Law Among States in Federacy ; By William G. Rice, C. C. Nelson Publishing Company, Appleton, Wisconsin, 1959. Salutation pp. 1-4, Foreword on Form pp. 5-19. Eight chapters pp. 101-120 ; 201-210 ; 301-336 ; 401-431 ; 501-519 ; 601-622 ; 701-736 ; 801-824, Colophon, pp. 901-904, Catalog, pp. 1001-1019. No price.

Very few, much less hard worked Professors of Law, would be inclined to devote a sojourn on the continent to scholarly pursuits. This work by Professor Rice is part of the " adventures "—one of the Rices' children was born in Switzerland—" of three long stays in the Swiss Confederation ".

The book is a survey of the decisions of the Swiss Federal Tribunal in inter-cantonal controversies, interspersed with judicial parallels in the United States to " elucidate " the Swiss decisions. The Swiss experience is of significance to other developing confederacies. The Swiss cantons had separate political structures before they entered the Confederation. Within the Confederacy, they have powers of legislation of both cantonal and national laws. They are sovereign states, not mere political sub-divisions. " In Switz ", the author points out, " the Constitutional separation of powers results in greater importance to the legislative and less to the judicative arm than in the United States ".

The Federal tribunal's jurisdiction is largely appellate. It is by no means the apex of a system of courts of the Central Government. Professor Rice tells us that no such system exists. It is the one general Court of the nation as contrasted to those of the cantons. One of its functions is to keep cantonal courts from " slipping the traces of federalism and prevent executive and legislative action of every canton from invading the exclusive area of other cantons or the confederation ".

The tribunal decides inter-cantonal disputes either as civil disputes (Art. 110 Cl. 3 of the Federal Constitution) or as constitutional disputes (Art. 13, Cl. 2). The author concludes that there is a marked tendency to decide the disputes according to the provisions of public law. In the Chapter 'Federal Tribunal and its Jurisdiction', the author points out certain interesting features about the tribunal. Appointments are frequently said to be influenced by political considerations. A serious criticism against the tribunal seems to be that it has not stood up against executive actions that seem to the critics violative of constitutional or statutory rights. The tribunal appears to be regarded with less esteem by the legal profession. The public law section of the tribunal never hears oral testimony or oral arguments and in other sections oral arguments, if heard at all, are

treated lightly. A judge who cannot distinctly hear what another judge is saying may leave his seat and stand beside the latter's chair. No judge interrupts an attorney's arguments by questions or guides him in any way. The case is assigned to the scribe of the Court, not to any particular judge, for opinion-writing: only ten per cent of the opinions reach official reports.

In the Chapter Civil Law and Public Law the author points out that a narrowing of civil law jurisdiction and enlargement of public law jurisdiction have taken place in inter-cantonal litigation. "While it is agreed that civil law covers more than property rights" says the author, "in inter-cantonal relations it seems probable that only disputes about rights of ownership of physical things or contracts of commercial type would be classified as of civil law nature. For even clearly economic interests, such as flow of streams and to be secured by public law suits; as well as political interests such as 'conflicts of competence'." The distinction between public law and civil law seems to have lost the importance it once had in inter-cantonal relationship. It seems that no reported inter-cantonal case before the Swiss Federal Tribunal in recent years has been decided by a Civil Law section. "History rather than logic", says Prof. Rice, "made this now vanishing distinction". "Is there any logic", he asks, "to support the distinction" between law and equity in American Constitutions? Such arbitrary distinctions are perpetuated by those who honor the past more than they trust the future".

Chapter III, 'The Political-legal Frontier' deals with what sorts of interests are vindicated by legal actions between cantons. The rest of the chapters take subject by subject the Inter-cantonal litigation that has engaged the federal tribunal's attention. In Chapter IV dealing with classifications of cases relating to Public Law, the author discusses the types of claims that one Canton may assert against another and the difficulty of neatly classifying them. The chief theme of litigation seems to be conflict of competence. Particularly interesting to students of International Law is the chapter on 'Cantonal boundaries and Territorial rights', where the author discusses in detail many of the well-known decisions of the Federal Tribunal oft-quoted in the field of international law.

Students of Comparative Law will find in the book a mine of information, not easily accessible, on Swiss Law and procedure. The large number of unpublished decisions and the list of important decisions of the Federal tribunal add to the utility of the book.

Professor Rice has remarkably achieved his object of making a "segment of Swiss experience accessible to the English reading public". It is not as if the author has merely presented to us the intricacies of a less known legal system. Swiss experience has a moral. As the author concludes, its "contribution to the happiness and order of a multilingual contry at the hart of a tumultous Europe, make Swiss experience worth the pondering of all the architects of the law of mankind".

The book has some interesting side-lights. Prof. Rice has a new style of spelling based on phonetics. This is explained at the beginning of the book. The author says he was conscious of the "stupidities of English spelling and resolved to do something tord lessening them". "It is time", he says, "for us to trim our own quanit grove". One gets the impression that Prof. Rice has trimmed the grove according as he wants the grove to appear. In the "Unkempt Orchard" he trims—to mention only a few—'foreign' to look as 'foran', 'sovereign' as 'soveran', 'Journal' as 'jurnal', 'dull' as 'dul'. Probably, the word 'neither' escaped Prof. Rice's attention. It has to be mentioned that the new style detracts from the pleasant readability of the book.

The peculiar numbering of the pages baffled this reviewer for sometime. But he was fortunate to find the author's explanation that "the numbering of the pages of text and notes is geared to the chapters like the numbering of rooms to the floors of a modern building".

Leaving aside the lighter aspects, Law Among States in Federacy is a significant contribution to the field of comparative federalism.

K. B. Nambyar

*****

THE PRAGMATIC APPROACH OF THE DANISH COURTS.

A characteristic feature of the Scandinavian courts—and especially of the Danish ones—is that the primary aim is to decide concrete legal dispute in such a manner that the decision is felt by everybody to be fair and just. The aim of providing guidance for the future is of secondary importance. The courts do not want to commit themselves on the general question until they are on firm ground. The counsel are, of course, primarily interested in their clients. Their concern is to win the case, and it is therefore uncertain whether the case will be so presented in the courts that the judge will feel that he can make a decision

that can serve as a guide for the future. It is true that often a safe result may be reached in a particular case, even though it may be very difficult to answer some of the general legal questions involved. So it is preferable to decide the case with reference to the particular circumstances. It is a general practice in Denmark for the courts to enumerate some concrete established facts and then conclude by saying that "Owing to the circumstances" a certain result has been reached.

One may therefore say that the tendency of Danish courts to confine the opinion rendered to the concrete case is due to intellectual restraint on the part of the judges. They prefer not to indulge in superficial reflections that subsequent similar cases may show to be untenable. Only when a number of cases have been fed to the judicial mills can it be seen how the general question must be answered. This restraint, however, sometimes develops into a reluctance to render decisions with a general effect. Perhaps the counsel even makes this "virtue" of restraint a necessity. Not daring to embark upon the general question, he takes refuge behind the concrete circumstances. In Denmark there have been quite a number of attacks by legal practitioners and theorists on this self-limiting tendency of the courts. This criticism has found its sharpest form in a statement to the effect that the courts "are steering haphazardly among the concrete facts". Though much of the criticism has been appropriate, this statement is rather wide off the mark.

—W. E. von EYBEN, "The Attitude Towards Judicial Precedent in Danish and Norwegian Courts" *Scandinavian Studies in Law, 1959,* Folke Schmidt (ed.) pp. 55-56.

******