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Review of “The Law of Nations,” By Marcellus von Redlich

Stefan A. Riesenfeld
Harvard Law School

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In spite of these criticisms, Dr. Beardsley's volume affords an exceedingly useful tool in a field where little guidance existed. After using this volume with a class of sixty students, the reviewer is satisfied with its contents, even though numerous minor typographical errors evidently escaped the attention of editors and proof-readers.

OSCAR C. ORMAN.†

THE LAW OF NATIONS (2d. ed.) By Marcellus Donald von Redlich. World League for Permanent Peace (1937). Pp. xvii, 607.

At the outset it must be admitted that the author may have deserved a friendlier critic than the present reviewer who writes his observations in the spirit of disappointment. He expected of the author a book which would show the fruits of the blending of American and continental legal training which Dr. von Redlich is so fortunate as to possess, *i. e.* a scholarly work somewhat in the nature of Professor Lauterpacht's remarkable achievements in the field, or, at least, a book which would contain some critical and constructive suggestions regarding the renewal and maintenance of the international legal order. But the book did not fulfill these hopes.

Dr. von Redlich's *Law of Nations*, in spite of its broad title, deals only with certain aspects of international law. On the other hand it contains many things which have not the slightest, or very little, connection with the subject. What is the reason for discussing police power, the powers of Congress, the District of Columbia, admiralty jurisdiction, amendments to the Constitution during the first quarter of the twentieth century, and relations between federal and state government in a book on international law, and for leaving out important topics such as state responsibility, state succession, freedom of the sea and territorial waters, international limits on jurisdiction and the whole of the international law with respect to neutrality, intervention and war? To be sure, the author claims, in the preface, the privilege "to present his subject matter in such arrangement as he may deem advisable and to include such phases of the subject treated as he thinks will serve the purpose for which the book is intended." Precisely, for whom *is* the book intended? The reviewer could make it out neither from the preface nor the content of the book.

Dr. von Redlich bases his text mainly upon American decisions. This makes the tenor of the book somewhat similar to Professor Hyde's well known and rightly esteemed *International Law Chiefly as Interpreted and Applied by the United States*. In addition the work contains interesting excursions into diplomatic history and the intricacies of the diplomatic ceremonials which, however, perhaps are too lengthy in proportion to the strictly legal parts of the book. But one misses any critical analysis of the quotations taken from the decisions. Fundamental problems, as for instance the relationship of international law and municipal law in general, the question of the subjects of international law, the effects of recognition, etc.

† Assistant Professor and Librarian, School of Law, Washington University.

are either not treated at all or in an unsatisfactory way. The author has shown too little discretion in the choice of quotations taken from the cases; see for instance the statement that "international law cannot be accorded extraterritorial (sic) operation to embrace non-civilized states,"¹ a bit of wisdom emanating from the Supreme Court of Mississippi in a pre-civil war slave case.²

The method of patching up a book by citations requires that the "writer" be on his guard lest he fall into inconsistency. Dr. von Redlich has not avoided this danger. For instance on page 8 he says, based on a statement by Oppenheim, that "the Law of Nations is exclusively based on (1) Custom and (2) Treaties"; but on page 6 he quotes a passage from a decision of Commissioner Frazer to the effect that "international law is the natural law applied to the nations, in their relation to each other, so far as they have consented that it shall be thus applied"; and on page 7 the readers are told that "the Law of Nations is divided, in a broad sense, into General, Conventional and Customary." How does all this go together?

