

November 1920

## A Treatise on International Law

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### Recommended Citation

J. M. Callahan, *A Treatise on International Law*, 27 W. Va. L. Rev. (1920).

Available at: <https://researchrepository.wvu.edu/wvlr/vol27/iss1/23>

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Lewisburg, died September 19, 1920. Messrs. Noonchester and Pace both were young men who were killed in automobile accidents. V. B. Dunn, Kingwood was killed in a similar accident on September 21, 1919.

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### BOOK REVIEWS

**A TREATISE ON INTERNATIONAL LAW.** With an introductory essay on the definition and nature of the laws of human conduct. By Roland R. Foulke, of the Philadelphia bar. Philadelphia: The John C. Winston Co., 1920, 2 vols. pp. 482, lxxxviii and pp. 518, lxxxviii (961 pages of text).

The author states that the purpose of his "humble effort" in writing this treatise is to aid in the modern movement for removal of the barriers to further development of international life "by exhibiting a more accurate and a more logical discussion of international law than has been usual among writers most of whom are so far removed from the actual facts of the world" (II,479). His chief aim has been "to clear away some of the many obscurities and misconceptions which pervade the subject." Apparently, however, he has no intention of popularizing a subject on which he says the masses must be content to be advised by experts. He says it would be as feasible to popularize the binomial theorem, the law of optics or the rule against perpetuities; and he recognizes that international law can be understood only through a knowledge of the "obvious facts in the history of man"—the rise and development of modern civilization through commercial and intellectual expansion.

He "does not pretend to have any more than scraped the surface" but he has especially tried to present "a more logical arrangement than that commonly found."

Although the author is logical, painstaking and comprehensive in his treatment, and his ambitious effort will doubtless prove stimulating, he has evidently found some difficulty in realizing his purpose or in fulfilling the promises of the publisher's extravagant announcement of "International Law made absolutely clear." His definition of law as "the jural conception of human conduct influenced by external factors other than forces of nature" and his conclusion that it has "no origin or existence outside of the mind" will hardly prove satisfactory to all who read the confusing definitions of writers which he has collected and compared.

He defines international law as "the conception in terms of order of the conduct of independent states as influenced by external and internal factors, from which external factors are excluded the forces of nature and external political power, which we may call the jural conception of the conduct" (I,143).

His definition of a state as "a community of men exerting its power as an organization by its own inherent force and not by a delegation of power from any other organization" is certainly inadequate and not in accord with the views of authorities. Neither by authorities nor in practice have pirates been treated as states.

He classifies states as fixed, moving, independent, belligerent and insurgent, dependent and neutralized—a division not based on coordination. To his classifications is added a useful alphabetical list of states annotated with chief facts relating to their origin and status.

He considers the Monroe doctrine as America's contribution to the maintenance of the balance of power—which, as a result of increasing solidarity of the world, and the growth of wealth and commerce of the South American republics, he says, must be maintained among a larger number of communities of independent states (I,121 n).

Following the preliminary chapters (chs. 1-3), Mr. Foulke presents the subject-matter of the treatise under the general heads "Substantive International Law (Part II, Vol. I., chs. 4-7, pp. 179-482 and Vol. II, chs. 8-9, pp. 3-83) and "Remedial International Law" (Part III, Vol. II, chs. 10-19, pp. 85-144).

To substantive international law he devotes six chapters—treating intercourse, territory, the seas, treaties, independent states and aliens, and state conflicts. In discussing excuses for non-performance of treaties he is perilously lax in suggesting that every state guided by its own discretion and self-interest will disregard or repudiate an inconvenient treaty or obligation whenever it feels strong enough to do so—unfortunately citing as an example the violation of the neutrality of Belgium by the Germans in 1914 (I, 447).

Among other interesting discussions, is one on exclusion and expulsion of foreigners—a right which he sustains subject to restriction by treaties, and possibly by the obligation of self-interest. He regards the question of race antagonism as one of the most serious confronting the modern world, and sees little hope in the

near future for sufficient solidarity to permit the free mingling of races; but in his final summary he looks forward with prophetic vision to a time when the remaining barriers to further development of international life—racial distinction and diversity of language—will be removed, resulting in one civilization, one language and racial solidarity. Meantime, he says “The spirit of nationality still remains to curse the world with its differences and prejudices.”

