

LAW LIBRARY JOURNAL

Vol. X.

July, 1917

No. 2

Published in conjunction with the Index to Legal Periodicals, Vol. X, No. 2, July, 1917

Published Quarterly by
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Index to Legal Periodicals and Law Library Journal
Official Organ of the Association
Editor, GERTRUDE ELSTNER WOODARD
University of Michigan, Ann Arbor, Mich.
Business Managers, THE H. W. WILSON CO.,
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RECENT DEVELOPMENTS IN INTERNATIONAL AND MUNICIPAL LAW

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The charge has frequently been heard in the last few years that international law is in a state of suspended animation and paralytic desuetude. Those who have embraced the view that it is not law at all find in the experiences of the last three years what they consider unanswerable support. To the uninformed, these criticisms of international law as a system make a striking appeal. Yet, when examined in the light of fact and history it will be discovered that the criticism, even in its widest application, can extend only to a very limited portion of the rules governing the conduct of war, and that the great body of the so-called law of nations is constantly enforced in international practice and in courts of law.

International law, in so far as it relates to the rules governing war, is undergoing today the same experience it has had many times in the last two hundred years. Each of the great conflicts in the history of international relations has threatened with destruction the most sacred institutions of the law of nations; yet, nevertheless, the progress of civilization has witnessed the tissue of that law emerge from each crisis tougher and firmer.

There are not a few striking resemblances between the development of private law and of international law during the nineteenth century. These center particularly about the factors making for greater socialization in both fields of law, and the most important of these is the economic factor.

The basis of modern life, national and international, is economic. The revelations of science as applied to industry have worked a metamorphosis in economic conditions since the end of the eighteenth century. These changes have brought in their train social changes, which have been reflected in the law. The eighteenth century philosophy and the individualism of the French Revolution, which found legal expression in the French civil code and its widely diffused progeny in other countries, began slowly to be replaced by the sociological philosophy of the later nineteenth century. Large scale industry, the rapid increase and accumulation of personal property, the growing complexity of business relationships arising out of corporate organization and combination, the concentration of population in urban communities and the ever greater facilities for communication, transportation, and international commerce and intercourse have brought about remarkable changes in social conditions, reflected in the law by transformations in private and public law.

Early nineteenth century individualistic notions of liberty, liability, contract and property have had to yield to new interpretations impelled by the new conception of social solidarity. Former theories of individual liberty have been modified by a recognition of human life as a social asset and of the State's duty to protect it as such, and metaphysical conceptions have almost vanished before the more convincing teleological theory of law; liability has ceased to be altogether subjective and in industrial enterprise and public services has become objective, as in the doctrine of liability without fault; a private contract is no longer a formalistic instrument, but embraces in its legal interpretation ever increasing elements of social purpose; and property is no longer an unlimited subjective right of the owner, but constitutes a public trust.

These changes in legal interpretation have been accompanied by an increasing expansion in the functions of the State, to prevent a violation of what may be called social justice. In our country, the line of demarcation between the police power and the constitutional limitations of the fifth and fourteenth amendments is being gradually moved in the direction dictated by the larger social interests of the State. Whether this represents, particularly in the field of labor legislation, a reaction against Sir Henry Maine's theory of evolution from status to contract or merely a recognition of the necessity for greater protection of the social interests of the State, it is beyond doubt that private property and private rights are now affected with a trust founded on social duties in the public interest.

Again, the necessity for certainty in the law led to the movement for codification, in which practically all the civil law countries of the world have taken part; and the approximation in economic conditions, with the gradual tightening of the bonds of international intercourse, has led to an increasing degree of assimilation of the rules of private, particularly commercial, law and the establishment of rules for the adjudication of conflicts of law among the civilized nations.

An analogous evolution may be traced in the sphere of international law. The vast expansion in foreign trade, the growth of commercial interpenetration and the migration of peoples from overpopulated to undeveloped countries has begun to bring about new conceptions of independence, sovereignty and territorial jurisdiction. Each of these concepts, with their strongly individualistic flavor, has had to be tempered by a recognition of limitations created by the interests of other

states and peoples. The widening substitution of interdependence for independence is recognized in the many devices and measures adopted, in the interests of convenience and order, for a joint regulation of the mutual interests of states. This has taken place in various ways—by the adoption of uniform municipal laws, as in the case of bills of exchange; by the observance of uniform customs, as in the York-Antwerp rules of general average; and principally, by international agreements governing the many spheres of mutual interest which modern economic and social conditions have created. Public administrative unions, covering the post and telegraph, railway transportation, navigation, patents, copyright and trademarks, agriculture, insurance, sanitation, the regulation of sugar production, the opium trade, the African slave trade and liquor traffic, police administration and many other international phases of state activity, evidence the growing solidarity of nations. Coordinate with these agreements are the several international conferences which have achieved valuable results in the adjustment of the conflict of laws in the adjudication of various classes of cases.

