REVIEWS AND NOTICES.

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LAW IN THE MAKING.*

Jurisprudence, or the "science of law," has always been hard put to it to defend itself in England. Traditionally the English lawyer has had small respect for legal theory, or it might be more correct to say that any respect he had was concentrated upon the simple and rigid dogma of Austin. One result has been England's comparative barrenness in the field of speculation as to the nature and sources of law. Sir Paul Vinogradoff was able, by his genius, to set up something of a new school, a school which had more sympathy with continental doctrine and a higher estimate of its value in supplying legal solutions for social problems.

Professor Allen was one of Vinogradoff's pupils and, at its first appearance in 1927, this book proved that the master's work had not been lost. It goes as far as any single book could to redeem English thought on the elements of law from the reproach of stereotyped superficiality. *Law in the Making* is not a general text book on jurisprudence. It does not take up at all that formal classification of legal institutions which is the main concern of books such as those of Holland and of Salmond. It is more fundamental than these, for it is wholly devoted to a subject which they dismiss briefly, namely the processes by which law is formed and established.

It goes without saying that Professor Allen is completely emancipated from the paralyzing dominance of Austin. He is concerned with law as a product of social forces, and in his analysis of these forces he is undeterred by shibboleths. His book confronts one again with the familiar problem as to whether jurisprudence should be taught late or early in the career of the law student. *Law in the Making*, if understood, would save the student from a host of common errors. The question is whether anyone approaching it without a fairly considerable knowledge of law can understand and appreciate its great contribution to English legal science. On the whole, the book presupposes either that knowledge or, alternatively,

*By Carleton Kemp Allen, M.C., M.A., Professor of Jurisprudence in the University of Oxford. 2nd ed. Revised and enlarged. Toronto: Oxford University Press, 1930.

a philosophical acquaintance with the general forms and functions of social institutions.

As sources of law, the author deals with custom, precedent, equity, and legislation. In the first three subjects, there is a scholarly and illuminating comparison of Roman and English legal history, the former treated as competently as the latter. In the chapters on precedent there is a brief but informative notice of the effect of decisions and of professional commentary (*doctrine*) in the growth of law in France. Professor Allen's peculiar service lies in his convincing demonstration of the falsity of a number of impressions which the less profound student of English law rarely escapes. He is able to show the great influence exercised by Roman law, by the opinions of text writers, and by considerations of abstract justice, agencies which the English lawyer is wont to put aside as of no real consequence. Not less valuable is his exposure of the late origin and limited validity of the law of absolute legislative sovereignty in parliament and the doctrine of the infallible precedent.

I can find but one fault with the book, and that of no great importance. In his introduction on the sovereign as the source of law, and again in his chapter on legislation, the author gives an adequate summary and criticism of Duguit, but makes no mention of the contemporary Germanic school under Kelsen. Yet there are those who believe that in the future evolution of legal theory, in particular with regard to the source and incidence of social authority, the work of this school will play a larger part than Duguit's doctrines of social solidarity, duty and administrative service. It may be noted with satisfaction that this gap is filled by another book produced last year by the Oxford Press, namely Hallis' *Corporate Personality.*

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Corporate Personality.*

The acknowledgment by Dr. Hallis, in his preface to the work before us, that his undertaking was entered upon at the suggestion of the late Sir Paul Vinogradoff serves to recall the rebuke administered by that great jurist to members of the English legal profession who say that they are too busy practising the law to exercise their

**A Study of Jurisprudence.* By Frederick Hallis, M.A., D.Phil. (Oxon.) Toronto: Oxford University Press, 1930. Price $5.25.

minds in its theory. Postulating law as a factor of the first importance in social life, and so demanding consideration by educated men of its theoretic side quite apart from its pragmatic value, he proceeds to say:

> Some practising lawyers will nevertheless—as Leslie Stephen has put it—consider all theory of law with 'serene indifference'; if so they will have to be left to their own devices. Jurisprudence addresses itself to those who study law as a part of a system of knowledge.

But indifference to theoretics on the part of the lawyer may be nothing more than a manifestation of a characteristic of Englishmen in general if we are to credit their critics. Dean Inge in one of his many essays states that the Englishman is constitutionally averse to general ideas and abstract questions. After quoting Bishop Creighton's acid remark that "An Englishman not only has no ideas; he hates an idea when he meets one," he presents historical instances of this distrust of general ideas and ends up with the statement that, "Our legal system is built up out of precedents, not on any general principles." All of which goes to show that it is time for the common lawyer the world over to put on his thinking cap and cease to declaim with Mr. Gradgrind: "In this life we want nothing but Facts, sir; nothing but Facts."

