

## REVIEWS

*Die Drahtlose Telegraphie im internen Recht und Völkerrecht*, von Dr. F. Meili. Zurich, 1908, pp. 100.

The indefatigable pen of Professor Meili has now sketched out the present legal position of wireless telegraphy. His first publication, issued in 1871, was on the law of the Telegraph, and it is appropriate that he should now, with ripened experience and power, take up the newest branch of it,—newest, at least, as a living thing, though the beginnings of a theory of the possibility of such a service by the air date back to 1838 (p. 10). Germany has been the most prolific in names for the new art: *Funkentelegraphie*, *Telegraphie mit Hertzschen Wellen*, *Telegraphie ohne Leitungsdraht*, *drahtlose Telegraphie*, and *Wellen-telegraphie*. Dr. Meili adopts the simplest and most expressive term, corresponding to that in use in England and the United States.

The treatise describes separately the legal aspects of wireless telegraphy in a particular country, and its legal aspects in respect to international concerns. The latter are of most interest to Americans, and for many purposes are to be determined, under a convention to which the United States were a party, on and after July 1, 1908, by certain rules specifically prescribed. This convention (which is given by Dr. Meili at length, p. 81) was made in Berlin in 1906 between twenty-seven powers. Of these, nineteen are European, six American, and two Asiatic. Russia, content with its provisions, did not include wireless telegraphy among the subjects to be specially considered at the second Peace Conference at the Hague in 1907, though it received some attention in framing the Convention as to Land and Naval Warfare (p. 62).

The author does not assent to the paradox of Rolland that (p. 48) in approaching this topic the earth may well be regarded as a mere support for the air, since the main actions of men which their governments regulate take place in the air and above the ground. This he dismisses as overstrained. There must be a separate division of international law for what takes place in the air, *das völkerrechtliche Luftrecht*. Its first proposition must be that the air is free. Its second must be that it is, nevertheless, under the control of the power governing the earth beneath it for certain purposes, to a certain height. But to what height? Can we seek an analogy in the three-mile limit of territorial waters? Can we adopt Rolland's position (p. 49) that 330 meters should be the boundary of terrestrial police? And what of the air over the high seas? Does a *mare liberum* below involve a free air above?

Dr. Meili is disposed to agree with the Institute of International law that each country must be conceded a regulative power over the air, as high as may be necessary, to forbid the passage of hertzian waves above its territory or its territorial waters, (pp. 52, 65). Several powers have already asserted that it must also be free to regulate or prohibit the use of wireless telegraphic apparatus on its ships, public or private (p. 55), even in time of peace.

The kernel of the Berlin Convention of 1906 he deems (p. 70) to be the provision (Art. 3) that wireless stations, whether on the coast or on board ship, must exchange messages reciprocally without discrimination between different systems.

Like all Dr. Meili's works, this bears mark of a careful study of the literature of the subject treated of, and is clearly expressed and orderly in arrangement.

S. E. B.

*Federal Usurpation.* By Franklin Pierce. New York. D. Appleton & Company. 1908. Pages 437.

In a book equally interesting to the layman and the practitioner, Mr. Pierce has discussed the growing tendency towards the centralization of power in the Federal Government by executive action and judicial interpretation. The book is, to use the words of the author, "a plea for the sacredness of the Constitution of the United States;" a plea, not that the Constitution as adopted a hundred and twenty years ago should remain unaltered, but that if it requires amendment to meet the changed conditions of to-day, it should be changed in the manner intended by the framers and by them provided, namely, formal amendment.

Mr. Pierce discusses the question of usurpation by the Federal Government from a historical standpoint as well as that of the present day. The usurpations in the Civil War and Reconstruction Period are graphically reviewed; the words and acts of President Roosevelt, which tend to abrogate the rights of the states and centralize the power in the National Government are criticized; the danger of paternalism is pointed out. The great power of the United States Supreme Court, the Interstate Commerce Clause, and other questions of universal interest are examined. In short, the book is an interesting review of the different phases and aspects of the present tendency towards imperialism and centralization.

The author, however, does not leave us without a remedy, and he discusses what should be done, from his point of view, in order "to restore the Democratic Republic"

In view of the present growing interest in the powers given to the Federal Government by the Constitution, Mr. Pierce's book is especially timely. Whether or not one agrees with the views of the author, whether or not one feels his attitude to be the correct one and his criticisms just, yet in any event one cannot help but find the book interesting and the questions discussed meat for thought.

R. C. H.