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Patents and Gebrauchsmuster in International Law

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all but ignited the already overstocked tinder-box of war."³ For the first time, contemporary American accounts are collated, the evidence sifted, and Dr. Ambler concludes that the juxtaposition of events justified Washington's action. The painstaking work which was necessary to assemble and mobilize these contemporary newspaper accounts, which are published in the appendix, is a tribute to Dr. Ambler's scholarship and is in itself a sufficient recommendation of the work.

The Fort Necessity clash is carefully reviewed by Dr. Ambler, and under his scholarly treatment, yields new fruits. Popularly described as a "defeat," Dr. Ambler points out that Washington, according to the terms of the capitulation, accomplish much of what he had set out to do and that his retirement was not the "rout" others have described.

The book moves along smoothly and Dr. Ambler has captured that elusive quality of making dates and places readable. Perhaps a simile may be helpful — he makes what are otherwise tedious "courses and distances," material which is akin to metes and bounds, flow evenly. The mechanics of this approach indicate a well-placed background, with Washington, the central character, emerging naturally and carrying with him the burden of the story to be told. The reader is unaware of any "hero-worship."

Complete foot-notes, an extensive bibliography which must claim the admiration of any student, a helpful appendix and index conclude the work.

—BEN IVAN MELNICOFF.

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PATENTS AND GEBRAUCHSMUSTER IN INTERNATIONAL LAW. By Emerson Stringham. Madison, Wisconsin. Pacot Publications, 1935. Pp. 447.

If one were seeking a good focal point from which he could quickly survey the temper of the prevailing economic order, he need only peer briefly into the machinations of patent law structure. He will perceive a rapid succession of scenes on the national and international stage, starting with the trade expansion period of the Industrial Revolution, and shifting temporarily through the Congresses of Vienna, Paris and Madrid to the more recent Wash-

³ AMBLER, GEORGE WASHINGTON AND THE WEST (1936) 72.

ington and Hague Conferences. The well-trained observer need not be tangled in the net of these passing events, however. Permeating the desire for national and international patent monopolies with their huge financial accoutrements is the constant pattern of a simple ideal which stands out in bold relief, — the ideal of private property with the “right to exclude others”.

The same focal point will also reveal the weakness inherent in the “international” slant upon society. Just as the League of Nations has crumpled under the pressure of autonomous groups, so in the field of patents no effective international legislative body has emerged from all of the conventions. The international patent has yet to be born, and because of the persistence of national values, the chances for birth are remote. The only “rights” and “privileges” that have transcended the national arena have been brought about mostly by bilateral, and sometimes multilateral treaties. For this reason it is difficult to understand the meaning of the term *international* in Mr. Emerson Stringham’s edition of *Patents and Gebrauchsmuster in International Law*. The study is at best a collation of *national* patent laws, together with a resumé of the international patent agreements to date.

Aside from one chapter entitled “Soviet View”, which has been placed in an awkward context, the study is devoid of interpretive insight. Instead of expanding the social implications manifest in this chapter, the remainder of the articles by Du Bois-Raymond, Osterrieth and Issay, plus the editor’s contributions merely describe the technical ramifications of the English, French, German, Italian, Russian, Canadian and American systems. This may be valuable for one who seeks only to enrich his store of factual knowledge in the field of comparative law. One, for instance, may learn what to pour into the vague receptacle called “patentability”; the nature of Gebrauchsmuster or short-term patent; the powers of administrative tribunals in patent procedure; the rapid advancement along design registry lines; the methods of contesting a patent; the necessity for “compulsory working”; the research methodology; the nature of annulment procedure and the remedies available to those who assert their patent rights. But one does not glean a clear picture of the balance between the interests of inventor, competitor and society. It is not shown clearly, for instance, that France favors the inventor, that Germany favors the industrialist, and that in England the societal aspect is impressed, with patent monopoly regarded with

disfavor. Such generalizations one must distill from a poorly organized mass of data.

There too is lacking a critique of the prevailing patent theory. In examining the detail of the various systems, one cannot avoid being impressed with the fact that the legal forms lag far behind the present-day needs. For instance, there is no reward offered to those who discover the "principles" upon which the practical "applications" are based. Patent pools, monopolistic "cross licenses", the formation of price cartels, are all evils which partly arise out of our patent structure, and, despite the Sherman and Clayton Acts, still remain — unperturbed. Finally, most inventors are under strong economic compulsion to assign their mental products to powerful industrialists who "benevolently" subsidize them. Once, inventors were offered patent protection in exchange for the benefit that they may confer upon society. Today, their efforts seem to be canalized into improving previously patented processes — a practice which inevitably results in greater "exploitation" through monopolization.

—JULIUS COHEN.

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NOTICE

Professor Ambler has for sale 150 copies of his book, **GEORGE WASHINGTON AND THE WEST**, reviewed in this issue of the **QUARTERLY**. While they last he is offering them at \$2.85 which includes postage. Publisher's price is \$4.00.

Address,

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STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912,

Of West Virginia Law Quarterly and The Bar published quarterly at Morgantown, West Virginia for October 1, 1935.

State of West Virginia }
County of Monongalia } ss.

Before me, a Notary Public in and for the State and county aforesaid, personally appeared Louise Farrell Hartley, who, having been duly sworn according to law, deposes and says that she is the Managing Editor of the West Virginia Law Quarterly and The Bar and that the following is, to the best of her knowledge and belief, a true statement of the ownership, management, etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 411, Postal Laws and Regulations, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

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2. That the owner is: Faculty of the College of Law, West Virginia University, Morgantown, West Virginia.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by her.

LOUISE FARRELL HARTLEY,
Managing Editor.

Sworn to and subscribed before me this 11th day of October, 1935.

LOUISE KEENER,
(My commission expires March 13, 1939.)
