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# International Public Law

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## REVIEWS.

### INTERNATIONAL PUBLIC LAW\*

The second edition of Dr. Hershey's widely and highly respected *Essentials of International Public Law* is notable for its frankness. The book made its debut fifteen years ago when the writer enjoyed the optimism of youth; it now gives evidence of the author's disillusionment. The title has been changed to read *The Essentials of International Public Law and Organization*; Parts IV and V, which formerly bore the quite respectable captions of "The Law of War" and "The Law of Neutrality" are now reduced to the humble stations of "The So-Called Law of War" and "The So-Called Law of Neutrality." If the reviewer is consulted, he will advise that the third edition of this work be re-christened *The Essentials of International Organization and So-Called International Public Law*. It is not only the proud rules of international combat which need to be humbled; the whole subject of the "law" of nations needs to be put in its place.

When a professor inherits a course listed in the college catalog as "International Law," or when, in the serene innocence of his aloofness from a world of relative reality, he creates a course by that name, he no doubt feels bound at least to make occasional allusion to his *raison d'être*. Now any extensive research into "that body of principles, rules, and customs which are generally recognized as binding upon the members of the International Community of States in their relations with one another or with the nationals of other States" (p. 1 of the book under review) would seem to require that the student know what a state is, and what states look like when organized into a community. Further, since international law deals with "relations" of states the student should know what are the contacts of nations and what are the agencies of international communication. And if these rules of international law are binding the student ought even to know what are the agencies or organs for their enforcement. Now what is the professor to do with his loftily conceived course in international law when he discovers that his students have no knowledge concerning this political organism and organization which the professor is about to adorn with the principles of international law? Our worried pedagogue might be advised to abandon his course in international law in favor of a course in international politics. A plague upon the low life who mentions it! Within the academic horizon, where men are judged by the names of the courses they con-

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\* *The Essentials of International Law and Organization*. Revised edition. By Amos S. Hershey. Macmillan, New York, 1927. Price \$4.75.

duct, international politics is a fatherless, unpedigreed waif while international law is the scion of a long line of bluest blood sired by Hugo Grotius and honored by Pufendorf, Bynkershoek and Vattel. An alternative is to inject into the lectures and reading assignments on international law, a plentiful supply of politics. Dr. Hershey, in his present edition, frankly acknowledges in the name of his book, that he is catering to the need of the instructor for this kind of material. The first edition carried discussion of such matters of organization as "the characteristics of states," "classification of states," "duties of diplomatic agents," "functions of consuls," purpose, character, organization and procedure of international congresses and conferences, etc.; the present volume furnishes even more material of this sort. A section on the mandatory system appears. The chapter on "International Treaties" is more than doubled, much of the augmentation coming from new sections on the treaty-making power. Likewise, the chapter on "Amicable Means of Settlement of International Differences" has been lengthened more than fifty per cent, mainly by increased attention to conciliation and commissions of inquiry, and by the addition of eight new sections, one on the League of Nations and arbitration, and seven on judicial settlement and the Permanent Court of International Justice. Besides these, an entirely new chapter of over forty pages under the heading "Prevention and Settlement of International Differences through International Organization and Coöperation" is devoted to the League of Nations. These alterations by no means equip the book for use as a text in courses in international politics and organization, since such essentials as the methods of diplomacy, control of foreign relations, organization and procedure of international conferences, and the methods of international administrative bodies receive too scant or no attention.

To say that the third edition of the *Essentials* should be announced as dealing with "so-called" international law is no aspersion on the work of Dr. Hershey, but is rather an indictment of the profession of international law. Perhaps the greatest handicap that profession has suffered is the superfluity of treatise writers. The work of summing up in a treatise the information presented in carefully worked out studies of divisions or sectors of a field of learning may be a distinct contribution of great value. But where the original monographs have not yet been prepared it may be difficult to learn what the facts are. So in the field of international law the practice of nations is often unknown and the one who writes a book such as the one being reviewed is forced to rely for information upon men who are themselves uninformed. So the contemporary writer on international law can do little more than present the conflicting opinions and leave the problem to the imagination of his reader, or himself. One need turn very few pages to discover the present author struggling in the mire of conflicting authority with no proof of international practice to cling to (witness p. 199,

n. 4; p. 261 and n. 24; p. 308 and n. 31; p. 403 and n. 30; and p. 564). This forced reliance on writers of general works has so enhanced the importance of "authority" that we find a tendency to place the opinions of publicists upon a par with international practice as evidence of what the law is (pp. 219, 563).

