

normative order, the separation of powers becomes a mere formal distinction without substantive meaning. Yet, it was conceived as a political idea covering certain processes of the state as a social reality and was intended to establish a system of political checks and balances.⁷

In the final phase of his discussion, Ebenstein points to the moment of indeterminacy and therefore unpredictability of the law which results from the volitional element in all steps of the legal process. Emphasizing that the Pure Theory includes the unknowable as an inevitable part of the legal order, the author quotes a significant statement of Merkl: "The science of law as a science of legal norms does not compromise itself when it says that it does not know what is the law for a particular case; after all, it does know it in rendering the unequivocal and doubtlessly correct judgment: law is what the law-applying authority on the basis of the legal norm recognizes as law."⁸

This statement is, of course, a contradiction of the traditional theory that the legal norm as a rule of human conduct must possess certainty and if lacking this quality does not constitute positive law. Here, one remembers Holmes' remark, also quoted by Ebenstein, that law is nothing but the *prophecies* of what the courts will do. The Pure Theory recognizes the inherent dependence of the legal process on social and other factual phenomena. The purity of the theory consists only in confining its scope to the formal structure of the legal system and excluding the consideration of all other elements which enter into the positive order of the law.

The time has not yet come for a full appraisal of the historical importance of the Pure Theory. Yet it seems that it represents a climax of an era of analytical jurisprudence foreboding in its own system the rise of a new conception of legal science.

The foregoing review was necessarily limited to some important points of the Pure Theory which is almost completely presented in Mr. Ebenstein's book. The only principal topics which the author has omitted are the Vienna School's theories of the state and of international law. Mr. Ebenstein's book, however, is more than a scholarly presentation of the Pure Theory of Law. His many references to related and parallel thoughts in German, English, American, French and Italian legal literature make it instructive and stimulating reading. It is hoped that a translation will make it accessible to all American readers interested in jurisprudence.

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American Foreign Relations. By John Mabry Mathews. New York: D. Appleton-Century Co., 1938. Pp. xvi, 766. \$4.00.

This is a "revised and enlarged edition" of the same title which appeared in 1928 and which was in turn a greatly enlarged revision of *The Conduct of American Foreign Relations*, published in 1922. The book is divided into two parts with fifty pages of source material in appendices. Part I, consisting of eleven chapters, is concerned with a general statement on international relations and the development and content of American foreign policy. Part II, consisting of twenty-one chapters which constitute more than half of the book, is devoted to the conduct of and the machinery for carry-

⁷ See Sharp, *The Classical American Doctrine of the "Separation of Powers,"* 2 Univ. Chi. L. Rev. 385, 434 *et seq.* (1935).

⁸ P. 180.

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ing on American foreign relations. The chief additions and revisions have been made in Part I. Every chapter has new material and there are new chapters on the development of American foreign policy, Pan-Americanism, and neutrality. Part II has the same chapter headings and subtitles throughout as in the former edition.

When the topical arrangement is used, as by Professor Mathews here, the developmental advantages of a chronological treatment cannot be achieved. A partial solution to this problem kept suggesting itself to the reader. Why could not materials which are used in different sections be tied together by cross references in footnotes? Indeed this has been done to some extent in Part II, but a more extensive use of this technique might make all the materials more readily available.

It appears to this reader that Professor Mathews in his desire to be reasonable, leans over a little in his too ready acceptance of some of the current isolationist rationalizations and catchwords. He says that it was a blunder for the United States to enter the World War unconditionally, to make the world safe for democracy,¹ that experience has demonstrated the futility of "war to end war,"² that the terms of the treaty of Versailles were too severe,³ and that if Wilson had not gone to Europe to help make the treaty he would have been in a better position to repudiate its terms.⁴ It would appear to this reviewer that the blunder was not so much entering the "war to end war" as it was the betrayal of that purpose in running out on the peace making. Though the terms of the treaty may have been too severe, they were as lenient at the time as the American people would have approved, if the temper of the few Senators who opposed the League was any reflection of public opinion, as Professor Mathews seems willing to assume;⁵ but regardless of the severity, the failure of the United States to participate in organized international life probably did more to make these terms more rigid than did any other one factor. Wilson was relieved of the opportunity of repudiation by the Senate, and in the anarchy of the present we witness the fruits of that repudiation. So, it would seem that the blunder was not so much in entering the war or in the treaty making, as in the scuttling of the adjustive machinery which was set up in the treaty to achieve the purpose for which the United States entered the war.

Professor Mathews writes interestingly and clearly. He summarizes complex material in such a way as to make the trees and the woods appear in their proper relations. In fact his chief use of the trees is to give the woods perspective, his use of detail being for illustrative purposes only. This ability to make the main tendencies stand out is nowhere more apparent than in his treatment of the Monroe Doctrine.⁶ His organization is well done and clear. Its merit becomes particularly noticeable when one reaches the discussion of the non-recognition policy, beginning on page 181, in which the organization is commonplace. The book should be especially valuable for the lay reader and for text purposes.

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Annotations on Small Loan Laws. By F. B. Hubachek. New York: Russell Sage Foundation, 1938. Pp. lxx, 225. \$3.00.

The first 144 pages, representing all but 34 pages of the author's contribution, are taken up mainly with a listing of cases under the various sections of the sixth draft of the Uniform Small Loans Law as revised January 1, 1935. The cases are preceded with

¹ P. 53. ² P. 181. ³ P. 203. ⁴ P. 195. ⁵ P. 205. ⁶ Pp. 55-89.

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