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From Main Street Across The Seas

Three college graduates with similar backgrounds, left to their own resources for legal training, bunked together in a third-floor of a mediocre town house on Riggs Place. One found employment at the Capitol, exposed to political surroundings. One counted twenty-dollar bills at the Bureau of Engraving, and was permitted to keep one each Saturday night. The third, more closely attuned to the soil, landed in the Department of Agriculture at a time when surplus production following World War I was becoming a problem to American agriculture. Undoubtedly these employment activities influenced their professional lives after graduation from law school.

Number one entered politics, successively serving as Assistant State Attorney General, member of Congress, Assistant Secretary of State, Presidential Assistant and Professor of Political Science. Number two found other people's money interesting. He joined the Internal Revenue Service and moved on to the Board of Tax Appeals and the United States Tax Court. Number three became a Main Street general practitioner in an agrarian mid-continent community. As a cub lawyer, his practice was typically provincial, handling such mundane assignments as commercial collections, real estate transfers, replevin, probate of modest estates, domestic relations, defense of criminals, boundary disputes and the like.

Believe it or not, the Main Street lawyer found International Law of interest, and the purpose of this paper is to point out some of the reasons why. It is hoped that stimulation of interest among general practitioners in this area of the law will be a by-product.

General terms of reference should be understood.

International Law, as used in this dissertation, includes the rules of conduct governing the relationship of one sovereign state to another, choice of law in conflicts situations (private international law to the legal scholar), and controversies between private parties having international aspects. While the first category affects, and should be of interest to, the Main Streeter, he will meet it rarely in his practice,

while he and his clients are likely to face the other two from time to time.

The American public is becoming increasingly aware of questions of International Law. Comparison of curricula in the law schools today with those of only ten years ago will demonstrate the growing importance attached to this area in training future members of the bar. Reasons for this rapid change include:

(1) The new posture of the United States in world affairs;

(2) American foreign-aid policy;

(3) Creation of the World Bank and the International Monetary Fund;

(4) Conflicting political ideologies leading to international agreements for mutual aid;

(5) Dissolution of colonial empires with concomitant proliferation of newly independent states;

(6) Growing imbalance in representation in the General Assembly of the United Nations;

(7) Rapid transportation and communication;

(8) Expansion of foreign trade and investments;

(9) Advanced technology in science and industry;

(10) War casualties in United States families occurring on foreign soil;

(11) Deployment of service personnel and their dependents;

(12) Insatiable American appetite for foreign travel;

(13) Presence in the United States of some three million registered aliens;

(14) Intermarriage between United States citizens and foreign nationals, with attendant family-law problems of separation, divorce, maintenance, adoption, descent, testamentary disposition, and the like;

(15) "Honda" as a synonym for "motorcycle" in American teenage vocabulary;

(16) Presence of imported perfumes in the American boudoir;

(17) Sale of American brand cigarettes and lighters in tobacco shops all over the world;

(18) Display of United States packaged food products on the shelves of foreign retail stores;

(19) World-wide distribution of U.S. brand named carbonated soft drinks; and

(20) Disappearance of national costumes in wearing apparel.

The reader can expand this list indefinitely, but these are sufficient to illustrate the ranges of causes.

A national institute recently sponsored by the ABA Section of International and Comparative Law was billed "International Law from Memphis to Milan and Maracaibo." With equal significance and alliteration, it could have read "from Salzburg to Salt Lake and San Francisco," or "from Newcastle to New York and Nuremberg."

Phillips Petroleum Company at Bartlesville, Okla. started with a corner service station in Fayetteville, Ark., but now operates worldwide.

Manpower and capital from landlocked areas like Tennessee and Wyoming are employed in producing, refining, transporting and marketing petroleum products in Canada, Latin America, the Middle East and Western Europe. On each of more than a dozen Trans-Atlantic crossings in recent years, the Main Streeter found one or more American geologists, petroleum engineers or roughnecks on the passenger list.

Origin of International Lawyers

The United States Ambassador to the United Nations was born in Des Moines and took his L1.B. degree from Northwestern University. The United States member of the International Law Commission was born in Dayton, Ky. and received his L1.B. from the University of Cincinnati. A renowned Professor of International Law at Yale was born in Burtons, Miss. and earned his L1.B. at "Ole Miss." These illustrate how midcontinent USA has spawned eminent authorities on International Law. There are at least a dozen men with roots in the midcontinent that are now serving in advisory capacities on International Law problems affecting the foreign policies of the United States.

