

THE LAW OF INTERNATIONAL WATERWAYS. By R. R. Baxter. Cambridge, Mass.: Harvard University Press. 1964. Pp. vii, 371. \$9.50.

What immediately strikes one about *The Law of International Waterways* is its attempt to consider a body of law in the context of the economic and political factors out of which the law has developed. Much of the book is concerned with describing the historical development of international waterways and the present operation of these waterways. Particular emphasis is laid on interoceanic canals. In order to give unity to what might otherwise be a disjointed succession of facts and figures, Professor Baxter has a long introductory chapter in which he states the purpose of his study—to examine the treaties and practices concerning international waterways, not merely to provide a convenient compilation of these matters for practitioners and scholars, but also to determine whether there is a substantial body of customary international law with respect to these waterways. In this regard he is concerned with whether there is a body of customary international law sufficiently general in scope to be applicable to all types of international waterways—rivers, canals, and straits.

Professor Baxter starts out with a factual classification of international waterways. They are the “rivers, canals, and straits . . . used to a substantial extent by the commercial shipping or warships belonging to states other than the riparian nation or nations” (p. 3). He acknowledges, however, that at least with respect to straits this definition must be broadened to include as well those straits which are *useful* routes of international maritime traffic (pp. 8-9). In accordance with this definition the Suez, Panama, and Kiel canals are international waterways. So too, perhaps, is the Corinth canal; Professor Baxter classifies it as a marginal case (p. 12).

In accordance with his professed aim to achieve meaningful generalization, Professor Baxter explores the suggestion in *The S.S. “Wimbledon”*<sup>1</sup> that international canals connecting two portions of the high seas are just limiting cases of international straits. The difficulty of this view is the question of establishing a legal basis for a right of innocent passage as against the territorial sovereign of the canal. Professor Baxter examines the arguments that have been advanced to support such a right with respect to the Suez, Panama, and Kiel canals, pointing out the difficulties in placing such a right in treaties, even in so-called dispositive treaties. The preferable theory, he concludes, is that the right of passage is anchored in the fact that these waterways have been “dedicated” to international use. He asserts that such a dedication, if relied upon by the international community, creates legally enforceable rights in favor of all nations (pp. 182-84).<sup>2</sup>

1. P.C.I.J., ser. A, No. 1, at 28 (1923).

2. Professor Baxter has added the element of reliance to the theory of dedication used by the Permanent Court of International Justice in *The S.S. “Wimbledon,”* P.C.I.J., ser. A, No. 1, at 28 (1923).

Through a theory of dedication and reliance by the international community at large Professor Baxter avoids the problem of third party states that besets an attempt to anchor the right of passage upon the basis of treaty. A theory of dedication also makes it easier to draw analogies between straits and canals.

With respect to rivers, however, the theoretical basis for analogy to other types of waterways is lacking. After examining the development of freedom of navigation of international rivers and the agencies that have been created to implement this freedom, he concludes that there is no body of customary international law applicable to the navigation of all international rivers and that there is no such body of law of sufficient generality and breadth to permit analogies to be drawn between rivers, on the one hand, and canals and straits, on the other. Only the regime that once governed the lower Danube came close to insulating an international river from riparian control to an extent sufficient to permit one to speak of true dedication to international use. Unfortunately, perhaps, this regime was not reinstated following the Second World War, and the Soviet bloc states, which now control this portion of the Danube, have instituted a regime that fully recognizes the primacy of riparian control.

The examination of the historic and economic background of the present legal status of international rivers, however, is important and timely. First, it shows that in a modern world short of pure water and with an increasing population, navigation can no longer be viewed as *the* prime international consideration even with respect to those rivers that have historically been considered major routes of international commerce. Second, this examination reminds us that the interest in waterborne commerce is primarily an economic one. Waterborne commerce cannot be considered in isolation from commerce by rail, by air, or by road. Nowhere is this clearer than in the case of rivers. When each nation is free to pursue national policies with respect to the use of its highways, railroads, and airspace, to talk about international rights in the use of rivers, considering rivers in isolation, is ludicrous. Thus far the economic advantages of oceanborne commerce have permitted one to consider the legal status of straits and canals in comparative isolation. The advent of the pipeline and of the large freight aircraft and the improvement of the road and rail systems in the underdeveloped areas of the world may make such an isolated view impossible. Indeed the introduction into service of the 100,000 ton tanker has already had an impact on the economic importance of canals. Professor Baxter correctly draws attention to these matters, even if doing so makes it somewhat difficult, and to an extent impossible, to accomplish his goal of restating the law of international waterways.

Professor Baxter's book is an indispensable addition to the library of anyone interested in the legal problems of international waterways.

He is to be complimented upon the imagination shown in his approach to this subject and the skill shown in the execution of the task that he set for himself.

GEORGE C. CHRISTIE\*

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\* Professor of Law, University of Minnesota Law School.