BOOK REVIEWS

THE CONTROL OF ATOMIC ENERGY. By James R. Newman and Byron S. Miller. McGraw-Hill Book Company, Inc. New York, 1948. Pp. xi, 434. $5.00.

The unleashing of the atom has been touched by the spectacular, from the cloud which mushroomed over Hiroshima to the glittering promise of industrial use in the "atomic age." It was not to be supposed that the applicable legal machinery, hurriedly devised in the shadow of the Bomb, should be of conventional mold—nor was it. James Newman and Byron Miller had an intimate part in the legislative deliberation and drafting which led to the Atomic Energy Act of 1946,[1] and were well equipped for their analysis of this radical piece of legislation.

The technical difficulty of the subject and the needs of military security have stood in the way of general appreciation of the implications of the controls which have been imposed upon atomic energy. To transpose the problems to a more familiar setting, we might by a flight of fancy suppose that towards the end of the eighteenth century our government had learned that the harnessing of the energy of steam was possible, and had grasped the implications of its exclusive control for military success and industrial development. Let us further suppose that the secret was closely guarded, and by Act of Congress was entrusted to a Commission which held control over the scope of public discussion of relevant scientific data.[2] This Commission was also given exclusive control over the production and distribution of the basic fuels[3] and machinery,[4] responsibility for supervising further research, and power to determine which, if any, of the industries should be permitted to use this new form of energy.[5]

The propriety of suggesting a parallel between this fanciful Steam Commission and the existing Atomic Energy Commission depends in part upon the accuracy of the promises of commercial use which await the development of this new form of power. Certain it is that the military portent of this new force in an unsettled world has produced in the Atomic Energy Act a pattern of control alien to traditions of free exchange of scientific information and unhampered commercial initiative. The Act, therefore, poses problems of the first magnitude, to which Messrs. Newman and Miller have done well to invite our attention.

The center of interest of the book is in the clash which it pictures in the legal arena between the two sharply competing interests: military security and freedom of scientific and industrial development. The draftsmen of the Act, under the prodding of an aroused body of scientists, were made sensitive to the interest in the free development of this branch of science, and general provisions were embodied in the act aimed at this goal.[6] Nevertheless, the substance of the Act may be quickly stated: it

1. 60 STAT. 768 (1946), 42 U. S. C. A. § 1801-19 (Supp. 1947). The authors were counsel to the Senate Special Committee on Atomic Energy which, under the chairmanship of Senator Brien McMahon, introduced the bill which became the Atomic Energy Act.

2. *Cf.* Atomic Energy Act of 1946, § 10.

3. *Id.* §§ 4(b), 5.

4. *Id.* §§ 4(c), 4(e).

5. *Id.* §§ 3, 7.

6. *Id.* §§ 1(b)(1), 3(c), 10(a)(2). The general policies enunciated in the Act in favor of independent research are, however, subject to the Commission's control over the distribution of all fissionable material and over the communication of "restricted data." *Id.* §§ 5(a)(4) and 10(b)(2).

places the future of the development and exploitation of atomic energy in the hands of the Commission. The truly radical character of the legislation, then, is that on a governmental agency rests the initiative for developmental activity, rather than the more traditional function of checking excesses of private enterprise.

The authors subject the provisions of the Atomic Energy Act to painstaking and authoritative analysis. Their book consequently is an indispensable starting point for any attorney faced with legal problems under the Act. Of special value to the practitioner is the analysis of the impact of the Act upon patent rights and of the dangerously vague interplay of this Act and the Espionage Act of 1917 upon public discussion of scientific information. In dealing with such legal problems the authors are at their best, for here they bring to a focus their unique grasp of the provisions of the Act, its legislative history, and underlying considerations of policy.

