

Book Reviews of Cushman Kellogg Davis: "A Treatise on International Law, Including American Diplomacy." (1901).

Minnesota Senator Cushman K. Davis died on November 27, 1900, at age sixty-two. At that time he was Chairman of the Committee on Foreign Relations of the United States Senate. The following year his 368 page treatise on international law, revised and annotated by Dr. Peter J. Healy, was published by Keefe-Davidson Law Book Company of St. Paul, Minnesota. Massachusetts Senator Henry Cabot Lodge wrote the Introduction. It was reviewed in two law journals. They follow

1.

*The Maryland Law Review*

(December 1901)

"Almost every author of legal text-books sees in his own work peculiar advantages for the beginner, and Hon. Henry Cabot Lodge, who writes an introduction to this work, in eulogizing the late Senator Davis, claims unusual merit for this work in that regard. His conclusions are partially justified. Senator Davis has presented this subject, a universal knowledge whereof is rightly claimed to be necessary in the direction of public opinion in the settlement of momentous questions affecting human welfare, in an attractive manner and with a literary style, agreeably in contrast with that of the majority of text-books. Senator Davis had years of experience in the practical application of the principles and theories of International Law, and writes with an authority and enthusiasm born of his varied experience. The book is planned upon the same general lines as the older works of Woolsey and George B. Davis, but its brevity and distinctly argumentative tone seriously diminish its value as a textbook. This, however, was to have been expected of the work of one, the best years of whose life were spent in the making and working out of great practical questions. A perusal of this work, and particularly of the opening chapter, will wonderfully repay the reader in the quickened thought and broadened interest resulting to him therefrom."

2.

A much longer and less enthusiastic review was published in the September 1901 issue of *The Green Bag*, a popular magazine for the legal profession:

“This little book comes into the world with unusual stir, for it is not only the offspring of a senator, late Chairman of the Committee on Foreign Affairs; but is introduced by a fellow senator and man of letters, and annotated and revised by a doctor of the civil law! It almost reminds one of royalty. "Gentlemen," said Louis XIV, on introducing his little grandson, "this is the King of Spain." The result in both cases was unfortunate.

“The title leads one to expect something much more profound from the book, which states itself to be a "Treatise on International Law including American Diplomacy " — all contained in 368 pages, text, notes, appendix and index. International law and American diplomacy must indeed be short and simple subjects to be treated within this compass.

“The fact is, the pretence is all in the title, for the book itself does not attempt to cover the ground indicated. The late Senator Davis, whose mind — witness the book — was admirably stored with International law, delivered a course of lectures, informal talks would be the better term, on International law and one on American diplomacy. The fundamental principles of International law are clearly stated, but in a positive way, without suggesting that the doctrines of the text are disputed or that they are not universally accepted. A single indication of this will suffice to show what is meant. "The general principle of International law is this: That every vessel on the high seas is a part of the territory of the country whose flag it bears," page 188. This may be true: it has the authority of Secretaries of State; but it would not be going too far to oppose the great authority of Lord Stowell, who maintains the contrary. This positive method of statement is apt to mislead, for one might accept it as law rather than as the personal opinion of the writer.

“A student would undoubtedly carry away much from the book, but would have to modify his doctrines considerably and broaden them without adequate suggestion from author or editor. Still compression and

positiveness have at times an advantage as on page 69, where the privileges and immunities of ambassadors and ministers are admirably summarized; page 95, where the right of de facto States to recognition are tersely and correctly stated; pages 97-102 where the question of intervention on behalf of insurgent States is examined; and pages 140-141, dealing with the effect of war on treaties and relations would easily bear quotation. There are other passages scarcely less good, but the scope of the book is so limited, the thread of comment so slender, that it requires considerable courage to call it a treatise.

“The style is generally agreeable, always interesting, but is open at times to the charge of informality. In the lectures as delivered, these passages were probably enjoyed but the editor might have revised them with profit to the book. For instance, in speaking of mob violence at Rock Springs, Wyoming, Senator Davis says that the Chinese "were asked by a turbulent mob, composed largely of aliens, to join in a strike for higher wages. John Chinaman did not see it that way, and refused to join," page 63. In another passage he compares Secretary Seward, during the troubles with France about Mexico, to "a blown pugilist, sparring for wind," page 282.

“But if the book can hardly be called a treatise either on International law or American diplomacy, much less on both, it is not without a certain value. The influence of Senator Davis was very marked in the last three or four years of his life, and his attitude toward the Spanish troubles as well as on the matter of expansion is here clearly stated. But while these expressions of personal opinion are short, yet they are out of all proportion to the size of the volume, and do not properly belong there.

“Dr. Healy has been very painstaking in his annotation and at times the notes are longer than the text. For instance, note 3, page 14, is thirteen pages and note 1, page 141 is longer than the chapter to which it is appended. If the book were a classic, as, for example, Wheaton's, such annotation might be necessary to bring it up to date, or to show the progress of the science since its publication. As it is, one loses the thread of the text. The little craft carries too much ballast.

“But if Dr. Healy is not to be blamed for making an earnest attempt to enhance the value of the book, he is to be taxed with many serious misprints or inaccuracies, with which the book is disfigured. Some of these are as follows: page 17, is a direct quotation from, not a paraphrase of, D'Aguesseau ; page 26 "Lord" Story is unknown, although Mr. Justice Story is one of our greatest jurists; "Lord Chancellor Jas." Cockburn is fictitious, although Chief Justice Sir Alexander Cockburn is well known to us through the Geneva Award ; page 72, "executor " should be executive; page 130, "Humbolt" should be Humboldt; Pitt was Prime Minister and Chancellor of the Exchequer, not "foreign minister"; page 172, Sir Charles Hedges was Judge of the Admiralty in 1689 not in 1869.

“The American cases that Dr. Healy cites are well chosen and he deserves great credit for thus treating International law as law proper. But here again misprints occur. For example: page 107, U. S. v. Pohner should be U. S. v. Palmer; page 165, The Dos Hermanus should be Dos Hermanos; page 120, Jackson v. Dunn should be Jackson v. Lunn; page 166, the San Jose Indians should be the San Jose Indiano.

“The Appendix contains at least three bad ones: "Marboin" is made Bonaparte's minister of the Treasury instead of Marbois; "Decies" is made minister of Marine instead of Decrès, page 260; and Bernadotte, the future king of Sweden loses his identity in Revendotte, page 258.

“The Appendix, in addition to the lecture on American Diplomacy contains an abstract of the Treaty of Westphalia and Professor Lieber's famous "Instruction for the Government of the Armies of the United States in the Field," for which no credit is given to the codifier.

“To the many friends and admirers of Senator Davis the book will be pleasant reading, but it is too short, too summarized and the style hardly such as to make it a text-book for schools or colleges.”

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