in the worst, and sometimes in the best, sense of the word—and also fresher and more provocative than is commonly the case with legal textbooks. Since war is "outlawed," to the edification of all unrealists, Kelsen relegates the law of war to his discussion of sanctions, where war against law breakers, *mirabile dictu*, becomes legal "counterwar." Under the Charter, Kelsen opines, even wars of aggression are legal if waged against a State which has resorted to illegal war against another. If this appears confusing, the confusion is not of Kelsen's making but is a product of the befuddlement of modern mankind in its weird conviction, long before 1984, that "War is Peace" (as the late George Orwell put it) and that collective armed hostilities against armed outlaws are the best means toward a stable legal order.

There is, it seems to me, no way out of this dilemma save through international federation, whereby rules of law would be enforced on individuals rather than upon sovereignties, or through a literal return to the old international law and to traditional concepts of neutrality and nonintervention, coupled with prudent *Realpolitik* in place of crusades against sin. Kelsen offers no way out, nor would it be fair to expect him to do so in this type of work.

What he offers us is a solid and thoughtful exposition of the customary precepts, plus a suggestive discussion of principles. In view of the deadlock at Panmunjom, it is not without interest to note his flat assertion (p. 71): "The belligerent in whose power the prisoners of war are is obliged to release them and repatriate them as soon as the war is terminated." Many will question his repudiation of "natural law" as the source of international law and his derivation of national or municipal law from international law. But all will welcome his careful documentation, his up-to-date citations of relevant cases, and the general lucidity of his analysis.

FREDERICK L. SCHUMAN*

Law and Society in the Relations of States. By P. E. Corbett. New York: Harcourt, Brace and Company, 1951. Pp. 326. $4.75.

Realistic analysis of the world community process is a task which has currently engaged the talents of large numbers of scholars categorized as lawyers, political scientists, economists, social psychologists and cultural anthropologists. All too often this departmentalization results in products that reflect a narrowly circumscribed view of the problem. Professor Corbett, a legal specialist, has recently contributed his efforts to an "unprejudiced evaluation" (p. 3). However, his book might better be entitled "Chaos and Anarchy in the Relations of States," for the author adopts an initial hypothesis that there is no effective international "law" or "society."[1] The extent to which Corbett mini-

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[1] The reader will have some difficulty in finding the author's frame of reference for the term "society." See, e.g., p. 40. For precise articulation of operational indexes in regard to group

mizes the existence of an international society is indicated by his contention that there is "no general society uniting even the 'civilized' States," and by his dismissal of the possibility that there exists a unity of demand for international common values (p. 40).[2] While he denies postulating a law of nations (p. 3), and indeed presents no concise statement of his understanding of law, such statements as "there is little but the abstract rule" and the author's emphasis upon establishment of "the organizations usually associated with the term 'law'" (p. 10), as well as his entire approach to international problems demonstrate that Professor Corbett's reference is solely to a body of doctrine rather than to decision-making in the world power process.

Elsewhere in the volume, the author employs such familiar examples as the practices in regard to piracy (p. 55), relations between foreign occupying forces and inhabitants of the occupied territory (p. 56), individual blockade runners (p. 56), and the Nuremberg Trial (p. 58) to document the trend toward a realization that private individuals as well as certain organizations are not mere objects of international law. However, in the face of this evidence, we learn that "[i]t is not possible, on the basis of international practice, to say simply either that individuals are or that they are not, 'persons in international law.' It is only possible to say that in some contexts they are treated as persons, in others not" (p. 58). Such verbalistic sophistry suggests that Professor Corbett is a gentleman from Missouri, who upon being showed refused to believe. The facts of life indicate that there are a vast number of participants continually engaged in the interactions of the world power process.[3]

Controversy about the origin, scope and efficacy of the normative quality of international law, Professor Corbett asserts, "keeps the theory of a law of nations as much a field of debate as it ever was" (p. 35), and he finds a breakdown of all attempts to rest the validity of the norm on the consent of states. Overconcentration on the role of traditional doctrine leads, furthermore, to such conclusions as "[a]ny claim is either supported by the *existing law*, or it is not, and that is a question for a court" (p. 78). (Emphasis added.) Apparently, Professor Corbett vainly seeks some touchstone of "validity" outside the decision-making process. At the same time, he negates the evolutionary or adoptive element of law so that a static body of doctrine irresponsive and irrelevant to changed conditions remains.[4]

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institutions and practices, see Lasswell and Kaplan, Power and Society 29–51 (1950), in which a "society" is defined as a group with its culture. See further, Linton, The Science of Man in the World Crisis 79 et seq. (1945).

