


REVIEWS AND NOTICES.

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AN OUTLINE OF INTERNATIONAL LAW.

This is one of the first excursions of Mr. Manning, the recently appointed Professor of International Relations in London University, into the realm of International Law, and one is undecided whether to commend or to criticize him for this translation. Of the debt due him by English-speaking lawyers and students everywhere, there is no question, for it is of the utmost importance that we should know intimately the views of other nations on International Law, and Dr. Hatschek's little book¹ is admirable for this purpose. But Professor Manning has turned the German into English, so literal, that at times the construction is almost grotesque and one cannot help feeling that, while it may add to the strength and accurateness of the English text, it is a pity that the style is not better and the book more easily read. For instance, on page 65 the text is—

the very notion of an ambassador assumes that he carries the official effectiveness of the acts of a foreign state from the latter's territory to within the domain of the receiving state. No, extraterritoriality rather means merely an exemption from the jurisdiction of the receiving state. That these two notions of extraterritoriality were confounded together so that the true idea is even today misconceived is due to the linguistic usage of medieval Latin, whereby *territorium* meant at one and the same time "territory" and "jurisdiction over territory."

—and this is typical of the whole book.

The subject-matter of the book itself is extremely interesting and decidedly stimulating, probably because I so thoroughly disagree with much that is in it even while I have to admit that many of the orthodox authorities are on the side of the author. It is unnecessary to go into all of these debatable points but I shall indicate a few of the more interesting.

The attempt in Part II to work out a jurisprudence of International Law along lines similar to those followed in national jurisprudence, and the division of the subject into "international

¹*An Outline of International Law.* By Dr. Julius. Hatschek, late Professor of Law at Gottingen University. Translated from the German by Professor C. A. W. Manning, Cassell Professor of International Relations in the University of London. Toronto: Clarke, Irwin & Co. Ltd., 1930. Pp. viii, 364. Price \$3.00.

juristic acts," "pieces of international business" and "international delicts" is thought provoking, but there is this difficulty or rather difference, that whereas human beings are, as it were, themselves physical facts, to whom the incidents of "conception," "birth," "coming of age," and death may not be juristic acts with juristic consequences, "states," on the other hand, are artificial creations and there seems to be no good reason why their relations and the happening of state events should necessarily or even conveniently be divided into juristic acts and pieces of business.

The passages on page 10

that states alone, and not individuals, can derive rights from international treaties. And since international law applies only as between states it is only upon the offending state that the consequences of a breach of international law may be visited, and redress for such breaches can never be properly exacted from the subjects who, under the orders of their government, commit illegalities.—There is no such thing as war-crime on the part of an individual . . . and the Treaty of Versailles (which) lays upon Germany the duty of handing over to the Allies the so-called "war-criminals" is an outrage—an outrage upon international law.

is not in harmony with the more modern developments in international law for the individual, and groups of individuals, e.g., minorities, are coming into such prominence that it is extremely difficult to deny them "rights and duties" or to hold that they are not in reality "subjects" in international law.

The British Empire is not dealt with in any detail but the statement on page 33 that "Amongst confederations of to-day the British Empire deserves a special mention," indicates an attempt to find room for it in the old classification of states rather than an appreciation that it is something new and different, which does not fit into any of the accepted categories, while the statement on page 112 that "certain English colonies, South Africa, Canada, Australia and India too, are eligible for membership in the League, although the conduct of their foreign policy is dictated by England" does not indicate any real understanding of the position of the British Dominions in world affairs.

Nor is the statement on page 36 that, because Danzig is protected by the League there is no possibility of its ever becoming a member of the League, particularly helpful, for membership in the League is something which is accorded by the members themselves and while it is unlikely that Danzig will become a member, the reason for this is its small size, and the fact that Poland is given the conduct of its foreign relations, rather than because it is protected by the League.