* * Such a book as Dr. Hallis's "Corporate Personality" should have some influence in depolarising any rooted prejudice against thinking about law in any other than its empirical and mechanical aspects. The views expressed in the following extract from his Introduction (p. xiv, ff.) administer a shock to those who, conceding a scientific content in the law, yet regard it as a complete thing in itself, essentially aloof from the influences of philosophy and sociology:

> It is inevitable that political ideas should influence law. Both are concerned with social problems; both derive their contents from the same world of social fact . . . The Austinian jurist of to-day relies on his distinction between legal fact and political or social fact to preserve his theory of sovereignty from the onslaught of those who emphasize its disharmony with actual fact. But even in England the pressure of new social forces has quickened the critical sense of some leading jurists to admit that the entire question of the relation of law and State requires reconsideration.

Obviously one can admit the justice and force of a general attack on the disinclination of English jurists up to the present time to regard law as a mere water-tight compartment in the ship of State, without consenting to the formulation of a theory which rejects the whole body of doctrine hitherto accepted as orthodox in any

particular branch of the law. We do not say that Dr. Hallis bears himself so irreverently in the temple of the common law, but he takes some pains to obey the apostolic injunction to keep himself from idols.

Dr. Hallis's book offers no attraction to the casual and careless reader, but it cannot fail to enlarge the boundaries of knowledge for those who approach it with studious intent. Viewing it as a whole, our author is disposed to treat the problem of corporate personality as projecting itself for solution into the domain where the question of the fundamental relation of the State to the Law falls to be determined. In working out his concept he finds it desirable to survey the theories of the more important modern jurists to the end that some measure of doctrinal agreement might be arrived at. In this project his success is not abundant, indeed those who sit in the seat of the scornful might say with some reason that instead of unison he has evoked *concordia discors.*

The arrangement of the work divides it into three parts. In the first part the author gives us a luminous criticism of the rationalist theories of the continental jurists Savigny, Stammler and Kelsen, and of the Englishmen Dicey and Bosanquet, concerning the interrelations of the State, corporations and the law. The second part contains a chapter in which Duguit's realism, so lately chastised by Professor Allen with whips, is now chastised by Dr. Hallis with scorpions. A second chapter in this part deals with modern sociology and its bearing on the legal aspects of corporate personality. Here the opinions of Tarde, Le Bon, Freud, McDougall, Giddings and Durkheim—a somewhat motley company—are discussed with a view to ascertaining how far the study of group-life explicates the juristic problem of corporate personality. The third part consists of three chapters, in which the juristic theories of Gierke, Ihering, Korkunov, Jellinek, Krabbe, Hauriou, Michoud and Saleilles, all having a sociological content, are examined for the purpose of establishing a more logical approach to the author's desired goal of juristic doctrine than that afforded by Duguit and his sheer empiricism. In short, M. Duguit not only darkens counsel in respect of finding a true theory of corporate personality, but the jurisprudence as a whole which he has constructed on the foundations of Comtian sociology is marked by such a confusion of thought as to earn the rebuke that can seldom be administered to those who have made the literature of his race: *Ce qui n'est pas clair, n'est pas Français.*

While Dr. Hallis has laid every student of jurisprudence under

obligation to him for his exceedingly able survey of modern juristic theory more or less related to his subject, its value to the practical lawyer and legislator is not commensurate with its achievement in scholarship. In none of the works he examines, with the exception of Saleilles's *De la personnalité juridique* does he find adequate support for his own theory of corporate personality. Thus to follow the author on his journey through the books he passes in review means fatigue for the mind indisposed to learning for learning's sake, and eager for short cuts to knowledge on a given subject.

But Dr. Hallis's own theory of the juristic character of corporate personality is clear enough. He maintains, with a forcefulness that carries conviction with it, that the orthodox Fiction Theory and its complementary Concession Theory of the common lawyers have broken down as a means of introducing legal order into the facts of modern social life. To quote him (Introd. p. xxxiv): "With the collapse of the Fiction Theory much of the structure of orthodox jurisprudence, with which it is inseparably connected, gives way." And again (Introd. p. liii):

> In practice, if not in theory, the Fiction Theory has been superseded by a wider and more realistic theory of corporate personality which still requires clear definition. So long as the Fiction Theory is strictly adhered to, the rights and privileges incidental to the personification of an association can be attributed only to those associations which have obtained personality by a *concession* of the State. But our law now recognizes certain associations, which are not incorporated, as enjoying even greater corporate rights and privileges than incorporated associations.

