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## Finding Peace Law and Teaching It

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## Finding Peace Law and Teaching It\*

**Ann Fagan Ginger**

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[Although lawyers comprise the most politically influential profession in our land, legal educators have been slow to respond when society — and, ultimately our legal system — is faced with problems which do not fit neatly into the existing curriculum. For example, the subjects of race and sex discrimination, environmental damage, and computerized invasions of privacy were addressed in other university departments and in the popular press long before we assumed our responsibility for training new lawyers to take the lead in solving these monumental problems. The danger of nuclear war is, perhaps, the severest threat to society and the greatest challenge to our profession.

On a practical level, approval of a new course addressing a societal problem requires that we convince our colleagues (and especially the curriculum committee!) that the problem deserves serious attention and that legal issues are necessarily implicated. Ann Ginger takes this first, important step in her article which follows.] — Burns, editor.

### I. The Events of 1945

Something new happened in 1945. Now, forty years later, it is appropriate to discuss what that new thing was and to assess its signifi-

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\* During the Fall of 1985, the author offered a series of lectures entitled Peace Law: From Rhetoric to Reality at UC Berkeley as Chancellor's Distinguished Lecturer for 1985-86.

cance. And it is necessary to make this assessment if we are to survive another forty years.

In fact, three new things happened in 1945. That is such a large statement it is likely not to be believed. But our failure to believe it, to understand it, and to integrate it into our daily lives may doom us as a people and may doom the law and the concept of law as a method of settling disputes.

It is a very large statement to say that something new happened when we all know that very few things are new under the sun. But by now it is agreed that the dropping of the atomic bomb on the city of Hiroshima on August 6, 1945 was a new event in the history of the world. Of course, a bomb had been exploded previously as an experiment in a desert in the United States. And, of course, the atomic bomb was based on work that had been done by militarists since the beginning of time, and by physicists, chemists and technicians for several decades. Nonetheless, both the development of the atomic bomb and the dropping of the atomic bomb were new events in the history of the world.

This particular bomb was a military weapon of value in destroying civilization, not simply military targets. The atomic bomb was designed to destroy the lives of people, both soldiers and civilians, the houses in which they lived, the markets in which they bought their food, the factories in which they produced goods and the very land on which they would grow food. This fact was well known by the scientists who developed the bomb and who participated in the decision to drop it. Yet even they did not comprehend the extent of the devastation one atomic bomb would create or the duration of this devastation.

In the forty years since the dropping of the bomb on Hiroshima and Nagasaki, ordinary people all over the world have come to understand the significance of these events, even if they do not understand the scientific laws behind the bomb or the scientific and engineering techniques that made it possible.

Two other new things happened in 1945. These events are of equal significance in the history of the world if their meaning is grasped as fully as the meaning of the development and dropping of the bomb at Hiroshima. One of these new things was the signing of the United Nations Charter in San Francisco on June 26, 1945 and its ratification and coming into force on October 24, 1945. It could be argued that this was not a new event, that several times in the history of the world, the leading powers had come together to carve up the power spheres into geographic divisions and had signed pieces of paper recording these di-

visions, swearing to keep the peace through a system of alliances. Cynics could say that none of these agreements was worth the paper on which it was written because it lasted such a short time.

These cynics should study the language of the United Nations Charter and read the record of the debates that led to the signing. They would discover here something new in the history of the world — imperfect, yes, but, like the atomic bomb, growing out of previous efforts, most recently the League of Nations. But the new features were numerous and significant. For one, the United Nations was to be an expanding organization, welcoming new nations as they broke imperial ties to some of the great powers. One of the fundamental purposes of the United Nations, clearly expressed in its language, was assistance to nations emerging from colonialism. The formation of the United Nations marked a stage in the end of the previous international power system marked by what were known as “mother countries” and “colonies.” This purpose of the United Nations has been carried out consistently in the 40 years since the Charter was signed. Many nations have emerged, each an independent, sovereign power in law, recognized as such in the United Nations building in New York, and treated as such in the General Assembly, if not by some of the commercial and financial institutions around the world or by the foreign affairs departments of some of the larger and more powerful nations. The UN has grown from 51 to 159 members in its first forty years, to encompass 98% of the world’s population.

It is probable that most people in the United States did not understand this purpose at the time, or its full significance, since we had won our independence from Mother England long ago and are not famous for our attachment to history. Perhaps this explains, in part, why we in the United States are not more positive about the success of the UN.

