

## REVIEWS AND NOTICES

✎ Publishers desiring reviews or notices of Books or Periodicals must send copies of same to the Editor, Cecil A. Wright, Osgoode Hall Law School, Toronto 2, Ontario.

*De Re Militari et Bello Tractatus.* By PIERINO BELLI. Two Volumes. Volume I, The Photographic Reproduction of the Edition of 1563, with an Introduction by ARRIGO CAVAGLIERI. Volume II, The Translation. By HERBERT C. NUTTING. (The Classics of International Law Series. Publications of the Carnegie Endowment for International Peace.) New York: Oxford University Press. 1936. (\$7.50)

The republication of the classic works connected with the history and development of International Law was undertaken by the Carnegie Institute at Washington in 1906 at the suggestion of our Canadian Dr. James Brown Scott, then Solicitor for the Department of State. He has acted as a most efficient General Editor of the Series both before and since the project was in 1917, transferred to the Carnegie Endowment for International Peace, which continues the publication of the Series.

This is the 18th and by no means the least interesting of this valuable series. Until a comparatively recent time, students of International Law—*crede experto*—were accustomed to be referred to Grotius as the original oracle on the subject. His *De Jure Belli et Pacis* was first published in 1625, but a few years ago, Gentili's *De Jure Belli*, published in 1568, began to receive the credit due it and its able author. And now we have an edition in English (as well as the original mediaeval Latin) of the *De Re Militari et de Bello* of Pierino Belli, first published at Venice in 1563 under the imposing title—

PETRINI

Belli, Albensis

IVCONSULTI INCLITI  
ET SERENISSIMI  
EMANVELIS PHILIBERTI  
SABAVDIAE DVCIS  
CONCILIARII

*De Re militari & Bello Tractatus* diuisis in partes XI  
IN quo, preterea, quae de Re militari tractantur, obiter multa,  
quae ad ciuilem administrationem attinent, attinguntur;  
omnibus iudicibus apprime necessarius.

CUM PRIVILEGIO

(Print representing an angel carrying books, &c.)  
Venetijs excudebat Franciscus de Portonotarijs

M D L X I I I

The book was dedicated to King Philip II of Spain; and the reasons assigned for writing it were "to show what, according to the principles of law, are the just causes of war, what things are lawful and what are unlawful for princes and leaders of armies in the conclusions of alliances and the conduct of military operations; how the captains and even the rank and file should conduct themselves in their relations with an enemy in arms, with prisoners, and with merchants and farmers both on their own side and the enemy's side, what treatment should be accorded to enemy property, &c." In short, the treatise is an exposition of the international law, resulting from the application of the principles of natural law.

Belli was born in Alba (hence his addition "Albensis") in 1502, and became military auditor in the army of the Emperor Charles V, and a Counsellor of State for Emperor Philip II.

The translation is admirable—as was to be expected from the competent scholar, entrusted with it. In a few passages, all may not agree with the connotation. The Latin of the author would be strange to Vergil or Cicero, but it is mediaeval and renaissance; and the learned editor points out that the orthography would in some cases seem strange to St. Augustine. While the author's style is "unpolished rough and laboured", the whole work bears testimony to his profound sense of justice. One who declares war should not only have the lawful power to do so, but also a serious and just motive and cause: a reasonable period should elapse after declaration of war before hostilities begin: an enemy is not to be attacked by treachery: every action during the war should be as just as its origin: prisoners are not to be enslaved but treated without cruelty or abuse and with moderation: children and other non-combatants should be exempt from the horrors of war: the rights of neutrals are to be respected: in victory, moderation is to be observed: arbitration is to be substituted for war wherever possible.

It may fairly be said that Belli examined with care all the important juridical questions connected with war and that his conclusions were in general the same as those now universally accepted by the nations of our present world. No undue eulogy is found in the estimate of his chief apologist—Mulas in his *Pierino Belli da Alba, precursore di Grozio* (Turin, 1878), a booklet notable for its fairness. He says that with Belli there is recognized for the first time in the realm of science an independent international law. "The work of Belli represents the first attempt looking toward a scientific organization of the law of nations."

