

BOOK REVIEWS

The Professional Ideals of the Lawyer. By HENRY WYNANS JESSUP. New York, G. A. Jennings Co. Inc., 1925. pp. xlii, 292.

Security Against War. By FRANCES KELLOR, and ANTONIA HATVANY, collaborator. New York, The Macmillan Co., 1924. Vols. II, pp. ix, 851.

If the reader of a book-review is entitled to know what the author has tried to do, how the author has succeeded, and what the reviewer thinks of it, then I say at once, that Miss Kellor has written a treatise to belittle, if not defame, the League of Nations and the World Court. She has done it with such painstaking research and dialectic skill, that her two volumes constitute a veritable Borah Bible, or Isolationist Iliad. Her conclusions, however, will not bear critical analysis, and in my judgment, are unwarranted by the facts.

The League of Nations, like the United States of America, was formed after a war, for two main purposes; first, to promote peace, and second, to promote progress. Miss Kellor deals only with the peace efforts of the League. On scarcely a single count does she feel it possible to commend the League, the Covenant, the Council, the Assembly, the Secretariat, or any of their activities. Says Miss Kellor:

"The centre of responsibility for the settlement of disputes under the Peace Treaties is not the League of Nations, but the principal allied powers." * * * "Machinery established under the Covenant to maintain peace, disregards sound principles of political organizations." * * * "The real agent of the principal allied powers, is not the League, but the Conference of Ambassadors."

But Miss Kellor specifies: The League is nothing but a "pawn" of France in the Saar Valley. It has only affected "a temporary peace" in upper Silesia. It "neither prevented a war or settled a dispute", in the case of Albania versus Jugo-Slavia. It so "befogged" the Italo-Greek dispute as "to enable the members of the Council to claim credit for moral influence and for mobilising public opinion, and to attach to its endeavors an importance wholly at variance with the facts". The adventure in Fiume demonstrated "that the Covenant is a fragile instrument when called upon to provide measures of national security against a great power". The Polish invasion of Vilna resulted in elaborate efforts of the League to "evade its duty". In the Memel case, the League acted merely "as the tool of the allied Powers". The Aaland Island decision sacrificed "the integrity of the Covenant". The transfer of Eupen and Malmedy to Belgium proves the League to be an "autocratic international organization". The quarrel between Poland and Czecho-Slovakia "disposed of Mr. Wilson's theory", that "peoples and provinces are not to be bartered as if they were mere chattels and pawns in the game". The League made a "travesty" out of the plight of Armenia. In the record in respect to the Asiatic problems "is found the beginning of the disillusion of small states with the Covenant". The League is desirous of "extending the European political system of which it is the agent, to South America". It is "autocratic"; it has "demonstrated its incapacity for Government"; its prestige and authority has been "shaken to the foundations"; its high probity "has been endangered". It is, in fact, a "moral facade" to divert attention from the punitive measures provided under the Peace Treaties. The League, in fine, has been a "failure".

So much for the reprehensibilities of the League as a whole. The record of the Council has been especially nefarious. Being composed of the "past masters of the old diplomacy", it has "arrogated to itself" important functions that belong to the assembly. It is little more than "a pawn of the strong powers". It is "autocratic". It has endeavored "to increase its hold over the sovereignty of member states". It has even "disregarded the provisions of the covenant". The Council, in short, is disqualified "to maintain a judicial point of view, to act impartially or independently".

The Assembly, and all its works, is equally bad, despite the fact that the actions it takes are "more or less perfunctory". The Secretariat is the "tool" of the Council. The innuendo is made, that its activities are governed by political considerations. Miss Kellor gazes upon the Permanent Court of International Justice, and finds it wanting. The first three disputes to come before it were "much ado about nothing" and have "derogated" from the prestige of the Tribunal. Even the Wimbledon award, generally regarded as the Court's most important decision, "contributed nothing to the maintenance of peace". Of the first eight issues submitted to the Court, none, with but one possible exception "was really worthy of the tribunal". A comparison of the questions submitted to the Court with those withheld "indicates that states signatory to the Court's statute are unwilling to submit to its jurisdiction their vital interests, including questions of territory and boundaries; minorities and their protection; reparations and their adjustment; and matters affecting state sovereignty—the four leading factors in the wars which have taken place since the Peace Treaty was signed". The Court, in fine, is "an instrument of the League", and its advisory opinions have "deflected justice in the interests of political expediency".

