



1966

## Book Reviews

Frank M. Wilson

Quincy Wright

Follow this and additional works at: <https://scholar.smu.edu/smulr>

---

### Recommended Citation

Frank M. Wilson, et al., *Book Reviews*, 20 Sw L.J. 949 (1966)  
<https://scholar.smu.edu/smulr/vol20/iss4/18>

This Book Review is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

## BOOK REVIEWS

ESSAYS IN LEGAL HISTORY IN HONOR OF FELIX FRANKFURTER. EDITED BY MORRIS D. FORKOSCH. New York: Bobbs-Merrill Co. 1966. Pp. xix, 647. \$17.50.

There is much in this collection of essays which, while worthy of the honored Justice, may not be claimed for the domain of legal history as the book's title would lead the reader to believe. This format is perhaps extenuated by the editor's definition of legal history as embracing "our whole experience." And the imperfection is relieved by the uniformly high quality of those writings in the historical field, notably those by L. J. Downer on *Leges Henrici Primi*, by Helen Cam on Eyre records, Heinrich Von Beinheim on ecclesiastical judges, Milton C. Abrams on *Doctor and Student*, and Fredric Chayette on choice of law in medieval France.

The reader need not look for a contribution to the history of law in the Maitland or Holdsworth tradition. Nevertheless, there has been an effort to expand and broaden reader appeal by geographical spread of contributors, nationally by sections; internationally by nations. The tabular divisions are "The Use of Legal History," (A) by Mr. Justice Frankfurter, (B) in the state supreme courts, (C) in a federal agency; "Essays in Legal History" and "Interrelationship of Legal History and the Social Sciences." The essays are those of individualists, and will not yield to an organized table of contents or the effort to organize them by category. There is a section devoted to Frankfurter's use of legal history by his law clerks.

The Southwest is represented by Joseph W. McKnight of Southern Methodist University School of Law, whose monograph on Spanish Watercourses of Texas emphasizes the role of Spanish sources in state water law.

Because of the diversity in subject matter, there is something of interest in the essays for all who seek to know, as the editor's definition of legal history suggests, how past events bear upon the formulation of legal principles.

*Frank M. Wilson\**

---

\* B.A., LL.B., Baylor University; Associate Justice, Waco Court of Civil Appeals.

THE PRESS IN THE JURY BOX. BY HOWARD FELSHER AND MICHAEL ROSEN. New York: The MacMillan Company. 1966. Pp. 239. \$5.95.

For the deeply disturbing problem of publicity prejudicial to a criminal defendant, this book offers a simple solution: pass a law against it.

The constitutional questions raised by press restrictions are dealt with summarily. The authors' thesis is that if the individual's constitutional right to a fair trial collides with the press's first amendment rights, the right of the individual should prevail. Practical problems of getting such a law enacted by publicity-sensitive lawmakers are not considered.

Basically, the book is an angry, slashing attack on the press's excesses. The cases described make up a sorry saga familiar to most, ranging from the Lindbergh kidnap case and the Sam Sheppard murder trial to the 1963 Presidential assassination and its aftermath.

The authors have put together, in a dozen or more cases, a "chamber of horrors" in criminal reporting. Each case history describes a trial which was preceded or accompanied by banner-headlined stories reporting such items as: (1) statements that the accused had confessed and contents of the confession, (2) accounts of the defendant's previous criminal record, (3) denunciatory statements by police and prosecutors ("This is the man. There is no doubt about his guilt."), (4) stories purporting to tell, in grisly detail, how the accused committed the crime, and (5) reports of evidence ruled inadmissible during the trial.

Certain "legal shields" are available to the defendant now. These include change of venue, change of venire, continuance, severance, *voir dire* examination, challenges to jurors, isolation of the jury, and instruction of the jury to consider only the evidence presented in court. All are too little, too late, in the authors' view. For example, in a time when instantaneous, mass communications blanket the country, where can one go on change of venue? How far can one trust the juror who promises to thrust aside his preconceived opinions of the defendant's guilt?