It is somewhat puzzling why his splendid work has been practically ignored. Even Gentili, who was undoubtedly familiar with his treatise omits to mention him and "boasts of being the first to treat scientifically the law of nations"; our standard Wheaton does not mention him at all. His recognition, such as it has been, seems to have come from Italians. It was well worth while to introduce this remarkable book to the English-speaking world.

It need not be said that paper, type, binding, proof-reading are all impeccable; and the Indices are perfect.

WILLIAM RENWICK RIDDELL.

Osgoode Hall, Toronto.

*Cases and Other Materials on International Law.* By MANLEY O. HUDSON. Second Edition. St. Paul, Minnesota: West Publishing Company. 1936. Pp. xl, 1440. (\$6.50)

The fact that the distinguished editor of this collection of cases and materials, the Bemis Professor of International Law in the Harvard Law School, is now a member of the Permanent Court of International Justice, is a matter of some extrinsic interest which will doubtless tend to increase the circulation of a book which by reason of its intrinsic merits is already widely used, and which is an indispensable part of any working library on International Law.

An old fashioned pre-War student of International Law, on looking at the table of contents, will be at once impressed by the change of emphasis which has taken place in the study of the subject in more recent years. Formerly the "law of war" (including the rules supposed to govern belligerent states and neutral states respectively, in time of war) used to occupy as important a place as the "Law of Peace", in any book on International Law. It is true that war is abnormal and peace of a precarious sort is normal, and that the experience of the Great War showed that rules governing states during former wars may be found to be ill-suited to modern conditions or may be disregarded by belligerent states. It may still be important, however, that in time of peace students of International Law should acquire a special knowledge which may be useful in moulding public opinion and advising their own governments in the sudden exigencies of war.

The book under review gives relatively little space to the rules governing the conduct of belligerent and neutral states in time of war. On the other hand it contains an invaluable collection of documents concerning various aspects of the relations of states to each other in time of peace, and concerning the multifarious tribunals, bureaus and other organized bodies designed to promote the peaceable settlement of disputes between different states or subjects of different states and to facilitate co-operation in matters of international or cosmopolitan aspect.

The book begins with a "selected library of International Law",—nineteen pages of bibliography in the new edition, instead of eleven pages in the first edition, published in 1929.

Chapter 1, entitled "The Society of Nations" begins with a new section (The Law and the Society of Nations) consisting of nearly twenty pages of definitions or descriptions of International Law extracted from works by various authors. In section 2 (Membership in the Society of Nations) of the same chapter, three cases appearing in the first edition are omitted, and items which appear for the first time in the present edition include an editorial note on the British Commonwealth of Nations (p. 28), the treaty of February 11, 1929, between the Holy See and Italy, with an editorial note (p. 38), *International Institute of Agriculture v. Profili*, in the Court of Cassation of Italy (p. 39), editorial notes on Government by Trading Companies (p. 43) and Extinction of States (p. 44). In section 3 (Restrictions on Certain States) the material has been rearranged to some extent and new items have been inserted. In section 4 (Dependent Communities) new items are the Agreement between Great Britain and the State of Perlis of April 28, 1930 (p. 57), editorial notes on the Status of a Protectorate

(p. 63), the Application of article 22 of the Covenant of the League of Nations (p. 71) and the Commonwealth of the Philippines (p. 76).

The foregoing itemized statement, resulting from a detailed comparison of Chapter 1 as it appears in the first and second editions, respectively, is sufficient as an example of the work done by the editor, and shows that the new edition is a thoroughly revised book, brought up to date by the insertion of new material, accompanied by the omission of some old material and some rearrangement of the old and new material.

The subsequent chapter headings are as follows: 2. Recognition of States and Governments; 3. Nationality; 4. The Territory of States; 5. The Jurisdiction of States; 6. State Succession; 7. Diplomatic Inter-course of States; 8. Agreements between States; 9. International Co-operation in the Administration of Justice; 10. International Regulation of Commerce and Industry; 11. Treatment of Aliens; 12. International Claims; 13. Pacific Settlement of International Disputes; 14. Hostile Relations of States; and 15. The Law of Neutrality.

JOHN D. FALCONBRIDGE.

Osgoode Hall Law School.

