



## Reviews

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### THE FRONTIERS OF INTERNATIONAL LAW

By GEORGE SCHWARZENBERGER. London: Stevens & Sons Limited.  
1961. Pp. 320.

This new work, by one of the most prolific English writers on International Law, is obviously not intended as a comprehensive treatise or even an outline of the subject. While the title would suggest an intention to deal only with possible points of departure in the future development of International Law, the book is not in fact so restricted. The author states that his first purpose is to orient the reader—the potential student by giving him his proper bearings; the layman by revealing to him this branch of the law in its wider setting; and the more advanced student by indicating to him the more fruitful lines for speculation in an expanding field. He has not, therefore, confined himself to the advancing front, but has made a cursory examination of the field over a considerable period of time to ascertain where the optimal frontiers lie.

The book is divided into two parts. The first part, entitled “Perspectives”, is in some measure a restatement of views expressed by the author in one of his earlier works, “Power Politics”.<sup>1</sup> He points out that International Law may be looked at from three different, but related, external viewpoints. It may be viewed in sociological perspective (i.e. in relation to other social disciplines) for the purpose of functional analysis, in historical perspective to ascertain its temporal frontiers, and in ethical perspective to trace its relationship to the standards of civilization attained by its subjects.

As an aid in his examination he postulates the existence of a basic dichotomy among groups of human beings into “societies” and “communities”. A society is based on interest, fear and distrust. A community requires self-sacrifice and love, and presupposes mutual trust. The extent to which any state approximates to one of these admittedly ideal types determines the kind of law operative therein. As there are no pure societies or pure communities—all terrestrial groups presently existing being hybrid—there are three kinds of law. The Law of Power functions in groups approximating to societies, the Law of Co-ordination in those approximating to communities, and the Law of Reciprocity in the hybrid groups.

Nations in their relations with each other form an extreme type of society, the bond holding them together not being any over-riding common purpose or spiritual values, but power. The primary object of each nation is its own self-preservation. Every means by which this object can be attained and secured is *prima facie* justified in the eyes of those who guide its policies. In a society of such nations, where power is the over-riding

consideration, the main functions of law are to assist in maintaining the supremacy of force and the hierarchies established on the basis of power, and to give to such an over-riding system the respectability and sanctity of law. International Law performs these functions. Built on the foundation of state sovereignty, it leaves open to its subjects the choice between the basic alternative patterns of inter-nation tactics; that is to say, between peace and war. But International Law is not solely a law of power, it is also a law of reciprocity, as becomes apparent in rules relating to diplomatic immunity, territorial waters, communications, patents, copyright and trademarks.

From his examination of International Law in the sociological perspective the author formulates eleven tentative working hypotheses, and in the historical perspective a further five hypotheses, partially confirmatory of and partially supplementary to the first eleven.

In examining law in the ethical perspective he regards the standard of civilization as the means of evaluation. The higher the stage of civilization, the more advanced is the development of the law. A group may be called civilized if it has acquired a mature apparatus of thought and action, and is characterized by the extensive use of rational behaviour patterns. The ultimate basis of civilization is religious and ethical. Its value is measured by the degree to which it is able to dispense with coercion by force and to rely on principles of reciprocity and voluntary co-ordination of effort. When the European Law of Nations was extended to include other than Christian nations it was drained of some of its ethical content. It adopted as a test of admission to the family of nations whether a candidate was civilized merely to the extent that it had a government sufficiently stable to undertake binding commitments, and able and willing to protect adequately the life, liberty and property of foreigners.

The second, and longer part of the book is entitled, "The Expanding Field". In this part the author deals, *inter alia*, with "International Law in Early English Practice," "The Protection of Human Rights in British Practice," "The Impact of the East-West Rift on International Law," "International Criminal Law," "International Economic Law," and some "Reflections on the Law of International Institutions."

Two chapters on "*Jus Pacis Ac Belli*" and "The Functions and Foundations of the Law of War" provide an interesting discussion on the doctrine of *Bellum Justum* and the states of war and peace, as well as an intermediate state, *status mixtus*. Powers are in a state of peace with each other when they are prepared to apply to their mutual relations the extensive system of legal rules relating to such matters as territorial sovereignty, the freedom of the seas and abstention from the use of armed force. They are in a state of war with each other, and of neutrality towards third states, if they choose to apply against each other utmost military, political and economic power. They are neither at peace nor at war when, while not being willing to discontinue all peaceful relations with

each other and to declare war, one or both resort to the use of limited force, and it is left to third states to decide whether in relation to the disputing states, they prefer the laws of peace or neutrality. Such a relationship is described as *status mixtus*.

The author's approach to these problems is realistic, his method empirical. It is a thought-provoking work, well worth the attention of even the most advanced students, although it is rather rich fare for beginners.

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### MECHANICS' LIENS IN CANADA

By DOUGLAS N. MACKLEM and DAVID I. BRISTOW, with a chapter on the Quebec Law of Privileges by JOHN W. DURNFORD. Toronto: The Carswell Company Limited. 1962. Pp. xxxi, 476.

Practitioners will welcome a new textbook on the Canadian law relating to mechanics' liens. The law of England does not provide the kind of protection afforded to workmen, contractors and suppliers by Canadian mechanics' lien legislation, and there has been a lack of convenient reference material on the principles applied in the more than 700 cases reported since the first Mechanics' Lien Acts were adopted in Manitoba and Ontario in 1873.

Students too will be pleased to learn that the authors of this book have adopted an analytic and comprehensive approach which does much more than merely collate decisions in digest form.

In this respect the present book is a vast improvement over the earlier *Handbook on Canadian Mechanics' Liens*, by MacAulay and Bruce. Although the new work purports to be a second edition of the earlier handbook, it is in fact a new textbook, and one which is in most respects much superior to the earlier one.

Those who have used MacAulay and Bruce cannot fail to have been irritated by their unusual method of case reference. They supplied a table of cases in the introductory pages, with a number assigned to each case. References to cases in the course of the text were not by name but by number, and to find out what cases were referred to it was necessary to refer constantly to the case list.

Macklem and Bristow have more sensibly referred to the cases by name and citation. Unfortunately, they have not availed themselves of the standard practice of using footnotes, and the resulting lack of continuity in their comments makes for difficult reading at times. Further-

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