One turns, however, from a reading of this excellent treatment of the Act with a feeling of the futility involved in an attempt to chart the future of such a dynamic subject by legislative enactment. The apology tendered by the authors (p. viii) for straying at times from bare legal interpretation of the Act was misplaced; indeed, any limitation upon the interest or value of the book arises from the inherent difficulty of dealing with a number of the problems of atomic energy primarily in terms of analysis of the text of the legislation. For example, one may well be skeptical of the extent to which inferences from the language of the Act will control matters such as the functions of internal operating divisions of the Commission and the Military Liaison Committee (pp. 35-45), or the fundamental question of the extent to which operations are to be carried on directly by the government or through contracts with private concerns (pp. 68-78). As has been noted, the peculiarly difficult problems involved in the control of the secret of the atom barred effective limitations upon the discretion of the Commission. Consequently, answers to the pressing problems of the control of atomic energy are less to be found in the bare bones of the legislation than in the wisdom with which the Commission and the President resolve a number of fundamental issues of policy which the Act commits to their care. These include: (1) Development and organization of a program for further scientific development;[7] (2) Allocation of the atomic energy program between military and civilian objectives;[8] (3) Determination of the extent to which scientific information in this field may be made generally available;[9] (4) Decision as to the commercial uses to which atomic energy shall be placed.[10]

Under the present Act, the factors which will determine the answers to these questions are, in the first instance, the nature of the personnel of the Commission—an issue not overlooked by realists in all camps—

7. For description of the Commission's vigorous program of research and development, see AEC, Second Semiannual Report, SEN. Doc. No. 96, 80th Cong., 1st Sess. 8-12 (1947); AEC, Third Semiannual Report, SEN. Doc. No. 118, 80th Cong., 2d Sess. 8-16 (1948).

8. For some of the scanty public information in this field, see AEC, Fourth Semiannual Report, 1-4 (1948).

9. AEC, Second Semiannual Report, SEN. Doc. No. 96, 80th Cong., 1st Sess. 15 (1947); AEC, Third Semiannual Report, SEN. Doc. No. 118, 80th Cong., 2d Sess. 24-29 (1948).

10. For a cautiously optimistic view of the future of atomic power, see AEC, Fourth Semiannual Report, 43-46 (1948).

and ultimately the guidance which the Commission will receive from Congressional and public opinion. Indeed, the need for such guidance recently led the General Counsel of the Commission to take the unprecedented step of appealing for more extensive criticism of its operations.[11] It may be hoped that further works, of the level of competence shown by this book, will continue to focus attention upon the issues of law and policy presented by this opening of another scientific frontier.

John Honnold†

THE ECONOMICS OF INSTALLMENT BUYING. By Reavis Cox. Ronald Press, New York, 1948. Pp. 526, $6.00.

Professor Cox has admirably succeeded in his objectives of describing the practices and procedures used in the installment selling system and of analyzing the system's economic and social consequences. Cox's approach is indicated by the title of the book. He de-emphasizes the sales promotion function of the installment system and views it as a device used by consumers for spending their incomes more effectively in the acquisition of "satisfactions" in the form of durable goods.

In Part I Cox recounts the history of installment buying, its place in the economy, and presents a very useful analysis of the types of installment buyers and of the durables which predominate the installment market. In Part II we get a descriptive analysis of the operation of the installment buying institution but with the main emphasis on its operation by retailers. Of particular significance to those interested in legislation controlling installment sales are the chapters on pricing practices and problems in installment buying. Cox describes the not uncommon practice of retailers' absorbing all or part of the cost of credit service in the sales price. This practice casts considerable doubt on the efficacy of the recent legislative attempts to require full disclosure of the cost of the credit service. The chapter on the sources of the capital invested in installment selling is of interest to those interested in the "wholesale" side of this industry. Here Cox describes the attempt of the commercial banks to sell credit at "retail" rather than "wholesaling" it to the finance companies.

Parts III and IV deal with the economic functions of installment buying. Here Cox sets forth the arguments in the current controversy about the significance of installment credit controls as a useful tool to control inflation and concludes that such controls are of doubtful significance.

While Part III is primarily for economists there is real meat in Part II for lawyers and law students who are interested in the institutions using the legal machinery working under the names of chattel mortgages, conditional sales contracts, bailment-leases and creditors' rights.

