

heim does not point out. Many forward-looking thinkers may be inclined to question the advisability of having a majority of the court of first instance composed of *advocates, i. e.*, of citizens or representatives of the nations in dispute, rather than of *judges*, — a feature of the 1899 Hague Arbitration Convention which was discarded as objectionable in the light of arbitration experience when the Hague Conference came to remodel the Arbitration Convention in 1907. (Compare Article 24 of the Arbitration Convention of 1899 with Article 45 of the Arbitration Convention of 1907.) The trend of thought to-day is perhaps in favor of having *no* parties in interest sitting as judges but as in ordinary law courts, letting the interested parties appear as advocates to plead their cases before impartial and unbiased judges. To his system of international courts Professor Oppenheim adds a further scheme for the constitution of international councils of conciliation for the settlement of non-justiciable questions.

One cannot help feeling throughout that Professor Oppenheim's mind is too firmly fixed in the ways of the past. He would have a League which, so far as legislation is concerned, would amount to little more than a periodically meeting diplomatic gathering. His conception of sovereignty seems to be the old-time idea that a sovereign state's most sacred and precious duty is to maintain an utter independence of any external control (p. 33). No law can be possible without obligation; and international obligation of necessity presupposes a certain external restriction. As Kant long ago pointed out, it is the obligation and restriction of law that gives real freedom and independence. Although in his conclusion Professor Oppenheim struggles to free himself from the popular bugbear of the sacredness of national sovereignty (p. 75), yet, at least so far as legislation is concerned, it seems essentially to underly his whole conception of the League.

It would be only carping to point out certain inaccuracies of statement and minor errors. We live at a time which calls for large constructive thought rather than for small destructive criticism. Professor Oppenheim's lectures are readable and thoughtful, and contain much that is worth while. Perhaps Americans are hoping for too much; perhaps it is a sense of disappointment rather than of criticism which will prompt many American readers to feel that the constructive suggestions contained in the book are grounded upon the conservatism of the past rather than upon a large-visioned and practical-minded conception of the future.

FRANCIS BOWES SAYRE.

EXPERIMENTS IN INTERNATIONAL ADMINISTRATION. By Francis B. Sayre. New York: Harpers. 1919. pp. 201.

The author of this interesting little book, having found that after former great wars the victorious allies, in Peace Congress assembled, solemnly dedicated themselves to "the repose and prosperity of Nations, and . . . the maintenance of the peace of Europe," and other lofty sentiments significantly like those enunciated to-day, seeks to discover the reasons for the failure of realization of those pious wishes and finds them (1) in the fact that previous peace treaties ending great wars were "founded essentially upon injustice," and (2) in the fact that nations in the past "have been unwilling to submit to a sufficient amount of external control to make an effective international executive organ possible." The author then presents suggestions for curing, in the forthcoming League of Nations, the defects thus diagnosed. In deprecating the first he points out that "no treaty founded on injustice can endure; no possible effort to retard the irresistible progress and triumph of justice and righteousness in the world can succeed" (pages 7, 160). He offers, however,

no suggestion by which any different standard of "justice and righteousness" than has prevailed in the past, namely, the will of the victors, shall now be applied; and it may be remarked that the statesmen of those days in concluding peace treaties appear not to have doubted that they were the apostles of justice and righteousness. The author speaks of the "purely selfish interests" which mark earlier settlements; but aside from our own contribution, the influence of any other than selfish "interests" in the draft of the settlement now proposed is not conspicuous.