Voluntary codes and various restrictive proposals have been discussed at scores of press and bar meetings over the country in the last few years. The American Bar Association committee on fair trial and a free press recently made proposals that would call on American courts to adopt rules sharply curtailing the information that could be released to the press by police, prosecutors, defense lawyers, and

court employees.<sup>1</sup> The committee recommended use of the contempt power "with considerable caution" against those who disseminate prejudicial statements. From time to time, press groups have discussed adoption of voluntary codes of restraint.

Both efforts are regarded as futile. Cutting off news at the source is considered ineffective because "leaks" cannot be stopped. The press will continue to print the same stories, attributing them to "reliable sources," "responsible officials," and the like.

The voluntary press codes, are regarded with the optimism that might be accorded a voluntary agreement not to use narcotics adopted by a group of addicts. A majority of newsmen have strong reservations about any kind of press restriction.<sup>2</sup> As for the rest it is predicted that good intentions will go by the board when subjected to the fierce competitive battles that attend the "big story."

For all this, the authors admit that some of the most articulate advocates of restrictive crime coverage are to be found among the media. John Harrison of the Toledo Blade stated: "It is for the citizenry that the press speaks when it demands to know how the public's business is transacted, how justice is administered. Where this freedom clearly transgresses other constitutional rights it can claim no priority. . . ."

But Mr. Harrison made this statement ten years ago, says the author, and nothing has happened. It is interesting to note, however, that between the writing and publication of this book, the Toledo Blade and Toledo Times (jointly owned) have announced the adoption of a crime coverage code.<sup>3</sup> In effect, the two papers say that until a case comes to trial the papers will print only the name, age, and address of the accused, a description of the arrest and charge, and identity of the complainant. All five of the prejudicial types of news listed above are to be excluded.

---

<sup>1</sup> New York Times, Oct. 2, 1966, p. 81. The information which the committee recommends that lawyers, police and court employees not be allowed to release includes (1) the accused's prior arrest record or statements as to his character or reputation, (2) existence or contents of any confession or the refusal to make one, (3) the identity, testimony or credibility of prospective witnesses, (4) the possibility of a guilty plea, and (5) other statements regarding the evidence or the merits of the case.

<sup>2</sup> Mr. Felsher's surmise is borne out by recent commentary from the press. The Dallas Morning News, Oct. 7, 1966, p. 8A, reported on a front page editorial carried by the *Fort Worth Press*. The *Press* said, in part: "We feel the time has come to assure our readers that the Press will not be intimidated or threatened . . . or edited by anyone other than the editor. . . . The judge should exercise full control of everything that goes on in his courtroom. We don't challenge that. But the editor must control everything that goes into his newspaper. That is his responsibility to all the public."

See also Case & Com., Sept.-Oct., 1966, for the report of a speech made by Clifton Daniel, managing editor of the *New York Times*, before the Federal Bar Association of New York, New Jersey and Connecticut in November, 1965. Broadly summarized, Mr. Daniel said, "We will not submit to censorship."

<sup>3</sup> Time, Sept. 2, 1966, p. 76.

Even had this developed earlier, it is doubtful that the tone of the book would have been different. To the authors nothing is adequate that is short of the English system of restrictions by law rigorously enforced by the government. Such curbs on the press would be no more drastic or foreign to American law than the SEC's curbs on promotion of securities.

Be that as it may, the chances for passage of laws restricting news coverage are dim. The lawmakers on whom the authors call to enact press curbs are elected officials. It will take daring men indeed to put shackles on the reporters who so often stand between the officials and the electorate they must woo.

Despite the fact that the proposed changes are unrealistic, the book serves a valid purpose. In this round-up of particularly glaring examples of page one convictions, the authors help to delineate the limits of decency and fairness in crime reporting. It should be a stimulus to the dialogue between press and bar that, hopefully, will result eventually in mutually accepted standards. The millennium will have arrived in this area when there is a concensus on these standards and the standards are taught in both journalism schools and law schools.

*Reba Graham Rasor\**

THE STRATEGY OF WORLD ORDER. EDITED BY RICHARD A. FALK AND SAUL H. MENDLOVITZ. New York: World Law Fund. 1966. 4 volumes. \$14.00.

