

**LETTERS BY HISTORICUS  
ON SOME QUESTIONS  
OF INTERNATIONAL LAW**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649630868

Letters by Historicus on Some Questions of International Law by Sir William Vernon Harcourt

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.  
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

[www.triestepublishing.com](http://www.triestepublishing.com)

**SIR WILLIAM VERNON HARCOURT**

**LETTERS BY HISTORICUS  
ON SOME QUESTIONS  
OF INTERNATIONAL LAW**



~~5.10.2.3.~~

JX  
4521  
.H26

*LETTERS BY HISTORICUS.*

10622

LETTERS BY HISTORICUS



ON SOME QUESTIONS

OF

# INTERNATIONAL LAW.

REPRINTED FROM 'THE TIMES'

WITH CONSIDERABLE ADDITIONS.

*Harcourt, Sir William George Granville Venable, Vernon, 1877-1878.*

*'So many encroachments have recently been made on the ancient course and maxims of the law of nations, that the primary object of importance now is to reinspire a deference to solemn precedents and established rules.'*

FRANCIS HORNER.

London and Cambridge.

MACMILLAN AND CO.

1868.

LONDON  
PRINTED BY SPOTTISWOODS AND CO.,  
NEWSPAPER SQUARE

## PREFACE.

I HAVE yielded to the opinion of those in whose judgement I place confidence in determining to publish these letters. I have done so with considerable hesitation, because I am profoundly conscious how far they fall below the standard of that which is adequate to the treatment of questions perhaps the most important with which politics or jurisprudence are conversant. The text-writer on international law assumes a noble task, but he at the same time accepts a grave responsibility. His speculations, if unsound, and his maxims, if unjustifiable, must too often be refuted by the sword. They furnish pretexts sometimes for unjust demands, at others for unrighteous refusals. Those who assume the authority of Publicists exercise, in some sort, the judicial functions of life and death. Like the Feciales of old, of whose office they are the legitimate heirs, they deal out the lots of peace and of war; and thereby, according as they guide or pervert the judgements of their age, they affect the destinies of nations and determine the misery or the happiness of whole generations of mankind. It is the immortal glory of Grotius through a new dispensation of international right, to have evangelised the society of nations brutalised by a licentious carnival of force. It has been the shame of others to have degraded the Palladium of Law into the minister of the temporary



passions of Governments and the servile instrument of the interests of States.

These fugitive pieces make no pretensions to a share in this noble work for which the labours of a life would be no excessive preparation. They assume to be nothing more than occasional observations thrown together in the intervals of business from such materials as lay at hand, in order to illustrate, in a popular form, clearly-established principles of law, or to refute, as occasion required, errors which had obtained a mischievous currency. The writer has not attempted any profound or scientific treatment of the questions they discuss, which would have been out of place in the columns of a daily journal, but has confined himself to establishing, by sufficient authority, propositions which have been inconsiderately impugned, and pointing out the various methods of reasoning which have led some modern writers to erroneous conclusions. If these papers have any merit at all, it is in the spirit in which they are conceived rather than in the manner in which they are executed. The object with which they have been written, is to offer a slight contribution towards that desirable end, the necessity of which is enforced in the wise sentence of that philosophical lawyer, Francis Horner, which I have prefixed to the title-page.—‘The primary object of importance now is to reinspire a deference to solemn precedents and established rules.’

It will be seen that of the following papers those on ‘Blockade,’ ‘Right of Search,’ and ‘Neutral Trade in Contraband of War,’ are simple expositions from ordinary books of the admitted and unquestionable law upon these heads. The discussions on the ‘International Doctrine of Recognition,’ the ‘Essential Qualities of Contraband,’ and ‘Belligerent Violations of

Neutral Rights,' are the only parts of this publication which attempt anything like original investigation. The notice of M. Hautefeuille's work attempts to point out, though very imperfectly, the erroneous sources from which that writer has sought to derive the institutes of international law, and also very slightly indicates the real basis of that jurisprudence. The letter on 'Intervention' is rather of a political than a juridical cast, but the present interest of the question gives it a place here.

An adequate work on the Rights and Duties of Neutral Nations, founded on a sound basis of historical investigation and judicial decision, has yet to be written. I have given my reasons at some length, in a subsequent paper, for holding the treatise of M. Hautefeuille to be vicious in its method, and unsatisfactory in its execution. The work of Dr. Phillimore, though laborious and impartial, is rather an indiscriminate digest of opinions, than a scientific investigation of the principles and practice of international law. The lectures of Chancellor Kent at the commencement of the Commentaries are a perfect specimen of juridical exposition. They are, however, too deficient in detail to supply the place of a practical treatise. The work of M. Ortolan is fair, trustworthy, and generally accurate, but makes no pretensions to a scientific treatment of the subject. The 'Elements of International Law,' by Mr. Wheaton, slight as they are, nevertheless present, on the whole, next to that of Kent, the best general attempt which has yet been made at a discussion of these questions. Nevertheless, on most questions of international law, the student has still to make for himself his own text-book; to extract from scattered documents the records of historical precedents; to deduce from judicial decisions the principles of established law; and, what is still

more difficult, to distinguish in contradictory text-writers the doctrines which are founded on reason and law from those which have their birth in inveterate prejudice or empty speculation. It is from these difficulties that ill-informed and shallow reasoners have been induced to question altogether the existence of the principles of international law. Yet this idea is about as reasonable as if a man who had neither the instruments nor the knowledge requisite to take an observation, should dispute the possibility of a science of astronomy.

Whilst on the subject of works upon these topics, I gladly take the opportunity of expressing my great obligations to Mr. Reddie for his valuable researches into the literature of this head of jurisprudence. His volumes are a perfect storehouse of learning and information, and he has the merit, rare in these days, of having pursued, under the advice of Sir J. Mackintosh and Mr. Horner—two sound opinions, if ever there were such—the true method of investigation. It will be seen that abundant use has been made of these volumes in the following papers. The defects in the arrangement of Mr. Reddie's writings alone prevent them from being among the most useful works on this subject which the present generation has produced. The treatise of Mr. R. Plumer Ward on 'The Rights and Duties of Belligerent and Neutral Powers,' is a perfect model of the method of discussion of disputed questions, such as arose in the case of the Armed Neutrality. His 'History of the Origin of International Law' shows how competent this accomplished writer was to treat these topics. Lawyers and statesmen have much occasion to regret that he abandoned the severe field of jurisprudence for the lighter paths of fiction. It would,