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*Sir Travers Humphreys. (His Career and Cases).* By BECHHOFFER ROBERTS, "EPHESIAN". London: The Bodley Head. Toronto: Wm. Collins Sons and Company. 1936. Pp. xiii, 336. (\$5.00)

This volume of some three hundred pages discloses its subject as a man of exceptional gifts who from an early age regarded the law and its practice as sufficient to claim his whole working time and attention, and he has served the law for some fifty years with singular devotion and great success. Sir Travers Humphreys, presently and for the past eight years a Justice of the High Court in England, does not appear at any stage of his career to have felt any attraction to what we call public life, or to any of the side issues with which even lawyers of distinction have been wont at times to round out their busy lives.

The book consists almost entirely of an account of the most interesting cases with which Sir Travers has been connected, first as Counsel, then as a Judge; and a very entertaining account it is.

The cases chosen are of a catholic variety, though murders undoubtedly predominate, and even amongst these there is not that monotonous similarity of one case to another which the reader sometimes encounters in a work of this kind. And not less interesting are the trials dealing with some of the most colossal frauds which have come before the English Courts. When one reaches the middle of this volume and reads there the trial of Horatio Bottomley, master humbug, completely exposed some fifteen years ago through the painstaking and skilful work of Sir Travers Humphreys, one feels that the book has surely reached peak interest, but as the reader continues his interest does not lag, and in fact the story of the undoing of Leopold Harris and his arson gang and their far-reaching ramifications in high and low places, holds the interest as completely as any detective story in fiction.

Even the names of some cases recall events which stirred a world-wide interest in the past quarter of a century : the Crippen case; Oscar Wilde; Smith, the bath-tub murderer; Pemberton-Billing, M.P.; the famous Mr. "A" case; the tragic Roger Casement.

Although engaged in many of the most outstanding trials that came before the courts for nearly 40 years, matching steel with the most brilliant and resourceful members of the English bar, yet Sir Travers never took silk, a fact which the author explains by reference to a tradition that Treasury Counsel shall not take silk. At a time when the royal letters after a barrister's name have come to signify so little in this country, it may be timely to recall that it still means very much in England, and is surrounded by well recognized limitations.

There is a wholesome vein of humour cropping out here and there throughout the book, and glimpses are vouchsafed also of the England which produced the man. A strange England. So slow moving at times. At others, so modern. To illustrate : In 1935 a husband's liability for his wife's tort was abolished. The justification for this liability, says the author, was that a married woman had legally no separate property out of which to satisfy judgments against her. Yet that had ceased to be the case in 1882, just 53 years earlier! On the other hand, in the trial of Harris and others for arson, where time was of the essence in a trial which was bound to be long at the shortest, the suggestion that the solicitor in charge should be provided with a telephone at his seat was instantly approved by Mr. Justice Humphreys. Space will not permit us to recount here the unique use that was made of this device during the trial, but it revealed a capacity in those ancient wheels of justice to turn as swiftly as any on this continent of short-cut methods.

This book may be ranked a distinct success.

ARTHUR A. MACDONALD.

Toronto.

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*Fingerprints. (The Numerical Index or Fingerprints Revolutionized.)* By F. BREWSTER. With an Introduction by A. K. BASU. Calcutta: The Eastern Law House. 1936.

The reader who wishes ready access to an authoritative handbook on the subject of fingerprints is recommended to acquire this volume. The outstanding merit of the work is the author's success in achieving his aim to provide "a complete and exhaustive manual on the subject so that the jurist will find within its covers, full information on any point he desires". The book, scarcely half an inch in thickness, fairly bulges with data on the history, practice, validity and pitfalls in the modern use of finger impressions. Citations of pertinent cases are generously supplied in support of the author's theses on the proper interpretation and use of fingerprints as evidence in courts of law.

A racy, almost "chatty" style, combined with an excellent index and a thoroughgoing use of sub-headings has succeeded in making a highly complex subject seem simple and entertaining. Mr. Brewster's lifelong studies have led him to New Scotland Yard and to New York but his practice has

appropriately been confined to India, the home of modern fingerprint methods. Here he has attained the first rank in a difficult field; for the customary use of finger impressions as a signature to all kinds of native documents greatly broadens the scope of the expert. The author brings forcibly to light the practical possibility of forging fingerprints. The rather startling revelations made in this part of the book compel the attention of lawyers, for there seems to be no good reason why successful exploitation of this fraud among the Kabuli and other Indian extortionists should not merit imitative flattery in the hands of Occidental crooks.