On the question of Jewish disabilities in Russia and other European states, he feels that the American people have misunderstood the true principles applicable to international relations and have violated the plain homely rule of “minding your own business.” He also declares that the refusal of Turkey to receive American missionaries who have been sent to convert the Turks furnishes no ground of complaint by the American government.

He recognizes that an independent state should be able by municipal law fully to control all its international problems; and, referring to the anomalous situation under which American commonwealth governments have violated international obligations without coercion, he holds that an American treaty must necessarily override mere commonwealth laws forbidding aliens from holding property.

Under remedial international law (Part III) he treats in successive chapters (chs. 10-19) redress from damage to a state interest, war, neutrality, conduct of hostilities, property in war, public property in war, private property on land and in maritime belt in war, private property at sea in war, private individuals in war, and character of individuals and property—subjects whose importance was increased by the practices in the recent “War of German Aggression” of 1914-18, to whose problems and acts the author frequently refers.

To neutrality he devotes nearly 100 pages including copious notes and references. He mentions Germany as the only state in modern times to descend to the odious practice of committing through diplomatic officials, under the cloak of diplomatic immunity, acts in violation of the neutrality of the United States and other countries to which these officials were accredited. He suggests that America was dragged into the “War of German Aggression” because her lack of preparation and the weakness of her foreign policy in 1914-17 did not command German respect.

He recognizes the doctrine of necessity in war but states that

the application will vary and is really a test of the civilization and humanity of a state. Although gentlemen representing the civilized states of the world substantially comply with the restraining rules of war, they are temporarily at a disadvantage in fighting with barbarians. He especially cites various German acts of pitiless and barbarous severity authorized by the German government in the recent "War of German Aggression," disregarding all restraints of civilization and humanity and resulting in the united resistance which finally accomplished German defeat. He refers to the recent conduct of the Germans in Belgium and northern France as perhaps the most conspicuous instance, in the last two hundred years, of systematic and ruthless destruction of private property in the invaded district. Although he finds some justification in resort to the use of modern implements of war which cause death on a large scale, and considers unobjectionable the shots from air vessels which result in no more needless cruelty than shots from troops on land, he considers that "the use of poison gas and streams of fire which result in a lingering death accompanied by great suffering is the act of a barbarian." He apparently condemns the violence which the Germans recently directed with "unexampled ferocity and barbarity" against cities and towns behind the enemy lines, although he thinks their methods will doubtless be used on a larger scale in the next war and may be found much less deadly and inhuman than has been supposed by the civilian population. Destruction of private property at sea, thus leaving no opportunity for a judicial review—and at the same time furnishing the possibility of abuse and inflicting a needless damage which reacts in part on the destroying state—he regards as indefensible in theory, although he thinks it seems inevitable in practice because states of a lower grade of civilization will throw aside all restraints." Destruction on sight without capture he properly regards as still more indefensible, but he finds it difficult to answer the arguments of those who say international law furnishes no restraint on such destruction of innocent property by submarines directed by a barbarous cruel state.

The work is logical and compact in arrangement, is well supplied with valuable footnotes, citations to historical precedents and references, and is characterized by philosophical discussions which interest the reader. It is interesting not only in discussing the facts of international law, but also in presenting the historical

background showing the development of the facts and the accompanying reasons. To each chapter is appended a very satisfactory summary; and in a concluding chapter is a final general summary which reviews the work and emphasizes the important topics.

The value of the volumes for rapid reference is increased by a duplicate index (88 pp.) appended to each volume, and by a full table of contents (26 pp.) which appears at the beginning of Vol. I and is repeated as chapter headings. Another valuable feature is the "Table of International Persons" inserted at the close of the second volume (pp. 480-518) showing at a glance the chief historic facts concerning the growth of the principal states of the world.

—J. M. Callahan.