to be in the fact of evidence rather than in the effect of evidence." Perhaps this, in a measure, accounts for the fact that many experienced lawyers regard the verdict of a jury as unpredictable.

It seems reasonable that an intelligent study of the mind of the juror as judge of the facts will point the way to more sense and certainty in verdicts. The advocate himself is incapable of an unbiased approach. The individual juror's service is generally infrequent. The impressions of an experienced witness are invaluable, and these are here recorded with unusual clarity and wisdom.

Within the compass of about two hundred pages, under thirty-three distinct headings, the author has trenchantly stated the experiences and observations of many years spent as a witness in jury trials involving questioned documents that have taken him all over the United States and into most of the provinces of Canada. He has had unusual opportunity to see lawyers as others see them. His unflinching analyses, pitched upon the high plane of the public interest, may well command the attention of judges and practitioners as well as law school teachers and students.

FRANK E. ATWOOD.†

THE LAW OF NATIONS. By Marcellus Donald A. R. von Redlich. Phoenix, Arizona: World League for Permanent Peace, 1937. Pp. XXIII, 640.

The above mentioned book was very severely criticized by Mr. Stefan A. Riesenfeld, in a review appearing in the February, 1938, issue of the WASHINGTON UNIVERSITY LAW QUARTERLY.[1] It is the purpose of this answer to show that Mr. Riesenfeld's accusations were unjust and that his statements were absolutely erroneous.

The reviewer failed to comprehend the statement appearing in the preface, to the effect that "The book sets forth an exposition of legal principles as accepted by the Courts, and, in the main, is based on cases adjudicated in the Courts. Writers on the Law of Nations, who are well known internationally and acknowledged as authorities are cited freely. It has been observed that some writers on the Law of Nations frequently give not what is, but what they believe *ought to be*, the Law of Nations. The author here definitely restricts himself to descriptions of what the Law of Nations *actually is*. Speculation has been consistently avoided and he limits himself to as few personal observations and opinions as possible."[2]

It is a grave error on the part of Mr. Riesenfeld to say that the book "contains many things which have not the slightest, or very little, connection with the subject." He claims that Admiralty Jurisdiction, the status of the District of Columbia, etc., do not belong within a book of this character. If Mr. Riesenfeld will consult John Bassett Moore's Digest of International Law he will find Admiralty Jurisdiction treated,[3] the status of the

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1. Pp. 289-291.
2. P. VII.
3. Vol. II, p. 79.

District of Columbia discussed,[4] Prize Courts considered,[5] etc., thus disproving Mr. Riesenfeld's erroneous contentions that these subjects do not belong within a book on international law. Police power and powers of Congress as given and in the sense discussed in the book most assuredly and properly belong within the book.

There is no inconsistency whatever between the statements contained on pages six, seven, eight and fourteen of the book. On page six there is simply a quotation from a decision by Commissioner Frazer, and on page seven a statement that "The Law of Nations is divided, in a broad sense, into *General, Conventional,* and *Customary,* * * *." As authority therefor, the case of *United States v. The La Jeune Eugenie,*[6] is cited. Moreover, to satisfy Mr. Riesenfeld as to the absolute correctness of such a statement, Mr. Justice Chase may also be quoted: "The Law of Nations may be considered of three kinds, to wit, general, conventional, or customary * * *."[7] And, as regards page eight where Mr. Oppenheim is quoted by saying: "The Law of Nations is exclusively based on, (1) Custom and (2) Treaties, * * *," the author continues: "Oppenheim gives the most authoritative scientific explanation of the growth and development of the Law of Nations as follows: * * *." (Here the author quotes at length from Mr. Oppenheim's International Law.[8]) Mr. Riesenfeld has apparently ignored this. It is clearly apparent that Mr. Riesenfeld fails to distinguish between custom and usage. He is referred to page nine of the book where it is stated: "Custom must not be confused with usage. *Usage* and *Custom,* when compared, agree in conveying the idea of habitual practice; but a *custom* is not necessarily a *usage.* A *custom* is merely that which has been *often* repeated, so as to have become, to a good degree, established, and by its long-established practice is considered as unwritten law, and resting for authority on long consent. A *usage* must be both often repeated and of *long standing.* Usage can be without custom, but no custom without usage to precede or accompany it. Custom arises out of usage which consists of a repetition of acts."

