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Judicial Interpretation of International Law in the United States, by Charles Pergler

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BOOK REVIEWS

Judicial Interpretation of International Law in the United States. By Charles Pergler. The MacMillan Company, New York. 1928. Pp. x-222.

In this little volume of two hundred pages Dr. Pergler has taken a short conventional outline of International Law and filled in the respective sections with appropriate excerpts and summaries which he has taken from nearly five hundred leading Supreme Court decisions. The work contains, in addition to the six chapters, a table of cases cited and an index.

The author turns first to the acceptance and enforcement of International Law in the United States. Lawyers will immediately recall that Blackstone, in his Commentaries, declares that in England the Law of Nations is "adopted in its full extent by the common law and is held to be a part of the law of the land." Since this common law was brought to America by the English settlers it early became a part of our law and Mr. Justice Wilson was able to declare in *Ware v. Hylton* that "when the United States declared their independence, they were bound to receive the Law of Nations in its modern state of purity and refinement." With the adoption of the constitution it became a part of the "law of the land" binding the States equally with the Nation.

Next follows a sixty page consideration of Independence and Sovereignty. These are generally treated by the writers as attributes of Statehood, or else regarded as "so-called fundamental rights of states." However, in addition to these, the writer treats of the United States as a state in International Law, the recognition of states and governments and sovereignty over territory, the nature and effect of belligerency, the kinds of governments, the continuing personality of states and the effects and results of the acquisition and loss of territory. This constitutes a rather meaty order and the reviewer feels that greater clarity would have been achieved if the material had been divided and made the basis of two chapters, or possibly three, rather than one.

A third chapter is devoted to the Jurisdiction of States. It covers the positive jurisdiction of states over their land and water boundaries and discusses the exemption from territorial jurisdiction, in addition to the problem of extradition. The treatment is deficient in that scant attention is accorded to jurisdiction over the marginal seas whereas this is proving to be of vast importance in contemporary litigation. Too, the author makes no mention of jurisdiction over the air space, although a pronouncement in point issued from the Supreme Court as early as 1907, *State of Georgia v. Tennessee Copper Co.*, 206

U. S. 230, whereas the political department of our government did not adopt the view advanced in this opinion until the outbreak of the World War. The refusal of the American Senate to ratify the International Flying Convention of 1919, or to sponsor aerial navigation treaties with other countries, renders this phase of jurisdiction of special importance at the present time. Too, it is to be noted that foreign government sponsored cartels operating in the United States have brought into greater prominence the difficulties presented in *Berrizi Brothers v. S. S. Pesaro*, 271 U. S. 562. In this regard see *United States v. Deutsches Kalysyndikat Gesellschaft*, 31 Fed. (2) 199.

The author next turns his attention to Citizenship and Alienage. The reviewer regards this as the most valuable section of the book. Even here the author devotes eight pages to the traditional doctrines of *jus sanguinis* and *jus soli*, although, so far as the United States is concerned, this is "wholly a matter of municipal legislation" and is answered by the Fourteenth Amendment. Still it may be laid down as a principle of International Law that every state may determine for itself what classes of persons are entitled to its citizenship. Also, once the state has conferred citizenship it is possessed with full power to stipulate the conditions subject to which it will release the bond of allegiance. Dean Pergler could easily have discussed such provisions of the Act of 1907, in connection with the Cable Act, p. 145. As regards aliens, their status is determined by the municipal laws of the country of residence. Thus the state may prevent altogether the entrance of foreigners, or may impose limited reasonable disabilities as a condition requisite to admission. If the state may go this far, then it may also expel them and International Law will raise no bar in such procedure.

A fifth chapter deals with Treaties, a third of which is given over to the treaty-making power in the United States. Here, in the opinion of the reviewer, the most important problem is the ability of Congress to nullify a self-executing treaty which the President has negotiated upon a subject not within its legislative competency, rather than "declaring any treaty invalid as having transgressed even the broad powers granted by the Constitution," as Mr. Pergler would have it. The "good sense," to use the phrase of the author, of the American Congressmen may not prevent our courts from facing squarely this issue in future litigation. It will be recalled that such a situation existed during President Wilson's administration but the issue did not come before the courts.

The remainder of this chapter is devoted to the enforcement, interpretation and termination of treaties. No attention is given to sanctions: treatment is confined to the measures adopted by the respective governments in putting the treaty into operation. Since treaties are in the nature of contracts, they are "governed by those canons of construction and interpretation applicable to agreements in writing between individuals, the primary object

being to give effect to the intent of the contracting parties." They may be terminated in various ways. These are enumerated and major attention given to the *clausula rebus sic stantibus* by which a treaty may be considered as abrogated when material circumstances on which it rests change, and to the effect of war on treaties. Our courts refuse to hold that treaties are extinguished, ipso facto, by war. The general formula of the old writers no longer suffices: the courts regard each treaty as entitled to special treatment on its own merits.

In a final chapter, entitled Remedial Measures Falling Short of War, the author devotes two pages to arbitration, one page to non-intercourse and embargo, and three pages to retaliation and reprisals. These points have been dwelt upon in only a few of the cases, hence the treatment is necessarily brief.

In reading the volume, one feels that it would have been better for the author to have included more of the case facts. Not only would it have added interest and clarity, but it would have given the reader a better understanding of the law. This seems all the more necessary since the courts regard the law of a case as applicable only to the particular facts under litigation.

The volume merits the attention of all students of the social sciences who desire a cursory legal summary of the principles governing the relations of states in time of peace. It will be of little use to practicing lawyers who have access to Corpus Juris or R. C. L. The volume is a disappointment in view of Dean Pergler's training and experience.

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