

the same, an illusion—one of the eternal illusions of mankind. From the point of view of rational cognition there are only interests of human beings and hence conflicts of interest.”⁵⁵ In a democracy imbued with the spirit of tolerance, there is freedom for different interests to assert themselves and to contend for recognition. And so Kelsen ended his lecture, as I shall end this essay, with the words:

It would have been more than presumptuous to make the reader believe that I could succeed where the most illustrious thinkers have failed. And, indeed, I do not know, and I cannot say what justice is. the absolute justice for which mankind is long.ng. I must acquiesce in a relative justice and I can only say what justice is to me. Since science is my profession, and hence the most important thing in my life, justice, to me, is that social order under whose protection the search for truth can prosper. “My” justice, then, is the justice of freedom, the justice of peace, the justice of democracy—the justice of tolerance.

LEO GROSS

CHARLES GHEQUIERE FENWICK
1880–1973

With the passing of Charles G. Fenwick, whose association with the American Society of International Law spanned more than sixty years, the Society and the world fraternity of international lawyers have lost one of their most distinguished and beloved colleagues. His departure is an ineffable personal sadness for the present writer, evoking recollection of several decades of warm friendship with one who was indeed a courtly and cultured gentleman of the old school. There are not many of his mold in present day America; it is doubtful that his like will pass our way again very soon. His roots tapped deeply into the soil of this nation: an ancestor shared in the travail of revolutionary independence. For those who were not privileged to know Charles as I did, let it be said merely that their lives are the poorer for being so deprived. He would have been 93 years old on May 26, and his exemplary life was rich in professional and literary achievement.

Not long after receiving his Ph.D. at Johns Hopkins in 1912, Dr. Fenwick joined the Bryn Mawr faculty as a professor of political science, a post he retained until his appointment as the United States Member of the Inter-American Neutrality Committee (which soon became the Inter-American Juridical Committee) of Rio de Janeiro in 1940. This, however, was not his first responsibility in a governmental capacity; for during World War I he was a special agent of the Treasury Department on war risk insurance at Fort Sam Houston, Texas, and was subsequently engaged in the preparation of confidential reports for the American Delegation to the Paris Peace

⁵⁵ WHAT IS JUSTICE? *supra*, n. 27, at 21. The next quotation in the text is at 24.

Conference. But the assignment at Rio definitively reoriented his career in the direction of what had already become his abiding, primary interest: the Inter-American community of nations. It did something else, too, which transfigured his life. At Rio, Charles, a confirmed bachelor until the age of 60, met and married the lovely Marie José Lynch. A benevolent providence permitted him to watch his two fine sons from this union grow into manhood.

Dr. Fenwick remained in Rio de Janeiro until 1947, returning to Washington to become Director of the Department of International Law and Codification of the Pan American Union, a post which he held until his retirement in 1962. During that period he contributed more to the cause of codification and to the development of international law in the Western Hemisphere than any other individual I know. While most of us were hardly aware of the legal principles germinating at the Inter-American conferences, Dr. Fenwick participated in their formulation as a delegate to the Buenos Aires Conference for the Maintenance of Peace in 1936; to the Eighth and Ninth Conferences of American States at Lima (1938) and Bogotá (1948); as a long-time member of the Juridical Committee of Rio de Janeiro; and as Executive Secretary to sessions of the Inter-American Council of Jurists. In these capacities he guided the work of the conferences, providing a continual source of information and strength for the delegates. Lawyers and academicians everywhere are indebted to him not merely for his innumerable, often unnoticed diplomatic services, but for publicizing through his indefatigable writings virtually every aspect of the development of international law in the Americas.

Yet it was his contribution to the work of the *American Journal of International Law* which emerges as the most remarkable of all, in his literary productivity no less than through his ever-stimulating effect upon his colleagues. Dr. Fenwick's output for the *Journal* alone was prodigious. It began with a comment written in 1912 on "The British Prize Bill and the Declaration of London."¹ Over the next six decades material ranging through a wide variety of international legal questions literally poured from his pen. In the analytical index prepared for the Society's publications during 1941 to 1960, Dr. Fenwick's contributions to the *Journal* and to the *Proceedings* of our annual meetings occupy over two and a half pages of small print. Between 1912 and 1972 he turned out eleven leading articles, 94 editorials and current notes, 162 book reviews and fifty-six shorter book notes. Yet, somehow, during the first half of this same period he managed to produce several monographs on *Neutrality Laws of the United States*,² *Wardship in International Law*,³ *Types of Restricted Sovereignty*⁴ and *Political Systems in Transition*.⁵ His reputation as a scholar and language expert had already been established by his authoritative translation into English of Emerich de Vattel's *Droit des Gens ou Principes de la Loi*

¹ 6 AJIL 180 (1912).

² Carnegie Endowment for International Peace, 1913.

³ 1919.

⁴ Government Printing Office, 1919.

⁵ 1920.