[2] The domestic jurisdiction concept seems to constitute the author's doctrinal blinders to a world society; by way of contrast the Tenth Amendment of the United States Constitution could hardly be said to remove the United States from the definition of a "society."

[3] See text at note 9.

[4] For the theoretical framework of a more realistic type of investigation, see Lasswell and Kaplan, Power and Society cc. VI, X (1950).

In discussing events of recent significance, the author considers the Nuremberg Trial at some length and observes that "in addition to the traditional category of war crimes, two new classes of offenses, namely, (a) *crimes against peace* . . . and (b) *crimes against humanity*" were defined (pp. 227–28).[5] Professor Corbett maintains that convictions based upon this declaration of law contain "an element of *ex post facto* legislation" (p. 231), thus defying the traditional doctrine of acts of state (p. 232).

"The tribunal was here ignoring the long and undecided doctrinal debate on the question whether, and how far, the individual is subject to rights and duties under the law of nations. . . . To make it the rule would, in the view taken in this book, be a useful development; but to apply it now as if it had been established as the rule clearly involves *ex post facto* legislation" (p. 232).[6] In fact the victors could have admitted they were administering justice as they saw it, "not as it is measured by law properly so called" (p. 236). Then again, Professor Corbett characterizes the United Nations effort to restore peace in Korea as illegal, declaring that it "involved ignoring the voting rule set out in Article 27, paragraph 3 of the Charter. With substantial justification and a marked disregard for the legal *punctilio*, the United Nations in that instance assumed a role that the letter of its constitution prohibited."[7] In conclusion, Professor Corbett proposes offering the world "a society in which the welfare of the human individual would be the acknowledged primary object, and in which all organization for preventing violence and raising standards of life would be regarded as means to this end" (p. 295). Institutionally the United Nations would be gradually reoriented "around the focus of human rights," and practices similar to those engaged in by the International Labor Organization would be employed; that is, some "particular problem, such as racial discrimination, should be selected first, and a system of study, report, and enforcement worked out and tested by actual experience before moving into other fields" (pp. 295–97).

Any "unprejudiced evaluation" of the domain of "law" and "society" in international relations demands comprehensive examination of the world power process and the role of doctrine in decision-making.[8] Initially this requires a recognition that a variety of participants, including, in addition to nation states, international governmental organizations, transnational political parties, transnational pressure groups, transnational private associations, and individual human beings, each with certain identifications, demands and expectations are

[5] For complete statement, see Charter of the International Military Tribunal, Article 6(a)(c), reproduced in Sohn, Cases on World Law 976–79 (1950).

[6] This objection is surprising after the author's admonishment against transferring, by analogy, municipal law of doubtful relevance to the international sphere. Ibid., at 8.

[7] United Nations Charter, Art. 27(3) (1945) provides: "Decisions of the Security Council on all other matters [than procedural ones] shall be by an affirmative vote of seven members including the concurring votes of the permanent members."

[8] A more detailed analysis of the relation of law to the world power process may be found in McDougal, The Role of Law in World Politics, 20 Miss. L.J. 253, 260–63 (1949).

using certain bases of power to secure values across national boundaries. These participants demand such characteristic values as power, wealth, respect or prestige, well being, a variety of skills, harmonious personal relations, rectitude and an accurate flow of communication.[9] In demanding and seeking these values a great variety of effective bases of power and both governmental and nongovernmental institutions and practices are utilized. Hence, law may be most usefully considered as formal authority combined with effective control, that is, a conjunction of the people who are expected to make the important decisions and the people who actually make them. An empirical investigation will frequently reveal a separation of these two elements, but if either is absent the result is only ineffective authority or naked force. While effective decisions concerning values are made throughout the entire range of institutions, in order to locate the role of doctrine in this social process, law may be defined as a part of government, which includes the official decision makers of the community, the technical, legal doctrines by which the decisions are said to be made, and finally the practices by which this doctrine is applied. Viewed from this perspective, doctrine is seen to be only one of the variables which determine decision. Other variables comprehend all the identifications, demands and expectations of both official and effective decision makers. From this brief summary of the world power process it follows that the frame of reference with which one describes "law" takes on a new and vital importance. Law becomes an instrument for achieving desired effects which is prospective in nature and not merely the dead description of past policies.