He relies on modern case-law and legislation to maintain the correctness of his views, e.g., *The Continental Tyre and Rubber Co. Ltd.* v. *Daimler Co. Ltd.*, [1916] 2 A.C. at p. 340, and *The Representation of the People Act (No. 2) of 1922* (12 & 13 Geo. V. c. 41).

Lord Bramwell's doctrine in *Abrath* v. *North Eastern Ry. Co.*, (1886, 11 A.C. 247) that a corporation is incapable of malice or of motive is discarded now, and its *âme damnée* the doctrine of *ultra vires* is, and has been for some time past, under attack as an intolerable stumbling-block in the way of holding corporations liable in the whole field of torts. (See Brown's Austinian Theory of Law, Excursus A; Professor W. M. Geldart on *Legal Personality*, 27 L.Q.R. 90, and Professor A. J. Harno on *Privileges and Powers of a Corporation and the Doctrine of Ultra Vires*, 35 Yale L.J., p. 13. ff).

In summing up Dr. Hallis lays down these general principles for

determining the juristic character of corporate life and giving it a personality at law (pp. 241, 242):

1. It must have an organised collectivity capable of acting as a whole in furtherance of an interest which the law will protect. This means that it must have at its service a will capable of appreciating its requirements and effecting its purpose.

2. To be a legal personality it must have a definite aim which gives a finality to its purposive life, marks out its destiny, and so controls its internal and external activities.

3. Considered as the fact of a will pursuing an interest, the fact must have a social value which calls for legal protection.

In taking leave of his subject for the present, for he promises us a later and more extensive work on the historical and practical aspects of it, Dr. Hallis gives us clearly to understand that the similarity between the juristic character of the State and corporate bodies within the State is a matter of high importance in our time. Speaking of the theory with which he would displace the outworn Fiction Theory, he says: "It implies a new conception of the State. *For it means that the corporate entity of the State cannot be separated from the corporate entities of associations within it.*"

We are inclined to think that if F. W. Maitland—ὁ μέγας—were alive to-day his heart would be rejoiced by the fact that scholars like Dr. Hallis are pressing for a doctrinal reform in the English law of corporations which he would have been glad to put forward had conditions been more favourable in his day.

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PROBLEMS OF GOVERNMENT IN THE UNITED STATES.*

These lectures, delivered by Professor Frankfurter on the William E. Dodge Foundation, are the latest addition to the Yale Series on "Responsibilities of Citizenship." Although dealing almost exclusively with the problems of government raised in actual legislative, judicial and administrative experience in the United States, the book should appeal to all students of government, not because of novel or ingenious speculations as to State functions (of which we have had so many), but because within a very short space we have raised the actual and diversified problems confronting the

**The Public and Its Government.* By Felix Frankfurter, Professor of Law in Harvard Law School. New Haven: Yale University Press. Price $2.00.

government of a modern industrial State, the checks and disabilities of law or administration which impede the solution of these problems, and, without undue rhetoric or hysterics, a trenchant analysis of the weakness and strength of the democratic form of government.

While claiming to offer "not guidance but the perplexities of government,"[1] the problem Frankfurter presents, is put at the outset in two sentences: "The fact is that we ask more from government than any society has ever asked. At one and the same time we expect little from government and progressively rely on it more."[2] All that follows is directed to showing what is asked, and why a great deal of it is not fulfilled.

Beginning with a telescopic view of the demands of early American society on its government, we find that "Government kept the ring within which men carried on their pursuits, and provided the few services which in those days individuals did not furnish themselves. The interdependencies of men were relatively narrow, and there was no conception of the State as an active promoter of civilization."[3] Hence legislation was comparatively scanty, consisting largely in a catalogue of things *verboten* as between man and man. The comparison of the 320 octavo page volume of the laws of Congress for the first five years of the Union's existence, with the "mastodontic"[4] volume of 1,014 quarto pages for the Seventieth Congress, is breathtaking. This increase of legislative activity marks the entry of government as "an extensive participant in devising complicated arrangements of society and composing the conflict of its manifold interests."[5] Urbanization, railway and telegraphic communication, and above all "Big Business," pushed and jostled men into groups with group interests, and the resulting conflict in turn led to an "exuberant efflorescence"[6] of congressional lawmaking. The simple life is gone, and with it simple government. There is no sphere of life into which government does not enter, in order that part of the community may be protected against the encroaching demands of another part. This new era of governmental regulation and control, was born, we are told, with the establishment of the Interstate Commerce Commission in 1887. On its heels, and engendered by the increasing economic and social complexity, we have other boards, other commissions, all investi-