Naturelle,⁶ Hans Wehberg's *Das Problem eines Internationalen Staaten-gerichtshofes* and Walter Schucking's *Der Staatenverband der Haager Konferenzen*.⁷

These publications were followed by casebooks on international law⁸ and the constitutional law of the United States⁹ (both books going through two editions), a study on *American Neutrality: Trial and Failure*,¹⁰ and his elementary but comprehensive textbook on international law which quickly won a place in the standard repertory and which he revised and modernized for the third time¹¹ at the age of 84. 1963 saw the appearance of his landmark volume on *The Organization of American States*. In contrast to many other texts dealing with the work of regional organizations Fenwick's literary talent made the Inter-American system come alive for the reader with an enviable clarity and fluidity of language. Finally, when he was 88 years old, responding to his conviction that the public at large should be more fully informed on the subject, Fenwick completed a handy guide for the layman on "Foreign Policy and International Law,"¹² which is a nutshell presentation of basic principles masterfully simplified in terms that any high school student can understand.

Dr. Fenwick was elected to the Board of Editors of the *Journal* in 1924, becoming a worthy confrere of a group consisting of Edwin Borchard, Philip Marshall Brown, William C. Dennis, Edwin D. Dickinson, James W. Garner, David Jayne Hill, Manley O. Hudson, Charles Cheney Hyde, Arthur K. Kuhn, Ellery Stowell, Lester Woolsey, and Quincy Wright—a veritable powerhouse of international lawyers who did so much to advance the rule of international law in the pre-World War II era. In 1953, Charles was honored by his colleagues with the presidency of the American Society of International Law. He was made an Honorary Editor of the *Journal* in 1956, and Honorary Vice President of the Society in the following year. Additional honors were conferred upon him with doctoral degrees from Marquette and Holy Cross, and an associate membership in the prestigious *Institut de Droit International*.

Fenwick's writings, though seldom scintillating with the virtuosity occasionally found among his contemporaries here and on the continent, were marked with solid scholarship and a pervasive common sense. One could rely comfortably on his formulation of a principle of law, drawn as it almost invariably was from a fastidious respect for the practice of nations. There were troublesome exceptions, such as his controversial posture on the illegality of nuclear weapons per se, and, for some, his equally debatable insistence—until the day of his death—that the legal regime of neutrality had been abolished once and for all by the United Nations Charter. Steeped in his scholarship was an unremitting humanism which glistens through his writing as the credential of one for whom the rule of law was truly intended to achieve the ends of justice for individuals

⁶ 1916.

⁸ 1935.

¹⁰ 1940.

¹² 1968.

⁷ 1918.

⁹ 1938.

¹¹ Fourth Edition, 1965

as well as nations. A patient and most kindly man, he had no patience with those who would distort or pervert the law for some rationalized objective. Although not trained as a lawyer, he was a far better international lawyer than many internationalists who were.

Charles Fenwick has left our ranks, but he will live on, as he outlived his contemporaries, in the hearts and memories of his associates, just as his writings have preserved for him an immortality which comes so rarely in a perplexing legal crucible overcast with the uncertainties of the morrow; but those to whom the baton of current challenge is passed may draw solace and strength in a relentlessly changing world from the noble example which this finest of men set for himself and his colleagues.

ALWYN V. FREEMAN

THE DOCTRINE OF SELF-EXECUTING TREATIES AND COMMUNITY LAW:
A PIONEER DECISION OF THE COURT OF JUSTICE OF THE
EUROPEAN COMMUNITY

The acceptance and status of the doctrine of the self-executing character of treaties in the legal order of the United States as well as in foreign legal systems is both an important and intriguing problem. It has confronted the courts with thorny and sometimes politically embarrassing issues and attracted the increasing attention of scholars of international law.¹ In 1971 the JOURNAL published the translation of a notable German decision which denied self-executing character to Article III of GATT² and an editorial comment on the holding and approach of the court rendering that judgment.³ Now the Court of Justice of the European Communities, in a recent case,⁴ has been confronted with the question of the self-executing nature of another article of GATT and, in the course of its opinion, resolved a host of interesting problems pertaining to the status of treaties in the law of the European Communities. It deserves the attention of the readers of the JOURNAL.

The litigation arose as a result of certain restrictions on the import of table apples from nonmember states which had been imposed by a series of regulations issued by the Community in 1970, especially Regulations Nos. 459/70, 565/70 and 686/70.⁵ Pursuant to these regulations an administrative agency in the Netherlands, charged with the issuance of im-

¹ An important new study is KOLLER, *DIE UNMITTELBARE ANWENDBARKEIT VÖLKERRECHTLICHER VERTRÄGE UND DES EWG-VERTRAGES IM INNERSTAATLICHEN BEREICH*, SCHWEIZERISCHE BEITRÄGE ZUM EUROPARECHT, Vol. 8 (1971). Other recent studies are listed in Editorial Comment, 65 AJIL 548, at 550, n. 14 (1971).

² *Ibid.*, 627.

³ *Ibid.*, 548 (1971).

⁴ *International Fruit Company N.V. v. Productschap voor Groenten en Fruit*, Court of Justice of the European Communities, Cases 21 to 24/72, Dec. 12, 1972 (Advance copy). A translation is printed *infra* pp 559-63.

⁵ 13 CEJO Nos. L 57, at 20, L 69, at 33, L 84, at 21.