

their defense? Stated abstractly the central questions posed by the Sacco-Vanzetti trial seem to demand an affirmative answer from every lawyer. Nevertheless, some members of the community—Professor Joughin calls them the forces of undemocratic action—welcome any method of repressing political views and associations which are sharply at variance with the established social order. Undemocratic forces do not rest content with their attempts to define unpopular political action as a new substantive crime. Where the accused are considered dangerous to the public welfare, these elements will countenance successful prosecution for already-established offenses even though proper procedures are disregarded. In times of hysteria the repressors succeed in both ways. It is not through coincidence that Benjamin Gitlow was convicted of advocating criminal anarchy just eighteen months before the Dedham trial of Sacco and Vanzetti.<sup>16</sup>

The legacy of Sacco and Vanzetti to the nation is the trial itself: a terrible demonstration of what can occur when the community surrenders to a tyranny of fear.

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A MODERN LAW OF NATIONS. By Philip C. Jessup.\* New York: The Macmillan Company, 1948. Pp. ix, 236. \$4.00.

THE INTERNATIONAL PROBLEM OF GOVERNING MANKIND. Two lectures for the Associated Colleges in Claremont, California. By Philip C. Jessup.\* Pasadena, The Castle Press, 1947. Pp. ix, 63. \$2.50.

A quarter of a century ago the late Professor E. H. Warren at the Harvard Law School used to greet his first-year Property classes with a statement of this sort: "Gentlemen: If you want to know what the law *was*, you should go to Professor Wambaugh. If you wish to know what the law

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16. See *Gitlow v. New York*, 268 U. S. 652 (1925).

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*ought to be*, I suggest that you consult Dean Pound. If you desire to know what the law *is going to be*, see Professor Williston. But if you want to know what the law *is*, draw up your chairs." The distinctions which Professor Warren made very clearly are forcefully brought to mind on a reading of Professor Philip C. Jessup's recent book, *A Modern Law of Nations*. Professor Jessup's discussion moves with great rapidity and facility from what was and is to what should be.<sup>1</sup> While the purpose of the book is to explore some possible bases for a modern law of nations, we are given a definite sense of direction:

Two points in particular are singled out as keystones of a revised international legal order. The first is the point that international law, like national law, must be directly applicable to the individual. The second is that there must be basic recognition of the interest which the whole international society has in the observance of its law.<sup>2</sup>

A little later, Professor Jessup states that until the world achieves some form of international government, including a police force to compel compliance with its rules, the ultimate function of law—the elimination of force as a solution of human conflicts—will not be achieved.<sup>3</sup> Then he poses the question—

Granted that the necessary organization is perfected, what is to be the nature of the body of law that is to be laid down, applied, *and enforced?*<sup>4</sup>

The seven following chapters discuss various "areas" in a modern law of nations under the above assumptions.

It is impossible to summarize the discussion in each of these areas, for in the final analysis, the book is a rather comprehensive text on the modern law of nations. An accountant might term it a "pro-forma statement" of the law of nations when that law has accepted and adjusted itself to Professor Jessup's two keystones. Because of its scope, its adequate footnotes, its clear style, and its present-day approach to so many facets of international law, it has been

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1. Or as the author says, "Those who will may consider some of the observations here as '*lex lata*,' while others will deal with them as '*de lege ferenda*.'" P. 16.

2. P. 2.

3. Pp. 2-3.

4. P. 3 (*italics supplied*).

found to be an extremely valuable book in the hands of students in an international law seminar.

For the layman or casual reader, who is not likely to be conscious at all times of the distinction between what was, what is, and what will or should be the law, the book may be misleading by giving the impression of a fluidity and a progress in international law that is non-existent. Then, too, the author moves from topic to topic, and from point to point with great speed, relying on footnotes to lead the reader to the factual basis of situations discussed. The book has the tempo and facility of a Cherny étude, and as the étude lacks musical qualities, so the book fails to move the casual reader toward a conviction that something needs to be done to bring about general acceptance of a "modern law of nations."

Carrying more conviction than *The Modern Law of Nations*, Professor Jessup's Claremont College lectures, entitled *The International Problem of Governing Mankind*, reveal a cautious and practical approach to their central questions. In the first lecture the author calls attention to the fact that world government is not necessarily a guarantee against the need for using military force to put down rebellions and civil wars.<sup>5</sup> He refers to the enormous scope and complexity of questions involved in setting up an international governmental organization, such as that of satisfactorily staffing a secretariat with nationals of many states having diverse cultural backgrounds,<sup>6</sup> the reluctance of existing governments to delegate any of their powers to an international organization,<sup>7</sup> the possible abuses of any voting system that may be adopted,<sup>8</sup> and finally "the problem of sheer size."<sup>9</sup> He feels that "great institutional transformations more frequently result from step by step modifications than from the spasmodic upheavals of once-for-all revolutions,"<sup>10</sup> and that a gradual approach to world government through the United Nations is to be preferred to "a leap into world government."