The United Nations began with a second change from previous international arrangements. The UN began, as did the United States, by recognizing that change is good and necessary. Our ancestors put that concept into the first amendment, guaranteeing the right to petition the government for a redress of grievances — an admission that people would have grievances against the new government, although they built it with the best materials available at the time (except for slavery), and according to the most modern design. The Founders accepted the reality of governance by the will of the people, rather than the ideal of a perfect, static republic, or the divine and unchanging rights of kings. The founders of the UN put that same concept into the provisions for the expansion of the membership of the organization as

the sun set on the British Empire. They also embedded the potential for change by provisions rotating the membership in the permanent Security Council, so that today, delegates to the Council include representatives of nations that had not come into being as independent states when the UN was born, in addition to the permanent members: the United States, the Soviet Union, France, Britain and China.

The United Nations also provided a significant role for non-governmental organizations to make proposals to UN agencies and to participate in UN agency hearings in constructive ways. Article 71 of the Charter opened the way for continuing change in UN policies and practices as changes are perceived by the people of the world, working through their organizations. The UN Charter<sup>1</sup> also set minimum standards for the conduct of nations, established procedures for reporting the existence of disputes that were bound to arise, and established the basis for settling these disputes peacefully.

Were I simply to cite the Articles of the Charter setting forth these minimum standards and reporting requirements and procedures, this would be a very dry article. But when our President, in his official capacity, tells his constituents that it is his goal to make the people of another sovereign nation "Cry Uncle!," and this goal is also heard by the peoples of all nations through modern methods of communication, then the Articles of the United Nations Charter leap from the printed page. They become front page news and the necessary subject of rhetorical concern, because this simple, homely statement by a man who prides himself on being The Great Communicator is an offense under existing law, against the concept of law, against the law of nations mentioned in our Constitution. It specifically violates agreements written in San Francisco in the treaty known as the United Nations Charter, duly ratified by the United States Senate and part of the law which each U.S. President since 1945 has sworn to uphold.

The UN Charter changed the law of the United States in a few very significant ways. It made illegal the Monroe Doctrine of U.S. domination of Central and South America. It forever put an end to the Teddy Roosevelt syndrome: "Walk quietly and carry a big stick." How? By putting into treaty language international law that had developed over centuries:

"The organization is based on the principle of the sovereign equality of all its members."<sup>2</sup>

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1. U.N. CHARTER art. 71.
  2. U.N. CHARTER art. 2, sect. 1.

"All members shall settle their international disputes by peaceful means in such a manner that international peace, and security, and justice, are not endangered." Article 2, section 3.

"All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any member or state, or in any other manner inconsistent with the purposes of the United Nations."<sup>3</sup>

The UN Charter is clearly a descendant of the U.S. Constitution. But it is much more than that — as it must be, because it was drafted by leaders of many nations with different governmental, economic, social, and cultural systems, at different stages of development, and it must govern their relations.

The third new thing that happened in 1945 was the enunciation of the Nuremberg Principles and the agreement to try as criminals the defeated leaders of the fascist powers. Again, this was not entirely new. The allied powers had come to an agreement during the war and announced their intention to punish "major war criminals" when Roosevelt, Stalin and Churchill signed the Declaration of Moscow on November 1, 1943. The London Agreement and Charter was signed August 8, 1945 and provided that major war criminals would be tried by an International Military Tribunal. Justice Robert Jackson of the United States Supreme Court represented the U.S. in the negotiations at London. He pointed out that, between World War I and the time Germany commenced its aggressive actions, international law had established the principle that aggressive war is a crime.<sup>4</sup>

Nonetheless, the actual agreement between the United States, the Soviet Union, England and France to try as criminals the defeated powers was a new act in 1945. The old arguments about whether the trials of the Nazi leaders at Nuremberg were unfair are not significant in 1986. It does not matter in terms of the future of the world whether the trials involved *ex post facto* laws; nor does it matter for our purposes whether an impartial body should have determined whether the Allies had committed crimes under international law and should have been tried. These issues do not matter because we are discussing the prospective application of the Nuremberg Principles here, and we know now that there will be no trials of war criminals after the first nuclear war — there will be no one alive and well enough to act as prosecutor,

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3. U.N. CHARTER art. 2, sect. 4.

4. Report to President Truman on the Legal Basis for Trial of War Criminals, 19 TEMPLE L.Q. 135, 153 (1945-46).

judge, or defendant.

The Nuremberg Principles have three aspects, only two of which were clearly understood at the time. First, they defined the activities deemed criminal: war crimes, crimes against humanity, and crimes against peace. This aspect of the Principles is quite well known around the world by this time and is known to many people, lawyers and lay people alike, in the United States.