Serious students of international relations generally recognize the great importance, especially in the nuclear age, of developing a discipline of international relations and of general education in this discipline. They anticipate that such education may contribute to a more enlightened public opinion on international affairs and better decisions by those responsible for action on such affairs. They also recognize that such a discipline must draw from many existing disciplines of both social and natural science. Furthermore it must be dynamic, continually correcting itself to take account of changing world conditions consequent upon an increasing flow of discoveries and inventions adding to human capability and of ideologies and philosophies modifying human values.

A discipline of international relations should include a *pure science* discovering, verifying, and systematizing propositions to facilitate

---

\* B.J., University of Texas; LL.B., Southern Methodist University; Assistant Professor of Law, Southern Methodist University.

analysis of situations and to ascertain trends and future probabilities. It should also include an *applied science* utilizing practical experience and the pure science to facilitate the mobilization of opinion and the making of laws, policies, and decisions to realize accepted values, interests, and goals.

The vastness of the field, the inchoate character of the discipline, the volume of writing, and the diversities of opinion manifested by this writing are baffling to the layman and student, and even to the expert and the decision maker. Consequently all will profit by a selection of readings indicating the major theoretical and practical problems, the varieties of points of view, and the conclusions on which there is sufficient consensus to provide a basis for appraising the probabilities of the future and the possibilities of control to establish a world in which men can survive and prosper. The four volumes under review provide such a selection. Some of the articles include theoretical analysis, but most of them are concerned with the practical problem of developing ideas and knowledge about international politics, international law, international organization, and international economics which may contribute to a more peaceful, stable, and just world. Some of the writers are skeptical about the possibility of changing the present international system of power politics and suggest strategies which might improve the functioning of that system in the nuclear age. Others believe that a new system is both feasible and necessary if man is to survive. They examine the nature of such a system and the steps in the transition to it.

The latter is the subject of the Clark-Sohn plan for limited world government<sup>1</sup> which stimulated the editors of these volumes. "This work," they say,

presents a model of a drastically revised international system that is designed to eliminate warfare from international life. It is a model that depicts in detail the character of the new system and outlines a set of procedures for dealing with conflict in such an altered international society, altered especially by the elimination of national military establishments as a result of total disarmament. Clark and Sohn present their model in the form of a proposed provision-by-provision revision of the present United Nations Charter.<sup>2</sup>

A more theoretical statement of the problems is presented in the first article by Kenneth E. Boulding. "I believe," he writes,

---

<sup>1</sup> CLARK & SOHN, *WORLD PEACE THROUGH WORLD LAW* (1964).

<sup>2</sup> FALK & MENDLOVITZ, *THE STRATEGY OF WORLD ORDER* (1966) (4 vols.). This work is a collection of essays in four volumes entitled: Vol. 1, *Toward a Theory of War Prevention*; Vol. 2, *International Law*; Vol. 3, *The United Nations*, and Vol. 4, *Disarmament and Economic Development*. Subsequent reference to this work will be by volume, author, and page.

the present international system to be one which has a significant probability built into it of irretrievable disaster for the human race. The longer the number of years we contemplate such a system operating, the larger this probability becomes. . . . The problem of system change, therefore, is urgent and desperate, and we are all in terrible danger. . . . Because of quantitative changes in these conditions [under which the system has operated] even in the last few years, the system of unilateral national defense has become infeasible on a world scale. . . . The problem which we face, therefore, is how to effect a system change in the international order, or perhaps we should say the world political order, sufficient to lower the probability of disaster to a tolerable level. . . . The world problem here is perhaps psychological rather than mechanical. . . . To give the people an image of changes in the international system which seem small enough to be feasible yet large enough to be successful. It is not useful to picture utopias which seem utterly unattainable. . . . We need to think, therefore, in terms of a world social contract; that is a minimum bargain [express or tacit] between the contending parties which will give the world a sufficient system change to relieve it from the intolerable burden which it now bears.<sup>3</sup>

Boulding then narrates five stages by which he believes the necessary system change can be effected.

