

BOOK REVIEWS

THE UNITED STATES AND THE WORLD COURT. By Denna Frank Fleming.¹
New York: Doubleday, Doran and Company, Inc. 1945. Pp. 212.
\$2.00.

This book has a much wider scope than that indicated by its title. The author discusses the action of the Senate of the United States with reference to the Statute of the Permanent Court of International Justice established in 1920. However, he also deals with such matters as the failure of the United States to join the League of Nations; the action of the Senate with reference to certain so-called general arbitration treaties; and a possible amendment of provisions of the Constitution of the United States requiring the advice and consent of two-thirds of the members of the Senate present to the consummation of a treaty. Such matters the author doubtless considers to be cognate to the subject suggested by the title of his book.

In a brief review, it obviously is impossible to analyze concretely a mass of strictures which the author employs in acrid condemnations of the Senate. This reviewer is of the opinion that the author's pronouncements along such lines would be harmful, if they should to any considerable extent carry the convictions which he seeks to promote.

On the one hand, they have a tendency to place on the Senate blame for deplorable failures of the processes of peace which should effectively be put on Executive authorities who are responsible for them. On the other hand, while faults are unjustifiably attributed to the Senate, some real shortcomings of that body are ignored. As has already been observed, it is difficult, within narrow limitations of space, to analyze the author's lines of attack. But some brief illustrations may be cited.

The general treaty of arbitration concluded between the United States and Great Britain in 1897 was a "sterile remnant" after the Senate had "emasculated" it.² A "paralyzing effect" of "well-meant perfectionism" . . . "lays the hand of death on each important treaty as it enters the Senate."³ The Senate has been "a death house for treaties which affect the peace or determine the fate of all."⁴ The defeat of the World Court in 1935 did not cast a "pall" over Washington at that time, but the "pall was to come later, on December 7, 1941" and "was to be a great cloud of black smoke, heavy with the acrid fumes of a fine American air force suddenly destroyed on the ground."⁵ The relationship between the two events referred to is not explained. These are a few illustrations of the author's picturesque descriptive language. Much that is treated in some detail by the author is summarized in the following striking passage:

"From the moment that we became a world power, as a result of the Spanish-American war, the Senate has frustrated every significant move to substitute the peaceful or international settlement of disputes for war. It rejected the Olney-Pauncefote Arbitration Treaty of 1897 and emasculated the Hay Arbitration Treaties of 1904. It retained a strangle hold on the innocuous Root Arbitration Treaties of 1908-1910 and made the Taft

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 2. Page 17.
 3. Page 126.
 4. Page 184.
 5. Page 137.

Arbitration Treaties the occasion for a full-dress rehearsal of the Senate's ability very deliberately to take the life out of an international compact."⁶

It is not practicable to make a detailed analysis here of the action taken by the Senate with respect to each of the treaties referred to in this passage. But some observations may be made with reference, in particular, to the attitude of the Senate in insisting on a right of participation in the so-called special agreements or *compromis* which are prescribed in general (very general) arbitration treaties to provide specifically for each arbitration the contracting parties may desire to undertake.

The Senate did not make use of a single word that in any way altered the legal effect or international obligations of our Government to arbitrate pursuant to the Hay Arbitration treaties which the author says were emasculated. The Senate suspected, rightly as it was later shown, that the Executive intended to conclude agreements of arbitration without the cooperation of the Senate. Therefore, the Senate substituted for the words "special agreement" the word "treaty" with the obvious purpose of securing to itself the right to participate in the consummation of special agreements of arbitration. The Executive Department objected to the change.

The word "treaty" used in this connection was probably not a very apt one, certainly not a conventional one. When Mr. Elihu Root became Secretary of State, he proceeded to renegotiate these general treaties with a simple alteration, so that, while the expression "special agreement" used in the original Hay texts was retained, it was provided that the agreements should be made by the President by and with the advice and consent of the Senate. Again, the change related only to a domestic formality.

Exception may properly be taken to a declaration that the Senate retained a strangle hold on the Root treaties, which it approved without the addition or alteration of a word in the texts which Mr. Root prepared and which were sent to the Senate by the same Executive, who, as the author points out, had described that kind of a treaty as a sham,⁷ when he and Secretary of State Hay objected to the action of the Senate in insisting on it.

It is significant that the author does not cite a single instance when action taken by the Senate with reference to any *compromis* has frustrated or hampered any arbitration. This reviewer recalls none.