The list of "important primordial rights" on page 93 is most interesting and the first one, "the right of equality, implying the injunction to every state that it do treat every other state in the fashion in which it, as a state, would wish to be treated" is reminiscent of the Golden Rule and like the Golden Rule conspicuous by its non-observance. The denial of the rights of sovereignty of the littoral state, page 139, over the littoral sea and the view that the littoral sea is merely a continuation of the open sea, seems unsound and is not in accordance with the views of the delegates to the Conference for the Codification of International Law which met at the Hague in March, 1930, who agreed that "it is recognized that international law attributes to each Coastal State sovereignty over a belt of sea round its coasts."

The statements, page 157, that "the foreigner when being expelled must accordingly be allowed to choose whatever frontier suits him best," and that "considerations of labour policy may not be made a pretext for expulsion of foreigners" have an archaic ring in view of the treatment ordinarily meted out to aliens in immigration countries.

The statement that all treaties "must be contracts between states" gives no recognition to the view, so ably expounded by Dr. McNair in the current (1930) volume of the *British Yearbook of International Law*, that it is essential to distinguish between contractual and legislative treaties.

The statement, page 224, that "war then is a totality of pieces of juristic business, not, that is to say, a totality of juristic acts" is a rather unique definition of that topic, as is the treatment of war in general.

These are but a few of the many interesting views expressed, but they will serve to illustrate how valuable the book is as a complement or antidote to many of our modern English treatises on the subject, and should force the student to reconsider his views on a great many topics. It should, in addition, emphasize the need for some form of international codification or some common source of law if an international court of justice is to continue to function to the satisfaction, and with the good-will of the nations subject to its jurisdiction.

The book includes an introduction by Professor Manning, in which he ably defends his unusual translation, an appendix containing a great many extracts from the Treaty of Versailles and a useful index.

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PEERS AND PEDIGREES.*

It is merely a commonplace to say that if we trace back the history of a noble house in England we are most likely to find it deriving its first honours and dignities through the rise to power and affluence of some man of the law. The history of the house of Bedford is an exception—but if the family has given us no great lawyers it nevertheless has given the profession cause to be grateful. The name of Russell is writ large on the pages of English history—and it also figures in many leading cases. The family has been cursed with litigation. Francis, fourth Earl of Bedford, opened up a veritable gold mine for lawyers when he undertook the draining of the 'Bedford level' to be rescued from his embarrassments only when King Charles took over the work in 1638. The Duke of Bedford who was excoriated by 'Junius' was a determined and rancorous litigant. That stormy petrel of Victorian policies, Lord John Russell, was no stranger to the law courts. The name of Russell figured unhappily in a *cause célèbre* of the eighteen-nineties and in 1924 a member of a cadet branch of the family figured in a famous suit which called forth from Lord Birkenhead one of the most brilliant (and most discussed) judgments ever pronounced by that great lawyer.

The lawyer, then, has reason to be interested in the history of the Russells:—but it is not from the legal standpoint that the present book has been written. The author says in her preface:

Some years ago the Duke of Bedford gave me leave to use part of his collection of household accounts as a basis for the study of the working of a great household during the seventeenth century. It was then my intention to insert two preliminary chapters, the one dealing with the rise of the Russell family, and the other incorporating such household papers, sadly few in number, as have survived from the days of Francis, second Earl of Bedford, the Elizabethan statesman. These two chapters have now expanded into the present volume which it seems better to present separately. It is intended only as a study in social history.

The origins of this celebrated house are sketched in vivid detail. The family of the Bedford Russells can trace its descent definitely and with accuracy from a certain doughty Weymouth merchant of the fifteenth century who made money, married well, served his king in parliament and in small offices and established the family among the squirearchy. It was this Henry Russell's grandson who

* *Two Centuries of Family History: A study in Social Development.* By Gladys Scott Thomson, M.A., F.R. Hist. Soc. 396 pp. Toronto: Longman's Green & Co. 1930.

reached the charmed circle of the court, rose to prominence under Henry VIII, kept his head in the troubled days of religious warfare and died in 1555, Earl of Bedford and a Garter Knight. His only son, Francis, the second Earl of Bedford played an equally important part with his father in the affairs of state; he too was made a Knight of the Garter, and so in the span of two lives were consolidated the fortunes of one of the most illustrious families in England.

