The neutrality laws of the United States

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THE NEUTRALITY LAWS
OF THE
UNITED STATES

BY
CHARLES G. FENWICK

A DISSERTATION
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PREFACE.

The study of the neutrality laws of the United States in the form in which it is now published has been considerably enlarged from the study originally presented as a thesis in the Department of Political Science. Its object is to discuss the neutrality laws of the United States, both from the historical and from the critical point of view. An introductory chapter explains the character and scope of neutrality laws in general; the obligations of a neutral state in international law, the necessity of municipal legislation to give effect to those obligations, and the extent to which such legislation may or should properly be carried. A second chapter sketches the history and development of the neutrality laws of the United States. The object of this chapter is to set forth the traditional policy of the United States upon the matter of neutrality laws, and to show the changes in those laws which have been brought about by the necessity of adapting them to existing conditions. A third chapter states the authoritative interpretation of the present neutrality laws of the United States, as determined by judicial construction. This chapter is supplementary to the second and aims to give an exact statement of the actual restrictions imposed upon citizens and aliens by the neutrality laws of this country. A fourth chapter deals with the limitations of the neutrality laws of the United States. It defines, first, the acts which, though apparently of an unneutral character, are not properly to be included within a neutrality code; and secondly, the acts which should be so included, but are not actually covered by the existing neutrality laws. This chapter is followed by a draft of a new neutrality code embodying the results of the investigation. The draft introduces amendments intended to meet the deficiencies of the existing law and to bring it more in accord with the recognized obligations of the United States.

While the study is therefore, by its purpose, largely technical in character, the subject with which it deals is one of such great interest and importance as to commend itself to the attention of the general public. The neutrality laws of the United States hold a significant place in the legal and political history of the country; controversies have ranged around them, and they have more than once been the subject of sharp diplomatic discussions, while not a few of the im-
important decisions of the Supreme Court of the United States have been based upon violations of the several neutrality acts.

Moreover, with the exception of Great Britain, no other country has enacted similar municipal legislation of so comprehensive a character, in the interest of enforcing upon its citizens and others within its jurisdiction, the observance of the duties of neutrality. Most of the continental countries have adopted certain general provisions against foreign enlistment and against acts which may compromise the neutrality of the state; but they have not thus far seen the need of enacting penal legislation of the definite and precise character of that adopted by the United States and Great Britain. It is true that in the case of the latter countries special circumstances formed the proximate occasion for the adoption of their neutrality acts; but, on the other hand, it can hardly be denied that municipal neutrality legislation, as a means of giving effect to international obligations, has been greatly neglected. In consequence of the rules relating to the rights and duties of neutral powers in land and maritime war, adopted at the Second Hague Conference of 1907 (Conventions V and XIII), it is all the more imperative that the states of the world should amend their neutrality legislation so as to enable them to meet the obligations which they have thus defined for themselves. In view of this fact, the experience of the United States may not only be of interest, but of service as well, to states contemplating the adoption of new or the amendment of existing neutrality laws.
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CHAPTER I.
THE CHARACTER AND SCOPE OF NEUTRALITY LAWS.

International law deals with the relations between states. It consists in those generally accepted rules of conduct which nations consider so far binding upon themselves in their relations with one another as to lead them actually to abide by them in their general practice. The traditional division of these rules by writers of international law has separated them into two general classes, those dealing with the relations of states in time of peace, and those regulating the conduct of states in time of war. The rules belonging to this latter class possess, in the history of international law, a far more important place than the rules prevailing between nations at peace. The reason for this apparently unnatural emphasis upon the rules of war is evident when we consider that, until within modern times, nations have been much more ready to cut the Gordian knot of disputed rights by a resort to armed force than to discuss amicably the justice of the right in question.

But even in their resort to armed force as the arbiter of their quarrels, civilized nations have recognized that there was a limit to the extent to which that force might be applied. If, in principle, the object of war is to overcome the opposition of one who refuses to grant us our rights, and if war is a means, not an end, if it is entered upon from necessity, not from choice, it follows that the operations of war are justified only in so far as they tend in fact towards the attainment of that object. But whether this principle was dimly or clearly present to the conscience of warring nations, the widespread misery, both on the part of the combatants themselves and on the part of non-combatants, attending the resort to armed force as a means of obtaining rights and redressing wrongs, forced upon civilized nations a recognition of the necessity of limiting, as far as possible, the accidental suffering caused by war, if the inherent and inevitable suffering could not be avoided. There has thus grown up between nations the apparently paradoxical system of rules called the "law of war."

From a scientific point of view the rules of international law might more properly be divided into the rules defining the fundamental
rights and duties of nations, and the rules relating to the procedure adopted by nations for the assertion of rights and the redress of wrongs. The former division would embrace the old “law of peace,” the latter the old “law of war” with such other methods of procedure of a pacific character which have come in recent years to commend themselves to the moral sense of civilized nations. Taken thus, war may be regarded as an international method of procedure for the enforcement of rights and for the redress of wrongs. However improper a method it may be at times from the standpoint of justice and morality, international law recognizes it as a legal means of coercing an alleged offender.

In thus acknowledging the legality of war, international law at the same time recognizes that the existence of war not only affects the rules normally prevailing between the parties to the conflict, but that it imposes new duties upon other states not themselves involved in the war. These new duties imposed upon states not involved in the war are deducible from the nature of the remedy resorted to by the parties to the conflict. War is the settlement of an international dispute on the basis of superior physical force. It is evident that states not parties to the dispute must either maintain an attitude of neutrality or else be drawn themselves in the conflict. Assuming, then, a desire on the part of third parties to keep aloof from the war, certain obligations necessarily devolve upon them. These obligations are based upon a two-fold principle: First, that neutrality demands an entire abstinence from all direct participation in the conflict; and secondly, that it demands an attitude of absolute impartiality towards the belligerents in all matters not connected, or only indirectly connected, with the war.

With regard to the first point it must be observed that to abstain from all participation in the conflict is something more than the mere impartial treatment of the contending parties, which would not be contravened by giving equal help to both. The principle of abstention is based upon a recognition that while it may be theoretically possible to give equal help to both contending parties, it is practically impossible to do so. Assistance of a certain kind to one party might be of far greater help to him than similar assistance might be to the other party. Moreover, the obligation of abstention from participation in the war imposes upon the neutral state active as well as passive duties. It is not merely sufficient for the neutral state to refrain from giving help to either of the parties by any positive acts of assistance on its own part, but it must take active steps to