A more skeptical opinion is offered in an article by Herman Kahn, who asks, concerning the arms race: "Why do nations in general, our own in particular, continue to play such a dangerous game?"<sup>4</sup> He examines the danger of war from accident, escalation, preemption, ambition, and catalytic action emphasizing that:

Every government is likely to build up a background of experience in which it did very well by standing firm and very badly when it displayed a flexible, reasonable, or conciliatory attitude. . . . One can almost confidently predict that unless arrangements are made for adjudication or arbitration, somebody is going to play the international analogue of Chicken once too often.<sup>5</sup>

He pays tribute to the Clark-Sohn plan, and regrets that "it has not had the benefit of as much hostile, informed criticism as it deserves" because "it is difficult for practical politicians, hardheaded statesmen, or professional planners to take such proposals seriously." He is hopeful that systems of deterrence may prevent the balance of terror from degenerating into nuclear war during the present century, but he does not believe anything like the Clark-Sohn plan will be adopted until the world has been shocked by the destruction of five or ten cities by a nuclear exchange. Even then:

It would be realized that unless an agreement were made within days,

---

<sup>3</sup> 1, Boulding, at 5-8.

<sup>4</sup> 1, Kahn, at 17.

<sup>5</sup> *Id.* at 23.

that is, before the dead were buried, one side or the other would quite likely try to exploit the common danger for unilateral advantage. In this case the negotiations would probably degenerate into the usual unproductive Cold War jockeying.<sup>5</sup>

There have been system transitions in the past, as from the Hellenistic balance of power to the Roman Empire, from the Roman empire to medieval Christendom, and from the latter to the post-renaissance balance of power, but the transitional period has usually been one of frequent war. Societies able to maintain moderate peace over large areas for considerable periods of time have been developed by utilizing the power of the sword, the power of the law, the power of the word, the power of the purse, or all of them in combination. The present unstable balance of terror is based on the retaliatory capability of great powers with huge military establishments, including nuclear arms, and sufficient technological advancement, economic productivity, and docile national opinion, to sustain these establishments, keep them up-to-date, and render threats of their use credible. The policy of these powers has been to some extent influenced by international law, cooperation to forward common interests including assistance to underdeveloped countries, and world opinion mobilized by educational and religious institutions and the United Nations. In spite of numerous lesser wars and several nuclear threats, mutual deterrence has prevented nuclear war in the twenty-one years since the destruction of Hiroshima and Nagasaki. This system is, however, too dangerous and too expensive to be satisfactory.

In the present state of world opinion and technology, the creation of a universal empire by force is not feasible, nor is the establishment by agreement of a world government with centralized power superior to that of the most powerful nation. Stabilization of the power equilibrium by arms control and disarmament, strengthening of international law and international organization, and development of international cooperation adequate to meet the world's political, economic, and social problems, depends upon a more vigorous and informed world public opinion than now exists. The development of such an opinion through education and propaganda is, therefore, the first step in the transition to a world society better adapted to the contemporary world. This is the assumption underlying this book of readings. Such education must, however, go beyond creation of the opinion that peace is necessary in the nuclear age. It must establish a consensus on the nature of a world which is not only

---

<sup>5</sup> 1, Kahn, at 52.



peaceful, but also reasonably satisfactory to the diverse nationalities and ideologies in the world and acceptable to the present wielders of power able to obstruct its realization. There must also be a consensus on the steps, or at least the first step, toward achieving this world.

The World Law Fund responsible for these volumes assumes, as its name indicates, that law has an important role both in the functioning of such a world and in the steps to attain it. Consequently while the selections pay attention to education, functional cooperation, and arms control, the role of law is continually stressed, but with insistence that international law can not be only an instrument of stability but must also be a dynamic law continually adapted to the rapidly changing world by the processes of international politics, national and United Nations initiatives, and judicial and juristic formulations as urged by Myres McDougal,<sup>7</sup> Posalyn Higgins,<sup>8</sup> Morton Kaplan and Nicholas Katzenbach,<sup>9</sup> A.J.P. Tammes,<sup>10</sup> and others. While a distinction should be made between a legal demand for application or interpretation of law and a political demand for change of the law or by-passing of law in a particular situation, the two merge, because demands or decisions by a state or an international body, whether formally based on law, political interest, or expediency may be generally accepted and become customary law in the future. Even though the law applicable to a dispute or situation can be ascertained at any moment in time, law in a broader sense is always changing under the influence of the continuous flow of decisions, resolutions, and formulations of numerous international and national, official and unofficial agencies.

