

**THE CLASSICS OF
INTERNATIONAL LAW.
DISSERTATIONS ON THE LAW OF
NATURE AND OF NATIONS. VOL.
II. THE TRANSLATION**

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The Classics of International Law. Dissertations on the Law of Nature and of Nations. Vol. II.
The Translation by Samuel Rachel & John Pawley Bate & James Brown Scott

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SAMUEL RACHEL & JOHN PAWLEY BATE & JAMES BROWN SCOTT

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THE
CLASSICS OF INTERNATIONAL LAW

EDITED BY

JAMES BROWN SCOTT

*Member of the Institute of International Law
President of the American Institute of International Law*

De Jure Naturae et Gentium Dissertationes

BY SAMUEL RACHEL

Jurisconsult and Professor of Law in the illustrious University of Holstein

EDITED BY LUDWIG VON BAR

*Professor of Criminal Law and Procedure and of International Law
in the University of Göttingen*

- Vol. I. A Reproduction of the Edition of 1676, with Introduction
by Ludwig von Bar, and List of Errata.
Vol. II. A Translation of the Text, by John Pawley Bate, with
Index of Authors Cited.

Dissertations
on
The Law of Nature and of Nations

BY

SAMUEL RACHEL

Jurisconsult and Professor of Law in the illustrious University of Holstein

Kiel:

From the press of Joachim Reumann, University printer,
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VOLUME TWO

THE TRANSLATION

BY JOHN PAWLEY BATE, LL. D.

Reader of Roman and International Law in the Inns of Court, London



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INTRODUCTION.

In his *Elementorum jurisprudentiæ universalis libri tres*, published in 1660, Samuel von Pufendorf denied the existence of a positive *jus gentium* (Law of Nations), distinct from the *jus naturale*. He maintained therein that States were universally subject to the Law of Nature only; in addition there were, of course, rights based upon treaties, and also customs observed between civilized States, but (said he) these treaty rights were valid only between the States that had concluded the treaty, and a State might at any time renounce these customs; such conduct would admittedly expose the State to evils—such as reprisals and censure—but Pufendorf does not seem to attach great importance to these evils, and (as he by means of a few illustrations proceeds to show) they have at different times failed to deter governments and generals. This doctrine, which in 1660 Pufendorf, as a young scholar, had expounded in his *Elementa jurisprudentiæ universalis* (Lib. I, definitio 13, §§ 24-26), he restated in 1672 in his great work *De jure naturæ et gentium* (Lib. II, cap. 3, § 23); and we may readily imagine that the authority of the famous writer won many adherents to his teachings. His doctrine, however, was not only erroneous; it was dangerous. According to it, it would not be possible for a custom in harmony with the actual progress of civilization gradually to assume the force of law; it failed, moreover, to recognize (1) the possibility of extracting a general principle of law from important stipulations recurring more and more frequently in international treaties, and (2) the fact that treaties, directly based upon generally accepted legal principles and concluded between the more civilized nations, will also by degrees be considered as authoritative by other and non-signatory nations, a phenomenon which, to be sure, first became conspicuous in our own day. Accordingly, to attack this doctrine, which favored arbitrariness and based the Law of Nations solely upon the principles of Natural Law established by *à priori* reasoning, and at the same time to show that by the

side of the *jus naturæ* there also exists a positive Law of Nations —this was a signal service. It was left to Rachel to render that service.¹

Samuel Rachel² was born April 6, 1628, in Lunden, a small market-town of Ditmarschen (Holstein). He was the youngest son and sixth child of Pastor Mauritius Rachel. His youth was one of hardship. When his father died, his mother sent the nine-year-old boy to school at Husum, where he remained two years; subsequently, his mother procured his admission to the Bordesholm Academy, which had been founded in 1566 by Duke Hans von Holstein out of the revenues of a suppressed monastery of that place. This academy offered instruction and entirely free maintenance to a number of scholars (originally 12, and later 36). During five years Samuel Rachel enjoyed these privileges. In 1643 the students were dismissed from the institution, in consequence of the occupation of Holstein by the Swedish armies. Rachel then entered the Academy of Hamburg; but he remained there for only a short time, as his mother was unable to defray the cost of his maintenance in Hamburg. Shortly afterwards he was apprenticed to an apothecary; but finding the place uncongenial he returned to the Bordesholm Academy, which in the meanwhile had been reopened. It was with great reluctance that he allowed himself (as he puts it in his autobiography) "to be immured again in this scholastic or penal institution"; but it was unavoidable, the means of the family having been considerably reduced through expenditure incurred in the education of three older brothers. "The suffering and misery," Rachel continues, "which I endured in this penitentiary can not be expressed in words; the mere remembrance of them fills me with horror." Not only were the scholars underfed or given unwholesome food

¹ In Pufendorf's chapter 3, mentioned in the text, he refers to Rachel's doctrine, though he does not indicate Rachel by name. See Nys in *Revue de droit international et de législation comparée*, Vol. XVI (1914), p. 284.

