

*Der Grundsatz der Freiheit der Meere in der Staatenpraxis von 1493 bis 1648. Eine rechtsgeschichtliche Untersuchung.* By GUNDOLF FAHL. Köln, 1969. Carl Heymanns Verlag. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht. Map. Notes. Appendices. Bibliography. Pp. ix, 143. Paper. DM 28.00.

This book persuasively sets forth its thesis that new light is shed upon the legal concept of the freedom of the seas and its development by putting it into the diplomatic context within which it was defined. The author shows how rights were claimed, contested, and defended through papal bulls, royal proclamations, diplomatic negotiations, and contractual agreements. The purpose of all peaceful shipping, of course, was to reach other lands for trade or settlement. This explains why the seas were initially considered subject to claims equally with lands, as in the title of Manuel of Portugal, who styled himself in 1501 *Senhor da conquista, navegação e comércio da Etiópia, Arábia, Pérsia, e Índia*. Since the outline of the shores and the conformation of many lands were then unknown, claims were worked out on the basis of assumptions which had to be tested in practical situations of conflict.

To show this, the author leaves aside the "battle of the books" and takes us from the jurist's study into the antechambers of palaces and the secretariats of governments. Theories are not analyzed for their moral or legal validity but for their usefulness for political advantage. The works of three jurists suffice: Grotius' *De Mari Libero*, the *Decades* of João de Barros, and Serafim Freitas' *De Iusto Imperio Lusitanorum Asiatico*.

To these one must add the papal bulls which based the Iberian monopoly on canon law. The bulls are used as a first demonstration of practice modifying principle. (Part I) The author builds entirely upon the work of Alfonso García Gallo concerning their origin and sequence. Historians who are unhappy with the notion that the Roman Curia was simply mistaken when it drew a crooked line of demarcation (Garrett Mattingly, James A. Williamson, E. G. R. Taylor, and José Aguilar) find no help here. But the Iberian powers, in the Treaty of Alcáçovas and subsequent agreement at Tordesillas which followed Columbus' voyages, did not concern themselves with the bulls either.

That the Holy See ever meant to allocate the two hemispheres exclusively to Portugal and Spain belongs to the realm of legend, but the existence of the Iberian monopoly is beyond doubt—read into the

bulls backward, one might say, when others powers challenged it. France was the first state to attack. (Part II) But at Cateau Cambrésis in 1559, it became clear that with their interlocking concerns, diplomats would not permit differences over shipping rights to jeopardize their continental accord. Only an oral agreement was reached, and in this the Spaniards carried their argument “mas por persuadir que por convencer” (p. 59). The pacts of London (1604) and of Madrid (1630) showed that England and Spain preferred to write treaties which allowed a favorable interpretation to either country while leaving the issue unsolved. The English and Dutch challenges are treated in Part III, as is the conflict between them in the East, since the focus remains on the breakdown of the Iberian monopoly.

In 1565 Pedro Menéndez de Avilés sacked the French Fort Caroline, and the effect of this action upon diplomacy is characteristic of the theme, coverage, and style of the book. The events are recorded through the dispatches of the French ambassador to Madrid, Sieur de Fourquevaux, the instructions to him by the Regent Marie de Medici, and the arguments submitted by the Consejo de Indias. The author is selective in the use of sources, but there is a wealth of reference to both old and new material. Diplomatic history has come some way since 1925, when Adolf Rein deplored its absence. Its progress is especially due to the work of Garrett Mattingly, whose article “No Peace beyond Which Line?” (1963), has not been used or surpassed, even though the author betters the earliest definition of the lines of amity by three years. However, he does take into account recent legal historical literature, especially with reference to the East. If freedom of the seas as an idea was developed through the Iberian monopoly, accommodation and diplomacy by the states had worked out its practical application by 1648.

There are two unpublished English documents among the materials appended, and one cannot praise highly enough the appearance of footnotes at the bottom of the pages, offering many telling quotations in the original. The footnotes are enough to make one nostalgic for the time when to look for them there was customary. They complement a well-planned, well-written, and useful book.

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