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5. P. 5. [Page references hereafter are to THE INTERNATIONAL PROBLEM OF GOVERNING MANKIND unless otherwise indicated.] Compare the more extended discussion of this point in A MODERN LAW OF NATIONS, pp. 52-54, 184-187.

6. Pp. 11, 14.

7. P. 12.

8. P. 23.

9. P. 26.

10. P. 2.

In the second lecture, Professor Jessup turns his attention to the "Truman doctrine" of aid to Greece and Turkey under the heading, "International Guaranty of Democratic Government." The interests to be balanced are the interest in international peace (theoretically served by preservation of the international status quo) and the interest of any group of people in "self-determination" (even at the cost of civil war).<sup>11</sup> The former interest is sanctioned by international law;<sup>12</sup> on occasion, the latter has evoked powerful emotional support.<sup>13</sup> He takes his stand on the proposition that world peace is to be preferred over the attainment of a democratic government in every country in the world.<sup>14</sup> This may be sound, where the crisis arises from a spontaneous domestic insurrection or civil war in which a rebellious group attempts to achieve a democratic government. Will it be sound where a foreign totalitarian regime threatens the continued existence of a democratic sovereign state, either by direct aggression, following the Nazi techniques, or by conspiratorial backing of an insurrection inspired by a "fifth column"?<sup>15</sup>

Professor Jessup from time to time in both books emphasizes the nature of his statements as predictions, and also that international law is but one factor in international control. He observes that human nature as well as international law must be revolutionized before there will be an end to the need for and use of force in international relations.<sup>16</sup> He states that world government would not put an end to the military problems of rebellion and civil war. He thus indicates his awareness of what has been said by an eminent philosopher in another field:

Human nature is so complex that paper plans for society are to the statesman not worth even the price of the defaced paper. Successful progress creeps from point to point, testing each step.<sup>17</sup>

Professor Jessup's books begin the building of an ideological bridge from the present primitive international law

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11. P. 52.

12. Pp. 45, 57.

13. P. 58.

14. P. 59.

15. Consider the examples given at pp. 48, 52, 58.

16. A MODERN LAW OF NATIONS, p. 71; THE INTERNATIONAL PROBLEM OF GOVERNING MANKIND, pp. 25, 37.

17. WHITEHEAD, ADVENTURES OF IDEAS 211 (1935).

to a modern law of nations by pointing out desirable goals. His blueprint for the future pattern of international law offers a desirable theoretical structure. One may venture to hope that, from his experiences as a most effective United States representative at the United Nations,<sup>18</sup> he will have practical recommendations as to methods of action which will lead, if only a step at a time, to the acceptance and observance of the modern international law which he has envisioned.<sup>19</sup>

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ENGLISH CONSTITUTIONAL HISTORY. By S. B. Chrimes.\*  
London: Oxford University Press, 1947. Pp. 189. \$2.00.

Mr. Chrimes has written a very readable account of the English Constitution as it exists today, tracing the important constitutional institutions from their origins. His own political philosophy woven into the narrative adds to the finished product. The problems of government are eternal, and it is only the solutions that change. According to the author liberty must be reconciled with law, progress with stability, and the State with the individual. England has arrived at the best answers to the perpetual riddles through her ability to compromise. Yet in the background is the lurking danger that the quest for catholicons will beguile the ignorant into accepting the Leviathan State. "Knowledge as well as eternal vigilance is the price of liberty."<sup>1</sup> It is to prevent such a contingency that Mr. Chrimes has shown "in broad outline what the English Constitution is now, and how past ages have contributed to it."<sup>2</sup>

The English Constitution is remarkable for many reasons. It is an historical process which has never been entirely

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18. The N.Y. Times Magazine, Nov. 28, 1948, pp. 32, 34 (The Paris Meeting of the U. N. General Assembly); The N.Y. Times, May 8, 1949, § 4, p.E 1 (The lifting of the Berlin Blockade).

19. His address delivered at the Yale Daily News annual dinner on February 28, 1949, is an eloquent argument for the North Atlantic Pact as one such step. and encourages that hope. 20 DEP'T OF STATE BULL. 281-2 (March 13, 1949).

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1. P. 189.

2. P. 3.