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Book Review: Outlook for International Law

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said, quoting WILLISTON, *loc. cit. supra:* "An express warranty is generally exacted for the protection of the buyer, not to limit the liability of the seller." *Supra* at 596, 35 S. E. (2d) at 805. By reliance upon this guiding principle, the court has reached a proper result which may well mean that by judicial decision Virginia will follow the states which have adopted the Uniform Sales Act.

BOOK REVIEWS

The Outlook for International Law. By J. L. Brierly. Oxford: The Clarendon Press. 1944. Pp. 142. $2.00.

Anything that is written by Professor Brierly is worth reading. He is one of the keenest minds operating in the field of international law, and his views of the outlook for that system are therefore important. It is rather depressing to observe that the defects of the existing system which he notes in Chapter I find their only relief in a supposed international organization which, in spite of good wishes, must be said to be thus far marked by regrettable failures. The period of two great wars it is not responsible for. A new experiment in international organization, the United Nations, organized since the book was published, is accompanied by a commitment that no action shall be taken by the operative Security Council except by the unanimous consent of five great powers, a unanimity which has never prevailed on any important issue. They seem likely to use their veto not only to prevent action against themselves, and possibly even consideration of the question, but also action against their satellites and spheres of influence which all of them have strengthened. The organization is thus apparently left with the promise of action only against powers neutral in the late war and against ex-enemy states, Japan, Germany and Italy, which in part have been deprived by the Potsdam Agreement, with little reference to the limitations of law, of substantial hope of future life. Perhaps it was not this system which appealed to Professor Brierly as a promise for the future strengthening of international law.

Since international organization has so little to show—except great armaments and great debts—the subscriber is unable to share the optimism of the author. The effort to convert a system of coordination into a system of subordination has served fairly effectively to produce a general departure from international law in war, without giving us anything substantial in its place. Whether it has terminated the existence of international law in war or not depends greatly upon future factual conditions which are unpredictable. In a valuable article published in the Law Quarterly Review,[1] Professor Brierly was then unable to reconcile municipal regulations of prize procedure with current international law. Having seen that law flouted

1. Brierly, *International Law in England* (1935) 51 L. Q. Rev. 24, 26.

by all the belligerents, it seems difficult to believe that a precarious international organization can revive respect for the institution. The author concedes that neutrality purports to have been abolished by the theory of the League of Nations, thus substituting for the old localization of wars the modern conception of universal war, the threat of which is supposed to produce peace. It is a little difficult to follow the reasoning of optimists in this matter.

In the first chapter of the book Professor Brierly discusses the present system, pointing out its primitive character, since it depends on custom and must tolerate the absence of a legislature. This was the only method possible for a constellation of sixty sovereign and theoretically equal states. He notes that a large part of international relations is not covered by law at all. It serves mainly to delimit the jurisdiction of the competing states. Through the growing practice of arbitration much sensible dissipation of conflicts had occurred during the 19th century.

Instead of admitting the necessity for excepting vital interests from arbitration, many advocates of the new system would subject even these to adjudication. But the difficulty of subjecting theoretically sovereign states to law is only enhanced by the attempt to bring their political differences under legal control. The author shows in Chapter II the attempts that have been made to produce such a result by distinguishing just from unjust wars, which distinction the League tried to revive. He portrays the conditions which developed neutrality and particularly promoted it to a high estate in the 19th century. It will be a surprise to some to observe the author's judgment that it was British policy which facilitated neutrality. Nevertheless, neutrality is pictured as a fortuitous circumstance of 19th century politics. Little is said about the attack on neutrality by the advocates of collective security. But it is interesting to note that a recent writer in *The Nation,* Mr. A. Vallance, suggests that England, to preserve its life, will probably remain neutral in the wars of the collosi, the United States and Russia, which he professes to foresee.

In Chapter III the author discusses "vital interests" as escaping not only arbitration, but possibly the control of an international organization. In fact, with its reservations, the United Nations may be an admission of the fallacies of collective security. The Monroe Doctrine is properly denominated political and extra-legal. The author's discussion of vital interests and of the differences between municipal and international law is a contribution. It will surprise many to learn that a blind endorsement of compulsory arbitration might have frustrated the evolution of Europe. Arbitration might work well or ill depending greatly upon the issues to be determined. The difficulty of applying general principles and rules rather than particular treatment to international law is ably discussed, as well as the fact that international law is so largely political as to constitute a handicap to the purely legal approach. The United States had better be careful before it endorses the proposal of romantic advocates to accept the

obligatory jurisdiction inherent in Article 36 of the Statute of the Court of International Justice.