The four volumes under review deal successively with international politics in relation to war prevention and systems change; with international law in its dual role of maintaining stability and facilitating peaceful change; with international organization as it has evolved from the Concert of Europe, the League of Nations, and the United Nations in peace keeping capability; with consideration of the prospects of further evolution to limited world government; and with international development as affected by the relations of armaments, security, and economic progress in both developed and developing countries.

The problem of curbing the arrogance, ignorance, prejudice, and selfishness, likely to dominate the behavior of individuals in a "state

---

<sup>7</sup> 2, McDougal, at 116.

<sup>8</sup> 3, Higgins, at 39.

<sup>9</sup> 2, Kaplan & Katzenbach, at 19.

<sup>10</sup> 3, Tammes, at 50.

of nature" and nations claiming sovereignty above the law, has been a major concern of political philosophers from Plato and Aristotle to Hobbes and Locke, and all have agreed that the solution is to be found in law protecting the common interests of all against the aggressions of any. Whether the law should be based on the principle of maximum freedom of each insofar as compatible with equal freedom of all, or upon the principle of social responsibility to maintain order, promote progress, and assure equality has been controversial. Today this controversy divides the free world from the communist world in principle, although in practice there has been much convergence as welfare programs have developed in the free world and much freedom of enterprise has developed in the communist world.

The same issue has divided lawyers in the international field. Some have considered the state the only subject of international law, as indeed that term implies, and have held that the function of that law is to maximize the independence and sovereignty of states. Others have asserted the democratic principle, that man is prior to the state, and that world (preferred to international) law, like all law should protect the "dignity of man" even against the state of which he is a resident or national thus diminishing the independence of states within their territories. But here also there has been convergence. The concept of "human rights" protected by universal procedures including "humanitarian intervention" has been recognized in traditional international law, at least in respect to the laws of war and barbarities which "shock the conscience of mankind." The United Nations Charter, though based on the "sovereign equality of all its members," and the right of states to protection from aggression against their territorial integrity and political independence and from intervention in their domestic affairs, repeatedly refers to "human rights and fundamental freedoms" and asserts as a major purpose of the United Nations, to promote respect for those rights without distinction as to race, sex, language or religion. It is clear that to reconcile the rights of states with the rights of man requires careful definition of the latter and accepted procedures for their maintenance.

The more serious problem lies in the insistence by some states that maintenance by the law of others of an ideology or religion which they consider contrary to the rights of man, justifies intervention, even though no established definition of the rights of man is infringed. The issue was faced in the Crusades of Christendom against Islam in the Middle Ages, in the wars of Catholicism against Protestantism in the Renaissance, in the French Revolutionary wars

against feudalism, and in the contemporary interventions of communist states to "assist wars of liberation" and non-communist states to "contain communism." The solution in the past has been to keep ideology out of international relations, leaving each state free to maintain its own ideology—*cuius regia eius religio*—and this solution is suggested by the modern phrase "peaceful coexistence of states with different social and economic systems." Peace between states, before justice for individuals, is the basis of this concept as it has been of traditional international law.

With this concept most of the writers in these volumes agree, perceiving that so long as "justice between individuals" varies with the prevailing ideology, intervention by a state to assure justice to individuals as interpreted by its own ideology is likely to escalate to nuclear war. Therefore, those who insist that the dignity of man comes first, recognize that trans-national law to implement that concept can only exist among states of similar ideology. Consequently international law, putting the rights of states first, is the only universal law possible at present. There are however several trans-national systems of public order among states of similar ideology. There can not be a genuine world law "until there has been a universal acceptance, not only in word, but in interpretation and procedures of implementation, of the "Universal Declaration of Human Rights."<sup>11</sup>

The first volume in the series starts with appraisals of the actual situation of the world with nuclear weapons, missiles and satellites; with increasing speed of technological change as science has become the servant of technology; with the cold war between diverse ideologies; and with the widening economic gap between the developed and the developing countries in spite of considerable economic assistance to the latter. The volume is concerned primarily with the problem of saving humanity from nuclear holocaust. Several selections suggest that solution of this problem involves a more general awareness of the situation and the nature of the catastrophe with which mankind is threatened. The text of the decision of the Japanese court in the Shimoda case<sup>12</sup> assessing responsibility for the destruction of Hiroshima and the philosophic exposition of the human peril by Karl Jaspers<sup>13</sup> induce such awareness.

