

BOOK REVIEW

WORLD LEGAL ORDER: POSSIBLE CONTRIBUTIONS BY
THE PEOPLE OF THE UNITED STATES. BY WALLACE
McCLURE. Chapel Hill: The University of North Carolina Press,
1960. Pp. xvi, 366. \$7.50.

Lee Silverstein †

No subject is more timely for the American lawyer than international law. The swelling international commitments of the nation, the expansion of foreign branches of American corporations, the recent spirited debate on the Connally Reservation in the American Bar Association, the exploration of outer space—all demonstrate the growing importance of international law. It is a distinct pleasure, therefore, to recommend this book for the lawyer who wants to know more about international law but who lacks the time to delve deeply into the subject.

Wallace McClure, with A.B. and LL.B. from the University of Tennessee and M.A. and Ph.D. from Columbia University, comes well armed to the task: he has practiced law in Knoxville, taught and lectured at home and abroad, and served for thirty years in legal and diplomatic positions with the State Department. Recently he became Consulting Director of the World Rule of Law Center at Duke University. And despite superficial signs that this book is primarily a work of political science, the author develops his thesis as a good lawyer develops a legal argument. Even his minor vices of style are familiar—occasional stuffiness and unnecessary repetition, with a lapse or two into utter obscurity.

This book does not, as one might expect from the title, present a plan for revision of the Charter of the United Nations or for a new regime of international government. In this respect it differs from the proposals of Clark and Sohn.¹ Dr. McClure's book is rather a review of the American attitude toward international law, with modest proposals for reform of that attitude in the light of the present status of the United Nations, the state of international law in general, and the threat of nuclear warfare. McClure is an ardent internationalist and his thesis can be simply stated: international law, or "world law," is superior to national law in the event of a conflict between the two, just as in the United States federal law supersedes state law.

The author first gives a lucid and detailed historical review of important judicial decisions involving treaties. This is a branch of constitu-

† *Assistant Professor of Law, University of Pittsburgh.*

¹ CLARK & SOHN, *WORLD PEACE THROUGH WORLD LAW* (2d ed. 1960).

tional law for which little time is available in the typical law school course. In the early case of *Ware v. Hylton*,² the Supreme Court held that the peace treaty of 1783 with England superseded a conflicting Virginia statute of 1776. Following this case, and until after the Civil War, the Supreme Court and lower federal courts—with one great exception—adhered to the theory that a treaty, once duly ratified, requires no enabling legislation by Congress to make it fully effective. That exception was *Foster v. Neilson*,³ involving the treaty of 1819 with Spain which ceded Florida to the United States. There Chief Justice Marshall asserted that when either party to a treaty engages to perform a particular act, the national legislature must execute the contract before it can become a rule for the Court. This pronouncement was not followed in later cases concerning the same treaty, but the idea has persisted to this day. McClure vigorously disagrees with it—to him a treaty by its very nature is a contract between the governments involved—a kind of legislative act consummated by the President and the Senate, needing no further enabling legislation. The Constitution, in fact, so provides. It follows that a treaty may not properly be repudiated by an act of Congress, save in event of war.

It is also axiomatic, the author argues, that since a treaty is an international obligation, the rule that international law is superior to national law precludes one party to the treaty from enacting statutes in conflict with the treaty. Yet this is just what Congress did when it passed the Chinese Exclusion Act of 1888, which was in conflict with the treaties of 1868 and 1880 with China. Worse still, the Supreme Court upheld the constitutionality of this legislation in the *Chinese Exclusion Case*.⁴ According to McClure, this decision “touched, perhaps, an all-time low in United States respect for international law” (p. 81). Other decisions of the same period showed a similar irresponsible, isolationist attitude. In more recent years, however, the Supreme Court has upheld treaty obligations of the United States, although the Court has not yet had occasion to squarely repudiate the view that Congress can validly pass a statute in conflict with a prior treaty.

Next the author describes the current attitude toward international law in other countries. Both France and the Netherlands, for instance, have constitutional provisions which declare the supremacy of international law over national law. *France v. Norway*,⁵ a decision of the International Court of Justice, is quoted at length. The case involved the French equivalent of the Connally Reservation, which was later repealed by the French National Assembly.

The last major part of the book is devoted to the United Nations. The legal aspects of war crimes trials and of the United Nations' intervention in Korea and Suez are reviewed, and there is a fascinating chapter

² 3 U.S. (3 Dall.) 199 (1796).

³ 27 U.S. (2 Pet.) 253 (1829).

⁴ 130 U.S. 581 (1889).

⁵ [1957] I.C.J. Rep. 8.

on the rapid constitutional development that has occurred in interpretation of the United Nations Charter. For example, the Charter provides that the big-power veto in the Security Council does not apply to any matter that is procedural. By a process of interpretation, chiefly by the General Assembly, the definition of what is procedural has been steadily enlarged. A second organ of interpretation is the International Court of Justice, which renders not only decisions between parties in controversy but also advisory opinions on the meaning of the Charter.

A thoroughgoing internationalist, Dr. McClure opposes the Bricker Amendment (pp. 199-204) and the Connally Reservation (p. 305), finds fault with the Senate for failing to ratify the genocide convention (pp. 291-92), and criticizes the State Department for its narrow attitude toward a treaty with Switzerland in the *Interhandel* litigation (pp. 278-81).

McClure's recommendations for changes in American policy are worthy of serious consideration by the new administration in Washington. In addition to advocating repeal of the Connally Reservation and greater voluntary use of the International Court of Justice, he would have the United States take the lead in strengthening the United Nations by having the President himself attend important sessions of the General Assembly each year, thus setting an example for other nations. This proposal foreshadowed the recent attendance by heads of state at General Assembly sessions. The author also suggests that a special United Nations bureau be created in the Executive Department, rather than continue such an important function in the State Department, where it does not receive proper attention.

To sum up, *World Legal Order* is well worth the time required to read it. Only by reading such books can the American lawyer keep himself properly informed upon the important issues of the day so that he can provide the leadership which the public expects of him.