² For Rachel's writings, cf. v. Ompteda, *Literatur des Völkerrichts*, 1780, Vol. I, pp. 275-278; for Rachel's life and works, cf. Jöcher, *Allgemeines Gelehrten-Lexikon*, Vol. III, and *Allgemeine Deutsche Biographie*, Vol. XXVII, p. 104; for his life, cf. especially the excerpt copied from Rachel's autobiography, in the library of the University of Kiel, and published by Ratjen in *Archiv für Staats- und Kirchengeschichte der Herzogtümer Schleswig-Holstein und Lauenburg*, Vol. I (Altona, 1833), pp. 335-362, and Vol. III (1837), pp. 99-166.

which brought on illness, but they also slept in rooms which were cold in winter and in summer visited by swarms of flies. Furthermore, blows were showered upon them on the most trivial pretexts, and at times the Rector of the institution would devise special tortures; for instance, in the scorching heat of summer he for a whole month forbade the scholars all outdoor exercise and had the windows nailed up. The instruction, however, was not bad; but the severity of the discipline exasperated many of the pupils to a desperate defiance, while it degraded others to a slavish fear. In view of these conditions we can not but regard it as proof of a strong, healthy, and sterling nature, alike on the physical and the spiritual side, that Rachel, although often finding life overburdensome and bereft of the loving care of his parents, was nevertheless able, in later life, to achieve great things. In 1648 he graduated from the Bordsesholm Academy; and in accordance with the then prevailing custom he entered the University of Rostock, to study there for three years at the cost of the Duke. To gratify the wishes of his kindred, and also because the Bordsesholm bursary was specific in its object, Rachel took up the study of theology there. But he soon realized that he was little adapted to the pulpit; moreover the theological controversies of the time rendered the study of theology irksome to him. Accordingly, with the very ready approval of the Duke, he decided to pursue instead the study of history, philosophy, and jurisprudence; but as regards the last-named, it was, as Rachel observes, too late for him to profit fully by the lectures thereon given by many of the able jurists then teaching at the University of Rostock. So, after three years and a quarter spent at this university, he went to Jena in order to devote himself mainly to the study of jurisprudence. Lack of sufficient means compelled him shortly afterwards to return to Holstein to earn his livelihood by teaching. He had, however, after four months, to relinquish a tutorship which he had obtained in a noble family, because the external conditions there were unbearable and threw him into a violent fever. Subsequently Rachel became a teacher in the Bordsesholm Academy, which, however, deteriorated steadily; and after one year he found himself forced again to accept a tutorship in a noble family, this time in the district of Halber-

stadt, Saxony. At last fortune seemed to favor him, for after seven months he accompanied his pupils to the University of Helmstedt in Brunswick. Here he studied for two years and was able to attend lectures on public law, notably those given by Conring, and made the acquaintance of prominent and famous men, such as the theologians Calixt and Christopher Schrader. Through an accident he failed to receive an appointment, which he had desired, to a newly founded *Ritterakademie* (gymnasium) in Lüneburg; and nothing came of an offer of a position in Frankfurt-on-the-Main, because the project of establishing a higher gymnasium there fell through eventually. This offer, however, led to Rachel's remaining in Frankfurt for some time; and here, among other diplomatic representatives of the princes, who had come to Frankfurt on account of the impending election of an emperor, and of peace negotiations there under way, he made the acquaintance of Johann Schwarzkopf, the representative of Brunswick. Rachel became secretary to the latter, and on his recommendation was appointed professor of moral philosophy in the University of Helmstedt in 1658.

Here, besides an edition of the so-called Nicomachean Ethics of Aristotle, to which he wrote an introduction, Rachel also brought out a series of dissertations of a philosophical and moral nature. He left Helmstedt in 1665 in order to take an active and successful part in the establishment of the University of Kiel and to assume at once the duties of a professorship of the Law of Nature and of International Law in this university. The *Dissertationes de jure naturæ et gentium*¹ appeared in Kiel in 1676.

Soon after, Rachel's activity as an academic teacher came to an end, an event due in part to divers intrigues hatched in the university and directed against him. He then went to Hamburg, where he became a diplomatic agent in the service of his patron, Duke Christian Albrecht von Schleswig-Holstein-Gottorp, whom the King of Denmark had driven out of his duchy. In 1678 he

¹ These were published in one volume, which is reproduced here; it will be seen that it is the second dissertation which specifically deals with International Law, and that this topic occupies pp. 235-324 of the whole volume. It is with this second dissertation alone that we are concerned in this introduction. The two dissertations are dedicated to Oloffe Grote, Privy Councillor of Brunswick-Lüneburg, whose acquaintance Rachel had made at Jena. For Grote, see *Allgemeine Deutsche Biographie*, Vol. IX, pp. 758 et seq.