United States, by Frederic L. Huidekoper, announced as forthcoming by the Macmillan Company will present the results of years of study by one of the foremost military experts in the United States. *Economic Aspects of the War* by Prof. Edwin J. Clapp (Yale University Press) contains a strong protest against Great Britains' infringements of our rights as a neutral power on the high seas. *The World's Highway*, by Norman Angell (G. H. Doran Company), discusses the part the United States must play in effecting the neutralization of the sea. *The United States and the Next War*, by George Lauferti (Athenaeum Press) follows the lines of Usher's *Pan-Americanism* in predicting that whichever side wins America may have to fight the victor.

Several studies of the war from the point of view of biology and the social sciences are to be found in *War and the Breed*, by David Starr Jordan (Boston: The Beacon Press), *Evolution and the War*, by P. Chalmers Mitchell (E. P. Dutton Company), *Social Progress and the Darwinian Theory*, by G. W. Nasmyth (G. P. Putnam's Sons), and *War, Science and Civilization*, by W. E. Ritter (Boston, Sherman, French and Company).

A number of collections of diplomatic documents have appeared, such as *The Protection of Neutral Rights at Sea*, by W. R. Shepherd (Sturgis and Walton) containing the diplomatic correspondence of the United States, Germany and Great Britain upon that subject, *Documents Relating to the Great War*, by Giuseppe A. Andriulli (London: T. Fisher Unwin), and the report and evidence presented by the Bryce Commission concerning the alleged German atrocities (Macmillan Company).

DECISIONS OF STATE COURTS ON POINTS OF PUBLIC LAW

JOHN T. FITZPATRICK

Constitutional Conventions—Manner of Calling. State vs. American Sugar Refining Co. (Louisiana, May 24, 1915. 68 S. 742.) The customary manner of calling constitutional conventions in the United States is by a resolution of the legislature followed by a submission of the question to the electorate. However, in the absence of express provision or restriction in the organic law the power of calling such a convention is vested in the representatives of the people in legislative session convened. When a governor calls a legislature in extra session

for the purpose of submitting the question of calling a constitutional convention to the people, he may not limit the call for a convention to a single subject. Having authorized legislation on the subject-matter he has no further power in the premises.

Dwellings—Classification for the Purposes of Removal of Ashes. Mayor, etc., of City of Baltimore vs. Hampton Court Co. (Maryland, June 22, 1915. 94 A. 1018.) A classification of the board of estimates of a municipality for the purposes of the removal of ashes from dwellings, that houses not more than four stories in height, and not having an elevator used for delivering purposes, should be classed as dwellings, and that the commissioner should remove ashes therefrom, but that houses of more than four stories and occupied by more than one family, should be classed as apartment houses, intended to relieve the municipality from the expense of collecting ashes from larger buildings, such as hotels and apartment houses, was ultra vires, arbitrary and unreasonable, and so void.

Former Jeopardy. Curtis vs. State. (Texas, April 21, 1915. 176 S.W. 559.) Where the statute makes burglary of a residence at night a distinct offense from ordinary burglary, the fact that defendant was indicted and placed on trial for ordinary burglary, does not constitute a jeopardy so as to preclude a second indictment and trial thereon for burglary of a residence at night where the court withdrew the case from the jury upon the first trial.

Former Jeopardy. Ex parte Bornee. (West Virginia, May 28, 1915. 85 S.E. 529.) A statute which gives the State a right of appeal in prosecutions for violation of the liquor laws cannot stand, since it denies to the defendant the constitutional protection that he shall not be twice put in jeopardy for the same offense, the punishment for such violations involving imprisonment. And an amendment to the constitution giving the supreme court of appeals of a State "such other appellate jurisdiction in both civil and criminal cases as may be prescribed by law" did not give the legislature power to alter the meaning of jeopardy in the bill of rights by providing for such appeal.

Elections—Preferential Voting. Brown vs. Smallwood. (Minnesota, August 27, 1915. 153 N.W. 953.) The preferential system of voting provided by the Duluth charter, whereby first choice, second choice

and additional choice votes are permitted, is unconstitutional. The word vote, as used in the constitution does not mean that the ballot of one elector, cast for one candidate, could be of greater or less effect than the ballot of another elector cast for another candidate. It was not intended that with four candidates one elector could vote for the candidate of his choice and another elector could vote for three candidates against him. The preferential system diminishes the right of an elector to give an effective vote for the candidate of his choice. If he votes for him once, his power to help him is exhausted. If he votes for other candidates he may harm his choice, but cannot help him. It is not a voting of man against man. (Orpen vs. Watson, 93 A. 843 cited to the contra.)

Highways—Use by Jitney Busses. Ex parte Dickey. (West Virginia, June 22, 1915. 85 S.E. 781.) All rights of common carriage on highways, such as those conducted by means of drays, omnibuses, hackney coaches and taxicabs, are legislative grants or concessions much lower in legal quality and dignity than the rights of ordinary use to which highways are incidentally subjected by citizens in travel and the prosecution of their business. The legislature may qualify such grants by prescribing the number, character, routes, rates and hours of service of common carrying vehicles on the highways, or it may delegate such power of regulation to municipal corporations. Under such authority a municipal corporation has power to prescribe the routes and hours and rates for and impose a license tax upon jitney busses carrying passengers along its streets.