[1] p. 2.
[2] p. 4.
[3] p. 15.
[4] p. 11.
[5] p. 148.
[6] p. 24.

gating, regulating and controlling. Railway rates, telephone, telegraph, water and electric power particularly come more and more under regulation. With the growth of such administrative boards, and in particular with those dealing with Public Utilities, we find signs of growing popular dissatisfaction. This discontent, Frankfurter attributes to narrow and superficial judicial review by the Supreme Court, lack of technical knowledge on the part of men entrusted with the work on Commissions, together with short terms and political patronage.[7]

As government has thus entered the fields of technology, a high degree of skill and training is essential to the management of its affairs. It is in this connection that Professor Frankfurter really does some fine writing.[8] His appeal for higher salaried permanent officials is one that may well be borne in mind by any democratic form of government. In comparing the United States with Great Britain he makes this statement: "The whole tide of opinion is against public administration as a career for talent,"[9] whereas "In Great Britain the traditions of public service are as yet powerful enough to enlist the best brains of the country."[10] A further comparison, and a far more fundamental one, is made in describing the "professionalism in administration"[11] in England due to its improved Civil Service, which the author whole-heartedly admires, with the spoils system of the United States, which the author condemns. Behind the latter Frankfurter finds "a crude logic of democracy,"[12] which found expression in President Jackson's message to Congress:[13] "The duties of all public officers are . . . . . so plain and simple that men of intelligence may readily qualify themselves for their performance." While this may have been the case in the limited governmental scope of Jackson's time, it still, in Professor Frankfurter's opinion, is the traditional conception of government which, more than any other one item, holds up the solution of governmental problems. The keynote of the whole book in our opinion is found in the following passage:

> There never was a more pathetic misapprehension of responsibility than Harding's touching statement that 'Government after all is a very simple

[7] Chap. III. Public Services and the Public.
[8] His chapter on Expert Administration and Democracy.
[9] p. 137.
[10] p. 139.
[11] p. 156.
[12] p. 147.
[13] Richardson, Messages and Papers of the Presidents, II., 449 cited at p. 148.

thing'? I recall the sentence and it deserves to be remembered, because Harding expressed the traditional American conception of government still deeply inured in American opinion. It is an assertion of faith in simplicity that serves as an escape from the painful problems due to the complexity of government. Until these notions of deluding simplicity are completely rooted out, we shall never truly face our problems of government.[14]

Despite his plea for "professionalism in administration" as the answer to the myriad technical problems of the present day, Professor Frankfurter is careful to avoid the charge of favouring bureaucracy. The experts must elucidate and administer, but the direct representatives of the public must determine final questions of policy. He quotes A.E. as summing up the situation in the phrase, "The expert should be on tap, but not on top."[15] As to which Frankfurter adds that "we have been so anxious to avoid the dangers of having the expert on top that we suffer from a strong reluctance to have him on tap."[16] In this connection we note with interest the author's remarks to the effect that "To call the administrative *régime* of the British Civil Service, 'the new despotism,' as does Lord Hewart, is to use the language of lurid journalism."[17] One has only to compare the remarks of an Ontario Court in speaking of "the grave danger" of "increasing that type of bureaucratic control over the rights and liberties of the subject which is the feature of our modern legislation, as has been pointed out by Lord Hewart,"[18] to see how easily the two notions of "expert administration" and "bureaucracy"may be confused.