Divergent interpretations of the trend are presented. Is it toward war or stability? Is it toward nationalism, bi-polarity, or regional-

---

<sup>11</sup> 2, McDougal & Lasswell, at 45.

<sup>12</sup> 1, Decision of the Tokyo District Court, Dec. 7, 1963, case No. 2914 of 1955 and case No. 4177 of 1957, at 314 of volume.

<sup>13</sup> 1, Jaspers, at 360.

ism?<sup>14</sup> Is it toward control by reason, custom, necessity, or caprice? Papers deal with the relative utilities of deterministic and strategic analysis,<sup>15</sup> and of analytic models at the international and the national level.<sup>16</sup> Selections deal with the causes of war,<sup>17</sup> the conditions of peace,<sup>18</sup> the processes and prospects of political science,<sup>19</sup> and the uses of violence.<sup>20</sup>

The major emphasis of the volume is on the imaginative task of formulating proposals for action, ranging from those indicating steps in a transition from the present hazardous balance of terror to a system better adapted to the nuclear age<sup>21</sup> to suggestions for more effective control of arms within the present system.<sup>22</sup> Selections deal with the nature of a universal law for mankind,<sup>23</sup> with the relative stability of a multi-polar<sup>24</sup> and bi-polar<sup>25</sup> system of power balancing, and with the relative merit and feasibility of world government with the "minimalist" aim of preventing war<sup>26</sup> and with the "maximalist" aim of administering justice.<sup>27</sup>

From the second volume on international law, the reader will not get a clear idea of what international law is, but diverse views about what it is and ought to be. Does it still recognize the traditional right of self help by reprisals or war? Is "just war" permissible? Are the principles of the United Nations Charter outlawing aggression and intervention positive law?<sup>28</sup> Is there a universal international law or only regional international laws?<sup>29</sup> Is international law "static," concerned only with stability, or is it "dynamic" and "policy oriented" continually changing under the impact of decisions by national and international authorities?<sup>30</sup> What can international law contribute toward a warless world?<sup>31</sup> Can international law survive the challenges from the "realists" who put national interest first, from the

<sup>14</sup> 1, Yalem, at 215.

<sup>15</sup> 1, Rapaport, at 251.

<sup>16</sup> 1, Singer, at 234.

<sup>17</sup> 1, Wright, at 124.

<sup>18</sup> 1, Levi, at 141.

<sup>19</sup> 1, Lasswell, at 284.

<sup>20</sup> 1, Nieberg, at 157.

<sup>21</sup> 1, Boulding, at 3; 1, Pope John XXIII, at 111; 1, Gaitskell, at 117.

<sup>22</sup> 1, Kahn, at 17; 1, Wohlstetter, at 92.

<sup>23</sup> 1, Wright, at 83.

<sup>24</sup> 1, Ducci, at 74.

<sup>25</sup> 1, Waltz, at 186.

<sup>26</sup> 1, Boulding, at 3; 1, Millis, at 64.

<sup>27</sup> 1, Hutchins, at 75.

<sup>28</sup> 2, Kaplan & Katzenbach, at 276; 2, Henkin, at 335.

<sup>29</sup> 2, McDougal & Lasswell, at 45.

<sup>30</sup> 2, McDougal, at 116.

<sup>31</sup> 2, Falk & Mendlovitz, at 10; 2, Falk & Mendlovitz, at 306; 2, Friedman, at 325; 2, Hoffman, at 134.

"idealists" who put the dignity of man first, and from the "ideologists" who put their doctrine first?<sup>32</sup>

International law is especially challenged by the great powers who tend to ignore it, or to claim exemption from it by their veto in the United Nations, in their pursuit of national interests, imperial ambitions, or the discharge of alleged "great power responsibility" to maintain law and order and to promote social and economic progress everywhere.<sup>33</sup> It is also challenged by revolutionists with a sense of mission to give the world the benefit of their revelation by propoganda, subversion, or aggression if they are unable to do so by trans-national information and education.<sup>34</sup> Finally it is challenged by the recently emancipated and under-developed states of Asia and Africa, anxious to maintain independence and to develop their economies, often beset by internal disorder, and dubious of an international law developed among states of European civilization; of race, religion and economy different from theirs; and with a history of imperial dominance over them.<sup>35</sup>