Secondly, they provided that all people are required to obey international law even if they are military personnel, and notwithstanding specific orders to the contrary from superior officers. A soldier at whatever level, including a general or a commander or the Secretary of the Department of Defense, is accountable if he commits a war crime, a crime against peace, or a crime against humanity. This principle is also familiar to most of the people of the world who are thinking about these matters.

The third principle of Nuremberg is only now emerging into full bloom. It forbids any person, any civilian, any citizen or alien, to commit war crimes, crimes against humanity or crimes against peace. More than that, anyone who knows that any of such crimes are being committed — *anyone* who knows about these acts and does nothing — may be in complicity.

This pronouncement of individual responsibility and guilt was a new event. It was coupled with the advent of television, which changed the character of citizen knowledge, involvement, and responsibility in international relations. Today, no person who reads the daily newspaper or watches television can be ignorant of the many war crimes, crimes against humanity and crimes against peace that are committed regularly.

Watching television news during the Vietnam War meant watching killings in many places under many conditions, including the massacre at My Lai. The court martial trial of First Lt. William L. Calley, Jr. was based on violations of the Nuremberg Principles. For the first time in our nation's history, United States military personnel were required to try a United States soldier for violations first enunciated in 1945 in response to foreign fascism.

Now, as I talk to people engaged in protests against various United States government actions, to civil disobedients around the country, I constantly hear references to the Nuremberg Principles: "I do not want to be in complicity with violations of law by my government in Nicaragua, Grenada, or other parts of the world," they say. These references, this consciousness, reflect the success of the United

Nations and the principles of international law it has helped codify, collect, develop and make known throughout the world. It is appropriate that the year 1945 should not only mark the beginning of the atomic era, with the dropping of the bomb on Hiroshima, but that it should also mark the founding of the United Nations as an organization of people and of governments to consider how to meet common problems throughout the world and the beginning of the public's recognition that it is a crime to break the peace. It is a crime to attack civilian humanity; it is a crime to behave, in wartime, in a bestial manner.

This concept of individual guilt, central to the Judeo-Christian faiths, among others, had been eclipsed for centuries by the legal fiction which absolved anyone of individual responsibility for institutional actions by corporate entities with anonymous boards of directors in the industrial and commercial world. While the corporation itself is regarded as a person, the individuals serving on the board of directors and the individual stockholders and bondholders may not be charged, as individuals, for civil or criminal acts of the corporation except under the most extraordinary circumstances. In short, one cannot "pierce the corporate veil."<sup>5</sup> Under this principle, few corporate investors or board members were ever held accountable for actions of corporations during the days of the robber barons, although corporations, in their infancy, made unsafe products, used production methods that were unsafe for workers and wreaked havoc on the ecology of many regions throughout the world.

But with the signing of the Nuremberg Principles in 1945, this veil protecting individuals from punishment for institutional behavior was lifted, at least with respect to certain international acts. A marriage took place again between morality and legality. As Justice Jackson stated when signing the London Agreement for the United States:

For the first time, four of the most powerful nations have agreed not only upon the principles of liability for war crimes of persecution, but also upon the principle of individual responsibility for the crime of attacking the international peace. Repeatedly, nations have united in abstract declarations that the launching of aggressive war is illegal. They have condemned it by treaty. But now we

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5. I became conscious of the significance of this rule of corporation law on my first trip to South America. Instead of "Inc." or "Co." at the end of a company name were the letters "S.A." They did not stand for "South America" but for "Sociedad Anonima."

have the concrete application of these abstractions in a way which ought to make clear to the world that those who lead their nations into aggressive war face individual accountability for such acts.<sup>6</sup>

The concept of individual guilt — of complicity based on knowledge, of responsibility for the acts of one's government — is also a product of 1945, like the atomic bomb and the United Nations Charter. And I maintain that the ratification of the U.N. Charter and the enunciation of the Nuremberg Principles are of equal moment to the world as the dropping of the bomb on Hiroshima. It would be highly unlikely, given the history of the world and the nature of human beings, that the atrocities committed on a consistent basis by the fascist powers would go unwhipped of justice in a world trying to dig its way out of the horror of thirty million dead, hundreds of million wounded, and even more millions homeless, hungry, and hopeless. In 1945, the birth of the United Nations, in the midst of war, gave hope. The announcement of the principle of individual responsibility for atrocious, inhuman acts — that gave hope. The arrest, not the capture and execution, of warmakers, of heads of warmaking governments — the arrest and trial before international tribunals of the strutting fascist military and industrial leaders — this also gave hope that the world would become a place for men and women to live in dignity, and for children of all races, classes, and creeds to grow to maturity.