Commerce and economic interests are the forces which are bringing about the socialization of international law. The new industrial stage which opened with the introduction of machinery and the improvement in land and water transportation in the early nineteenth century brought a quick realization that war in any part of the world was an economic disturbance for all countries, and efforts were made, with increasing success, to confine its disastrous results to as small an area as possible. Hence the widening range of the rules governing neutrality, to whose development the United States has made notable contributions. Again, developing from treaties between two states to international conferences of nearly universal participation, from the Conference of Paris of 1856 to the Second Hague Conference of 1907 and the London Conference of 1908-9, the rules of land and maritime war have been, in part, codified and standardized. The rules governing military occupation, the effect of war on private property and other private rights, the exercise of the belligerent right of blockade and the rules governing contraband carriage have all been developed in the nineteenth and twentieth centuries in the interests of a growing economic and social advantage in their definition. The inevitable struggle between neutral and belligerent rights in time of war had, until lately, largely by reason of British economic self-interest and support, been practically won by the defenders of the neutrals, and belligerent rights restricted to their narrowest limits.

In more peaceful activities, the policy of commercial penetration and exploitation of undeveloped or backward countries has led to colonial expansion, to spheres of influence, and to overseas investments and markets, by economically strong countries. Here we find the source of the many cases of international friction giving rise to the diplomatic protection of citizens abroad and pecuniary claims. This is practically a phenomenon of the nineteenth century.

As commerce cannot long thrive in an atmosphere of belligerent disturbances, efforts have been concentrated, with considerable success, upon the initiation of methods for settling international disputes without recourse to arms. The nature of many of the disputes arising out of economic relations lends itself to settlement by conciliation and arbitration, which methods of adjusting international differences have made remarkable progress during the last century. Only when these economic

conflicts become political in character, have pacific methods, up to the present time, proved generally ineffective in preventing belligerent action. The dynastic ambition of rulers has been replaced by the economic interest of peoples as the moving cause of international conflicts, and the primary reason for the present world conflagration is to be sought, not in the worship of any particular form of government, democratic or autocratic, but in the clash of economic interests arising out of commercial rivalry, jealousy and fear.

This brief indication of the recent development of municipal and international law by socialization, codification and assimilation may warrant a concluding suggestion as to the future development of law in international relations. The Thirty Years' War, the Wars of Louis XIV, the many continental wars of the eighteenth century, the Napoleonic struggles—have each been followed by an era of law-making designed to establish a more orderly regulation of international relations. The necessity for better organization and the strengthening of international law was emphasized in the last few decades, when the remarkable development of commerce and industry, with the realization of the interdependence of nations, led to several international conferences, terminating with those of the Hague, whose activities seemed to bring very near the day of the international legislature.

In troublous times like the present, it is not sufficiently recalled that although international relations in times of peace have grown continually more complex, the rules governing those relations are commonly observed and judicially enforced. Moreover, the vast growth in arbitration during the last century is unmistakable evidence of the toughening fibre of the law and its processes. Even the laws governing war are not without their sanction, as was shown in the Russo-Japanese war. Only when a majority of the Great Powers, impelled by the exigencies of the moment and their physical ability to depart from its recognized precepts, undertake to violate international law—fortunately only an infrequent occurrence—does the weakness of the system afford justifiable ground for complaint and manifest the necessity for improvement.

Its defects consist, therefore, not in the absence of commonly recognized rules to govern the situations usually arising, nor even in their general non-observance; but rather in the physical inability—under the present international organization—to enforce its sanctions when the Great Powers simultaneously disregard its provisions, and in the lack of a sufficiently strong legal organization of the nations of the world to compel joint action if the rules are violated by any member of the society of nations.

This end, therefore, to bring about the reign of law among nations and to establish a legal organization among them, with agencies and instrumentalities capable of enforcing the rules of law, is to be the aim of the future. In its realization, the world's ablest statesmanship will be required. Let us hope that antiquated notions of sovereignty and nationalistic ambitions for political hegemony will not be permitted to impede the achievement of this noble object, which now more than ever before is the universal need of mankind.