In spite of the recognition of ambiguities in, and challenges to, international law, the general tone of the articles suggests that there is a solid core of international law, that its sources permit considerable precision in determining its application in particular cases, that its sanctions, though imperfect, are often effective, and that procedures and institutions exist continually to adapt it to the changing situation of the world.<sup>36</sup> For some time, however, it is likely to remain a "horizontal" international law among equal states only gradually changing to a "vertical law" reflecting the will of the world community.<sup>37</sup>

The third volume, the longest in the series, indicates the progress of international organization in extensity and intensity since the Napoleonic era, and the relation of international organization to international law, especially in preventing war,<sup>38</sup> sanctioning law,<sup>39</sup> curbing sovereignty,<sup>40</sup> keeping peace,<sup>41</sup> and dealing with civil strife.<sup>42</sup> The volume deals with the internal problems of the United Nations in respect to membership, representation and weighted voting, finance, and the

---

<sup>32</sup> 2, Falk, at 172.

<sup>33</sup> 2, Claude, at 353.

<sup>34</sup> 2, McWhinney, at 189.

<sup>35</sup> 2, Syatauw, at 232; 2, Lessitzyn, at 243.

<sup>36</sup> See especially 2, Fisher, at 75.

<sup>37</sup> 2, Falk, at 306.

<sup>38</sup> 3, Brierly, at 454.

<sup>39</sup> 3, Kelsen, at 472.

<sup>40</sup> 3, Friedman, at 508.

<sup>41</sup> 3, U Thant, at 526; 3, Hammarskjold, at 559.

<sup>42</sup> 3, Sohn, at 580.

relations of the principal organs to one another. It also examines the evolution of procedures for peace keeping, pacific settlement of disputes, and the handling of civil strife. Several opinions of the International Court of Justice, resolutions and debates in the General Assembly, and recommendations of the Secretary General are included.

The detailed descriptions and discussions, and the diverse evaluations<sup>43</sup> are illuminating, and permit an informed judgment of the scope of effective United Nations action and the feasibility of the development contemplated by the Clark-Sohn plan.

The final volume on disarmament and economic cooperation examines in detail the activities and the obstacles to progress in these major requirements for a peaceful world and the divergent proposals for strategic deterrence,<sup>44</sup> unilateral initiatives for reciprocal disarmament,<sup>45</sup> and control of nuclear weapons.<sup>46</sup> Selections deal with the objective of arms control and disarmament,<sup>47</sup> the steps toward this objective,<sup>48</sup> the problem of inspection,<sup>49</sup> the economic aspects,<sup>50</sup> and the relations of disarmament to international politics,<sup>51</sup> international law,<sup>52</sup> and international policing.<sup>53</sup>

The value of seeing both sides of controversial issues is especially illustrated by the articles on anti-missile and other defense systems. A Soviet general thinks such a system is technically feasible, because in the past defense measures have always caught up with new offensive inventions<sup>54</sup> while an American scientist doubts this.<sup>55</sup> Furthermore the Soviet general thinks such a defensive system is desirable because it will reduce the prospects of successful aggression, while an American writer thinks it undesirable because it will disturb the balance of nuclear deterrence which is the only hope of a stable world in the nuclear age.<sup>56</sup> The same difference exists in regard to the desirability of a civilian anti-nuclear defense system and a counterforce strategy, which are believed by some to strengthen mutual deterrence and frustrate aggression, and by others to give evidence of a first strike

<sup>43</sup> See 3, Schachter, at 94; 3, Bailey, at 326; 3, Nicholas, at 536; 3, Hoffman, at 795; 3, Hammarskjöld, at 817.

<sup>44</sup> 4, Schelling, at 120.

<sup>45</sup> 4, Osgood, at 141.

<sup>46</sup> 4, Wiesner & York, at 33; 4, Tucker, at 233; 4, Lall, at 248; 4, Goldstein, at 217; 4, Doty, at 256.

<sup>47</sup> 4, Bull, at 93; 4, Bull, at 270.

<sup>48</sup> 4, Blackett, at 12; 4, McCloy-Zorin Agreement, at 280; 4, McVitty, at 284.