The full horror of the dropping of an atomic bomb on a civilian city — that came later. In 1945, we ordinary citizens really did not know what we had wrought. And even the learned ones who had prepared the bomb did not know for many years what they had done to the human beings, and to the very soil, they had attacked.

## II. A Mere Piece of Paper?

It can be said, and *truly* said, that the UN Charter is just a piece of paper, that the Nuremberg Principles are just a piece of paper. At the moment of its birth, the atomic bomb was also a piece of paper, nothing more. When the physicists developed the formulas that unlocked the secret of the atom and made possible the unleashing of its energy for destruction or construction, they wrote their findings on pieces of paper. Those papers had no value to the world until they were

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6. Statement of Chief U.S. Counsel Upon Signing of the Agreement, 19 TEMPLE L. Q. 135, 169 (1945-46).

published, studied, debated and tested by physicists and mathematicians from many nations over several years. And when all of the intellectuals in the business — all of the eggheads — accepted as true the symbols on those pieces of paper, even then, nothing was changed in the world as a whole.

It was only when the United States government, during a global war against a powerful enemy, learned that the enemy was working toward an atomic bomb and therefore decided that something could be done with these formulas to magnify immeasurably the power of the United States in the world that it decided to carry out the Manhattan Project — only then did those pieces of paper begin to come to life. And only when the government assigned a general to work with a physicist from Berkeley to build an intellectual city whose sole purpose was to maximize destruction, only then did those pieces of paper begin to change the world.

The Emancipation Proclamation, after all, was also only a piece of paper. But when the United States government, in a horrible and brutal civil war, decided that it must confiscate billions of dollars in property, without compensation to their owners, in order to save the nation, it was only at that moment that the idea of freedom finally took root throughout the United States. The system of chattel slavery was abolished forever on our soil. And this action — late as it was and incomplete as it proved to be — was also written on a piece of paper called the thirteenth amendment.

The Social Security Act, as well, was initially just a piece of paper. Yet it has changed the meaning of the word “retirement,” and even of the words “old age” and “senior citizens.” It has provided a small measure of security and some hint of dignity to millions of people who, before 1935, would have died of starvation and neglect in our country.

I do not mean to suggest that the Emancipation Proclamation and the Social Security Act deal with as large a question as the atomic bomb, or that they have proven as successful in solving the problems they addressed as it was. The forces at work on those two pieces of paper were never as awesome as the forces assembled by the United States government at Los Alamos. And their tasks were never as comprehensive. But each of those documents, in its own way, helped pave the way for the UN Charter and the Nuremberg Principles, and the affirmative features of the world we know. These pieces of paper consist, not of mathematical symbols or equations, but of words:

Mere words? No, Majestic words! Stern words that sent men to trial as war criminals at Nuremberg and My Lai. Humane and loving words that founded UNICEF and World Health Organization to save the lives of millions of children. Smart words that founded UNESCO to train tens of thousands of teachers. Just words that hold nations accountable and determine the decisions of the World Court. Equal words that improve the legal status of women and people of color. Constructive words that fund projects to save the endangered environment. Principles of peace that require all nations to beat their swords into plowshares.<sup>7</sup>

### III. The Manhattan Project: Who Spoke For Us?

General Leslie R. Grove and J. Robert Oppenheimer knew a great deal about the operation of the military and about mechanics. Otherwise the Manhattan Project would have failed entirely, or at least been slowed down considerably. The two men from disparate disciplines also knew a great deal about human nature. In creating a virtual city, they knew the components necessary to achieve maximum creativity and production from workers whose sole purpose was the development of tools of massive destruction and the production of human horror on a scale never before imagined by man.

I am not a student of the Manhattan Project, and I have not spent time in the library looking for the list of occupations represented by those recruited to come to Los Alamos. But I do feel, from the vantage point of 1986, that the people in charge of the project made fatal errors in their choice of occupational expertise. I understand from Owen Chamberlain and Emilio Segri, who were there, that they brought people to Los Alamos to sell many ordinary goods, including alcohol; that they brought chaplains and other religious leaders, and teachers for the children of Project employees. Apparently they also brought some patent lawyers because new technical developments were being made. But they also needed — yet they did not include — doctors, psychiatrists, ecologists, philosophers, historians and lawyers with broader perspective and concerns than simply whether a particular advance was really new and, therefore, patentable.