The author is clearly an enthusiast, for after ranging over the whole realm of fingerprinting and introducing an entirely new method of classification, he ends by setting a self-examination paper to test the reader's grasp of the subject matter of the book. This unusual feature has one great value, in that it provides at a glance an accessory and very comprehensive compendium of the contents of the volume.

W. H. B.

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*Dominion Report Service.* 1936. Montreal and Toronto: The Kingsland Company. (\$10.00)

Just a year ago we reviewed in these columns the first part of this service. The completed volume which has come to hand contains within 470 pages epitomes of all the judgments recorded in Canada during the last year. Included in this compilation are decisions of the Privy Council on appeal from Canadian courts. The volume is exceptionally well indexed and to the practitioner who desires to keep abreast the development of case law throughout Canada, but who has not the time to read the full reports from the many courts in this country, the volume should prove of great service. So far as we have been able to judge, the abridgements are accurate and present in abbreviated form the gist of the decisions noted.

C. A. W.

#### BOOKS RECEIVED

*The inclusion of a book in the following list does not preclude a detailed review in a later issue.*

*A Treatise on the Law of Contracts.* By SAMUEL WILLISTON. Revised edition by SAMUEL WILLISTON AND GEORGE J. THOMPSON. In Eight Volumes. New York: Baker, Voorhis & Company. 1936. Four Volumes printed to date). Vol. I, pp. xix, 926; Vol. II, xi, 927-1724; Vol. III, xii, 1725-2579; Vol. IV, xiii, 2581-3669. (An article dealing with the importance of this treatise to the Canadian profession will appear in a forthcoming issue.)

*Here's to Crime.* By COURTNEY RYLEY COOPER. Boston: Little, Brown and Company. Toronto: McClelland & Stewart. 1937. Pp. 454. (\$2.75)

*Assessment and Rating.* (Being the Law of Municipal Taxation in Canada). By H. E. MANNING, K.C. Second edition. Toronto: Canadian Law List Publishing Company. 1937. Pp. lviii; 775. (\$15.00)

*International Law.* By K. R. R. SASTRY, M.A., M.L., Reader, Law Department, Allahabad University. Foreword by PROFESSOR JAMES W. GARNER, University of Illinois. Allahabad: Kitabistan. 1937. Pp. xxxi, 472. (7s. 6d.)

*The Law of Damages.* By FRANK GAHAN, M.A., B.C.L., LL.B., Reader in Common Law in the Law Society's School of Law. London: Sweet and Maxwell. Toronto: The Carswell Company. 1936. Pp. lxxx, 242. (15s.)

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## CORRESPONDENCE

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Correction in the address of Chief Justice Rowell on  
*The Place and Functions of the Judiciary in Our Canadian Constitution.*  
(5 CAN. BAR. REV. 57)

EDITOR, THE CANADIAN BAR REVIEW.

SIR :

In my address, *The Place and Functions of the Judiciary in our Canadian Constitution*, published in the February issue of the CANADIAN BAR REVIEW, I stated :—

“The Federal Courts of the United States cannot declare a State law invalid because it violates the Constitution of the State, but they can, and do, declare State and Federal laws invalid which violate the Constitution of the United States.”

This statement was too broad so far as it applies to State laws which are alleged to be invalid because they violate the Constitution of the State. While true as a general statement, it is subject to an important qualification. The Federal Courts have jurisdiction over disputes arising between citizens of different States, referred to as jurisdiction based on “diversity of citizenship”. In the exercise of that jurisdiction Federal Courts feel themselves “bound to respect the decision of the State Courts and from the time they are made will regard them as conclusive in all cases upon the construction of their own Constitution and laws”. But if there is no settled ruling in the State Courts, then Federal Courts will rule independently on the question of validity.

For the sake of accuracy I should be glad if you would publish this correction.

Yours very truly,  
N. W. ROWELL.

Osgoode Hall, Toronto.