Does Cox's study indicate the necessity of any revision in attitudes toward these tools? He does not attempt to answer this question except to suggest that the legal forms in current use are unduly complex. Cox's own attitude is illustrated by his comment on the disclosure features of Regulation W, the old wartime control of installment buying, that it was the product of "the reformer's hand." While Cox finds some abuses in the operation of the system, such as "one-sided contracts," collection rackets, deception and misrepresentation in sales promotion, he concludes that they are so

11. Marks, *The Atomic Energy Act: Public Administration Without Public Debate*, 15 U. OF CHI. L. REV. 839 (1948).

† Assistant Professor of Law, University of Pennsylvania Law School.

quantitatively unimportant that the pressure for governmental action will remain small. Cox finds self-policing by trade associations more productive. He does not undertake to opine or collect data on how governmental regulation to eliminate the abuses can be obtained without upsetting the necessary aspects of the system. Enough experience should now be available to substitute data for generalizations about "bitter experience" convincing "many business men" that controls are subject to abuse. Thus at this point as in others Cox's value judgments determine his selection of data to be presented. This is of course an author's prerogative and whether one agrees with him on these conclusions or not, the data and descriptive material which he does present is useful material from which to draw one's own conclusions on other aspects of the problem.

This book does give lawyers some cause to re-think the legal tools used to obtain security in the consumer credit field. I suppose a great many lawyers would agree that the distinctions taken between chattel mortgages and conditional sales contracts are fictitious. It is a common belief that one is used for "convenience" loans and the other to purchase goods, yet Cox indicates that in consumer installment cash loans, where chattel mortgages would be used, between 13 and 20% of the loans are made to finance the acquisition of automobiles and furniture.

Most interesting to the reviewer is Cox's discussion of the title retention contract in which form over one-half the installment buying is done. Unfortunately the conclusions extractable are made difficult by his indiscriminate use of "title retention" to mean at various times right to repossession without benefit of legal process, right to possession whether by self-help or through legal process, and sometimes to mean nothing more than a right to a preferred claim against creditors. Cox reports, for example, that "business men" regard "title retention" as a necessary protection against "dishonest buyers and against third parties." It is not clear whether business men think they need the right to take repossession by self-help to obtain this protection or whether they think they need only a preferred claim. It would seem that the right to repossession is not too significant as a protection against "dishonest buyers" since Cox reports that in repossessions of automobiles only one-tenth of one percent were repossessed for reason of fraud and only 12 to 16% for reason of moral risk. Over 80% of the repossessions were for reason of poor financial risk and financial reverses. The total repossessions from 1928 to 1939 was 4.2% of all cars sold and Cox cannot allocate the proportion properly attributable to credit difficulties.

By "third parties" Cox apparently means general creditors, landlords and the like where any self-help repossession may be unnecessary and a preferred claimant position may be all that the seller needs.

Cox finds disagreement in the "trade" as to the significance of the title retention feature of the contract but he does attempt to describe the trade's attitude toward "title retention." This attitude is broken down into four distinct attitudes, the importance of which vary according to the type of commodity involved.

The first attitude is said to be that of looking to the value of the goods on resale as protection against loss. This is probably the lawyer's idea of security and its function. This attitude is predominant, Cox reports, where goods of relatively large unit value can be repossessed easily and resold in a well-organized second-hand market. Automobiles are typical of this situation. Cox finds the second attitude predominant where repossession is costly and no good second-hand market exists. Here the

creditor's attitude is to avoid repossession if possible but he finds the threat of repossession useful in bringing pressure to bear upon laggard customers. This view is said to be typical of the furniture trade. The third view, typical in the jewelry business, Cox attributes to situations where the buyer can conceal the goods and make repossession without physical force difficult. Here "title retention" is looked on only as a basis for a lawsuit and protection against fraud. The fourth view, found in the clothing industry, exists where repossession is virtually impossible and repossessed goods are of little or no value. Cox reports sellers are likely in this situation to tack on to the title retention contract additional security such as wage assignments.

If these attitudes represent the primary attitudes of sellers toward title retention contracts they raise anew the question, why is the self-help type of repossession necessary? For on analysis none of these attitudes towards "title retention" require self-help repossession to satisfy the ends sought. In the first attitude the method of repossession has nothing at all to do with the realization price on resale. It is the same whether the seller repossesses with or without legal help. In the second and third attitudes what seems to be wanted is something "legal" which can either be used as a basis for legal collection or as a threat. Unless the threat of self-help is taken more seriously than the threat of legal action it would seem not to make much difference whether self-help repossession was permitted or not providing the seller had a legally enforceable claim against the buyer which was prior to that of any creditors. The fourth attitude seems to regard "title retention" as only a legal peg on which to hang other and better security devices. Repossession has no relevance to the peg.

Without data we can only suppose that the real basis of the asserted need for self-help repossession is the desire to save the high cost of legal repossession. Against this legitimate desire must be set the fact that, as Cox points out, repossession can be used as a racket when coupled with a technical default.