In the foregoing, I have attempted fairly to present Miss Kellor's conclusions in respect to the League and the Court. To most readers, these will carry their own refutation; I cannot, however, let the following misstatements of fact pass without comment. I have picked them at random from more than a hundred notes.

Says Miss Kellor:

"In the United States it (the Covenant) is popularly referred to as an American idea, but in Europe it is pointed out that there were five schemes before the Peace Conference, and that the present Covenant represents a compromise between British elasticity, and French definiteness; in which the British draft prevailed over the French design".

The Covenant, on the contrary, is virtually an Anglo-American product. The French are responsible for scarcely any constructive ideas embodied in the final draft.

"Argentina is said to have resigned, but she has since paid up". Argentina is still a member of the League". The League is the judge when a state has fulfilled all its international obligations". On the contrary, the sovereign members of the League are the sole judges of what constitutes compliance with their obligations under the Covenant. Paragraph 3 of Article 1 of the Covenant can bear no such construction as Miss Kellor puts upon it.

"It is difficult to understand in what manner a representative (of the United States) could take his place upon the Council, and a delegation attend the Assembly, without being a party to the following activities: 1. Contribution of American funds raised by taxation of American properties to enforce the provisions of the Peace Treaty. 2. Responsibility for all acts committed by the Council in the name of the League of Nations, whether the American representative voted or not."

The Congress of the United States, and not the League of Nations, is the only power that can raise and expend taxes in the United States. There is nothing in the Covenant that does or could suspend this power under the United States Constitution. The United States is responsible for nothing except the vote of her representative. If he withholds his vote, the League can take no action whatsoever, except to investigate and report.

"In the 14 cases before the Court of Arbitration before the war, in each and every instance the award was accepted by the parties, and there has been no formal complaint as to non-execution". In the dispute of Venezuela, with England, Italy and Germany, Herbert W. Bowen, the Counsel for Venezuela, solemnly protested against the award of the Court, and Miss Kellor will find this protest printed in the official records. She also fails to mention in this connection, although she makes amends for this later on, that Secretary Hughes found it necessary to issue a vigorous protest against the decision of this old Hague Court in our recent dispute with Norway. Miss Kellor quotes the South American publicist, Señor Alvarez, evidently with approval, when he says "according to the Monroe Doctrine, such an occupation (by a European power of American territory) would not be permitted with regard to an American State." Theodore Roosevelt said, when President of the United States, that there was nothing in the Monroe Doctrine which would prevent European nations from seizing South American territory, as a punitive measure, provided the occupation was not permanent.

From the foregoing, it is evident that Miss Kellor not only opposes the Democratic position on the League of Nations, but the Republican position on the World Court. But she is not wholly negative. She holds aloft the banner with a strange device of "Isolation". She is willing to revive the old Hague conferences, to outlaw war, and to go back to the Hague Court created by the first Hague Conference of 1899, which every succeeding American administration has tried to supplant with a better tribunal.

Miss Kellor would perhaps tolerate the new Permanent Court of International Justice, if the Pepper or other Senatorial nullifying reservations were affixed. But even so, she says that "there is no reason to believe that States will be induced thereby to submit their disputes to the Court". Indeed, Miss Kellor has so little fear that America will go into the Court of Justice, that she tells us, in a very naive footnote, that when, last year, the Foreign Relations Committee was holding its hearings on the Court, and such national organizations as The United States Chamber of Commerce, The American Federation of Labor, The Federal Council of Churches of Christ in America, the Federation of Women's Clubs, the American Legion, the American Bar Association, appeared in its behalf, "The opposition, believing there was no likelihood of the measure being passed, agreed not to waste the effort or time of the Senate Committee, by presenting their views".