Income Tax. United States Glue Co. vs. Town of Oak Creek. (Wisconsin, June 16, 1915. 153 N.W. 241.) The tax imposed by the income tax law of Wisconsin upon incomes derived from transactions without the State, does not impose a burden upon business or property repugnant to the provisions of the United States Constitution conferring on congress the right to regulate interstate commerce. The tax deals only with that part of the fruits of such commerce which remains as the net proceeds after all the immediate burdens of commerce have been discharged and such net profits are merged in the assets.

Indeterminate Sentence. Klette vs. Commonwealth. (Kentucky, June 15, 1915. 177 S.W. 258). A verdict fixing the defendant's punishment "at not less than two years nor more than two years in the

penitentiary" is not indeterminate or for an indeterminate term within the letter or spirit of an indeterminate sentence law.

Indians—Treaty Rights; Jurisdiction of State Courts. People vs. Becker. (New York, May 11, 1915. 109 N.E. 116.) A treaty with an Indian tribe reserving to the members thereof the right in common with other people to take fish on territory which was ceded away by such treaty, and which does not purport to secure to such Indians exclusive and special privilege in such fishing rights, is not superior to the right of the State to enact police legislation for the preservation of fish, and does not relieve the Indians from the observance of general laws regulating the taking of fish. An Indian violating police regulations of the State may be arrested and subjected to the jurisdiction of the state courts where both the violation and arrest occur outside of a reservation.

Interstate Commerce—Federal Protection of Migratory Birds. State vs. Sawyer. (Maine, July 21, 1915. 94 A. 886.) The States, as sovereignties, have the exclusive right to regulate the taking of wild game, unless such right is conferred upon the federal government. The commerce clause of the United States Constitution does not warrant the act of congress, passed March 4, 1913, regulating the taking of migratory birds within the several States, the taking of such birds not being an act of "commerce." Nor is the act warranted by the general welfare clause, declaring that congress shall have power to dispose of and make all needful regulations respecting the property of the United States, for wild game is not property belonging to the federal government.

Interstate Commerce—Carmack Amendment. Michelson vs. Judson Freight Forwarding Co. (Illinois, June 24, 1915. 109 N.E. 281.) The Carmack amendment to the interstate commerce act, regulating the liability of any common carrier receiving property for interstate carriage, covers every detail of the subject; and there can be no doubt that congress intended by the act to take full possession of the subject of interstate shipments, and that the effect of the act was to supersede all state laws and regulations on the subject.

Intoxicating Liquors—Prohibition of Publication of Advertisements to Promote Sale. State vs. Delaye. (Alabama, May 13, 1915. 68 S. 993.) The anti-advertising liquor law, prohibiting the sale of newspapers and magazines containing liquor advertisements, is within the

police power of the State to regulate traffic in intoxicating liquors. Newspapers, published out of the State and sent into the State, become subject to this regulation upon the bundles being broken and the individual newspapers placed on sale.

Legislative Procedure—Legislative Journals—Reading of Bills. Heiskell vs. Knox County. (Tennessee, June 5, 1915. 177 S.W. 483.) The court will take judicial notice of the journals of the legislature, even before they are published. Such journals cannot be impeached even for fraud or mistake, the recitals therein being conclusive. If there are any errors the house itself is the only tribunal authorized to correct them. A constitutional requirement that a bill be read in each house on three separate days, is satisfied when a senate bill which has been duly passed in that house, is substituted for a house bill, the same in tenor and substance, which had already had two readings on separate days in the house and was on order of third reading.

Married Women's Enabling Act. Porlow vs. Turner. (Tennessee, July 23, 1915. 178 S.W. 766.) An act abrogating all common-law disabilities of married women, and providing that every woman, now married or hereafter to be married, shall have the same capacity to acquire, enjoy, and dispose of all property and to make any contract in reference thereto as if she were not married, is not invalid as destroying any vested rights of a husband in a marriage occurring prior to the passage of the act.

Municipal Corporations—Home Rule. People vs. Village of Pelham. (New York, June 18, 1915. 109 N.E. 513.) An act which provides for a scheme of assessment and taxation for the townships, villages and tax districts within a certain county, wherein it is provided that there shall be but one board of assessors in each town, is unconstitutional as violative of the home rule guaranty of the Constitution as depriving villages of a right of self local government by transferring the powers covered by the act to the towns in which the villages of the State are contained.

Municipal Corporations—Powers; Building Permits. People vs. Village of Oak Park. (Illinois, April 22, 1915. 109 N.E. 11.) A municipal corporation possesses and can exercise the following powers and

no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable. If a doubt exists concerning the grant of power, the doubt is to be resolved against the municipality. Where the plans and specifications for a proposed building comply substantially with the provisions of a building ordinance, the municipal authorities must grant a building permit notwithstanding the failure of the commissioner of public works to give his approval to the plans.