The one "improvement" which Cox uncautiously supports is simplicity and improvement in the provisions of installment contracts. Today local lawyers have very little to do with drafting the contracts. Cox says that when lawyers do draft they do so for a "routine fee" and that they seem overly impressed with an "elaborate contract." More frequently merchants write their own forms, borrow them from fellow members of the club, or are induced to take those prepared by their trade association or by their banks or finance companies.

It is true many lawyers are uninterested in these "forms" for small business. It is likewise true that after a form has once been prepared, the code of legal ethics hinders many lawyers from taking a continuing interest in the form. Unless the merchant, when the old pads run out, asks the lawyer to review the form before reprinting it, he may never see it again. There are styles and fashions in legal drafting just as there are in the clothing trade. A lawyer's first problem is to get a chance to continually supervise his forms in order to keep them in current style. His big problem, however, is more basic: Can he draft a simple contract? This is the challenge. It is a particular challenge to the law school professor whose current fad is "drafting" exercises for future lawyers. Perhaps a law institute is needed to do a restatement of forms.

ALLISON DUNHAM †

† Assistant Professor of Law, Columbia University School of Law.

STATE LABOR RELATIONS ACTS. By Charles C. Killingsworth. University of Chicago Press, Chicago, 1948. Pp. x, 328.

Concise and vigorous in style, compact in format, this is an easy book to read. Its comprehensiveness, careful documentation and discerning selection from a complex welter of material must have made it a difficult book to write.

Legislators even more than other interested groups will find the facts and the conclusions soundly significant.

Employers, employees (organized and unorganized), labor leaders, students of labor relations, attorneys, and the consuming public all have here material for thoughtful consideration.

The author initiates his study by distinguishing between laws which he classifies as "protective" and those which he calls "restrictive."

The former (protective) are described as follows:

> "They affirm the right of workers to combine to better their conditions and to bargain through representatives of their own free choosing, and they safeguard this right from interference in any fashion by employers. Certain practices by employers are specifically forbidden. These include domination, assistance, or support of any labor organization; discrimination on the basis of union activities in hiring and firing; refusal to bargain with the designated representative of a majority of employees; and such other forms of interference with the right of employees to self-organization as the circulation of blacklists and the use of threats or violence. Interpretation and application of the law are placed in the hands of a special quasi-judicial agency, usually called a 'labor relations board.' The boards are also empowered to investigate controversies concerning representation of employees, to determine the appropriate bargaining unit, and to certify the bargaining agent selected by a majority of employees." [1]

The latter (restrictive) are thus generalized:

> "They contain most of the provisions of the protective laws, but they also impose numerous restrictions on unions and employees as well as on employers. They prohibit violence in labor disputes; forbid strikes, picketing, and boycotting under certain circumstances; limit the objectives of unions; and in some cases regulate the internal affairs of unions. Some of these laws are administered by agencies somewhat similar to those functioning under the protective laws; but in some states their administration is left to the general law-enforcement officers." [2]

"No effort"—Mr. Killingsworth says—"will be made to argue for either of the two chief policies. Instead the aim is to show as fully and as clearly as possible the real nature and implications of each policy." [3]

Although the classifications may seem overgeneralized, this approach contributes to understanding of divergent tendencies later emphasized. The author is at pains to indicate that in some instances the same act involves both tendencies. He also exemplifies the transition of some of the acts, through amendment, from major emphasis on "protection" to emphasis on "restriction."

1. P. 1.
2. P. 2.
3. P. 6.

Earlier acts, according to Mr. Killingsworth, have been based squarely upon the assumption that the interest of all the nation, not just that of the participants in collective bargaining, is served by protection of the right to organize. He points out that the Wagner Act, as well as its predecessor legislation, and the first state acts all rest upon such a premise.

Explanation follows of the unparalleled expansion of labor organization and of collective bargaining under the increasingly effective protection of such acts.

Faced by growing strength of labor organizations, an increasing body of sentiment and propaganda has arisen, directed against the alleged inequity of acts which protect the right of employees to organize without assuring an equal right to employers.

Mr. Killingsworth explains: [4]

"To equalize [the provisions of the protective laws] it would be necessary only to prohibit interference of unions with the right of employers to organize for collective bargaining and to require unions to bargain in good faith when requested by an employer."