If, thus far, I have been compelled to deal adversely with Miss Kellor, I would not do her the injustice of failing to note the wealth of detailed information she has presented throughout every chapter as to the work at Geneva and the Hague. Nowhere else is the tale so completely and exhaustively told; nor would I fail to give Miss Kellor due praise for the rare intellectual ability with which she has pursued her thesis. She has, moreover, obeyed all the amenities of courteous advocacy, by not descending to diatribe or personalities. If I am compelled to add that she is an adept in making the worse appear the better course, I am sure she is entitled to whatever measure of pseudo-admiration such abilities deserve. Her volumes will undoubtedly be referred to as authority by many future irreconcilable Senators, when attempting to thwart progress in the halls of

Congress. Fortunately, however, the treatise is too long, and makes too hard reading, to have much effect upon the popular mind.

The incontestable fact remains, however, that, owing to the inventions of steam and electricity, which have annihilated time and space, the physical world has become so small, and the moral and intellectual and commercial world so large, that hereafter only an international organization can possibly cope with international affairs. The casual machinery by which international affairs are now conducted can little longer block the full employment of permanent machinery, for the simple reason that permanent machinery, as everybody knows, is always more effective than casual machinery. The League of Nations and the World Court are the most comprehensive, promising, and permanent measures yet devised to do the world's work. If we have to scrap them, we shall have to create them over again, Miss Kellor and her isolationist friends to the contrary notwithstanding.

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The Anatomy of the Law. By ADOLPH J. RODENBECK. Boston, Little Brown & Co., 1925. pp. xi, 292.

This is an attempt to present a classification under which all the law can be brought into scientific arrangement. To the reviewer the attempt seems a failure, when viewed as a whole. So, however, does every other attempt which he has thus far run across. Perhaps the trouble lies in his understanding or misunderstanding of the term "scientific". If the classifications used are to be both comprehensive and mutually exclusive, according to good logical doctrine, the reviewer doubts if law will ever be so classified. If the categories are to be merely groupings in which the same material might appear more than once and perhaps be developed from different points of view, the only question becomes one of convenience. One may share the feeling that Anglo-American law, especially in the non-contract field, has been lacking in systematic treatment, and may share the desire to reach broader generalizations than are to be found in a cyclopedic presentation, without accepting the view that what is commonly meant by "systematic" or "scientific" treatment of "the law" as a whole is in itself either valuable or possible. The Europeans seem to have sought system often at the expense of reality. Even our own "unification of contract law" in the later nineteenth century has obscured the complexity of operation of a rule under the simplicity of its statement, and at times—as with acceptance in insurance contracts—has obscured an actual diversity of rule. And the widening of generalization beyond the point where each generalization touches chartable fact at a goodly portion of its career, is dubious to dream of, and more dubious to put in practice.

The author's attempt only purports to outline main heads. This limitation of objective keeps him from colliding with (and perhaps from becoming fully conscious of) the real difficulties of the problem, those of showing exactly how the overwhelming welter of material is to be fitted into his outline. He urges that we be not too nice in dealing with border cases, but simply put them one place or the other, which is sense, but only touches a small part of the problem. His own classification turns especially upon the division of each topic into its *general* and *special* phases; and upon division of each *general* phase into *theoretical* ("nature, origin, development, functions, purpose") and *practical*. *Substantive* and *adjective* are major subdivisions; *public* and *private* are sub-major subdivisions under each. Beyond this the classification becomes to the reviewer largely meaningless, except possibly in terms of the detail which is not presented. How, for instance, can we tell what fits under the general head of the

private side of the special phase of substantive law, as distinguished from the general phase of substantive law? The author's suggestion of contract law as falling into *occupational* and *non-occupational* is welcome; on the other hand, the further subdivision of *occupational* into *principal* and *accessory* seems to promise nothing. The book is marred by the intrusion of Tennysonian sentiments and not particularly illuminating second-hand historical material into space that might have been given to working out the classification into more concrete and detailed form.

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Selected Cases Illustrating the Law of Contracts. By A. CECIL CAPORN and FRANCIS M. CAPORN. Fourth Edition. London, Stevens & Sons, 1925. pp. xxi, 1030.

