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Mr. Riesenfeld Replies to Mr. von Redlich

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This volume on Incompetents and Dependents covers the law of infants, aliens, drunkards, and insane persons. The place of the first in a study of family law is obvious. That of the other three is not so clear. Of course, differences between aliens' and citizens' rights to hold and transfer property, differences as to inheritance, employment, and the like do affect the family. But the law pertaining to torts and crimes by drunkards and insane persons, suits by and against them, judicial determination of their status, etc., seems a bit remote from the family as such. On the other hand, dependents who are feebleminded or who are kinsmen other than parents and children appear not to be dealt with in this volume and series.

The procedure here as in previous volumes is to present first a brief summary of the common law, second a statement of statute law showing variations and omissions, third some criticism and comment, fourth references to texts, case books, annotations, reports, articles, and case notes from law journals. Effective use is made of comparative tables. This volume contains, instead of a separate index, one covering the whole series.

The reviewer, who is a student of sociology, not of the law, is impressed by the thoroughness with which this series has been prepared. The organization of material and the indexes make it possible for even a layman to locate data in which he is interested. The text is well written and the tabular presentation is helpful. This work will surely be of great value, not only to the legal profession, but also to its neighbors, Sociology and Social Work.

STUART A. QUEEN.†

MR. RIESENFELD REPLIES TO MR. VON REDLICH:* I shall be content to make a few short statements concerning Mr. von Redlich's review of my review:

I did not misunderstand Mr. von Redlich's intention to present to the reader what the international law *is*. I have not said anything to the contrary. But I believe that Mr. von Redlich has not met the difficulties of his object.

Despite the author's reassurance to the contrary I still think that he has included topics which properly do not belong in a treatise on international law and has left out vital subjects. The reference to Judge Moore's treatise proves nothing. The District of Columbia is treated there merely under the aspect of acquisition and loss of territory. Admiralty jurisdiction is dealt with by Judge Moore under its international aspects and not in its relationship to state powers as in Mr. von Redlich's book. If the author had discussed in his chapter modern cases of international implications, such as *United States v. Flores*,¹ I should not have objected. The international

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* See in this connection Mr. Riesenfeld's review of Mr. von Redlich's *Law of Nations* (1938) 23 WASHINGTON U. LAW QUARTERLY 289, and Mr. von Redlich's answer in 23 WASHINGTON U. LAW QUARTERLY 453.

1. (1933) 289 U. S. 137, 53 S. Ct. 580, 77 L. ed. 1086.

importance of the extent of the police power and the various amendments has yet to be discovered.

I cannot understand how Mr. von Redlich fails to see the inconsistency of the three statements: (a) that international law is exclusively based on custom and treaties; (b) that it is "the natural law," etc.; (c) that it is divided into three kinds, General, Conventional, and Customary. The statement under (c) differentiates "general" and "customary" international law. This is not the case in the statement (a), and the statement under (b) goes on a natural law basis. Here is one of the fundamental problems of international law which the author treats with too much nonchalance and lack of consistency. The latter is not gained by splitting the discussion into "definition," "sources," and "origin." Certainly I have not neglected any words of Mr. von Redlich nor overlooked the difference between custom and usage.

Mr. von Redlich now explicitly states that the book is intended for the profession and scholars. So it is not "unfair" to measure the work on professional and scholastic standards.

The relationship between municipal and international law is one of the bitterest controversies in the field. The few remarks on pages 12, 13, 177 do not amount to adequate treatment. The same is true with reference to the subjects of international law.

Where did I question the authority of Professor Oppenheim or Judge Bustamante? All I do is to disagree with the latter with respect to the value of Mr. von Redlich's book.

The British Parliament never "ratifies" treaties. The king, and only the king, has this function. It is perfectly known to me that in the certain instances where legislation is required for the execution of treaties (as in the United States also),² the assent of the Parliament is sought. But this is by no means a ratification.³ Sir Ernest Satow, to whom Mr. von Redlich refers, does not say anything of parliamentary ratification.

Some states could not become members of the League; others did not join even though membership was open to them.⁴ To say that the latter states (*e. g.* Saudi Arabia) were "not admitted" is not accurate.

The question of translating foreign citations is a matter of opinion. Incidentally, Mr. von Redlich does some translating of de Bustamante on page 326.

The "pet" authors and periodicals which I missed are either most important modern treatises of authors of highest reputation, leading periodicals in the field, or classical standard monographs.

In conclusion, I should like to say that the author is unfortunately mistaken in his inference that I did not read his book carefully.

STEFAN A. RIESENFELD.

2. Cf. Riesenfeld, *The Power of Congress and the President in International Relations* (1937) 25 Cal. L. Rev. 643 at 650 ff.

3. Cf. Wilcox, *Ratification of International Conventions* (1935) 78.

4. Cf. Hudson, *Cases on International Law* (1929) 23.