<sup>49</sup> 4, Barnet, at 382; 4, Ikle, at 410.

<sup>50</sup> 4, Benoit, at 642.

<sup>51</sup> 4, Knorr, at 326.

<sup>52</sup> 4, Fisher, at 69.

<sup>53</sup> 4, Fisher, at 441; 4, Fisher, at 470.

<sup>54</sup> 4, Talensky, at 60.

<sup>55</sup> 4, Dyson, at 48.

<sup>56</sup> 4, Gamer, at 66.

intention and so to induce preemptive attack. The absence of these systems on both sides is characterized by Kahn as a "homicide pact"<sup>57</sup> and by others as effective mutual deterrence by making entire populations hostages to peace.

An important difference among the selections is between those that look upon peace in the nuclear age as mainly a *technological* problem of maintaining a balance of arms to assure mutual deterrence through secure nuclear second strike capability, and those that look upon it as a *psychological* problem of changing the usual assumption of peoples and governments that national security depends on armaments. The difference is not as great as it may seem. Deterrence depends, not merely on technical capability, but also on perception of this capability by others and belief that it will be used in response to a first strike. This is the problem of credibility, a psychological problem. On the other hand governments are not likely to assume that nuclear armaments will never be used if they exist and especially if those in the hands of a rival are increasing. Thus the technical problem of disarmament seems to precede the psychological problem of confidence.

The real difference seems to lie in differing opinions on whether a change in the existing system of power politics is possible, and whether in a transition to a more secure system changed attitudes must precede or can only follow technological change. The psychological school holds that armaments are a manifestation of distrust and suspicion, and that nations will not disarm until these attitudes change by a modification of distorted images, unjustified fears, and skepticism about the human capability of rational action to create a peaceful international system. The technological school, on the other hand, hold that armaments, and especially arms races, maintain perceptions of threat and attitudes of distrust and suspicion invulnerable to educational effort. Consequently arms control, followed by arms reduction, and eventually disarmament are the necessary prerequisites of changed attitudes and a more peaceful international system.

The selections in these volumes provide ample material for reaching conclusions on the complex relations between technological and psychological change in international relations, and of the role of international law and international organization in controlling these relations in the interest of international peace, stability and progress.

To digest the wide variety of facts and opinions presented in these four volumes is no light task. The student and policy maker can, however, by studying them, learn a great deal about the situation of

---

<sup>57</sup> 1, Kahn, at 36.

the world, about probable trends of both technology and opinion and about informed judgments on what to do.

The book is designed for class study rather than for research. It is, however, of value for the latter purpose in providing easy access to the leading ideas of numerous researchers in the field in recent years. For this purpose the value of the book would be increased if a comprehensive index were provided.

*Quincy Wright\**

---

\* A.B., LL.D., Lombard College; A.M., Ph.D., University of Illinois; Professor Emeritus of International Law, University of Chicago; Visiting Professor, Rice University.



# Try **LAW WEEK**

for three months

at  $\frac{1}{2}$  the regular rate

*LAW WEEK safeguards you against missing a single point of legal importance . . . saves your time by greatly reducing your reading load!*

## **WHAT YOU GET—each week**

- **SIGNIFICANT FEDERAL AND STATE DECISIONS**—all the precedent-setting cases establishing new principles of law. Typical headings: Antitrust, Taxation, Insurance, Public Contracts, Labor, Transportation, Trade Regulation, Criminal Law, Public Utilities, Railroads.
- **IMMEDIATE NOTICE OF IMPORTANT NEW FEDERAL AGENCY RULINGS**—among them rulings in the fields of Money and Finance, Aeronautics, Taxation, Public Contracts, Shipping, Labor.
- **SUPREME COURT OPINIONS, IN FULL TEXT**—mailed to you the same day they are handed down—plus Supreme Court Orders, Journals, Docket, Arguments.
- **SUMMARY AND ANALYSIS**—a five minute review of new law, including an incisive analysis of the leading cases of the week.

*For further information on the Special LAW WEEK introductory offer, write:*

**THE BUREAU OF NATIONAL AFFAIRS, INC.**

1231 — 24th Street, N.W., Washington 7, D.C.