He notes further—"It is perhaps significant that none of the restrictive state labor relations acts contain any such provisions." [5]

It has been aptly said that all states have laws to protect small game from hunters but no state has a law to protect hunters from rabbits.

In a coolly logical light, Mr. Killingsworth's analysis meets adequately the criticism of those who disparage "protective" labor relations laws upon the basis that they are "one-sided" or that they "discriminate" against the employer.

More deep-seated probing of the reasons behind much of the clamor for "equalization" through labor relations acts would reveal a fundamental misconception as to the contribution of government in the bargaining situation.

The Wagner Act defined this contribution, among other factors, as "restoring *equality* of bargaining power between employers and employees" [6] (italics supplied). The same emphasis appears in the preamble of the Taft-Hartley Act and in several of the earlier state acts. The fallacy here is the assumption that the labor relationship must be primarily a "combat" or balance of power situation.

The possibility of "combat," or resort to use of power, can never be ignored in negotiations but it need be dominant only when one of the parties insists upon invoking economic strength.

The balance of power attitude is based upon such fundamentally human impulses that it cannot be "hoped" away or analyzed out of any rivalry for advantages. It is an emphasis implicit in practically all relationships between nations. It stresses an unattainable aim—a sustained equilibrium between equally growing aggregations of strength. It has inevitably led to war.

Legislation directed toward attaining or sustaining a "balance of power" between parties will degenerate into a devious and formidable kind of "bargaining" through the channels of the government and, as Mr. Killingsworth implies,[7] may lead toward a "planned economy" and away from a free bargaining situation.

4. P. 22.

5. P. 23.

6. 49 STAT. 449 (1935).

7. P. 263.

The value of the protective laws lies in their encouragement to sound bargaining machinery and techniques, not in the arraignment of "strength" planned to "equalize" the power of groups demanding a larger share of a common output.

This idea seems to grow out of the author's facts, but could be further emphasized in his conclusion. Perhaps it will be the more persuasive to the intelligent reader because it is implied rather than over-asserted.

The focus of the book is its clear presentation of essential conflict between the protection of the right to further growth in scope and effectiveness of collective bargaining, and the protection of the asserted right of individuals *not* to bargain.[8]

Mr. Killingsworth does ample justice to this theme and his conclusions are roundly emphasized. He says: "By deciding generally in favor of the rights and interests of unorganized workers and employers, the framers of these statutes" (restrictive) "produced a policy that tends to restrict or discourage collective bargaining." [9]

At various points there is stress upon an increasing demand by the public for legislation to protect members of labor organizations and other individuals from arbitrary use of the power which springs from "union security" provisions.

One of the book's most constructive positive suggestions, as yet unrealized adequately by any existing law, is the proposal for government tribunals available to union members who have suffered from abuse of democratic process by their own leadership.[10] The note, citing President George A. Lynch of the Pattern Makers' League [11] illustrates forward looking and courageous thinking upon the part of a conservative but aggressive labor leader. The author might well have referred in this connection to the excellent report of the American Civil Liberties Union on "Democracy in Labor Unions." [12]

The chapters dealing with (VII) prevention of unfair labor practices, (VIII, IX, X) employee representation and elections, and (XII) jurisdictional problems, are sound reference material. They deal objectively with techniques and administrative details which have often occasioned controversy far beyond their importance. An interesting diversity of approach is shown in different states. The variety of method illustrated emphasizes the author's closing words.

> "It is not practicable for the federal government to try out two or more possible policies toward labor relations; neither can the N. L. R. B. readily experiment with alternative methods for implementing the basic policy. Innovations and deviations from the prevailing policies and methods can more easily be tested in separate states. Because we need much more education in this field, it is desirable that the states should continue the experimentation."

Chapter V, dealing with restrictions on peaceful tactics, carefully weighs the pros and cons of a very explosive subject and leaves the reader to his own judgments but not without an impression of the author's feeling.

---

8. Pp. 95, 96, 98.
9. P. 263.
10. Pp. 106, 109, 110.
11. P. 106.
12. DEMOCRARY IN LABOR UNIONS, A SURVEY WITH A PROGRAM OF ACTION, American Civil Liberties Union, 170 Fifth Avenue, New York, N. Y., Nov. 1943.

