

Undoubtedly statesmen abroad will be glad to hear that "we can create better and certainly more reliable instruments of control than these" (p. 37), but they would like to know what they are. Until they have been allowed to learn what these better methods are they will probably continue to use the methods they have thus far employed, although conscious of their inadequacies.

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International Law Chiefly as Interpreted and Applied by the United States (2d rev. ed.). By Charles Cheney Hyde. Boston: Little, Brown & Co., 1945. Vol. I, pp. lxxvi, 822; Vol. II, pp. xvii, 855; Vol. III, pp. xv, 810. \$45.00.

Hyde's *International Law* has been the standard American work on the subject for a generation. The author's method of comprehensively organizing historical materials, subjecting them to critical examination, and abstracting properly qualified legal statements has been familiar to users of the first edition and is not altered in the present volumes, although the intervention of twenty-three turbulent years has changed the weight of evidence on a number of points.

The new edition follows the first in classification and paragraphing, with some 200 new subordinated paragraphs discussing such subjects as the status of individuals under international law, mandates, international cooperation, recognition, the Monroe Doctrine, Polar Regions, self-determination, waterways, aviation, radio, nationality of women, interpretation of treaties, the right to make war, blockade, neutral obligations, and the international organization of peace.

Concerning the latter the author added a significant section at the end of the volume in September, 1944, after the rest of the book had gone to press. In this he emphasizes the lessons of two world wars, that the waging of war by powerful belligerents "is absolutely incompatible with the welfare of the several members of the international society whatever be their relation to the existing conflict" and "that by no means short of organized intervention will states bent on achieving their ends by the sword be deterred from so doing."¹ The United Nations in its provisions for intervention against aggressors is thus endorsed.

Professor Hyde recognizes in principle that "if flagrant and persistent violation of commonly acknowledged obligations that spring from basic principles are looked upon with indifference and are permitted to become the means of enabling the wrong-doer to acquire and demand respect for the fruits of internationally illegal conduct, the law of nations must lose its grip."² It is surprising that he does not apply this principle to the legal situation during a war of aggression. Hyde considers the Stimson Doctrine, which applies this principle to the aggressor's conquests, "merely a declaration of policy,"³ and he seeks to justify American departures from traditional neutral duties in the destroyer deal of 1940 and the Lend-Lease Act of 1941 on grounds of self-defense⁴ rather than on the ground that a State cannot acquire the benefits of neutral privilege as a fruit of its illegal acts of aggression.

In a foreword to the present edition, Professor Hyde clearly sets forth his theory of international law. International law is the statement of conduct which may be ex-

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¹ P. 2420.

³ P. 375.

² P. 18.

⁴ P. 2235.

pected of States. "How fantastic and unscientific," he writes, "are statements or conclusions which ignore such expectations or probabilities; and how unconvincing it is to the layman to hear proclaimed as the law rules which States under certain well-defined circumstances may be expected habitually to ignore. Such proclamations suggestive of preachments concerning what States should or should not do, shed little light on what they may at the time accept as correct standards of conduct to be respected as such."⁵ Nevertheless, Professor Hyde recognizes that expectations are to be discovered from sound appreciation of future needs of States no less than from analyses of their past behavior. He is a "positivist" in the sense that he regards international law as what is, not what ought to be, and in the sense that he puts actual expectations ahead of logical deductions from asserted principles. Like Charles Peirce, however, he recognizes that future possibilities and general principles may be realities no less than actual happenings. Therefore, he does not deny that moral opinions widely prevalent and logical consistencies apparent to all are bound to influence behavior as long as man remains a social and rational animal and, therefore, must be considered in formulating expectations of behavior. Perhaps, therefore, Hyde should be described as a "Grotian" rather than as either a "positivist" or a "naturalist." The practice of States, the consent of States, the moral principles of civilization, and the conditions of the world community all have to be considered and weighed with the object of judging how the bulk of States now and in the immediate future may be expected to act.