As the name shows, this is a volume of illustrative cases. There is no attempt to show the development of the law historically. Every case is preceded by a statement of the general rule that it is supposed to illustrate.

The chapter headings correspond with those in Anson on Contract. In addition there are chapters on Agency, 70 pp.; Bills and Notes, 80 pp.; Sales, 120 pp.; Carriers, 60 pp.; Insurance, 35 pp.; and Suretyship, 20 pp.

It will be apparent to any student of American casebooks that the service rendered by this book is comparatively limited. It is a reasonable representation of the present case law of a single jurisdiction. As a basis for forecasting how the courts of that jurisdiction will decide in the future, it is not as good as are the American casebooks. It forms, however, a convenient collection of modern English cases, all of which are familiar to American students. Only one case is from the American reports. The volume opens with *Fitch v. Snedaker*.

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ARTHUR L. CORBIN

Code of Ethics. By EDGAR L. HEERMANCE. Burlington, Vt., Free Press Publishing Co., 1924. pp. viii, 525.

During the last forty years the lawyers of the United States have become increasingly conscious of the failure of many of their members so to act as to reflect credit on the profession. Impelled by the consciousness of this situation and of the evil results to the profession at large and to the public, lawyers, as individuals and in groups, have sought to set the house of the profession in order. They have secured the adoption of codes of legal ethics, beginning with the action of the Alabama Bar Association in 1881 and leading to the adoption of a code by the American Bar Association in 1908. They have organized or energized Grievance Committees which have brought about the discipline of many lawyers. They have organized clinics for the study of the ethical problems which confront lawyers. The best known of these clinics is that of the New York County Lawyers' Association.

As testified by Mr. Charles A. Boston, who writes an introduction to this book, Mr. Jessup has rendered valiant service in all these activities in his own State of New York and in the American Bar Association. Mr. Jessup has rendered the profession a real service in crystallizing the result of his long experience and careful study and in making the result available for students, lawyers and judges. Included in the book is a wealth of material for the student. Here, he will find the canons of ethics of the American Bar Association, the canons of judicial ethics of the American Bar Association, Sir Matthew Hale's Rules for the Guidance of Judicial Officers, Hoffman's Resolutions in regard to Professional Deportment, the

232 questions and answers expounded to and decided by the Committee on Professional Ethics of the New York County Lawyers' Association, and also, a summary of the cases in New York dealing with discipline of lawyers. In addition, Mr. Jessup has given us a preface to the study of legal ethics in his usual thoughtful and sententious manner, and has discussed some 92 questions of legal ethics, so selected as to make a student, who has mastered all of the questions, thoroughly familiar with the entire subject.

Mr. Jessup has chosen the title for his book advisedly. He thus makes a definite choice of approach to a consideration of the ethical problems which confront a lawyer. We may apply to the solution of such problems three different kinds of standards; (1) the ideals of the best men in the profession, (2) the actual practice of the man of "ordinary (ethical) prudence", (3) the standards applied by the courts in disciplinary proceedings. In other words the standards are (1) the hope of the profession; (2) its practice, which unfortunately does not always measure up to the hope; (3) what will "get by" the courts.

Mr. Jessup's interest is in the first field. He seeks, by persuasion, and by an appeal to what is best in the student or practitioner, to urge him on in the pursuit of the highest ideals of the profession. This problem of approach is serious for those who attempt to teach legal ethics. The third standard is out of the question. To teach the first unreservedly is to send the student out to look for a world that does not exist. To teach all the compromises of the middle standard is unsatisfactory. As Mr. Jessup points out, some thoughtful men believe that legal ethics cannot be taught. They say that a law student should be told to be honest in thought, word and deed and that this touchstone will always enable him to tell true metal from false. Perhaps this is so, but it leaves out of account the fact that a lawyer owes many duties to himself—to be honest to his clients, to be loyal to the courts, to be honest and respectful to his opponents, and to witnesses, to be fair and decent to the public and the state, and to aid in the enforcement of law and order and the accomplishment of justice. These duties result in a series of cross pulls of obligations. A lawyer cannot deal with his clients' problems as he would with his own. For himself he might be willing to give another the benefit of every doubt. For his client he may be required to submit every doubt to the most searching inquiry.