Detailed examination of experience by the states with mediation, fact-finding and arbitration (Chapter XI) divulges conflicting inferences, but a general impression that mediation is constructive procedure and operates more effectively when unhampered by arbitrary legal requirements and in an agency *not* vested with any enforcement powers.

Relatively little attention is accorded the serious prospect, in the "restrictive" acts, of limitations upon the scope of bargaining. A forceful chapter might have been devoted to the state and federal experience in curtailing that field, and to the danger that such encroachment leads back to "bargaining" through the toils of legislative and judicial determination.

There are doubtless practical reasons for the omission of an appendix including all state acts. Complete texts of these laws would have added substantially to the value of the volume as a reference work, and usefully supplemented the index of Union-Regulatory Laws, other than Labor Relations Acts (Appendix A).

Mr. Killingsworth keeps his promise not to argue policies but his judicial selection and his honestly objective presentation of the facts establish a basis for clarified convictions on a number of hotly controverted points.

BENNET F. SCHAUFFLER †

A MODERN LAW OF NATIONS. By Philip C. Jessup. The Macmillan Company, New York, 1948. Pp. 221. $4.00.

In this book Professor Jessup, who is Hamilton Fish Professor of International Law and Diplomacy at Columbia University, discusses the future development of international law with special reference to the changes which may be expected in view of the second World War and the organization of the United Nations. The book is interesting and stimulating. In his introduction Professor Jessup says:

> "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 point is that there must be basic recognition of the interest which the whole international society has in the observance of its law."

In developing the first point, the author refers to the growth of the principle that international law does apply to the individual and mentions many cases in which it has been so applied both in the award of money damages and in the punishment of international criminals. In a chapter entitled "The Subjects of a Modern Law of Nations," he not only points out that the rights of individuals have been recognized in international law, but urges that the conception that international law applies only to states should be definitely abandoned and that individuals as well as certain international organizations should have a definite *status* entitling them to have access to the International Court of Justice and not be entirely dependent for the protection of their interests upon the state of which they are a national.

† Director, Region Four, National Labor Relations Board.

In Chapter III, the author interestingly analyzes the subject of "Recognition" and points out that there is a community interest on the part of all the states in the consequences of recognition of a new government. He very sensibly suggests that it would be better, if not necessary, for the Assembly of the United Nations to establish a general procedure which could be applied in determining the legitimacy of governments claiming representation in the United Nations. Unilateral recognition is still possible, but it is suggested that collective recognition by an organization such as the United Nations would be far preferable.

In discussing "Nationality and the Rights of Man" in Chapter IV, the author devotes considerable space to the various problems arising out of the "right of expatriation" which has been asserted by many authors. The "inherent" and "natural" right of expatriation is generaly recognized, but there is a limitation which states must be free to impose with respect to the admission of aliens. The problem is a very knotty one and has caused international complications in the past by reason of the American exclusion of Japanese nationals and other regulations of like character. In earlier times America was conceived of by many of the oppressed races of Europe and Asia as a land of refuge which would freely receive them and protect them against the hardships from which they suffered. However, as Professor Jessup says: . . . "even under a modern law of nations the individual would not have a right of asylum in the sense of a right to require any particular state to receive him," adding, however, that "precedent and humanity would suggest that every state should be under an obligation to grant temporary refuge to persons fleeing from persecution." That this right of asylum has been at least partly recognized by the United States is shown by the recent legislation permitting the immigration of displaced persons.

Considering the "Rights of Man," the author declares that the treatment of its citizens by a state is no longer a matter entirely within the domestic jurisdiction of a state, and it is suggested that the jurisdiction of international law over this question might well be extended to the treatment of aliens residing within the state. Reference is made to the statement by Field Marshal Smuts for the Union of South Africa that the Charter of the United Nations did not extend to permitting interference by the Government of India with the treatment of Indians residing in the Union of South Africa. Professor Jessup, however, maintains that the General Assembly of the United Nations did not share this view, pointing out that friendly relations between the two nations might be impaired unless a satisfactory settlement was reached with respect to this matter. This question cannot be discussed without bearing in mind the treatment of the Jews and other nationalities by the government of Germany. Professor Jessup visualizes a further development of international law in this connection whereby a duty will rest upon every state to treat nationals and residents with due regard for principles of humanity and in accord with such declaration of human rights as may hereafter be adopted by the United Nations Commission on Human Rights.