While this "Grotian" view of the law, stated in the foreword, corresponds to Hyde's consistent weighing of considerations in his text, his formal statement of the sources of international law in the initial chapter, differing little from that in the first edition, is less eclectic. There international law is defined as "the principles and rules of conduct declaratory thereof which states feel themselves bound to observe, and, therefore, do commonly observe in their relations with each other."⁶ Custom and treaties are emphasized as the sources of international law and no mention is made of "general principles of law" referred to in the Statute of the International Court of Justice. Juristic analysis and judicial precedents, also mentioned in that instrument, are relegated to a secondary position.⁷

Hyde writes of international law as applied by the United States, but he does not imply that there is an American international law different from others. International law in his opinion is universal, and he recognizes that the United States has so regarded it. His approach is very different from that of writers on "American international law," "Soviet international law," or "Nazi international law." Such discussions assume that great areas of the world have recognized rules of international law different from those applicable in other great areas. Hyde, on the other hand, treats international law as including only those rules binding substantially all states. Treaties may be evidence of such rules, but in themselves treaties are contracts between the parties. He considers international law superior to municipal law in principle even though this superiority may not be enforceable by national courts.⁸ On the whole he is optimistic though he completed his treatise in the midst of world war. Better enforcement and better law, he believes, "are within the reach of the States which today seek to maintain international law. Because they are, there is a basis for the expectation that the growth rather than the diminution of respect for that law may be anticipated."⁹

While Hyde's philosophy of international law indicates careful and mature thought,

⁵ P. vii.

⁶ P. 1.

⁷ P. 10.

⁸ P. 16.

⁹ P. 20.

his book will be sought primarily as a reference by those who wish to find what the law is on a particular point. For this purpose, the elaborate table of contents and index will be of service, and the excellence and completeness of the discussion of every point will assure many users.

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The Faith of a Liberal. By Morris R. Cohen. New York: Henry Holt & Co., 1946. Pp. 471. \$3.75.

Unless the reader is already familiar with Mr. Cohen's meanings for the words *faith* and *liberal*, the depth, richness, and delight of this collection of his essays cannot altogether be anticipated from its title. The collection consists of some fifty-five papers varying in length from two to thirty pages and varying in subject matter sufficiently to suggest the range of Mr. Cohen's mind and interests. All but four of the pieces have been published before but in widely scattered places over the past thirty years, and it is in the nature of a public service to have had them collected here for us.

There is enough of law here for those who would insist on an intimate connection with their special field. Thus, we have memorial essays on Cardozo, Brandeis, and Holmes, who is a particular hero of Mr. Cohen; we have a study in constitutional law; some remarks on the Sacco-Vanzetti case; a legally sophisticated analysis of the Bertrand Russell case; and, of course, the effective review of Mr. Arnold's *Folklore of Capitalism*.

But, like the title, such an enumeration does not do justice to the catholicity of Mr. Cohen's interests. It is sometimes said that a good book is really a conversation between author and reader. That, I think, goes to the root of the appeal of this book; it is simply mellow, wise, generally wonderful conversation. And it is conversation which lights up corners of human interest from the technical difficulties of Spinoza's conception of God to debunking the Magna Charta; from the dilemma of philosophy in the modern curriculum to whether one should turn Communist; from the weaknesses of Frazer's anthropology to baseball. In fact there is everything here but a special theory of Hamlet and even on that score we are reminded: "That men's thoughtless or impulsive acts are always wiser than their reasoned conduct is hardly shown, even in the case of Hamlet."

It is Spinoza with his serenity and his intellectual love of God who appears on these pages as Mr. Cohen's chief hero, and liberalism for Mr. Cohen appears as the quality of mind of the Spinozas and Socrates. Mr. Cohen, too, is throughout an intellectual gadfly, consistently and delightedly stinging us out of our complacent generalizations, whether from law, economics, metaphysics, art, or biology. It is of Mr. Cohen's liberalism to remind us repeatedly of the pathetic and permanent finitude of human knowledge and of the infinitude of human ignorance and yet to insist that the seeking of rational explanations is one of the best businesses for man. And again it is liberalism in his sense to face frankly the considerable and permanent amount of evil in human life and yet to retain and to inspire a zest for living. We may perhaps suspect by this time that liberalism for Mr. Cohen has become, in effect, wisdom, and wisdom, "as Sophocles said long ago, is a major part of happiness."

A special word about the wit which seems an integral part of the wisdom. We are

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