

What, then, is the middle of this channel, and how is it to be ascertained?

I have shown that it cannot be ascertained by the common-law rule of running a center surface-line through the whole expanse of waters and islands lying between the two shores, because both Powers have construed differently from that an identical expression in the treaty of 1783, and because both have all along abstained from even suggesting such a line, on account of the impossibility of bringing together the two lines, namely, the "middle" line through the Gulf of Georgia and the middle line through Fuca straits, which two lines are by the treaty contemplated as forming but one and the same line, by running into and naturally uniting with each other, which could not be unless the middle of one channel was geographically and in point of fact the middle of the other. I say, for these three reasons: first, because the two Governments have not applied the common-law rule to islands lying in the center of the water surface; second, because both have throughout the dispute actually abstained from putting forth such an idea; and third, that such a line is geographically impossible, having in view the language of the treaty, which really makes the two lines one, by running the one into the other, or, in other words, welding them so as to form one middle of the two channels, Georgia and De Fuca. In construing the language the datum given, the point conceded by both parties by the very language itself, and not to be denied or retracted by either, is that this middle line is the same line and runs through both channels, Georgia and Fuca; and, of course, that in point of fact, as admitted by both parties, they form but one channel, having this "middle." How then, I ask again, is it to be ascertained?

I have shown that in reference to the islands it cannot be by the common-law rule. Resort must be had to some other to get at the intention of the parties.

Halleck, one of the most careful thinkers on international law that the United States have produced, says, (page 138:)

"But where the river not only separates the continuous States, but also their territorial jurisdiction, the *thalweg*, or middle channel, forms the line of separation through the bays or estuaries through which the waters of a river flow into the sea. As a general rule this line runs through the deepest channel, although it may divide the river and its estuaries into two very unequal parts."

Hilfner (section sixty-six) says:

"If a river separates two States the dominion of each extends to the middle of the river, sometimes the bed, called the *thalweg*, serves as the boundary, as the *thalweg* of the Rhine. This mode was adopted in the treaty concluded in 1809 between Russia and Sweden."

The *thalweg* is the "valley way" or lowest part of the bed of the stream, the line most followed by boatmen in going down stream.

Klüber, speaking of the frontiers of the territories of a State, (section one hundred and thirty-three,) says:

"As to rivers and lakes as frontiers by which the opposite banks are equally occupied, the middle, comprising in this the islands traversed by the line of the middle, ordinarily separates the territories. Instead of this line nations have recently chosen for frontier the *thalweg*; that is to say, the variable way taken by boatmen when they go down stream, or rather the middle of this way or road."

The author adds in a note:

"In the treaty concluded between the grand duchy of Baden and the canton of Argovia, September 18, 1808, the parties took for their limit the *thalweg* of the Rhine, but by this is understood the deepest places of the river, and as to the bridges their middle."

Webster defines "channel" as the deeper part of a strait, bay, or harbor, where the principal current flows, either of tide or fresh water, or which is the most convenient for the track of a ship.

Worcester defines the word as the bed of a stream of water, especially the deeper part of a river or bay, where the main current flows; a strait or narrow sea between two portions of land, as the British channel.

Wheaton says:

"Where a navigable river forms the boundary of continuous States, the middle of the channel, or *thalweg*, is generally taken as the line of separation between the two States, the presumption of law being that the right of navigation is common to both."

The author here manifestly treats the expressions "middle of the channel" and "*thalweg*" as equivalent, that is, the lowest bottom of the channel.

Thus it appears that in its geographical and hydrographical sense the word "channel" is the equivalent of "*thalweg*," with this only difference in popular use that "*thalweg*" implies a downstream motion, and is therefore more generally applied to rivers or flowing masses of water, while "channel" applies alike to water flowing and non-flowing. When either of these terms relates to the earthy bed of the river it means the lowest part or gutter of that bed. Speaking of this bed, and on and along this bed is the boundary line, a child will tell you that the middle of the channel is the deepest and lowest portion of the passage "channeled" out through the earth. "Through the middle of the channel" means, in the popular understanding, through the lowest bottom of the space hollowed out, whether on land lying under water or not, because the mind at once measures the depth of the channel by, so to speak, a vertical radius or diameter in order to estimate the size and capacity of the channel.

The true boundary, then, according to the text of the treaty, is this line running from where the forty-ninth parallel strikes the line of deepest water in the whole channel, thence southwardly along this deepest line in the straits of Georgia and the line of deepest water through