Public Utilities—Act Requiring Street Railroads to Grant Free Transportation to Police Officers. State vs. Sutton. (New Jersey, June 14, 1915. 94 A. 788.) An act by which street railway companies are required to grant free transportation to police officers when in uniform or on duty, is a constitutional exercise by the legislature of its police power. The result of the statute is to induce the presence of the police upon street railway cars, and the police protection thus secured is within the object expressed in the language of the statute. Even if it be permissible to find that the purpose of the legislature was to save expense to the public by throwing it upon public utilities by the exaction from them of an unconstitutional tribute, the construction will be given to the statute that will sustain its constitutionality where the object expressed is in fact accomplished.

Public Utilities. State Public Utilities Commission vs. Noble Mut· Telephone Co. (Illinois, June 24, 1915. 109 N.E. 298.) A mutual telephone company, not a commercial company organized for profit, but which renders service to its members at cost, and does not hold itself out to render service to any one except members; which only makes connection with other companies upon the basis of a mutual exchange of free service; and which while connecting its members with a toll line for long distance service, collects no toll, leaving the matters of toll charges to adjustment between the members seeking such service and the toll companies, is a "public utility." A public use means public usefulness, utility, advantage or benefit. To be public the use must concern a community as distinguished from an individual or any particular number of individuals, but it is not essential that the entire community or people of the State, or any division thereof should be benefited. The use may be local or limited.

Race Segregation. Harris vs. City of Louisville. (Kentucky, June 18, 1915. 177 S.W. 472.) A municipal ordinance which prohibits any colored person from occupying as a place of residence or place of assembly for colored people a building in any block in which the greater part of the houses are occupied by white persons, and vice versa, but which provides that it shall not affect the location or use of such places established previous to its enactment, does not take away the right of alienation, but is merely a restriction upon alienation by taking away the probability of alienation to certain classes of purchasers, and as such, does not deprive the owners of vested rights. The fact that such an ordinance would have the effect of excluding colored people from the more desirable parts of a city does not deprive them of liberty or property without due process of law, since they can improve their sections of the city until they are equal to those of the whites. Such an ordinance is a valid exercise of the police power of a municipal legislature as a reasonable measure for the public welfare, in view of the settled public policy of the State to secure the separation of races. (State vs. Gurry, 121 Md. 534, 88 A. 546; State vs. Darnell, 166 N. C. 300, 81 S.E. 338; Carey vs. City of Atlanta, 84 S.E. 456, distinguished.)

Railroads—Spur Tracks. McInnis vs. New Orleans & N. E. R. Co. (Mississippi, May 31, 1915. 68 S. 481.) A statute which authorizes the railroad commission to require railroads to construct spur tracks so as to connect their main lines with industrial plants, without regard to the necessity therefor and without requiring any indemnity for the money expended, is unconstitutional.

Sanitary Ordinance. City of New Orleans vs. Ricker. (Louisiana, July 31, 1915. 69 S. 416.) A city ordinance requiring the rat-proofing of houses and other structures for the purposes of preventing and eradicating the bubonic plague, is not unconstitutional as being either confiscatory or discriminatory.

Slaves—Rights of Inheritance of Children. Napier vs. Church. (Tennessee, May 29, 1915. 177 S.W. 56.) Slaves could not contract and therefore were incapable of entering into relationship of a valid marriage. No civil rights could grow out of a slave union and slaves were incapable of inheriting property from each other. The slave marriage was a mere cohabitation, and subject to be absolutely terminated at the will of the master at any time. Since the war between the States,

however, various statutes have been enacted in the former slaveholding States by which, with limitations, children of these slave unions are entitled to inherit.

Statutes—Force of English Statute Enacted in 1752. Hudson vs. Flood. (Delaware, June 28, 1915. 94 A. 760.) The constitution of 1776 of Delaware provided that the common law of England, as well as so much of the statute law as should have been adopted in practice, should remain in force. A statute of 25 George II, passed in 1752, relative to attesting witnesses to a will, which provided that its provisions should extend to British colonies in America, is not in force in Delaware where there is no tangible evidence of its enactment or adoption there.

Workmen's Compensation. Jensen vs. Southern Pac. Co. (New York, July 13, 1915. 109 N.E. 500.) A workmen's compensation act, providing for a scheme for a compulsory compensating by employers of workmen injured in hazardous occupations, and which deprives employers of the defense of contributory negligence, assumed risk and negligence of a fellow servant, is a valid exercise of the State's police power and is not violative of the fourteenth amendment to the United States Constitution. This in view of the amendment to the state constitution of 1913 and of the decisions of the United States supreme court. (See Jeffry Mfg. Co. vs. Blagg, 235 U. S. 571. Ives vs. South Buffalo Ry. Co., 201 N. Y. 271, 94 N.E. 431, distinguished.) Such an act is applicable to employees engaged in interstate commerce for whom a rule of liability or method of compensation has not been provided by congress.