Chapter V, entitled "The Responsibility of States for Injuries to Individuals," deals at length with the question of the extent to which individuals may secure redress for injuries occasioned by a state. This chapter is somewhat technical and will be useful as a reference for persons who have claims of this nature. The same may be said of Chapter VI dealing with "The Law of Contractual Agreements" which discusses the binding force of treaties made between independent nations, conditions

which may be attached to their becoming effective, whether third parties may have rights thereunder, and other questions of like character.

In many respects the most interesting chapters in the book are Chapters VII and VIII. Chapter VII deals with "The Legal Regulation of the Use of Force," and Chapter VIII with "Rights and Duties in Case of Illegal Use of Force." The author begins Chapter VII with this true statement:

> "The most dramatic weakness of traditional international law has been its admission that a state may use force to compel compliance with its will."

This results from the concept of absolute sovereignty and the lack of a well developed international organization with power to restrain sovereign states. These weaknesses, the author feels, are in course of losing their significance by reason of the organization of the United Nations which, he rightly says, reveals progress over the League of Nations. The concept of absolute sovereignty has been under attack and has lost much of its force; but the terms of the Charter, the trial of the war criminals at Nurnberg and the resolutions of the General Assembly seem to fall short of an asseveration that the state itself is guilty of a crime when it starts an aggressive war and may be restrained or punished. "Under the traditional law the full acceptance of the illegality of war would have led to the conclusion that the state which waged war would be guilty of an illegal act," but, says the author, "under the current development it is the individual who is held to have committed an internationally criminal act. The traditional system would have put the burden on the state to restrain the individual, whereas the precedent of the war trials suggests that pressure in the form of fear of punishment would be put on individuals to restrain the state. . . . As international organization develops and is perfected, it may be assumed that collective force will be used in case of necessity to restrain states or other groups in advance, but that punishment after the event will be visited on individuals and not on the group."

After a full discussion of the right of self-defense recognized in Article 51 of the Charter of the United Nations, the author returns to the question of how the illegal use of force by a state may be prevented. The suggestion of the organization of a world state currently advocated by certain groups is rejected as impracticable, and it is pointed out that even in such a case wars between members of the federation would almost certainly develop. Whether there could be created an international police power of sufficient strength when coupled with national armaments to prevent the outbreak of war is discussed; and inevitably the author concludes that, as the Charter is now drawn with the right of veto in any one of the five great powers, the Security Council would be unable to take any action in any case which affected the interests of one of the five. This means, of course, that aside from minor outbreaks the restraint of war is, under the present structure of the Charter, practically out of the question.

> "It must always be borne in mind that the veto may be exercised not only when one of the permanent members of the Security Council is a party to a dispute, but also in any case in which such a member desires to block action, perhaps because of sympathy with one of the parties."

The possibility of amending the Charter is mentioned, but Professor Jessup does not appear to be hopeful that any such amendment could be

now proposed with any reasonable hope of success, as under Article XVIII of the Charter an amendment may come into force only when agreed to "by all the permanent members of the Security Council."

It occurs to this reviewer that the experience of Pennsylvania may point the way to amendment of the Charter in a manner which would be legal and yet could not be stopped by the use of the veto. The Charter of the United Nations is its constitution and may properly be compared to the constitution of an American state. The Constitution of Pennsylvania in force prior to 1873 contained within itself a method of amendment. This method was not followed but when public sentiment became strongly in favor of a new constitution for Pennsylvania, a convention was called through an act of the Legislature which framed the constitution of 1874. This involved many amendments to the old constitution and was thereafter adopted by vote of the people.

The validity of the action of the convention was considered by the Supreme Court of Pennsylvania in two cases: *Wells v. Bain*[1] and *Wood's Appeal*.[2] These cases held, in line with many other decisions, that the power to "alter, reform or abolish government" always remains with the people and that a convention legally called through action of the Legislature has authority to frame a new constitution. In this instance the constitution so framed did not comply with the provisions of the enabling act which called the convention. For this reason and because the method prescribed by the act for submission to the people was not followed, the Supreme Court in the first case above mentioned issued an injunction to restrain the holding of an election to adopt the constitution. Before the second appeal came before the Supreme Court, however, the people had voted upon the constitution and had adopted it by a substantial majority. The court therefore said at the beginning of its opinion:

> "The change made by the people in their political institutions by the adoption of a proposed constitution . . . forbids an inquiry into the merits of this case."