Of particular interest to the lawyer is the problem, presented by every federal state under a written constitution, of obstruction of government businesss by law.[19] Canadians are often astounded at the virtual "veto power" over State legislation possessed by the Supreme Court of the United States. So we are told are many Americans! The joker seems to be the Fourteenth Amendment, to the effect that "No State . . . shall . . . deprive any person of life, liberty, or property without due process of law." Introduced "when *laissez-faire* was the dominant economic-social philosophy . . . the Fourteenth Amendment was made the vehicle for writing *laissez-faire* into the Constitution,"[20] with the result that much legislative experimentation—strongly advocated

[14] p. 149.
[15] p. 161.
[16] p. 161.
[17] p. 157.
[18] Orde, J.A., in *Re Ridler* (1930), 38 O.W.N. at p. 281.
[19] Chap. II. Does Law Obstruct Government?
[20] p. 44.

by Frankfurter—has been nullified by "finicky or pedantic arguments based on abstractions."[21] In view of this it is interesting to learn that there is no dissatisfaction with the Constitution and no general demand for an overhauling. The answer is put by the author when he says that: "the difficulties that government encounters from law . . . are due to the judges who interpret it."[22] Were the Supreme Court Bench to be filled with men of Mr. Justice Holmes' calibre we are given to believe that the Fourteenth Amendment would be almost as sterile of bad results as the Eighteenth Amendment (for which the author appears to have little affection) of good. Canada might well take a leaf from the United States' constitutional book, in obtaining a closer co-operation and combination of the legislative powers of the Dominion and provinces. The two "hostile camps" notion certainly has a confining effect on "political invention," and as a means of mitigation, the Conference of Governors in the United States and the Annual Conference of State Premiers in Australia[23] might well be followed to advantage here, in place of the occasional conferences now in vogue.

On the whole, these lectures, while written somewhat in the style of a popular essay, are an attempt to become concrete on a topic that is altogether too open to hazy speculation and theorisation. It is of particular interest to Canadians, to note that the author acknowledges the assistance of Dr. James Forrester Davison, formerly of the faculty of the University of Toronto, in the preparation of the lectures. Unless and until Canada recognises the worth of such analytical and constructive studies of government and law as Frankfurter has here and elsewhere given, one may express regret, but certainly not surprise, at the drift of many of our economic and legal specialists to the United States.

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FOUNDATIONS OF JURISPRUDENCE.

The Elementary Principles of Jurisprudence. By George W. Keeton, M.A., LL.M., of Gray's Inn. Senior Lecturer in Law at the Victoria University of Manchester. Toronto: The Macmillan Co. of Canada Ltd. Price 12*s.* 6*d.*

The first sentence in the preface to this book is rather significant. "He who treads in the footsteps of Austin, Maine, Holland, and

[21] p. 49.
[22] p. 79.
[23] pp. 65-6.

Salmond, no matter how distantly, should do so with circumspection." Two remarks may be made at the outset: in the first place the author has followed the distinguished writers whom he cites with such single-minded devotion that newer writers in the field of jurisprudence have been more or less neglected: and in the second place, the author has, to say the least, not been overly circumspect.

The general plan of the work is much the same as that of Holland's and Salmond's well known treatises. It seems to have grown out of a series of lectures in Jurisprudence compiled in 1924 for a class of final students in Hong Kong University, amended and re-written to meet the needs of students at the Victoria University of Manchester; and to have been hastily revised for publication. In the hands of a careful lecturer the book may be of considerable value in a class room, provided that its somewhat arid neo-Austinianism is vitalized by reference to the more recent jurists—and both home student and practising lawyer may read it with profit if they are prepared to challenge and to verify the author's rather staggering generalizations.

It is in a spirit of helpfulness rather than of destructive criticism that the following errors are indicated:

p. 11. [*The Italian school of criminologists*] *"regard punishment as completely ineffective as a deterrent from crime."* The school of Lombroso hold that in the case of the born criminal punishment is of little or no avail but surely no devotee of that theory is prepared to endorse so sweeping a statement of their views as Professor Keeton's.

p. 72. *"In Turkey . . . the law of the Koran has been replaced by a copy of the French Code."* In fact the Swiss Code, which differs in several material respects from the French Code, was adopted—with minor alterations—by Turkey in 1926.

p. 87. *"The Initiative as yet only exists in some of the Western States of the United States."* Surely the author must be aware of the application of the principles of the Referendum and Initiative in Switzerland as far back as the middle of the last century. The Initiative was in use in the canton of Vaud as early as 1845.

p. 89. *"A form of law which no longer exists in modern systems of Western law is ecclesiastical law . . ."* It is only a very rigid concept of law which will exclude from its definition the rules recognized and administered, let us say, in English ecclesiastical courts: and one should like to have the author tell us by what law he thinks the papal city in Rome is governed.

p. 131. *"Modern continental law in general retains the age of twenty-five as the date at which infancy terminates."* The reviewer believes that not a single European state retains this rule—usually the period is fixed at 21 years as in our own law: apparently Chile is the only state which maintains 25 years as the age of majority.