The author mentions an episode, which, it has often been said, occurred when President Washington sought in person advice from the Senate with respect to the conclusion of a treaty.⁸ It may be true that the Senate at that time accorded shabby treatment to that exalted figure, who undertook to live up to the letter of the Constitution. But whatever the precise occurrences may have been, they are in a remote past, and it would hardly be appropriate to put blame for them on the Senate of today. Furthermore, it might be said that the Executive Department has abundantly retaliated since that early day by repeatedly putting before the Senate a *fait accompli* without even some slight cooperation with the Committee on Foreign Relations. The requirement of the Constitution pertaining to "advice" from the Senate has been disregarded. It is not unkind to observe that opposition to the Treaty of Versailles, containing provisions creating the League of Nations, had its origin largely in the notable illustration of that attitude on the part of an Executive.

The opposition to adherence to the so-called World Court was, it would seem to be clear, an aftermath of the struggle between the Executive

6. Page 162.

7. Page 20.

8. Page 165.

and the Senate over the Treaty. It may readily be conceded that, as the author very emphatically argues, the Senate took undue precautionary measures so far as concerned the interests of our Government in relation to adherence to the Court.

Doubtless something may be said in favor of the proposed amendment to the Constitution giving some 500 members of the House of Representatives, in addition to 96 Senators, a voice in the consummation of treaties. But here again, the nature of the remarkable attacks made on the present system and attacks on the Senate, characterizing it as an agency of obstruction of arbitration, obscures veritable reasons for a deplorable debasement of the processes of peace in our country over a considerable span of years.⁹ For this, blame rests primarily with the Executive Department. To be sure, some grave fault may properly be charged to the Senate. It could at times have availed itself of some remedial measures, as for example, when there have been brought to its attention sordid spectacles in connection with judicial and *quasi*-judicial proceedings such as are revealed by facts relating to settlement of claims between the United States and Mexico, and of claims between the United States and Turkey.¹⁰ Here useful documentary evidence throws light on neglect of the processes of peace, the nature of personnel entrusted with their maintenance and development, and the manner in which such high functions of this nature have been discharged. The Senate, in the performance of its functions relative to appropriations, has some control over officials, including the methods of the discharge of their duties.

Fred K. Nielsen.†

CLAIMS TO TERRITORY IN INTERNATIONAL LAW AND RELATIONS. By Norman Hill.¹ New York: Oxford University Press. 1945. Pp. vi, 248. \$3.00.

"A group of people can prosper, increase and grow powerful when their environment furnishes them an abundance of food and of material for making appliances to supply the other necessities of existence."² These normal economic needs and demands have been universal. Translated into political or national ideals they present the problem of claims of territory. Professor Hill in this excellent book has presented the historical and geographical background why claims to land have eventually caused wars. This book does not attempt to find a solution to the recurring problems of war. The author has, however, presented basic factors, common to all people, irrespective of race or form of government. The same or similar arguments were used by democratic governments in their demand for claims to territory as used by the more undemocratic governments. This book is timely for all persons who have hopes that the United Nations may avoid future wars.

Professor Hill is of the opinion that the legal claims for territory are subject to peaceful settlements between the nations involved. The legal claims to territory are those based upon discovery, conquest, cession and

9. Page 164 *et seq.*

10. See SEN. DOC. No. 2528, 77th Cong., 2d Sess. (1942) 18-48, 215-9.

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1. Professor of International Law and Relations, University of Nebraska.

2. SMITH, INDUSTRIAL AND COMMERCIAL GEOGRAPHY (rev. ed. 1925) 3.

accretion. The nonlegal claims for territory are those based upon strategic, geographic, historic, economic, and ethnic claims.

The author in several chapters suggests that in order to minimize the inherent dangers of the nonlegal claims, nations should form an international security organization, trade barriers should be reduced, and disputed strategic areas should be neutralized. In the last chapter, Professor Hill deals with the topic of methods to be used in the settlement of territorial disputes. Although he favors compulsory jurisdiction by an international security organization over territorial disputes, he realizes that there are certain limitations due to advantages the large states have in all international organizations. This book is timely in that with the termination of World War II, territorial claims will again confront the peacemakers of tomorrow. Readers of this book will have a better understanding and appreciation of the problems which await solution.

O. H. Thormodsgard.†

INJURY AND DEATH UNDER WORKMEN'S COMPENSATION LAWS. By Samuel B. Horovitz.¹ Boston: Wright and Patter Printing Company. 1944. Pp. xxxii, 486. \$6.00.

This book is a hybrid, seeking to straddle the interests of the lawyer and the layman. It is not a text, a case book, or a popular treatise, but has some of the flavor and purpose of all three. The author believes there are fundamental principles which animate the law of all jurisdictions and he proposes to trace the root structure beneath all the variegated foliage.