A practicing lawyer from a New England pastoral setting became a member of the Court of Appeals for the Second Circuit. He made national headlines the first time he sat when his chair broke and he fell from the dais. Thereafter he made world headlines by his opinion in the *Sabbatino* case (307 F.2d. 845), reversal of which (376 U.S. 598) evoked Congressional action in the form of the "Hickenlooper Amendment." Thereafter the Court of Appeals arrived at the same result reached prior to the reversal (383 F.2d 166). The prominent role given to the Act-of-State Doctrine in that litigation generated gathering strength for legislation in the United States to abolish sovereign immunity as a defense in actions growing out of commercial activities of a foreign nation in this country.

Stanley Balback in Urbana, Ill., may never become a member of the International Court of Justice, or even be employed by a litigant in that Court; nevertheless, his peripatetic clients take their law problems with them, but not necessarily their law. Rights of his clients flying non-stop from Chicago to London, or vice versa, are governed by the Warsaw Convention, while those from Chicago to Los Angeles are not.

Hicks Epton in Wewoka, Okla., may never structure an international organization for oil exploration in Latin America, yet he has a neighbor at Tulsa who is up to his neck in a client's activities in the North Sea. No longer can one say with assurance that legal problems arising in Kokomo, Ind. and Midland, Texas, are wholly provincial.

Case Illustrations

Let us take a look at a sample of actual cases that involved some aspect of international law.

The Supreme Court of Iowa has had occasion to consider the clash in Anglo-American law between "domicile of origin" and "domicile of choice" (192 Iowa 78). It has also had before it the recognition of a Greek adoption decree affecting the devolution of property in Iowa. The Supreme Court of Michigan has had to consider whether an Ontario alimony order should be enforced in Michigan. Validity of choice-of-forum provisions of contracts between citizens of the United States and foreign nationals has been determined in the courts in Pennsylvania, Texas and New York. Construction of an Arkansas will, affecting the rights of a beneficiary in a Middle East country, is still unresolved.

A Pennsylvania Court ordered a Canadian insurer to pay to a Cuban policy holder the cash surrender value of his policy in U.S. dollars, notwithstanding prohibition of such payment under Cuban law. *Varas v. Crown Life,* 203 At.2d. 505 (1964). A similar case on somewhat different facts will probably be decided by the Supreme Court of Florida before this goes to press.

New Jersey's Supreme Court refused recovery by Cubans against an American life insurance company on a policy issued in Cuba after Cuban operations had been nationalized. *Present v. U.S. Life Ins. Co.,* 232 At.2d. 863 (1967).

The Supreme Court of Iowa had before it a knotty problem of succession to property and the effect thereon of the 1954 Treaty of Friendship with Greece. The adopted nonresident Greek national lost by a 5-4 decision. *Corbett v. Stergios,* 126 N.W.2d. 342 (1964).

The Ninth Circuit has held that the Federal Tort Claims Act was applicable to injuries suffered in the American Embassy at Bangkok. *Meredith v. U.S.*, 330 F.2d 9 (1964).

In a replevin action, the New York Supreme Court was called upon to consider a variety of unusual questions of international law, including: (1) Statutes of limitation of New York and Belgium; (2) Abandonment of a painting by its owner, and its capture by occupying land forces; (3) Requisition in time of war; (4) The Act-of-State Doctrine; and (5) Treaty obligations. *Menzel v. List,* 267 NYS2d 804 (1966).

A New York court has enforced an English judgment against a New York corporation when service of process in the English action was had in New York. *Plugmay, Ltd. v. Nat'l. Dynamics Corp.,* 266 N.Y.S.2d 240 (1966).

A citizen of the United States, having executed a will in New York, died a domicilary of Switzerland. He directed probate of his will in New York pursuant to Section 47 of that state's Decedent's Estate Law. The Surrogate Court held Section 47 was not in conflict with an 1850 treaty, and directed distribution under New York law. *Estate of Prince,* 267 N.Y.S. 2d 138 (1964).

A California court denied Soviet heirs a right to property of California decedents for lack of a reciprocal right in property situated in the Soviet Union. *Lorkin's Estate,* 44 Cal. Rep. 731 (1965).