p. 131. *"In tort the question of infancy does not affect liability."* *Ergo* "infancy" finds no place in the index of a text book on Torts. Let the author look up Pollock or Salmond and verify his statement.

p. 131. *"Achievement of majority coincides with termination of parental authority."* The author fails to point out that the Roman system of *venia aetatis* has interesting parallels in the modern continental law as to emancipation.

p. 132. *"In English law the rule was that 'by marriage husband and wife became one person, and that person is the husband.' Accordingly all her property became vested in the husband, whilst the wife became incapable of contracting or making a will."* If this is meant to imply that marriage vested all property including chattels real and choses in action the author's statement as to the common law rule is clearly inaccurate: furthermore the wife retained, even though she required her husband's consent, a considerable power of disposing by will of her personal property.

p. 133. *"A clergyman in English law is . . . incapable of becoming a member of Parliament."* If the author had said *"clerk in holy orders"* we should have had no comment to make. If Horne Tooke's stormy sessions led to the exclusion of clergy of the established church, the Act of 41 Geo. III. did nothing in itself to prevent clerics of other denominations from sitting in the House of Commons.

p. 133. *"Conviction for felony renders an individual, according to English law, devoid of all legal capacity, if no pardon has been obtained, or the sentence has not been served."* This statement is so widely inaccurate as to call for no special comment but it may be advisable to remind readers that in Canada a person undergoing confinement as a punishment for an indictable offence is not deprived of his property nor of his freedom of contract. *Young* v. *Carter* (1912), 22 O.W.R. 643, 5 D.L.R. 655.

p. 134. *"The British Dominions, which are also members of the League of Nations, seem to occupy the position of adult Romans under an attenuated patria potestas."* This comparison seems rather unprofitable; there may be some profound meaning which eludes the reviewer; the reader will have to judge for himself.

But one wearies of pointing out errors. Sufficient is it to say that the author's generalizations must be accepted with a great deal of reserve—and that the reader will be well advised to verify his facts. He will not be greatly aided in this task by the bibliography which omits for example any reference to such well known authorities as Korkounov, Kohler, Stammler, Gény, Saleilles, Cardozo or Kocourek.

There are numerous irritating errors in proof-reading. It should not be necessary to point out that nouns in German are capitalized (*see pp. 29, 95*), and there is no excuse for such sloppy mistakes as *'Alteri Stipulari nemo potest"* (*p. 248*) *"testamentum in comita calatis"* (*p. 237*) *"Spondio"* (*p. 253*) *"per vindicitionem"* (*p. 237*).

But these, after all, are small matters. A much graver charge to be laid is that the author has evaded more than one of the chief problems of modern jurisprudence. At *p. 125* he says: *"A discussion why the law chooses to recognize certain 'group personalities' while denying legal recognition and separate legal existence to others would be too remote from the subject to merit discussion here."* All that need be said in reply is that if a book on jurisprudence refrains from discussing the most debated problem in modern juristic thought, it cannot be regarded as making any serious attempt to cover its assigned field. [The references given in note 1, p. 125, on this topic are very inadequate: readers will find a complete discussion and a comprehensive bibliography in Hallis on *Corporate Personality*.]

In *M'Naughten's Case* the Law Lords elaborated a rule as to the criminal liability of the insane which has formed the basis for argument ever since. At *p. 153* the author states the rule and its application with no comment or criticism whatever. It is suggested that if this book ever reaches a second edition the author, if he feels disinclined to discuss the rule, will at least indicate in a footnote the extent of the literature to which the rule has given birth.

The chief defects of this book may be accounted for by premature publication. The reviewer cannot pretend to any great degree of sympathy with the author's position which is Austinian: a conception too insular, and insulated, for our liking. The author however is entitled to range himself in the camp of Austin—and he has distinguished companions there.

It would be unfair not to note that Professor Keeton out of the store of his rich experience has given us some illuminating comparisons with Chinese law, a subject upon which Professor Keeton's

studies in *The Development of Extraterritoriality in China* (1928) entitle him to speak as an authority. The student and the general reader will find the present volume interesting and suggestive: if we appear to be rather critical it is because the author's previous works and his acknowledged success as a teacher lead us to expect and require a rigorous standard of accuracy.

