bassett Moore, in the encyclopaedic work of which these volumes are the first installment, has drawn upon his wide learning as a lawyer and a historian and upon his experience as a statesman to place before the world the complete record of all known arbitrations or adjudications between nations, supplemented by advisory opinions, mediations, and decisions of domestic commissions. The work may require seventy-five or more volumes, and is designed to be continuous. Judge Moore has divided the work into two series, an ancient and a modern, the latter commencing with the arbitrations under the Jay Treaty of 1794 between the United States and Great Britain. That treaty of itself marked an epoch in the peaceful adjudication of international disputes by reviving arbitration, a process which for nearly three centuries had fallen into desuetude.

The three volumes under review embody an account of the proceedings of the arbitral commissions under two articles of the Jay Treaty—the 5th and the 6th. The first two volumes deal with the former, relating to the determination of the boundaries between the United States and Canada, and more particularly the identification of the river which was mistakenly named, in the peace treaty of 1783, the St. Croix. The third volume is devoted to the 6th article, by which the United States assumed the obligation of compensating British creditors for the losses sustained through the impairment by American states after 1776 of the right of British creditors to recover their debts from American debtors. The fourth volume will deal with the arbitration under the 7th article of the Jay Treaty, covering both the claims of British subjects for losses due to seizures of British shipping by the United States or by vessels armed in United States ports, in violation of American neutrality, and the claims of American citizens arising out of wrongful captures of American vessels by British naval forces.

Volume I begins with an Introduction and Historical and Legal Notes of some 96 pages, which constitute a unique and penetrating analysis of the concepts of adjudication, judicial action, and arbitration in the light of theory and practice in municipal and international law. Probably Judge Moore himself, by the original publication in 1896 of his "History and

digest of international arbitrations to which the United States has been a party," but which includes foreign arbitrations also, has done more than any one else to make the awards of international tribunals a "source or evidence of law," the subject of an important section. Since that time, the awards of international tribunals, now multiplied by the frequent establishment of claims and boundary commissions and given added dignity by the establishment of the Permanent Court of Arbitration (1899) and the Permanent Court of International Justice (1921), have become a major source in the growth and development of international law. Judge Moore has exploded the myth, sedulously purveyed and thoughtlessly repeated in disparagement of the ephemeral and *ad hoc* international tribunal, to the effect that international arbitration was a process of compromise or political adjustment, as distinguished from the work of a law court, such as a permanent international court, which, it was asserted, would cut through an issue rigorously by applying exclusively rules of law regardless of where the chips fell. The judicial process, as Judge Moore shows,<sup>1</sup> is not devoid of the element of compromise, and possibly it could be said that in the balancing of considerations political views occasionally have been influential. But that this element is not confined to arbitral tribunals is evident in the many decisions of municipal tribunals, including those of the United States Supreme Court and, among others, in the recent opinion of the Permanent Court of International Justice in the Austro-German Customs Union case. That it is a characteristic of international arbitral tribunals to any greater extent than it is of other tribunals is an assumption destitute of foundation. Judge Moore has, it is believed, laid this rumor to permanent rest and written its obituary.

The record of the two arbitrations reported in these volumes follows the historical and, for the most part, the chronological method of presentation. It pursues the narrative form, in the light of the documents, which are either reprinted or summarized. The whole is clarified by the explanatory remarks of Judge Moore, modestly described as "editor," who brings to the task an erudition unequalled in the field of international law and rarely equalled in the field of American history. His description of events and personalities, frequently illumined by sage and humorous comment, mellows and enlivens the record. The reproduction of source material, some of which had not heretofore been generally known, would alone entitle the work to high rank. Judge Moore's painstaking analysis of the arbitral proceedings by which the "St. Croix" River was found to be the Scodiac, as contended by Great Britain, and not the Magaquadavie, as contended by the United States, will probably leave nothing further to be said on that important historical event. The contribution that the arbitration made to American cartography is not the least important of its many features.

The third volume, dealing with the arbitration under Article VI of the Jay Treaty, embodies the account of the work of a Mixed Commission which ultimately broke down, mainly because of an unbridgeable difference of opinion as to the duty of claimants to exhaust their local judicial remedies before appearing before the international tribunal, and as to the meaning of "lawful impediments" erected by the states to the recovery and value of the claims of British creditors against American debtors. The proceedings of the Commission are fully described in the light of documents, the discovery of some of which, described by Judge Moore, is one of the romances of research. The arbitration represents not only an important stage in American history, but in international law. The views of the members of the Com-

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<sup>1</sup> p. xc.

mission on the exhaustion of local remedies and on other legal questions have played an important part in the history of the subjects. The confiscation of private property (here debts) which some of the American states effected, and which the United States after the breakdown of the Commission finally agreed to make good by the payment to Great Britain of £600,000 under the treaty of 1802, closed a practice which, with the exception of minor lapses of the Confederate states and the legerdemain involving the Chemical Foundation patents in 1919, has not since marred the pages of American history. Judge Moore terminates the record with the full report of the proceedings in Great Britain for the distribution of the indemnity among the British creditors, together with an account of the proceedings of an earlier British domestic commission for the reimbursement of "loyalists," who had suffered special losses in the United States by reason of their loyalty to Great Britain.

The publication of these volumes, the crowning achievement of one of the most notable careers in American public and scientific life, is a source of congratulation and inspiration for American scholarship.

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*The Law of Coöperative Marketing Associations.* By John Hanna. New York: The Ronald Press Co. 1931. pp. xxx, 509. \$7.

MR. JUSTICE CARDOZO has often compared the law to a game. That is a most happy analogy. When new methods of attack or defense are discovered or devised, new rules of the game must be formulated, and interpreted and applied. The customary procedure when the new play appears is to attempt an application of the old rules. If these rules are stoutly maintained and rigorously enforced the result is an abortion. But if the new play has in itself sufficient vitality, the second move probably will be an extension of the old rules through a system of juridical logic, supported by the tenuous expedient of false analogy. If the old rules prove hopelessly inadequate, new rules arise. This is the process described in Professor Hanna's book.

If a book may properly be expected to fulfill the promises implied in the preface, Professor Hanna's book must disappoint the critical reader. The first sentence promises "To describe the nature and functions of agricultural coöperative marketing associations, and to state the American law in respect to them." Despite the not-too-modest statement that, "It is believed that all cases involving coöperative marketing associations have been read and most of them cited," a thoughtful study of the book might cause one to doubt whether the author quite understands the nature and functions of coöperative marketing associations, or even the vast changes in American law in respect to them.

4 The first chapter is devoted to a running story of the development of coöperative marketing associations. The tenor of this account leaves one marvelling that coöperative marketing has not cured all the farmers' ills. The leaders have been such supermen as no other institution may boast. A critic of the whole scheme might approve the opinion of Mr. G. Harold Powell, long-time general manager of the California Fruit Growers Exchange: "He combined in his person the eloquence of a William Jennings Bryan and the economic knowledge of a John R. Commons with an organizing genius so peculiarly his own that it is unfair to mention the name of another even for purposes of comparison";<sup>1</sup> or this: "Aaron Sapiro is one

<sup>1</sup> p. 8.