The Interim Committee in charge of the Manhattan Project included military men, scientists, the Secretary of State and the Presi-

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7. Words by Ann Fagan Ginger from *Human Rights Cantata* by James F. Wood, a musical setting of the Universal Declaration of Human Rights, with excerpts from the UN Charter and the Nuremberg Principles.

dent's personal representative. Several men were presidents of universities. They had no right, as responsible human beings, to omit from basic discussions specialists in every discipline that would ultimately be affected by the outcome of the work on that Project, and to omit leaders of the working people whose occupations would be radically changed by permanent concentration on production for war. If they knew the awesome nature of their task — and there is no suggestion that they lacked that knowledge — they were bound as members of human society to consult with the learned ones from every field of human knowledge in order to make decisions that would affect the future of the whole human race, of all life on this planet, and the future of the planet itself.

What difference would it have made if these additional experts had participated in the decision-making? The job was to make the bomb before the Germans did. That was it. And a damned important job, too, given the nature of the fascist powers and their threat to return the world to barbarism in the name of rule by a superior race. But what would a philosopher, or a historian, or anyone from the humanities have said about the Project, after the defeat of the Nazis and the Fascists in Europe in the Spring of 1945 eliminated any danger that an enemy power would develop an atomic bomb in that era of history? Japan was not on its way to the bomb, as Germany had been, thus leaving only the question of shortening the war with Japan.

That is, that was the only question to a person not committed to the research, to the experimentation and the intellectual excitement of seeing physical principles designed into reality — to a peace-loving citizen of the world from another discipline — the only question remaining after Hitler and Mussolini were defeated was whether the atomic bomb was an appropriate way to end the war with Japan.



That question was not debated from as many viewpoints as were required to find the wisest answer. And the decision on the actual targets — two civilian cities on the island of Japan — seems to have been made, from all accounts, quite casually. I do not know what a panoply of the best professionals in the United States would have decided in the Spring of 1945 if they had been consulted on the continuation of the Manhattan Project or on the proper target for the first atomic bomb. But even if we assume that they would have favored continuation of the work, that they would have voted for Alamogordo and Hiroshima and Nagasaki, that does not end the matter.

#### IV. The Law Schools: Where Were They?

After the bomb was dropped and after the Japanese government surrendered in the Fall of 1945, the future of every profession in this country faced a qualitative change. The ability to make an atomic bomb had changed, forever, the field of military science (if that is not a misnomer). It had also changed, forever, the fields of biology and all of the natural sciences. It had made necessary — imperative — a field of ecology. It had also affected the work of the medical profession, with respect to treating physical wounds, as well as mental illness. The bomb had changed history, the need for learning the lessons of history, and the ability of historians to convince people born after World War II that they would have any need for history.

The bomb also changed, forever, the field of law; not only international law, but local law, and more, the concept that disputes can be settled peacefully.

Given the fact that the President of the United States — first Roosevelt, then Truman — did not fully understand at the time the awesome nature of the work being done with United States government money and manpower at Los Alamos, what was the responsibility of academia in the Fall of 1945?

One responsibility was to begin studying the qualitative changes wrought in each field by the ability of one nation to destroy more people and plants and animals than had ever before been possible. The books used in physics classes were updated after August 6, 1945 to reflect results measuring spontaneous fission rates that had been important in making the nuclear bomb. There were changes in the curriculum of courses in engineering all over the country.

Yet in law schools, professors and administrators sat, and continue to sit, on their hands. Curricular changes were urgently needed because

the atom bomb was, by its very nature, illegal. The bomb violates all of the laws of war in existence *before* World War II began. It inflicted cruel and unusual punishment on civilian populations — that was its purpose. It was not limited in its destructive capacity to hit military targets. It was not a clean weapon (if that is also not a misnomer). It could only make a big bang — destroying all in its vicinity — and it was a large vicinity, even at Hiroshima and Nagasaki.

But the atom bomb was more of a threat to law than that. It not only violated existing law. It led thinking people to question whether law could limit bestial acts committed by government. This led to questioning whether the idea of law is dead as a method of achieving order; whether the idea of negotiation, arbitration, and litigation as methods of settling disputes is outmoded; whether law can continue to be used between disputants, or whether force will now make all decisions.

If the best lawyer in the country, or the best legal scholar, had lived through the Manhattan Project — or even the fateful Spring and Summer of 1945 — that person would have surely found a way to bring to some law school somewhere the need to study the legal ramifications of atomic law or atom bomb law.

If academics had been fully engaged in working to create the United Nations, they would have suggested a new course in the law of the United Nations, or at least a significant addition to international law courses in 1945. Certainly they would have suggested using the UN Charter as an example of a treaty, rather than the old chestnut involved in *Missouri v. Holland*,<sup>8</sup> the ancient treaty with Canada on the migration of birds. And they would have insisted that the Nuremberg Principles be studied in detail, as an international agreement binding on the United States in the future and binding on all nations after its adoption by the UN General Assembly in 1946 at the request of President Harry Truman.