Lawyers have dealt with these cross pulls for generations, and their experience is of value to men dealing with them for the first time. For instance, the cross pulls involved in the treatment of the communications of a client to his counsel have troubled men as wise as Bentham. The experience of the profession furnishes the solution of the problem. Is it not well that the prospective lawyer should study this experience?

Mr. Jessup lays great stress upon the fact that law is a profession which, as he defines the word, means that those who follow it seek first to render service, and that reward is incidental. He contrasts a profession with a business, where the reward is the primary object. From this he deduces certain rules as to advertising, the soliciting of business, etc. This method of approach seems unsatisfactory. Many business men regard the rendering of service as their main object, and feel that the rewards which come are incidental. Thus Henry Ford in *My Life and Work* (p. 273) states a part of his creed as follows:

"The putting of service before profit. Without a profit a business cannot extend. There is nothing inherently wrong about making a profit. Well conducted business enterprises cannot fail to return a profit, but profit must and inevitably will come as a reward for good service. It cannot be the basis—it must be the result of service."

In Rev. Mr. Heermance's collection of Codes of Ethics there appears over and over again the notion that business exists primarily for service, e.g. in the codes of the Iowa Concrete Products Association, Chamber of Commerce of the United States, National Retail Coal Dealers' Association, American Warehousemen's Association, Retail Credit Men's National Association, National Association of Retail Grocers.

It is true that in the interest of the public and for his own comfort it is desirable that a man should become a lawyer only if he believes that in this profession he can do the best work of which he is capable. But is this not true of the man who is to supply milk to our children? Does the man who collects a milk bill render a service any more truly than the man who furnishes good and wholesome milk? "The servant is worthy of his hire". "After service comes reward". These apothegms state facts. We know that lawyers who render real services receive rewards. Why blink the facts?

Many law students are the sons and daughters of business men. Can the older men in the profession say to these people, "The principles which we apply to our own conduct are other and higher than those which your parents do, and should, apply to theirs"? The difficulties sought to be solved by this formula seem susceptible of a solution by an analysis of some of the factors involved. A lawyer acts for others. His profession offers peculiar temptations to serve himself at the expense of his clients. Many sins of this sort defy detection or punishment. So too, ill means can be employed to a great extent with like immunity.

The securing of business by solicitation and advertisement creates so great a desire to "deliver the goods" according to representation, that the temptation to use ill means is greatly increased. This in itself justifies the prohibition against solicitation and advertising. In serving a client a lawyer, if he is true to his obligations, must consider the interests of his client first, and in many cases to his own detriment. In other words, service comes first in a peculiarly complete sense; but this is based on the duty of loyalty to the client. A like duty rests upon business men, at least in certain occupations.

It seems better to state and emphasize the duty of loyalty rather than to focus attention upon the notion of a profession, from which the same duty may be implied. The difference between the obligations of a lawyer and the obligations of some other men, is based primarily upon the fact that the lawyer is acting for others, and dealing with their property, and, perhaps, with their lives. Any other man who is put in the same situation has the same obligation. An agent must be loyal to his principal. The men in charge of a train must act in the light of the fact that the life of every one of the passengers on it is in their keeping. Milk producers and dealers recognize that on the wholesomeness of their product may depend the health and lives of their customers.

Mr. Jessup, on page 63, incidentally corrects the generally accepted version of the famous "Rum, Romanism and Rebellion" incident of the Cleveland-Blaine campaign of 1884. On the authority of Judge Noah Davis he states that Blaine's ignoring the remark was deliberate because he felt that it was beneath his dignity to notice it, and that no one would impute such a sentiment to him. Rhodes (Vol. VII. p. 225) and Stanwood in his *Life of Blaine* (p. 289) indicates that Blaine did not notice the phrase or did not appreciate its possibilities of harm to him. Paxon in the *New Nation* (p. 133) takes the same view. Colonel McClure, a friend of Blaine's, in *Our Presidents and How we Make Them* (p. 311) gives a somewhat more extended statement along the same line.