The chief theme of the book is foreshadowed in the title of its first chapter, "The Making of Pedigrees." The story is told of the ingenious attempts made by sycophantic genealogists to trace the family's lineage from a mythical 'Hugo de Rozel,' a companion of the Conqueror, down through certain Russells who are found holding Kingston Russell in Dorset as early as the reign of King John. This story leads the author to discuss the extreme importance which was attached to ancestry by the people of England in the seventeenth century. The study of pedigrees engrossed John and Francis Russell but no more so than it engrossed their sovereigns. A roll still exists at Hatfield House which was made up for Elizabeth as early as the year of her accession showing her true descent, and that of her sister Mary, from Adam, Eve, Methuselah, and Seth. That was an uncritical age but perhaps less so than the next reign when James had made for him, by Thomas Lyte, a table showing the descent of the royal house from Brutus, Noah, and Woden, all in a fine jumble together, a table which James is said to have studied 'long and seriously.' Finally, in a glow of delight, he presented the author with his picture set in gold with diamonds!

One is amazed at the care and attention bestowed on matters of pedigree by people of an earlier age, but lawyers will not need to be reminded that, after all, there were many valid reasons for such care in Tudor and Elizabethan days, and we know that even today, when such reasons have, in the main, disappeared, there is a lot of pother over vain genealogies and fables. If the Russell pedigree has its weak spots, a humbler order of men may wonder whether the ambitious 'family tree' so cunningly wrought on vellum, or the 'coat of arms' painted above the fireplace is worth the money it costs.

The study of the Bedford household accounts and papers has yielded a rich harvest. Here are the minutiae of domestic affairs in a great Elizabethan home, and the lawyer will read and enjoy the records of old suits, conveyances, wills, and settlements. Lack of space forbids any extended reference, but the passport granted to the second Earl by Philip and Mary in 1555 prior to the Earl's two-year visit to the continent, the text of which is given on pp.

205-6, suggests a small but interesting subject for historical research: no one has yet attempted to give us a comprehensive history of the traveller's bugbear throughout the ages.

This is a book of unusual interest, worthy of the high repute of its author. Publishers and printers are also to be congratulated. The text is enriched with reproductions of portraits and documents and the facsimile of an illuminated pedigree drawn up for Francis, second Earl of Bedford, is supplied in a pocket at the end of the volume.

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Blenheim. By George Macaulay Trevelyan, O.M., Toronto: Longmans, Green & Co. 1930. Price \$7.00.

Any piece of history written by the present Regius Professor of Modern History at Cambridge is a satisfying thing both to the scholar and the man who is merely curious to read about what was done and thought in the world before he came into it. For Professor Trevelyan writes as one, who, to quote his own words, "cannot abandon the older ideal of History that was once popular in England, that the same book should make its appeal both to the general reader and to the historical student." Anyone who is familiar with his most excellent *History of England*, published in 1926, will concede that he is a master of the method by which the ideal he espouses is achieved.

The book before us is but a portion of the author's plan to present a complete history of England under Queen Anne; yet it has unity of movement and climax within itself, because, while there is a somewhat lengthy prologue, the drama proceeds with forthrightness towards Blenheim after Anne and Marlborough come on the stage. It is a valuable exposition of some of the chief features of the 'Augustan age' in England.

Professor Trevelyan is a descendant of a sister of Lord Macaulay, and this kinship lends a piquant quality to the following passage in the work before us (p. 178):

Macaulay adopted his unfavourable reading of Marlborough's motives and character straight from Swift and the Tory pamphleteers of the latter part of Anne's reign. Macaulay, indeed, was less often misled by traditional Whig views than by his own over-confident, lucid mentality, which always saw things in black and white, but never in grey.

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