

*The Diplomatic Protection of Citizens Abroad.* By EDWIN M. BORCHARD. New York, The Banks Law Publishing Company, 1915.—xxxvii, 988 pp.

In *Democracy in America*, De Tocqueville has commented on the aptitude of Americans for the study and profession of law. The French observer had primarily in mind national law, but his remarks may be applied, in the qualitative sense at any rate, to American achievement in international law as well, as witness the work of Wheaton, Wharton and Moore. Within the international field Dr. Borchard's volume stands forth as a notable contribution, of a rank with the best product of American legal scholarship. Although the title may suggest a limited phase of state action, pretty much all points of international contact, both in peace and war, are traversed in a strictly objective manner through the medium of adjudged cases, of precedents from the diplomatic practice of states, especially of the United States, and of awards of claims commissions and other arbitral bodies. The work is presented as a systematic treatment based upon a thorough examination of an amazing mass of material, as indicated in copious footnotes which should prove invaluable to the special investigator. In a field so wide, there are necessarily many places where the authorities are uncertain guides, where the strict legalist is in conflict with the theorist. At the very outset the author faces a divergence of view with respect to the function of the state and the rights and duties involved in the diplomatic protection of its citizens. Here, as elsewhere, Dr. Borchard reveals good critical ability and an admirable method by his avoidance of abstract philosophy and the "unwelcome natural-law flavor." He is concrete, with the lawyer's respect for fact—for which reason he often finds himself in agreement with Westlake, the most legalistic among English authorities.

Having set forth the aim of international organization to be "the advancement and perfection of those rights which the modern development of international law, by custom and treaty, has recognized as inherent in the individual," and having found diplomatic protection (which he considers to be the sanction for the right of international intercourse) to be in conformity with this aim, Dr. Borchard proceeds to discuss the status of aliens and the municipal and international responsibility of a state to protect them. Then follows an examination of the various kinds of international claims with special attention given to those arising out of contracts with foreign governments. Part ii deals with the exercise, means and extent of diplomatic protection and

with the distribution of awards. Part iii indicates in detail the object of protection—the person and property of citizens—and Part iv, the limitations on diplomatic protection due to the status of the claimant or the nature of the claim. On the whole, the analytical arrangement followed by Dr. Borchard is logical, though it would be more natural to discuss the “object of protection” before its *modus operandi*. “Distribution of awards,” too, would seem better to follow “proof and evidence of citizenship,” as establishing title to claim. Occasional repetitions occur, sometimes within the limits of a few pages (e. g., on pages 537 and 543 *re* British naturalization), and the discussion of topics shows some overlapping, but nothing that may not easily be eliminated on revision. An appendix, giving an extensive bibliography, and a topical index make this excellent book still more serviceable.

The chief obstacle to a satisfactory prosecution of international claims is the political character of diplomatic action. Some states take a keen interest in the fortunes of their nationals and are prompt to extend protection when invoked; others, from principle, follow *laissez faire*. As it is today, too much is left to political expediency, which in turn leads to inequalities in the measure of security accorded investors of different nationalities in foreign fields. Dr. Borchard suggests as a remedy that “essentially legal claims” be adjusted by an international court, in which the individual claimant, not his government, would be the party to bring suit against the debtor state, precedent for which may already be found in the convention creating an international prize court. The advantages of such a tribunal are, in the author’s opinion, apparent:

The creditor will thus be assured of a hearing, the debtor state will be secured against the pressure of exorbitant claims accompanied by disagreeable diplomatic coercion, the government of the claimant will avoid what is always a potential germ of international difficulty and ill-will, with the incidental expense of pressing a diplomatic claim, and the peace of the world will be fostered by the removal of one great source of international conflict.

Such a proposal appears more immediately practicable than projects for an international supreme court of wider jurisdiction, especially since it has been found possible at The Hague to put restrictions upon the use of force in the recovery of contract debts. The court should follow as the complement of the convention. Dr. Borchard, however, does not indicate clearly what the principle governing such a tribunal is to be—arbitration or “judicial adjudication.” It would seem (page 443)

that he has both in mind. The one finds its exemplar in the permanent court at The Hague (where, by the way, some five cases involving pecuniary claims have been arbitrated); the other, in the draft convention for a court of arbitral justice. Arbitration does not always secure judicial settlement; on occasion it may lend itself to compromise or the arrangements of diplomacy. The alternative principle, however, applied by an international court, would in time create a body of decisions as definite and unified as those of a national tribunal, and thus, if successfully worked, would point the way to the realization of what is at present the more utopian proposal for a supreme court of the world.

No subject can have more vital interest for the United States than that of diplomatic protection. Not only does the temporary situation due to the war give it prominence, but even in normal times it must always loom large as the chief motive for American diplomatic action. All states are concerned in protecting their nationals abroad, but conditions peculiar to the western world present to the United States problems of its own—such (to mention but a few) as the Mexican situation and its relation to the Monroe Doctrine, the Caribbean “protectorates,” the restrictions upon European and Oriental immigration, and the status of naturalized American citizens in their countries of origin. When it is further taken into account how rapidly finance has been internationalized and how assiduously American financiers will soon be seeking out new fields of activity, the timely appeal of Dr. Borchard's book will become apparent. Everyone whose business or professional outlook takes him beyond the national frontiers will find in it a light unto his path, while to the student of international law it will serve as a reminder that, in spite of mine and torpedo, his occupation is not yet wholly gone.

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*Nationalism, War on Society.* By Edward H. Krehbiel.

With an Introduction by NORMAN ANGELL. New York, The Macmillan Company, 1916.—xxxv, 276 pp.

Unfortunately, in America books on current problems are generally written by clever journalists or tired public officials who aim merely to arouse the reader's interest, not to satisfy it. Hence the market is flooded with superficial books that live but a day. This volume of Professor Krehbiel marks a welcome departure, for on every page is seen the sure touch of the trained historian to whom current problems