Of course, one must always go through the curriculum committee! And that can be a long and difficult process. But I know that at my own school, the University of Michigan, within a few years after the end of World War II, my dean, E. Blythe Stason, introduced a new course dealing with the new financial arrangements to be made in a Europe containing a defeated, but scientifically smart, West Germany, and an England and France with many other nations needing food, clothing, housing and new industrial plants. The innovative courses at

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8. 252 U.S. 416 (1926).

Michigan brought to the campus business lawyers from Western Europe, anxious to participate in building a new financial structure in postwar Europe. Dean Stason, like any law school dean in the 1940's, knew that law must change as financial and industrial realities change. He knew that there would be many opportunities for lawyers trained in Ann Arbor to think globally about loans and international contracts and new transnational corporations.

But why didn't he know, why didn't someone tell him, that law must also change as engineering and military realities change, that the very concept of law was threatened by the force of the atom bomb? The bomb had caused many to rush to prayer alone, abjuring the concept that reason and law can be used, must be used, if civilization is to endure. Why didn't someone tell my dean that the UN Charter and the Nuremberg Principles created a new field of law? Why didn't the contours of Peace Law begin to emerge? I do not mean to focus unduly on the dean of my particular law school. The same could be said of the deans of every law school, of the faculties of every law school, and of the deans and faculties of every medical school, of every graduate school, and of every liberal arts college. Why, in the Fall of 1945, did none of this happen?

There is little point in speculating. Perhaps the atom bomb was simply too big to think about, what with the end of the war and all. And its impact was really not understood among intellectuals who were not physicists or military people. The UN Charter was too small, in 1945, to think about — if you lived in the United States. The Nuremberg Principles were barely a ripple in the legal seas of Lake Michigan in 1945. And academics from nearly all disciplines kept themselves busy in 1945, and for many years after that, trying to absorb and deal with the massive number of GI's coming into their institutions.

But not the atomic scientists. They were the first professionals to organize, to deal with the facts of life — the new facts. That is natural for they were the closest to the corpses, they knew the most about the dangers. Dr. Owen Chamberlain shared his memories with me about one of the first actions of professionals in response to the atomic bomb threat. He remembers that:

A bunch of us at Los Alamos were getting together to warn the mayors of the 100 largest cities in the United States that now warfare had changed and we had to eliminate war. Otherwise our cities would be turned to melted glass. The sand around the base of the tower where the test bomb was exploded had melted and turned into a kind of crude glass. We took some of it and encapsu-

lated a chip of it in a lucite cylinder that could be used as a paper-weight or something and we sent these things to the 100 mayors, saying that war had changed and people must be alerted to the fact that war is more dangerous than it used to be.

Dr. Chamberlain left Los Alamos in April, 1947 and does not know what response the scientists received from the mayors. But already, in 1945, the Bulletin of the Atomic Scientists had been launched. Soon the warning nuclear clock was developed. But the scientists were virtually alone in their midnight ride to sound the alarm.

By 1950, 2,500,000 people throughout the United States and 500 million people in the world had come to understand enough about atomic bombs to sign the Stockholm Peace Appeal to end their use. But, still, where were the courses in Peace Law?<sup>9</sup> In Atomic Medicine? In Mental Health in the Nuclear Age? In Conversion to a Permanent Peacetime Economy?

## V. United States Actions Abroad

It must be that the policy of the United States government had something to do with the failure of intelligent people in this country to study and write and come to conclusions about the qualitative changes wrought by atomic energy used for destructive purposes, and about the qualitative changes inherent in the organization of the United Nations and the pronouncement of the Nuremberg Principles.

When I have attended meetings of the American Association of Jurists in Latin and South America since 1974, I have frequently ex-

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9. In the spring of 1950, Professor Louis B. Sohn, Bemis Professor of International Law at Harvard University, published his first collection of materials on world organization, *CASES AND OTHER MATERIALS ON WORLD LAW*. In 1956 he published a completely revised version of that casebook, now entitled *CASES ON UNITED NATIONS LAW*; a second edition was published in 1967. These books were on a very important subject, and one closely related to Peace Law, but they were not focused on that subject. Nor did Professor Sohn include in the basic documents supplementing his casebook *THE NUREMBERG PRINCIPLES*, which I have come to believe are basic to Peace Law and to an understanding of the individual professor's and student's responsibility to study and practice this legal specialty. At the other end of the spectrum, in form and date, *PUBLIC INTERNATIONAL LAW IN A NUTSHELL*, by Professors Thomas Buergenthal and Harold G. Maier, published in 1985, does not "explore the complexities of the law applicable to the use of force in modern international law," according to the authors.