The answer to Mr. Riesenfeld's question "Precisely, for whom *is* the book intended?" is contained in the book's preface: "* * * the author of this work has earnestly endeavored to compile into one volume some of the most vital phases properly belonging under the Law of Nations to be available to all those who are interested as well as those who cannot afford to acquire financially the several volumes of eminent authors dealing with these varied questions." And, Judge de Bustamante, in his foreword also answers Mr. Riesenfeld's question in the following language: "* * * recommending the book for reading and study, because both its form and its style make it useful and agreeable reading alike for the student, the lawyer and the professor, as well as for the amateur and studious lay-reader of this very

4. Vol. I, pp. 319, 320.
5. Vol. VII, p. 584.
6. (1922) 2 Mason (Mass.) 409, Fed. Cas. no. 15,551.
7. Hylton v. Ware (1796) 3 Dallas 199, 227; See also John Bassett Moore, *Digest of International Law* (1898) Vol. I, p. 5.
8. Pp. 8, 9.

interesting topic of our day which is called International Questions."[9] The book is further intended for diplomatic and consular officers, judges, lawyers, libraries, scholars, statesmen, students and teachers.

Mr. Riesenfeld's statement that "Dr. von Redlich bases his text mainly upon American decisions" is not true. The text is based upon American, British and French decisions as is clearly evident from the numerous British and French decisions cited in addition to the large number of American decisions. Eminent authors on international law from a large number of nations—America, Cuba, Chile, France, Germany, Great Britain, etc.,—are freely quoted, thus giving the book adequate authoritativeness.

Mr. Riesenfeld states that "the relationship of international law and municipal law in general, the question of the subjects of international law, the effects of recognition, etc. are either not treated at all or in an unsatisfactory way." Here again Mr. Riesenfeld has made an inaccurate statement, for the relationship of international law and municipal law is clearly and fully treated.[10] Subjects of international law are effectively covered[11] and the effects of recognition are also discussed.[12] For specific page references consult the footnotes.

There are numerous self-contradictions in Mr. Riesenfeld's review. He first complains that "Subjects of the Law of Nations" is not treated at all and in a later paragraph laments the repetitiousness of the aforesaid subject which is treated in two different chapters in a completely different form and in relation to two different subjects.

It seems that Mr. Riesenfeld also questions the authoritativeness of Mr. Oppenheim and the reliability of the opinion expressed in the foreword about this book by Judge de Bustamante. Mr. Oppenheim is rightfully considered as one of the greatest authorities on international law, and Judge de Bustamante is an internationally recognized authority on international law, author of a large number of books on the subject, father of the famous Bustamante Code, and the oldest judge of the Permanent Court of International Justice at the Hague.

Mr. Riesenfeld further states that "The discussion of the treaty power of Great Britain and the British Empire should have been more precise. It is not correct to say *'the ratification of treaties comes within the duties of Parliament'*." The quotation which Mr. Riesenfeld criticizes has been taken out of its context. The discussion of the British treaty power is, in full, as follows: on page 116, "* * * the power of making treaties * * * [is] an incident of the Royal Prerogative. However there is evidence that the King on many occasions recognized the right of the House of Commons to give or withhold its assent to treaties, to consider their provisions, and to share with him the responsibility of deciding on peace or war"; on page 135, "The treaty-making power in Great Britain is vested in the Crown. In practice the Sovereign acts on the advice of his responsible Ministers,

9. P. XVII.
10. Pp. 12, 13, 177.
11. Pp. 10, 14.
12. Sec. 14, p. 25.

and where the execution of the treaty involves a grant of the national funds, or a cession of territory, the approval of Parliament is first sought. The ratification of treaties comes within the duties of Parliament."[13] Read in its context the quoted section is not lacking in precision. The treaty-making power of Great Britain and the British Dominions is most precisely covered on pages 135, 136 and 137 of the book.