While it would be too much to ask the writer of a text to search out for himself the facts which determine the actual conduct of states, one might expect at least mention of the more evident precedents. For that reason it is more than disappointing to find in this work no discussion of some of the more important international conventions and judicial decisions which have appeared between the two editions. The Barcelona convention of 1921, establishing a regime of international waterways and signed by more than twenty-five states in Europe, Asia and America, is barely mentioned and not at all described. Many of the more important prize decisions of the world war are unmentioned, e. g., the *Roumanian, Anichab, Bonna, Hamborn, Berlin, Floating Craft of Deutches-Kohlen Depot at Port Said*. Indeed, while Professor Garner's *Prize Law During the World War*, and Professor Verzijl's *Le droit des prises de la grande guerre* are cited, they quite evidently were not adequately used, though either would have enhanced to a marked degree the value of the last hundred pages of this book.

In physical appearance the present volume is quite similar to the first. The historical introduction has been lengthened to carry the story of international relations to the Locarno agreements, making an introduction of 155 pages, or one-fifth of the book. The parts devoted to the so-called law of war and neutrality are still almost exclusively quotation of the Hague Conventions, with notes made up largely of quotations from various publicists. The text of the new chapter on the League of Nations is likewise made up chiefly of quotations from the covenant. The proportion of space given to notes throughout the work is perhaps increased.

Various criticisms of emphasis might be made. The codes of neutrality issued by the Italian states during the war of the American colonies and France against England merit mention in chapter 4 as contributions to the development of rules of international conduct. The three pages devoted to the slave trade (p. 333) might have been reduced to a note. The chapter on international conferences and congresses might have been improved by a discussion of the increased reliance on conferences as a method of international negotiation since the Paris peace conference. It would have been advisable perhaps to preface the long quotations from the Hague Conventions with a very full discussion of the extent to which the belligerents during the late war agreed to be bound by these rules in the face of solidarity clauses which made these conventions technically not binding. These, however, are points upon which few will agree and will detract little or none from the value of the book.

The noting of some 150 errors of spelling, punctuation, etc.,

progressing in frequency as the pages are turned, leads one to think that the proof reader dozed at the start of his job and slept soundly at the end. Some of the errors, however, should be accredited to the author; e. g., Laski's well known *Grammar of Politics* is consistently misspelled as *Grammer*, M. Boidin appears about half the time as Boiden, and Bustamante appears as often as Bustamente. At least a dozen important cases appear neither in the table of cases nor in the index. Cases are in several instances cited in such obscure collections as those by Blatchford and Sprague instead of the much more accessible Federal Cases.

We note with pleasure that additional and larger bibliographies are to be found in the new edition. It seems to the reviewer that the chief value of this work lies in the comprehensive and carefully selected bibliographies which are attached to nearly every topic discussed. No better guide to the secondary material dealing with international law can be found in any language, and the new edition will delight even more in this respect. Were the book not also the most popular text which has been written for college courses in international law, the bibliographies alone would make this volume an unusually valuable contribution to the literature of the law of nations.

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## CASEBOOKS ON CRIMINAL LAW\*

Judges, lawyers and law teachers agree that law schools can do certain things for the administration of criminal justice: first, the law schools can help in the training of capable lawyers for service in the administration of criminal law, as judges, defense lawyers, prosecutors and in other capacities; second, the schools can assist in the writing and publication of books and articles on the criminal law, and in the drafting of proposed statutes, all designed to aid in administering criminal justice; third, the schools can promote the investigations and studies in the problems of criminal justice which are being conducted by many survey commissions and bar association committees, and which require adequate permanent reports and frequently call for careful legislative draftsmanship. In these three fields, respectively, of professional training, of legal writing, and of organized investigation, it is agreed that the law schools can promote better administration of criminal justice.

\**A Selection of Cases on Criminal Law.* By Francis Bowes Sayre. Rochester: The Lawyers Co-operative Publishing Company. 1927. pp. xxix, 1135. Price, \$6.50.

\**Cases on the Administration of the Criminal Law.* Selected and arranged by Edwin R. Keedy. Indianapolis: The Bobbs-Merrill Company. 1928, pp. xx, 586. Price, \$5.00.