

Louisiana Law Review

Volume 3 | Number 1
November 1940

ALIENS AND THE LAW, by William Marion Gibson. The University of North Carolina Press, Chapel Hill, 1940. Pp. xv, 200. \$3.00.

Léandre Maréchal

Repository Citation

Léandre Maréchal, *ALIENS AND THE LAW*, by William Marion Gibson. *The University of North Carolina Press, Chapel Hill, 1940. Pp. xv, 200. \$3.00.*, 3 La. L. Rev. (1940)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol3/iss1/33>

This Book Review is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kayla.reed@law.lsu.edu.

amended by the Chandler Act, the General Orders, a reference table, and an index complete the book. On the mechanical side the makeup will be hard to beat, and the author has done everything possible to facilitate locating points of law.

The pattern of the entire book is that described previously. A legal proposition is set out, followed by citation to the Bankruptcy Act and by reference to decided cases, where such exist. Excellent work has been done in collecting these cases from recent volumes of the Federal Reporter series. In the "Table of Authorities" the references are wholly to standard treatises and a few statutes. Only three references to law review material appear. One of these is to the Federal Law Journal and the others are to the American Bankruptcy Review. Thus, a vast reservoir of bankruptcy jurisprudence has been left undrained.

In a word, then, this is a grand book for those who like their bankruptcy law straight and sure. It is not a book for those who desire to learn much concerning the author's reaction to the tough cases which may or may not still be the law since the Chandler Act. Neither is it for those who would dig deep into the pages of periodical literature.

THOMAS C. BILLIG*

ALIENS AND THE LAW, by William Marion Gibson. The University of North Carolina Press, Chapel Hill, 1940. Pp. xv, 200. \$3.00.

During its early years the United States of America welcomed aliens to its shores, and as a result of their contributions to its national welfare the country grew and prospered. At present some 3,600,000 aliens reside within its borders; hence, the legal rights and personal status of aliens are by experience of great importance to the welfare of the land. At a time when the world is upset by totalitarian concepts whose proponents seek an insidious infiltration into the western hemisphere, Mr. Gibson's study shows cogently the liberal treatment extended by this benevolent country to immigrants. His book covers these forensic aspects and will interest not only American and foreign jurists but government officials as well.

As the author points out in his summary, the main purpose of the work "is an inquiry into the extent to which aliens are

* Lecturer in Law, Catholic University of America.

accorded national treatment by virtue of American municipal law."¹ This question, like that pertaining to nationality, is one which must be preliminarily considered together with private international law. It is evident that before analyzing which law is applicable, in a controversy where an alien is a party advancing a right which he claims, the question must be resolved as to whether such alien is entitled thereto. The rights of an alien may be divided into three categories: public, political and private. As to *public* rights, aliens in this country enjoy rights substantially similar to American citizens, such as individual freedom; and unlike many foreign countries, the United States extends to aliens the freedom of the press as well as the liberty of assembly and freedom of teaching. It is only recently that this country has adopted a measure placing under surveillance the aliens within its borders. This decision to register all aliens is certainly no indication that the government or the people suspect the entire alien population of unpatriotic or dangerous activity, but should be welcomed by all law abiding aliens who have come to this country to work and to establish homes and families under the benevolent protection of the American flag. After all, this government is starting to treat aliens as other countries have long treated them.

On the other hand, the author points out the numerous constitutional rights to which aliens are entitled in the United States.² So far as *political* rights, including the right to vote and jury service, are concerned, they do not and cannot rationally belong to aliens.

Questions pertaining to the *private or personal* rights of aliens embodied within the limits of private international law and their scope are numerous. Mr. Gibson expounds a practical analysis of the various phases of the law on these matters.

A brief synopsis of the distinctive features considered in this work, viz., the municipal or positive law, the customary international law, the treaties, the court decisions and finally the doctrine of jurisconsults, is here in order.

Municipal or positive law. The author shows that in most states the legislature has regulated by positive and expressed promulgations certain questions dealing with private international law. No emphasis is needed to demonstrate the national

1. P. 153.

2. P. 82.

and sometimes "local" character of these regulations which are unilateral solutions of matters which, by nature, should be the object of bilateral international treaties or conventions. In a particularly well drafted appendix³ the author affords a bird's eye-view of the diversity of municipal laws affecting the rights of aliens to acquire real estate by purchase and descent. The lack of uniform and harmonious regulations in this respect by the various states of the Union is surely to be regretted in a country where state lines have long ceased to be real boundaries in the life of the people.

Customary international law. Tribunals of various countries have almost universally adopted a number of maxims which have truly become rules, the most important of which are: *mobilia sequuntur personam*, *locus regit actum*, and *lex loci rei sitae*. A careful perusal of their true character will show them to be too broad in scope and hence quite vague in their application, the courts having interpreted them in their own way with a rather full adaptation to the internal legislation of their respective states. As the author points out, "the provisions of customary international law are not national treatment provisions in the true sense."⁴ An excellent interpretation of customary international law is given.

Treaties. Treaties and diplomatic conventions should be the most important source of private international law. The difficulties that must be met grow from the independence and sovereignty of nations; to overcome these obstacles, covenants based upon reciprocal concessions are drafted. They are reached not so much in a spirit of international courtesy but rather in the interest of trade with the purpose of securing for each country concerned, the best possible advantage out of the ineluctable concept of economic interdependence of nations. Dr. Gibson, realizing no doubt the importance of treaties, has elaborated on this phase of the subject, devoting to it an entire chapter.⁵ However, a greater stress should perhaps have been given concerning the effects of the "most favored clause" inserted in many treaties; under such clause some countries may claim privileges extended to others.⁶

3. Pp. 177-181. Appendix B (tables 1-7).

4. P. 155.

5. Pp. 19-44: National Treatment Provisions in the United States Treaties—Provisions relative to personal rights or privileges—Provisions relative to ships and goods.

6. *Santovincenzo v. Egan*, 284 U.S. 30, 52 S.Ct. 81, 76 L.Ed. 151 (1931).

*Jurisprudence.*⁷ By decisions and conclusions reached by prize courts and arbitration tribunals a most important source of private international law has been created. The strength of these decisions is particularly great in the Anglo-American juridical system where court decisions are real legislative monuments.

Doctrine of Jurisconsults and Publicists. Finally, another source of private international law is the authority attached to the "doctrine" propounded by jurisconsults and publicists whose interpretation of the law occupy the same position in legal science as public opinion does in politics. To the great works left us by earlier publicists should be added the brilliant pleiad of contemporaneous writers to whom we owe the incessant progress realized in international law, both in the field of treaties and custom, as in that of court decisions and legislative enactments.

This book gives good evidence of the methodological thinking of its author. It saves much time and labor to the researcher, as materials heretofore scattered in many different places and sometimes even not to be found in published form, are carefully arranged and well presented.

"Aliens and the Law" should be received with gratitude by all branches of the legal profession, and by foreign diplomatic and consular officers located in the United States.

LÉANDRE MARÉCHAL*

7. Jurisprudence should be taken here within its Continental concept (i.e., the interpretation of legal problems by the court) and not as the science of the law, as a whole, as understood by the common law jurist.

* Lecturer in Law, Loyola University School of Law (New Orleans).