pressed pride in the democratic traditions of my country. I am proud of those traditions, and I think it is important, in a foreign atmosphere where U.S. Government policies are under attack, to state this. I remain proud of the principles in the Declaration of Independence and their call to arms against an imperial power. I am proud of the principles in the Constitution and Bill of Rights, the Reconstruction Amendments and the 19th (women's suffrage), the 24th (no poll-tax) and 26th (votes for 18-year-olds) amendments. But when I have made such statements of pride, and given a little of the history that went with these written expressions of freedom and equality and justice, I have been met by educated answers from many Latin and South Americans who have told me, chapter and verse, exactly what the United States government and its troops were doing in their country at almost every moment in our history.

And when I have said that the United States took a step forward in 1945 by signing the UN Charter and by agreeing to the Nuremberg Principles, when I have said there was a magic moment when we were in favor of peace, they have replied, "But even in that brief moment, here's what the United States government was doing, covertly or overtly, in my country. And here's what your corporations, what we now call transnationals, were doing in my country at that moment." And they have described actions I had not known about, actions of my government and of leading U.S.-based corporations that violated the basic sovereignty of their nations.

Even in my ignorance of these unpeaceful acts, I could only count five or six weeks of U.S. commitment to the United Nations and the goal of permanent international peace. It was June 26, 1945 when the U.S. delegates signed the Charter at San Francisco. It was August 6, 1945, when the U.S. government dropped the atom bomb on Hiroshima with no advance warning.

This atomic explosion was not intended to be an act of the new United Nations. And it was not intended solely to end the war more quickly and to save American lives. It is clear from U.S. government records that there were two purposes in the dropping of the bomb in Hiroshima after Germany and Italy had been defeated. One purpose was to end the war with Japan. The other purpose was to prevent the Soviet Union, the other major power in the world, from participating in the defeat of Japan by conventional weapons, thus preventing the Soviet Union from playing a major role in the construction of peace in the Far East. The bomb became the first major step in the Cold War.

When the United States hosted the delegates from 46 countries in

San Francisco in the Spring of 1945, some leaders of our government knew that we were developing a bomb that would abolish all existing understandings about the balance of forces in the world. And some of the people who signed the Charter for the United States knew that their efforts would soon be against the United Nations and in favor of United States dominance of the world in an American century.

True, this dominance of the world was not to be obtained or continued in the style of Imperial England. This was to be neocolonialism — dominance by loan, by stepped-up use of the media, by use of the land of foreign powers as military bases for our atomic weapons. We would work sometimes in and through the UN, but with the bomb securely in our pocket, in direct violation of the new United Nations Charter, to be dominant by the threat of use of force and, where “necessary,” the actual use of force, as in Vietnam, Nicaragua, and Grenada, among other places.

## VI. Peace Law

Seeing events in this light changes markedly the task before us. It is not to ask why the United Nations has not done more. It is to learn from the UN how it survived this massive body blow at its very creation in order to support it effectively.

Today, the survival of the UN and its related agencies continues to be the basic problem in the face of specific, numerous attacks on the power, decisions, and budget of UN agencies by the United States government. Within the past few months, President Reagan has announced our withdrawal from the World Court, both as to the case brought against us by Nicaragua and on other “political cases.” The Joint Chiefs of Staff have recommended against U.S. ratification of a basic international document on treatment of combatants and war victims, the protocols to the 1949 Geneva Conventions, which are strongly supported by the International Committee of the Red Cross and others concerned about victims. Reagan has taken us out of UNESCO without debate or consultation with Congress. And the United States has cut its contributions to the UN by 20%.

Nonetheless, we — as people living in the United States of America, as citizens of the world, and as lawyers, and particularly as law professors who have such influence on the development of future leaders — must go forward. We must act. Peace Law, I believe, is a large step in the right direction.

Peace Law emerged out of the United Nations Charter, the Nu-

remberg Principles, other UN Covenants, Conventions and Protocols, and the fact of atomic weapons. It includes discrete portions of a number of fields of law: constitutional, international, administrative, legislative, labor, immigration, tax, criminal, tort, ecology — and with considerable attention to federal jurisdiction and civil and criminal procedure.

Peace Law has a goal, as do other traditional fields of law — contract law and real property law, for example, are not neutral; their goals are to support the enforceability of contracts and to uphold rights in real property. As the new economic system of capitalism arose out of the defeat of the old economic system of feudalism, new rules of law were necessary, and they created new fields of law, which vigorously insisted on achieving respect for and enforcement of written contracts and written deeds. Constitutional law has the significant goal of supporting the enforceability of the United States Constitution.