Furthermore there are deficiencies in organization and treatment. The book suffers from repetitiousness. For instance section 5 deals with the "Subjects of the Law of Nations," section 7 with "States as Subjects of the Law of Nations" without adding anything substantial to section 5. Article 36 of the Statute of the Permanent Court is printed in full twice in the text. (Pp. 133 and 506). The chapter headings and chapter sequence indicate little talent in arrangement. Chapter IX is entitled "The Control of Foreign Relations including the War Powers," Chapter X is entitled "War Powers," and only there do we find the subject matter discussed. The special topic of the treaty power is dealt with before the general chapter on "Control of Foreign Relations." All this is very confusing, leads to repetitions and even self-contradictions. In the actual treatment of the American law with respect to international treaties important Supreme Court decisions are entirely omitted. Imagine a chapter on the scope of the treaty-power without *Missouri v. Holland*,³ and a chapter on the effect of war upon treaties without *United States v. Karnuth*.⁴ The discussion of the treaty power of Great Britain and the British Empire should have been more precise. It is not correct to say that "the ratification of treaties comes within the duties of Parliament."⁵ On other points also accuracy seems lacking. The Kingdom of Saudi Arabia, as successor of Hedjas (one of the signatory powers) never became a member of the League; but is it true that it was not admitted?⁶ The statement that the earliest works on the Law of Nations were not of a strictly legal character⁷ will make Gentilis turn in his grave.

1. P. 14.

2. *Heirn v. Bridault* (1859) 37 Miss. 209.

3. (1920) 252 U. S. 416, 40 S. Ct. 382, 64 L. ed. 641. There is an indirect reference on p. 167, note 115.

4. (1929) 279 U. S. 231, 49 S. Ct. 274, 73 L. ed. 677.

5. P. 135; see also p. 116.

6. P. 419.

7. P. 4.

The reviewer is at loss to see the value of lengthy quotations from cases, as for instance two entire pages from *Taylor v. Morton*, or of the long extracts in Spanish from Bustamante and Cruchaga,⁸ which probably only a few readers will understand. The bibliography which is intended for "the scholar and student who are desirous of conducting further researches on the subject" show serious deficiencies. One misses references to Anzilotti's and Cavaglieri's celebrated treatises, to Fedozzi-Santi Romano's great *Trattato di diritto internazionale*, to Stier-Somlo and Walz's recently completed voluminous *Handbuch des Völkerrechts*. There is no mention of any writings of Kelsen; one misses his adversary Triepel's famous *Völkerrecht und Landesrecht*. Lisft's *Völkerrecht* is not cited in Fleischmann's valuable edition of 1925 and Lauterpacht's edition of the second volume of Oppenheim is likewise forgotten. The *Recueil des Cours* of the Hague Academy is listed as 1923-1931, thus omitting the last 6 years. Bruns' *Zeitschrift für ausländisches öff. Recht und Völkerrecht* and other periodicals dealing with international law would have deserved a reference more than "Current Legal Thought."

All this might be of secondary importance if the book had the result of stimulating interest in international law. But from a scholarly and technical point of view the reviewer regrets that he cannot joint Judge Bustamante's praise in the foreword.

STEFAN A. RIESENFELD.†

CASES ON INTERNATIONAL LAW. By James Brown Scott and Walter H. E. Jaeger. St. Paul: West Publishing Co., 1937. Pp. lxxix, 1062.

THE LAW OF NATIONS—CASES, DOCUMENTS, AND NOTES. By Herbert W. Briggs. New York: F. S. Crofts & Co., 1938. Pp. xxix, 984.

The case-book has been generally accepted as a necessary part of the equipment for the study of any branch of the law. For a course in International Law it is obviously even more indispensable than for courses in the Municipal Law on account of the great difficulty in this field of collecting anything comparable to the sets of supreme court reports in the domestic field. Possibly John Bassett Moore's heroic project for the collection of all the international arbitrations of the world may inspire someone to undertake the compilation of a complete chronological world-wide series of decisions under international law upon which to build a comprehensive digest service such as is now available in the field of American municipal law; but up to now nothing but an occasional fragment of the sort has been done. Consequently, the student of international law is heavily dependent upon the case-book.

There are now on the market at least half a dozen acceptable case-books from which a choice can be made. They vary greatly in plan. It has become traditional to separate the cases which have arisen under the laws of peace from those which have arisen under the laws of war and possibly

8. Pp. 146, 263, 270, 306, 343 et passim.

† J.U.D. Univ. of Breslau, 1932; J.U.D. Univ. of Milan, 1934; LL.B. Univ. of California, 1937; Graduate Student, Harvard Univ. Law School.