Chapter IV deals with vital interests inside the state and shows that groups occasionally rise above the law. The author is much taken by the maxim that for any order organization is necessary, and that good laws and good arms must go together. It seems a pity that Machiavelli must now be called upon to justify the United Nations. The factors which make for community feeling in international life were not notably evident at Potsdam.

In Chapter V the author points out why the League of Nations had to fail. He finds the failure in the lack of good arms, but it is submitted that some of the fault lies with the theory of enforcing peace, a peace much to be desired but never to be obtained by international force, at least not so long as there are such things as sovereign states. The author wisely observes that the promise of any state to go to war in the future must always remain precarious, and yet he finds some hope in an advance arrangement embodying promises. The author realizes the fragility of promises.

Chapter VI on international order discusses sanctions. Professor Brierly does not point out, however, how badly they worked in 1935, and that they drove Mussolini into the arms of Hitler. Here also the obligations undertaken are precarious. The flagrant breaches of neutrality which preceded this war are justified by the author under the rather lame excuse that the Budapest Resolutions of the International Law Association interpreting the Kellogg Pact justified them. This is not law, but wishful thinking.

In Chapter VI the author rightly places order, law and good government in their appropriate hierarchy. But these virtues are not easy to find in Europe today. The author asks, is there a reasonable chance of an international order which shall abolish single states and spheres of influence and substitute cooperation? History would seem to give an answer. Actually sovereign states and spheres of influence have never been abolished and are today stronger than ever. Indeed, many critics suspect that the United Nations is just an excuse for military alliances. Collective security may be an ideal, but it is likely to remain a myth as long as sovereign states prevail. The author has little to say about the Treaty of Versailles, and Postdam appeared subsequent to the book. The author is persuaded, however, that power to support law is necessary [2] and finds that feature in the prospective organization, now transformed into the United Nations. But whereas the League failed to inspire confidence, as the author observes, the United Nations cannot be called an improvement. The author calls attention to the dangers of the hegemony of the great powers and the possibility of revolt against such domination. Yet, he insists that world organization is a prerequisite of international law. Why? It was not before 1920. He notes the difficulty of regulating international relations in water-tight compartments. If the League was a standing conference system, as he says, conferences can lead to as

2. p. 84.

much disagreement as agreement. Economic considerations transcend national boundaries and warrant international regulation.

While pointing out in Chapter VII the disadvantages of sovereignty, unanimity and veto powers, he nevertheless places his hopes on organization and a majority system. He has excellent things to say on why majority rule will not cure the defects of the unanimity system, and that unanimity sometimes works. Public opinion is a weak reed on which to lean. The author supports an increased intervention in the affairs of individual governments. But this promise may prove more belligerent than peaceful, and posits a new type of international society.

In the last chapter, entitled "International Disputes," the author deals with the defects in compulsory arbitration and shows why municipal law furnishes no analogy to international law. He also affirms that not all disputes are capable of submission to a court. His discussion of the defects of peaceful change and the revision of treaties is enlightening. He thinks that the conflict of interests will handicap peaceful change. But he nevertheless insists on the value of security, which may not be susceptible of guaranty. Peaceful change, he says, is hardly possible without the consent of the victim, especially when the latter is a strong state or has strong friends. Hence, the difficulties of Article 19 of the Covenant.

On the whole, the book is provocative of much thought and deserves earnest consideration. It will make men aware of the possible insolubility by mechanical means of some of the present problems, and of the difficulties of obtaining what the author calls collective security.

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The Conflict of Laws: A Comparative Study. Volume I. By Ernst Rabel. Foreword by William Draper Lewis, Director, American Law Institute, and Hessel Yntema, Editor, Michigan Legal Studies.) Ann Arbor: University of Michigan Press. 1945. Pp. lvi, 745. $12.50.

Rabel's new book, one of the Michigan Legal Studies, is impressive evidence of its author's learning and ability. This first volume contains the introductory material for a complete treatise on the Conflict of Laws and a discussion of the rules applicable to family law. It raises great hope that the projected volumes will soon be completed and published. If the work lacks any useful element, it is that Rabel has not allowed himself sufficient space for his own critical appraisals and recommendations for the future. It is fortunate, however, that he felt that it was his "duty not entirely to conceal his impressions regarding the desirable path that evolution may take." Rabel's demonstrated knowledge of civil and common law rules, theories and techniques makes it difficult to think of a writer more