The Development of International Law by the Permanent Court of International Justice. By H. Lauterpacht. New York: Longmans, Green Co. 1934. Pp. 120. $2.60.

Dr. Lauterpacht already distinguished for his treatises on the place of analogy in international law, and the function of law in the international community now gives the results of his mature acquaintance with the work of the Permanent Court of International Justice. This volume which consists of five lectures given at the Graduate Institute of International Studies at Geneva, is not one for the casual student of international affairs, but for the lawyer who wishes to grapple with the most fundamental problems of legal interpretation and their application. The author has at his fingertips not only all of the opinions of the court, but also arguments made before it, and his illustrations from this material are always cogent.

Opinions as to the general tendency of the court's work have differed. Some have considered it a "partisan of state sovereignty." Some have criticized it for the inadequacies of its reasons in certain cases. Some have suggested that certain of its decisions were affected by political considerations. Some have believed that the need of compromise between Anglo-American and Continental legal practices and conceptions has hampered its logical development of international law.

While prepared to criticize certain of the decisions, on the whole, Dr. Lauterpacht gives the court a clean bill of health. It has in his opinion been progressive in developing international law to meet the requirements of justice, without sacrificing judicial caution in applying the law as found in the recognized sources. While respecting state sovereignty in form and in words, it has not allowed a theory of restrictive interpretation to hamper its willingness to give the intended effect to treaties.

The effect of the Court has undoubtedly been to augment the authority of international law at the expense of claims of state sovereignty. One is reminded of the influence of the Supreme Court of the United States under Marshall in augmenting the authority of the Constitution at the expense of certain claims of "states rights." In his final chapter on the court and State sovereignty, Dr. Lauterpacht writes:

"... the work of the Court can to a large extent be conceived in terms of a restrictive interpretation of claims of State sovereignty. It is sufficient to recall the rejection of the rigid rule of unanimity in the interpretation of the Covenant; the cases of assumption of jurisdiction through a bold interpretation of existing jurisdictional clauses, or the construction of an implied submission of the parties, or the disregard of requirements of form; the interpretation of minorities treaties in favor not of States but of the system of protection of minorities; a wide interpretation of the scope of the competence of the International Labour Organisation and of International River Commissions; the recognition of the prohibition of abuse of rights; the ruling reducing to an insignificant scope the exception of domestic jurisdiction under Article 15 of the Covenant; the emphasis upon the superiority of international obligations over municipal law. The same effect can be traced in the pronouncement recognising the possibility of direct conferment of treaty rights upon individuals (for is not the exclusiveness of States as subjects of international law yet another aspect of the current doctrine of State sovereignty?); in the constant contribution of the Court to the creation of rules of international law (for is this not a sphere of action which States have always jealously reserved for themselves?) or, finally, in the refusal of the Court to let its decisions be determined by the construction of the parties. For its function, the Court says, is to declare the law without being confined to choosing one of the two views propounded by the parties; both sovereign States may be wrong."
Has this tendency been due to a steady bias of the judges, or is this result inherent in the existence of the court? Dr. Lauterpacht unhesitatingly takes the latter view.

"The curbing of some cherished claims of State sovereignty is the result of submission to jurisdiction, and not of any usurpation of powers on the part of the Court. It is largely independent of the composition of the Court at any given time so long as the Court fulfills its judicial duty. This is the reason why the authority of the Court has remained generally unchallenged in a period of disillusionment and widespread criticism of international institutions."  

It is to be noted that no judge has dominated the World Court as Marshall dominated the Supreme Court of the United States, nor has the court had the support of a powerful central political authority. On the contrary both the jurisdiction of the court, and the fulfilment of its awards, if not the life of the court itself, depends upon the benevolence of the governments representing the litigating states. The tendency of its decisions is therefore due to the rules of international law, and the apparent curtailment of claims of sovereignty is due to the frequency with which, in the past, states have evaded their obligations under the law with specious arguments.