Mr. Horovitz, also the author of *Practice and Procedure under the Massachusetts Workmen's Compensation Law*, has practiced extensively in the field in which he writes, mostly on the side of the injured worker. He was for many years the compensation attorney for the Boston Legal Aid Society and the Massachusetts State Federation of Labor. He classifies himself as a liberal by nature, and throughout the book freely disagrees with what he regards as illiberal rules and decisions. This, however, is not to the detriment of a fair statement of the position with which he disagrees.

The first section of the book is concerned chiefly with the Federal-State relationship as it impinges upon the problems of injury compensation. Such matters as constitutionality, admiralty, interstate commerce and extra-territoriality are discussed. The second part of the work is devoted to a detailed examination of how the statutory phrase "personal injury by accident arising out of and in the course of the employment" has been construed in the various jurisdictions. The third section treats the employee-employer relationship. Part IV is entitled "Important Provisions Common to Compensation Laws." This is the most extensive section and as the title implies catches up all matters not covered by the other more integrated subdivisions. A final section deals briefly and more superficially with administration and the future of compensation.

Lawyers will not find the book very useful as a working tool. It was probably not intended as such. For one who has not been active in the field and wants to briefly survey the subject, it will repay a few evenings' reading.

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1. Member of Boston Bar.

Laymen, if they pick the book up, will, I suspect, not pursue its pages too long. The style is not engaging and the textual material frequently bogs down in technical detail.

These judgments are based upon the reviewer's conclusion that the book falls between two stools. It seeks to attract the legal fraternity by copious citations. But the treatment is too brief and summary to earn the volume a valued place on the lawyer's book shelf. It is brief by design, in order that the lay reader will not be repelled. Yet such a reader, even though he ignores the footnotes which occupy the larger part of most pages, will not, I think, find the work enticing. It fails to achieve the lucid and interesting treatment necessary to carry along one who does not come to its pages with a developed interest in the subject.

For a smaller group of specialized readers such as teachers, social workers, and labor leaders who wish to broaden and deepen their grasp of workmen's compensation, the book can be heartily recommended.

J. Perry Horlacher.†

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BOOKS RECEIVED

- CHARTER OF THE UNITED NATIONS AND STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, FACSIMILE OF THE. Washington: Department of State.
- DIRECTORS AND THEIR FUNCTIONS: A PRELIMINARY STUDY. By John Calhoun Baker. Cambridge: Harvard Business School, Division of Research. Pp. xiii, 145, 8 exhibits. \$2.50.
- FULL FAITH AND CREDIT, THE LAWYER'S CLAUSE OF THE CONSTITUTION. By Robert H. Jackson. New York: Columbia University Press. Pp. 60. \$1.00.
- GENERAL THEORY OF LAW AND STATE. By Hans Kelsen. Cambridge: Harvard University Press. Pp. xxxiii, 516. \$6.00.
- INTERNATIONAL SECRETARIAT, THE. By Egon F. Ranshofen-Wertheimer. Washington: Carnegie Endowment for International Peace. Distributor, New York: International Documents Service, Columbia University Press. Pp. xxvii, 500. \$4.50.
- OUTLOOK FOR INTERNATIONAL LAW, THE. By J. L. Brierly. New York: Oxford University Press. Pp. 142. \$2.00.
- PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES, 1930. Washington: Government Printing Office. Three Volumes: Vol. I, pp. lxxv, 564. \$1.75; Vol. II, pp. xciii, 797. \$2.25; Vol. III, pp. xc, 904. \$2.25.
- PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES. THE PARIS PEACE CONFERENCE, 1919. Volume Eleven. Washington: Government Printing Office. Pp. xxix, 736. \$2.00.
- PRIVATE INTERNATIONAL LAW. By Martin Wolff. New York: Oxford University Press. Pp. xliii, 637. \$10.00.
- STRUGGLE FOR BILL OF RIGHTS. By Samuel S. Wyer. Columbus: Better World Fund. Pp. 46.
- UNITED NATIONS GOVERNMENT. By Amos J. Peaslee. New York: G. P. Putnam's Sons. Pp. xi, 183. \$2.00.
- UNITED NATIONS PRIMER. By Sigrid Arne. New York: Farrar and Rinehart. Pp. 156. Trade \$1.25. Text \$.95.
- WILLIAM HOWARD TAFT: YALE PROFESSOR OF LAW AND NEW HAVEN CITIZEN. New Haven: Yale University Press. Pp. xiv, 158. \$2.50.