It is, however, to the second defect, namely, the absence of executive machinery to enforce the lofty aspirations of peace treaties, that the major portion of the volume is devoted. To illustrate this want of executive authority the author has classified into three different groups or types, according to the degree of power exerted by the central executive organ, the various international unions which states have created for the administration of some common economic or social interest. English readers had already been acquainted with the operation of these organizations through the work of Professor Reinsch on "Public International Unions, Their Work and Organization" (1911). Mr. Sayre has classified the administrative organs of some of these unions and of some recent examples of joint governmental administration into (1) those having little or no power of control over the member states, *e. g.*, the Postal Union; (2) those having a measure of control over some local situation, such as the Danube, Congo, and Huangpu River commissions, International Sanitary Councils, the Albanian Commission, the Moroccan Police, the Suez Canal and Congo commissions, and the Spitzbergen and New Hebrides administrations; and (3) those having some power over the actions of the member states, among which he cites the International Sugar Commission and the Rhine River Commission. The author analyzes the powers of these executive bodies and their internal organization, such as methods of voting, representation of states, etc. From his study it appears but too clearly that in the few rare cases where these bodies have been intrusted with duties other than informational, statistical, or purely formal and have had duties which bore a shadow of political power they have practically always failed. The nearest analogy to political functions involving some impairment of state sovereignty the author finds in the Rhine Commission and in the International Sugar Commission, which was designed to prevent the grant of sugar bounties by states. Its determinations of fact were to result in an obligatory change of tariff laws by member nations, much like Presidential power under the reciprocity provisions of the McKinley tariff. To deduce from such a commission an analogy for an executive organ such as the proposed League of Nations embodies, requires well-developed powers of projection. The difference in degree amounts to a difference in kind. The author has no illusions in this regard, but is hopeful that the illustrations given and the analysis of the underlying reasons for success or failure will offer encouragement to the belief in and the creation of an "international government" by a League of Nations. From the evidence offered, however, such encouragement is more than doubtful. The author deprecates (page 151) the conception of sovereignty by which "each state is the unrestricted arbiter of its own fate, and that no state therefore can be bound against its will." The unnecessary abandonment of this conception, however, upon adherence to which we have become a nation, and a committal of our fate to the determination of nations whose interests may, on the whole, be opposed to ours is possible of even greater deprecation. Especially is this so when the document on which our fate is to rest is drawn in such vague terms — occasionally, as in Article XV, indicating a deliberate vagueness inspired by compromise — that perhaps the leading English authority on international law confesses to having read it six times without having grasped its full meaning.

Mr. Sayre's book is written in a clear and concise style, and is entertaining

throughout. The Appendices of texts are useful. The distribution of footnotes between the end of the chapter and the bottom of the page is somewhat disconcerting.

EDWIN M. BORCHARD.

A HISTORY OF GERMANIC PRIVATE LAW. By Rudolf Huebner. Translated by Francis S. Philbrick. With Introductions by Paul Vinogradoff and by William E. Walz. Boston: Little, Brown, and Company. \$5.00. 1918. pp. 785.

As a volume for "The Continental Legal History Series" no more suitable book on Germanic law could have been selected than Professor Huebner's "Grundzüge der deutschen Privatrechts." Though a purely scientific and historical work, not intended as a textbook to prepare students for examinations, its merit is attested by the fact that its first publication in 1908 was speedily followed by a second edition in 1913. It is from this second edition that the present translation is made.

Though Huebner called his book "Principles," the translator has more accurately indicated its true nature by entitling it "History." For it is in no sense a mere exposition either of medieval Germanic law or of the Germanistic paragraphs in the Civil Code of 1900. On the contrary, its peculiar interest and value to the American student lies in the great historical sweep with which the author surveys the development of Germanic private law through the course of twenty centuries. In so doing, he shows a wide command of the vast literature of the subject, and, on disputed points, always refers to the views of his opponents, even though he does not clog his exposition by entering into a detailed discussion of their arguments. Huebner is frankly an enthusiast of the Germanistic school which developed under the inspiration of, and in opposition to, the Romanistic claims of Zavigny and his disciples. Being a follower of Albrecht, Brunner, and Gierke, Huebner rejoices every time that a good old Germanic institute, twisted or displaced at the Reception, has again come into its own by being given recognition in the Civil Code of 1900. But his enthusiasm cannot be said to bias his judgment. Nor why should it? For now that the scholars of the Germanistic school have secured in the paragraphs of the present Civil Code such a generous restoration and purification of Germanic law there is no longer need for them to carry on their propaganda. The Code has set the seal upon their labors. All that Huebner, therefore, seeks to do is to elucidate the historical development which Germanic law has undergone.

His method may be very briefly indicated. He divides the whole subject into five books (Law of Persons, Things, Obligations, Family, and Inheritance) and subdivides each into its constituent institutes. He then follows each through the five phases of its history. Take, for instance, by way of illustration, the law of associations. (1) The medieval Germanic law is portrayed in all its rich variety of forms. The weakness of the medieval state, which was too weak to give efficient protection to individuals, naturally led "fellows" ("Genosse") to form themselves into all sorts of associational groups. Besides the old "sib" and "mark" associations, there grew up associations for special agricultural purposes (*Gehöferschaften*, *Hauberge*), mining associations, transportation unions, the craft and the merchant guilds, and various other associations for fraternal, convivial, religious, and political purposes. In addition to these associations proper (*Genossenschaften*), so organized as to confer upon the entire body of members as such an independent personality, there developed also various personal unions "of collective hand," which had no such independent personality. All these forms of association shaded into