While the reviewer believes that Dr. Lauterpacht has proved his point with respect to the tendencies of the court's interpretations of international law, it appears that in a few instances he has rather exaggerated the general significance of decisions. The Mosul advisory opinion (No. 12) hardly supports the general conclusion that the rule of unanimity is qualified by the doctrine that no one should be judge in his own case with respect to all instances where the Council "is called upon to interpret the Covenant or to take measures in pursuance of the interpretation of the Covenant adopted by it." 5 The Mosul opinion had to do primarily with the interpretation not of the Covenant but of an article of the Treaty of Lausanne. The court held that by that article the parties had intended to vest the League Council with authority to make a decision establishing the Mosul boundary, by the vote specified in Article 15 of the Covenant. There might be room for doubt whether the intentions of Turkey and Great Britain in making the Lausanne treaty was to apply that vote or to apply the rule of absolute unanimity, specified in Article 5 of the Covenant. But it can hardly be said that the decision of the court meant that the qualified unanimity rule would apply in other disputes which the council might be called upon to consider, either under the Covenant or under other special treaties.

It also seems doubtful whether the court's advisory opinion in the Danzig case (No. 15) in any way militates against the general rule that individuals are not subject to international law. 6 The court held in this case that a particular treaty between Poland and Danzig gave Danzig railway officials a right of action against the Polish railway administration.

Whether or not this conclusion was justified by the terms of the treaty, it could scarcely be contended, even by the most rigorous adherents of the "dualistic school," that states are incompetent to make treaties giving such rights of action to individuals. The treaty establishing the Central American Court of Justice in 1907 and that providing for an international prize court made at the Hague in the same year, both unequivocally gave rights of action against states to private individuals. Such treaty provisions have not been common and doubtless their multiplication would tend to break down the conception which holds that states only are subjects of international

4 P. 106.  
5 P. 49.  
6 P. 51.
law, but it is difficult to find in such exercises of the treaty-making power any theoretical inconsistency with the doctrine that individuals are not in their own right subjects of international law. Dr. Lauterpacht would doubtless reply to this argument that in these cases the treaty provisions in question were vague and the court could never have reached the conclusion it did if it had considered that general international law was hostile to the principles which they seem to sanction. While sound, practically, this answer does not meet the theoretical point.

In this book the reader will find a useful guide to the court’s opinions bearing on such important topics as the interpretation of treaties, especially the rôle of *travaux préparatoires,*7 *rebus sic stantibus,*8 abuse of rights,9 consent to jurisdiction,10 verbal agreements,11 *res judicata,*12 general principles of law,13 estoppel,14 and domestic questions.15

The author presents an interesting discussion of the meaning of article 59 of the Court Statute with reference to *stare decisis,*16 and of the alleged difference between Anglo-American and Continental approaches to legal problems.17

National, as well as international, jurists will find the book stimulating to thought and students of international organization will be convinced that, apart from its important function of ending litigation, the court, while displaying judicial caution, has served a useful purpose in developing international law, particularly in applying criteria of interpretation, calculated to give their intended effectiveness to international agreements and institutions.

Quincy Wright*


The vigorous recommendation of the Committee on Economic Security that the States replace their “ancient, out-moded poor laws” and their traditional poor law administrations with modernized public assistance laws and efficient, centralized welfare authorities makes this volume especially timely. It has taken an economic catastrophe to bring to general attention the fact that the legislation under which our states administer public assistance to destitute persons is, except as far as the emergency provisions of the Federal Emergency Relief Administration have made temporary changes, essentially the poor law of Elizabethan England, written for a parochial, semi-feudal society and entirely unadapted either to our present day industrial and governmental organization or to our democratic social philosophy.

The first half of this book consists of a historical survey of the legislation, the Supreme Court decisions, and the Attorney General’s opinions involving the public support of the poor in Ohio, from territorial days to 1934. The relationship of the early Ohio legislative enactments to the colonial poor laws of Pennsylvania and other eastern states and the influence of the English poor laws are indicated. The legislative and judicial attempts to adjust the original laws to an Ohio which was changing from a wilderness of pioneers to a state which combines metropolitan industrial areas

7 P. 35.  9 P. 53.  11 P. 61.  13 P. 82.  15 P. 85.  17 P. 40.
8 P. 43.  10 P. 57.  12 P. 78.  14 P. 83.  16 Pp. 5, 7.

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