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CONSTITUTIONAL DOCUMENTS.*

When the first edition of Professor Kennedy's work was issued in 1918 a competent reviewer said of it: "Canada has in her constitutional history illustrated every phase of British Colonial Government . . . Professor Kennedy makes this development unfold itself with dramatic interest. No other volume in existence provides such an adequate collection of material for its study." The acceptance the work has met with in the universities, the law-schools and the courts (counsel have been allowed to cite it in argument before the Judicial Committee of the Privy Council) fully justified the preparation of a second edition, which puts us in possession of all material at present available for acquainting us not only with the political theories prevailing in the provinces prior to 1867 from which a desire for union was bred, but also with the type of union the Fathers of Confederation sought to set up by the organic Act of 1867. That Canadian federalism was intended by its founders to rest on the unitary principle, as distinguished from the principle of dualism that obtains in the American system, is fairly obvious from the documentary evidence assembled in Professor Kennedy's book. That there is a tendency abroad at the present time to obliterate that intention cannot be gainsaid, a matter which must have an unfortunate reaction upon the national spirit in Canada which has been all too slow in its growth.

Adverting to the aim of the Fathers of Confederation to provide for the development of Canada into a nation in the true sense of the word, we quote the following passages from Sir John Macdonald's speech in the Parliament of the old Province of Canada in

**Statutes, Treaties and Documents of the Canadian Constitution, 1729-1929.* Edited by W. P. M. Kennedy, M.A., Litt. D., Professor of Law in the University of Toronto. Second edition, revised and enlarged. Toronto: Oxford University Press, 1930. Price $6.00.

1865. They will be found at pp. 558, 559 and 568 of the new edition of Professor Kennedy's work:

> Ever since the [American] union was formed the difficulty of what is called "State Rights" has existed, and this had much to do in bringing on the present unhappy war in the United States. They commenced, in fact, at the wrong end. They declared by their Constitution that each State was a sovereignty in itself, and that all the powers incident to a sovereignty belonged to each State, except those powers which, by the Constitution, were conferred upon the General Government and Congress. Here we have adopted a different system. We have strengthened the General Government. We have given the General Legislature all the great subjects of legislation. . . . . We have expressly declared that all subjects of general interest not distinctly and exclusively conferred upon the local governments and local legislatures, shall be conferred upon the General Government and Legislature. We have thus avoided that great source of weakness which has been the cause of the disruption of the United States . . . I believe that as we grow stronger, that, as it is felt in England we have become a people, able from our union, our strength, our population, and the development of our resources, to take our position among the nations of the world, she will be less willing to part with us than she would be now, when we are broken up into a number of insignificant colonies, subject to attack piecemeal without any concerted action or common organization of defence.

It is said of St. Thomas Aquinas that to an inquiry as to how a man might become learned he answered: *"By reading one book."* That saying might be applied with appropriateness to Dr. Kennedy's book as regards those who would be learned in what was said and written aforetime about the constitution of Canada.

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INTERNATIONAL LAW CONFERENCE.*

This is an interesting report of the proceedings of the Fourth Conference of American Teachers of International Law and Related Subjects. Many of the addresses at the Conference demand the attention of those who are interested in the changes that are taking place at the present day in the rules of international law. One of the papers is by Dr. Alejandro Alvarez, the well-known international jurist. The title of his paper is "The Necessity for the Reconstruction of International Law—Its Aim." Speaking on the project in detail he says (p. 14):

* *Proceedings of the Fourth Conference of Teachers of International Law and Related Subjects.* Held at Briarcliffe Lodge, New York, October 10-17, 1929. Washington: Carnegie Endowment for International Peace, 1930.

Let us confine ourselves to stating that in international life there are four almost concentric circles of relations in close connection, which can and should be distinguished from one another, but which it is impossible to separate.

I. Those which can be submitted to legal rules.

II. Those which are not a part and cannot be submitted to such rules. They are generally of a political character. Formerly, politics were arbitrary: in order to remedy this the lawyers have tried to submit these relations to legal rules. The truth is that these matters can only receive a solution which is based on justice and equity.

III. Those which relate to international organization, which is one of the tendencies in the life of nations; they are subject in part to legal rules and in part to politics, but preserve a distinct character.

IV. Those which relate to the domain of psychology, of sentiment, and the mentality of peoples; especially those which are the primary basis for peace, confidence, and co-operation between the nations.

International law must in the future contain these four elements, not in a haphazard fashion, but permanently, for their sum constitutes international life and gives it its physiognomy.