The Fifth Circuit upheld conviction of a Canadian on a charge of conspiring in Canada to violate United States law, when the conspiracy was designed to have its effect in the United States. *Rivard v. U.S.*, 375 F.2d 882 (1967).

A German national serving with the U.S. Army in Germany was subject to trial by court-martial on the basis of the status of the offender as a member of the armed forces and not upon his citizenship. *Puhl v. U.S.*, 376 F.2d 194 (1967).

Declaratory judgment procedure cannot be substituted for habeas corpus, to determine whether the Province of Ontario could maintain proceedings to extradite an accused found in the United States. *Schonbrun v. Dreiband,* 268 F. Supp. 337 (1967).

The NATO Status of Forces Agreement was held to control the right to sue in a United States court for injuries sustained on a vessel operated by the United States as part of the NATO forces in territorial waters of the Federal Republic of Germany. *Shafer v. U.S.*, 273 F.Supp. 152 (1967).

Immunity from local property tax assessed on the Argentine Con-

sulate in New York was refused in the absence of a treaty exempting it. *Argentina v. City of N.Y.*, 283 N.Y.S.2d 389 (1967).

The Ministry of Finance of India was recently granted discovery under 28 USC 1782a. *Re Gov't. of India,* 272 F.Supp. 758 (1967).

These cases illustrate the innumerable types of questions which can and do arise in a Main Street law office.

Frequency of Similar Questions

A survey conducted in Colorado by Professor Courtland H. Peterson for the State Bar's Committee on International and Comparative Law, disclosed that local practitioners handled 658 cases having international aspects during the year ending November 1, 1967, and an average of 464 cases for each of the preceding four years.

Professor E. Blythe Stason, Jr. of William and Mary Law School recently polled 150 lawyers practicing in cities of from 10,000 to 100,000 population in Illinois, Michigan, New Hampshire, New York and Washington. Seventy-four responded, of whom 85% reported handling of international cases.

Appropriate committees in each state and local bar association are urged to sponsor surveys similar to that in Colorado. The results should prove quite interesting. Indeed, such a survey could prove useful in designing curricula for law students.

Non-Uniformity in National Law

The Main Streeter finds obstacles arising because the law in one country on a given subject differs from that of his own.

Adoption of war orphans by citizens of the United States frequently raises the spectre whether or not prior nationality ties have been severed.

There are wide variances in national laws governing adoption. In the United States, adoptions are governed by State law, and the jurisdictional forum is that in which the person to be adopted resides. Generally, a person of any age may be adopted by another, but our courts are slow to permit adoption of young children by elderly adoptive parents.

In Italy, a person under 50 years of age cannot adopt another. In some countries one cannot adopt a person over 18 years of age. In France there are several kinds of adoption, each having different effect. In Belgium, adoptions are largely administrative rather than judicial in character.

An Israeli delegate to a diplomatic conference stated that adoptions in his country were religious in character, and were handled by a Rabbinical Court. Later a prominent Israeli scholar qualified this statement.

Marriage of a female U.S. citizen to a foreign national and residence abroad may raise questions of dominion of the husband over the wife's movable property.

Under certain circumstances, liability for torts committed in a foreign country may be litigated in the United States. Absence of information about the law of the situs of the tort sometimes result in the trial court's applying the law of the forum. The Main Streeter should consider what predicament might face him if the law of the situs is more favorable to his client and he fails to prove the foreign law.

When a foreign visitor to the United States asks the Main Streeter to draft a valid testamentary disposition of property in a foreign state, he may find that the Hague Convention on Execution of Wills can be helpful.

Longarm statutes frequently give local courts jurisdiction over defendants in a foreign state as well as in a sister state. The Hague Convention on service of judicial documents, ratified by the United States Senate in 1967, may give the Main Streeter an answer on how to bring the defendant into court.

In actions by a national of that country, French courts can render personal judgments whether or not the defendant is served with process in France, and in Germany it can be done if the foreigner has assets there. Until quite recently, the foreigner was within the jurisdiction of a French court upon the plaintiff's doing little more than posting a notice on the court house door. (In fairness, it should be said that, as practiced, notification requirements generally resulted in actual knowledge and opportunity to be heard by the defendant.)