Mr. Riesenfeld takes issue on the question of Saudi Arabia not having been admitted to membership in the League of Nations. On the list of nations that were invited to become members, and of those that are members of the League of Nations, Saudi Arabia does not appear and Saudi Arabia was never recommended for membership. Hence the proper interpretation is that Saudi Arabia has not as yet been admitted to membership in the League of Nations. However, there was no intention to disparage Saudi Arabia, I simply stated the truth that "Some of the States like Andorra, the Free City of Danzig, Iceland, the Principality of Liechtenstein, the Principality of Monaco, the Kingdom of Nepal, the Republic of San Marino, the Kingdom of Saudi Arabia, * * * have not been admitted to Membership in the League * * *."[14]

Regardless of whether Gentilis turns in his grave, as so fearfully expressed by Mr. Riesenfeld, the statement of fact is and remains that "the *earliest works* on the Law of Nations *were not* of a *strictly* legal character." Can Mr. Riesenfeld prove the contrary by the production of such earliest works and quoting therefrom? By "earliest works" is meant the period before Gentilis, who lived from 1552 to 1608. Modern international law did not make its appearance until the end of the sixteenth century. Hugo Grotius, properly called the "father of modern International Law," presented to the world his *De Jure Belli ac Pacis* in 1625. While it is true that Grotius had been anticipated by Francisco de Vitoria, Francisco Suarez and Albericus Gentilis, it was he who proclaimed that the ethics of right should take precedence over the "contemporary canons of self interest."

Mr. Riesenfeld says that he is "at a loss to see the value of lengthy quotations from cases, * * * or of the long extracts in Spanish from Bustamante and Cruchaga, * * * ". Spanish, however, has become a very important language to American readers. The book contains an even larger number of quotations in French—some even longer than the Spanish—and Mr. Riesenfeld found no fault with such French quotations.

He further states that he "misses" references to certain authors' books and periodicals in the bibliography. It is unfortunate indeed that I did not find the space or necessity to mention Mr. Riesenfeld's pet authors or periodicals. The bibliography contains a rather long and quite sufficient list of authors and periodicals which will certainly cover all references required or desired.

Mr. Riesenfeld seemed inclined to make inaccurate statements without foundation and express opinions without any bases and without submitting

13. See also Sir Ernest Satow, "A Guide To Diplomatic Practice," (3rd ed.) 405, sec. 717.
14. P. 499.

proofs or citations from authoritative or any sources to substantiate his ideas.

The author, in writing the book, purposely avoided the treatment of controversial questions. However, in stating controversial facts, authoritative sources were relied upon. All statements are supported by excellent quotations of an authoritative character.

Perhaps more accurate an estimate was given to the book in question by Professor Manuel Rodriguez Serra: "It is clearly apparent that Dr. von Redlich's book is characterized by painstaking and scholarly research, a judicial attitude and, as it is evident, by soundness of judgment."

MARCELLUS DONALD A. R. VON REDLICH.

BOOKS RECEIVED†

AMERICAN FAMILY LAWS (Vol. V). By Chester G. Vernier. Palo Alto: Stanford University Press, 1938. Pp. xxxiii, 707.

BUSINESS AND GOVERNMENT (3d ed.). By Rohlfing, Carter, West, and Hervey. Chicago: Foundation Press, 1938. Pp. xviii, 780.

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PARTNERSHIP AND OTHER UNINCORPORATED ASSOCIATIONS. By Judson A. Crane. St. Paul: West Publishing Company, 1938. Pp. x, 535.

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† The listing of a book at this point in this issue does not preclude its review in a subsequent issue.