In other words, the court held that the authority which originally adopted the constitution, *i. e.*, the people of the State of Pennsylvania, having approved the changes therein, these changes would be accepted as the fundamental law and the court was powerless to interfere.

The Charter of the United Nations was adopted by the representatives of more than fifty nations. These nations have the same power to amend the Charter that they had in the first place to adopt it. They occupy the same relation to the Charter that the people of Pennsylvania did to the Constitution. There would therefore seem to be no legal reason why a new conference could not be called to which all of the nations who cooperated in adopting the Charter should be invited. They could by this means amend the Charter and it could not reasonably be contended that such an amendment was illegal even though adopted by only a majority vote.

Many suggestions of amendments to the Charter have been made and at least two resolutions have been introduced in Congress which have this purpose in view. If the President, or the President in consultation with the head of some other state or states, should call a new conference, no legal reason is perceived why an amendment of the Charter could not promptly be adopted.

1. 75 Pa. 39 (1874).
2. 75 Pa. 59 (1874).

It has been objected that in the event of an amendment which limited the veto, perhaps forbidding its use in cases involving avoidance of war, Russia would withdraw and that the organization might be wrecked. It is, however, not at all certain that withdrawal of Russia would wreck the organization, nor is it certain that she would withdraw. As our own William Penn wisely remarked in 1693, one nation would not be strong enough to stand out against all the rest and armed force against it might not be necessary. It may also be mentioned that to raise the issue with Russia by an amendment of the Charter would be less likely to create solidarity of opposition among the Eastern powers than to oppose her by force of arms.

Whatever may be thought of this view of the matter, which is solely that of the reviewer, Professor Jessup's book is a very worthwhile addition to the literature on the future of international law.

THOMAS RAEBURN WHITE †

† Member, Philadelphia Bar.

BOOKS RECEIVED

ANTITRUST LAWS ET AL. v. UNIT OPERATION OF OIL OR GAS POOLS. By Robert E. Hardwicke. American Institute of Mining and Metallurgical Engineers, New York, 1948. Pp. ix, 270. $1.50.

CONTEMPORARY RELIGIOUS JURISPRUDENCE. By I. H. Rubenstein. The Waldain Press, Chicago, 1948. Pp. 120. $2.50.

EDUCATION FOR PROFESSIONAL RESPONSIBILITY. A report of the Proceedings of the Inter-Professions Conference on Education for Professional Responsibility, held at Buck Hill Falls, Pennsylvania. Carnegie Press, Carnegie Institute of Technology, Pittsburgh, 1948. Pp. x, 207.

THE ELEMENTS OF LEGAL CONTROVERSY. By Jerome Michael. The Foundation Press, Inc., Brooklyn, 1948. Pp. xxxi, 756. $7.50.

THE FEDERAL INCOME TAX—A GUIDE TO THE LAW. By Joyce Stanley and Richard Kilcullen. Clark & Boardman Co., Ltd., New York, 1948. Pp. xv, 344. $6.00.

LAW OF MUNICIPAL CLAIMS AND LIENS AGAINST REAL ESTATE IN PENNSYLVANIA. By L. S. Hecht. The Legal Intelligencer, Phila., 1948. Pp. xxvi, 532. $10.00.

THE LEGACY OF SACCO AND VANZETTI. By G. Louis Joughin and Edward M. Morgan. Harcourt, Brace and Company, New York, 1948. Pp. xvii, 598. $6.00.

LEGISLACION PARA LA DEFENSA POLITICA EN LAS REPUBLICAS AMERICANAS. By Comite Consultivo De Emergencia Para La Defensa Politica. Montevideo, 1947. Pp. Tomo 1, 639; Tomo 2, 819.

MANDATES, DEPENDENCIES AND TRUSTEESHIPS. By H. Duncan Hall. Carnegie Endowment for International Peace, Washington, D. C., 1948. Pp. xvi, 429. $5.00.

THE PRESIDENT, OFFICE AND POWERS. By Edward S. Corwin. New York University Press, New York, 1948. Pp. xiii, 552. $6.75.

CASES ON LABOR LAW. By Archibald Cox. The Foundation Press, Brooklyn, 1948. Pp. xxxv, 1432. $8.50.