Specifically, doctrine can be applied in such a manner as to promote a world society which honors the dignity of the individual human being. In order to emphasize the difference in results between the traditional approach to international law and a value or policy oriented approach, reference to particular problems may be fruitful. The inflexible, mechanical application of doctrine led Professor Corbett to conclude that both the Nuremberg Trial and the United Nations Korean effort were not in accord with certain legal norms. This result often follows from the use of an ambiguous doctrine which simultaneously refers to the facts and legal consequences. A rational policy decision finds these actions in accord with both our preference for human dignity and prior prescriptions of doctrine. First, the characterization of the Nuremberg decision as not "law properly so called" because of its alleged ex post facto nature demonstrates the fallacy of applying the doctrine out of its intended context. The prohibition of ex post facto prescriptions is designed to protect citizens within a nation state from the oppression of tyrants; it has no relevance to the protection of tyrants, who seek to impose oppression on the peoples of other nation states. With this orientation in context and elimination of doctrinal strait jackets,

[9] For a comprehensive statement of interactions in the shaping and sharing of all values, see Lasswell and McDougal, Legal Education and Public Policy: Professional Training in the Public Interest, 52 Yale L.J. 203 (1943).

an observer may make a disinterested analysis of the facts and an appraisal of the conflicting values at stake, which in this case are power, rectitude and respect demanded on the part of world society on the one hand as contrasted with physical well being, power and wealth of the defendants on the other. An appraisal of alternatives might show that these defendants could be summarily executed, released without trial or punishment or granted a trial. A preference for individual human dignity leads to the last alternative, which was actually followed. If this concept of law be accepted, that is of effective control and formal authority, it cannot be denied that the Nuremberg decision constitutes law, and it should be noted that the Tribunal was able to find a vast body of doctrine in International treaties and customary law of nations to sustain the convictions.[10] The action taken by the United Nations in Korea can be analyzed in similar fashion.[11] Without developing a comprehensive application of a policy-oriented approach to this issue, if the decision maker finds that United Nations aid to the survival of South Korean independence is a humanistic policy in accord with the major purposes of the United Nations, then adequate basis for the legality of the action exists. One may invoke a familiar canon of interpretation with regard to agreements which states that where the textual language is ambiguous,[12] that interpretation should be applied which contributes most to the major purposes for which the agreement was made.

If this analysis of the world community process is sound, it follows that no treatment of *Law and Society in the Relations of States* based solely upon doctrine can possibly be adequate. To study a social process, students of the law must call upon the findings of experts in a variety of interrelated fields, such as cultural anthropology, social psychiatry, economics and semantics. The special skill of the lawyer lies in his knowledge of legal doctrine and procedure. Professor Corbett's book demonstrates his skill in the use of these traditional tools, yet it is apparent that this is insufficient. The alternative is a value or policy-oriented approach which provides a concept of law conjoining formal authority and actual power in the community interest, and applies doctrine so as to promote a truly democratic society in which all values, including actual power, are widely shared.

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[10] Judgment of the International Tribunal, Nuremberg (October 1, 1946). Opinion and Judgment (Washington, 1947). For reproduction see Sohn, op. cit. supra note 5, at 983–1034.

[11] For a detailed, systematic approach to this event, see McDougal and Gardner, The Veto and the Charter: An Interpretation for Survival, 60 Yale L.J. 258 (1951). The import of Art. 27(3) of the United Nations Charter appears in note 7 supra.

[12] That Art. 27(3) of the United Nations Charter contains ambiguities is documented in Goodrich and Hambro, Charter of the United Nations 216–27 (1949).

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