It is still possible for judgments to be rendered in some countries against defendants out of the country by what we consider improper fora, which include: (1) the forum of nationality of the plaintiff available under the law of France and Luxembourg; (2) the forum of domicile of the plaintiff available under the law of the Netherlands; and (3) the forum of the presence of assets available under the law of the Federal Republic of Germany and of Austria.

A draft multilateral convention (not yet in force) prepared for the Common Market countries would require that a French judgment based upon Article 14 of the Civil Code be enforced by the five other

members of the Common Market. The same would be true of a German judgment rendered on the jurisdictional basis that the defendant had a bank account in Germany. (Nadelmann, Columbia Law Review, June 1967). This was a divisive factor at the 1966 Special Session of the Hague Conference on Private International Law when a draft convention on enforcement of judgments was under consideration.

Emerging Interest in International Law

At the beginning of his professional career, the Main Streeter first mentioned was advised "to read good books and to associate with people smarter than he, who, "he was assured, "would not be hard to find." Acting on that advice he dogged the trails of eminent advocates. His first brush with a legal problem having international aspects had to do with obtaining evidence from abroad in a suit against a marine insurer of a cargo of meat shipped from New York to Stockholm in a Swedish bottom. From inland litigation of liability he observed the technique of forum shopping.

The Main Streeter found it more feasible and less expensive to promote a Private Bill in Congress to restore the national status of an Arkansas woman who had voted in a Dutch election, than to litigate the validity of the Nationality Act of 1940. Ten years later, a decision of the Supreme Court of the United States (*Afroyim v. Rusk,* 387 US 253) told the Main Streeter, in effect, that his client had never in fact lost her United States citizenship.

The Main Streeter felt compelled to advise a naturalized American citizen not to visit the country of her birth because of her original unauthorized exit therefrom.

Need for greater uniformity in state law emerged when he became a Commissioner on Uniform State Laws. There he became aware that lack of uniformity in the international field presented the same problems as in the interstate arena. An active role in the development of the Uniform Commercial Code for enactment by our several states no doubt was responsible for his selection to participate in a Diplomatic Conference considering a uniform law on International Sale of Goods.

Certainly, this Main Streeter was no genius in the field of conflict of laws; yet his long experience as a trial lawyer was useful while serving as official observer and delegate to sessions of The Hague Conference on Private International Law, and while attending three meetings of specialized organizations interested in International Unification of Private Law.

Early experience at these International Conferences convinced the Main Streeter that it was not in the interest of the United States to stand aloof from such activities. With the help of eminent legal scholars, a proposed policy for participation by the United States was formulated and later approved by the American Bar Association and the Congress. This country is now a member of both the Hague Conference on Private International Law and the International Institute for the Unification of Private Law.

Differences between the Civil and Common-Law traditions, plus our federated form of government, make unification of conflict rules and substantive law infinitely more difficult in international than in interstate areas. Whatever may be done in foreign states will vitally affect our trade and investments as well as our social intercourse throughout the world, whether we approve or disapprove such action. It is imperative, therefore, that we participate and strike a blow for our point of view wherever and whenever possible. Further, we must not overlook the fact that we may also profit from the experience of legal systems of greater antiquity without sacrifice of our bed-rock standards.

Query

It is fair to ask what motivation caused a Main Street general practitioner to expend substantial capital, and even more compensable time, in legal areas in which his paying clients are involved only occasionally. Indeed, the Main Streeter repeatedly asked himself this question. The answer is somewhat complex.

Answer

In a democratic society, every lawyer owes a duty to give a fair amount of his time to the public interest. Observation by one with an inquiring mind of the trends in history, politics and jurisprudence during a most exciting era could only expand horizons from local to national and international arenas, and lead to speculation about what legal regimes lie ahead. Interdependence of people in present society is great and in the future must be even greater. Emergence of the United States as one of two dominant world powers compels an activist role in harmonizing rules of law suitable for an international society. History records that the really significant strides in law and government have sprouted from ambitions of people. Ideas for improvement generally move up to, rather than down from, those exercising legislative and executive

power. Witness Magna Carta at Runnymede. Sometimes the view is more encompassing when seen from a distance. The composite painting is blurred by brushmarks when the observer stands too near.

The simple answer to the question probably is that the Main Streeter would like to stimulate objective thinking in the development of legal principles needed to serve modern international society. Justification for this motive was formulated by Charles Dickens, when he said: "No one is useless in this world who lightens the burden of it for anyone else."