The goal of Peace Law is to bring about world peace by concrete measures to encourage peaceful resolution of disputes and disarmament. The major tools in achieving its goal are work in the United Nations and the principle of individual responsibility for continuing and expanding peace. Major participants in the field of Peace Law are, and must be, all of us: community activists, lawyers, teachers, concerned public officials, scientists, economists and other experts, judges, jurors, legislators, and men and women who work for a living.<sup>10</sup>

How to use Peace Law is becoming clearer each day as we respond to inquiries at Meiklejohn Civil Liberties Institute.<sup>11</sup> During one recent week, for example, Peace Law issues kept hitting page one, and phone inquiries came in from around the country. The government of Nicara-

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10. Later lectures discussed: *The Courtroom as a Forum for Peace Law; Congress as the Second Front for Peace; Is Nuclear War Illegal; UN Structures to Further Peace; The Economics of Peace Law; The Social Responsibility of Public Officials; Individual Responsibility for Peace; and Who Is Really Going To Wash the Dishes*. The accompanying selection of readings provided basic source material on each of these subjects.

11. The Institute, established in 1965 as a research center on civil liberties and human rights, added the *Peace Law & Education Project* in 1983 to assist practicing attorneys, *pro se* activists, judges, scholars, legislators, policy makers, and journalists working on questions as varied as the drafting of nuclear-weapons-free ordinances, defending against conspiracy charges in a prosecution of sanctuary workers, preparing a memo on the illegality of apartheid for a West Coast port commission, and writing *voir dire* questions for a civil disobedience case arising out of actions by the Emergency Response Network. The Institute has prepared peace law packets on the major defenses in civil disobedience cases, on the right to present such defenses, and case file summaries of 150 cases in the Peace Law Brief and Issues Bank.

gua had announced its suspension of certain civil and political rights in strict accordance with the provisions of an international treaty which it had signed, that is, the International Covenant on Civil and Political Rights. Significantly, President Ortega's announcement was almost exactly in the language of Article 4 of that Covenant and was limited in scope and in duration, as was President Lincoln's suspension of the writ of habeas corpus under conditions he no doubt perceived as similar to the conditions perceived by Ortega to exist in Nicaragua today.

Or consider the picture that ultimately emerged as United States armed forces surrounded Italian armed forces on Italian soil in connection with the hijacking of an Italian vessel and the surrounding of an Egyptian airplane. This incident can be analyzed with much more clarity by referring to Peace Law and the more familiar field of International Law. The latter does not cut as deep as the former, however, because International Law has no automatic commitment to the value of peace and has proved to be an inadequate match for another field, Military Law.

Daily reports in our press on the problems connected with what we call "Third World debt" are also much closer to analysis and peaceful resolution when they are studied in the context of Peace Law than when they are simply seen as money owed to the United States and to private banks by developing nations. Peace lawyers must ask hard questions, such as whether the borrowers had the authority to put up the particular collateral (if it is a publicly-owned public utility, for example), and whether the borrower followed the law of his own country in making the loan.

## VII. Dream vs. Reality

What would happen to the piece of paper called the UN Charter if the United States government assigned a military general and a university scholar to build an intellectual city whose sole purpose would be to maximize peace? What would happen if they were assigned to integrate the Nuremberg Principles into their work? Whom should they invite, and from what disciplines, to insure the success of their endeavors? Certainly their work would be improved by representation of the myriad number of new organizations developing across our country: Physicians for Social Responsibility, Lawyers Alliance for Nuclear Arms Control, Lawyers Committee on Nuclear Policy, Government Officials, and Educators, and Social Workers, and Business People for Social Responsibility. And today, unlike 1940 and 1945, invitees could

include members of, for example, the California Legislature's new Peace Caucus, and the Congressional Arms Control and Foreign Policy Caucus, and committees on international solidarity in many labor unions.

But it is counterproductive to spend time on these questions. I have found in my work as a lawyer, as a political person, and often as a parent and a wife, that "freedom is the recognition of necessity."<sup>12</sup> It is certainly a distant dream to think of the United States government assigning anyone to build an institution whose sole purpose is to maximize peace through disarmament, with no cost-plus contract.

What can strengthen us to go forward in working for peace, and using Peace Law as a valuable tool, is some reality. That reality is that the people of the United States, and of the world, are not limited in their capacity to demand and enforce peace by the current view of any government, including our own, that does not understand that their right to peace comes first. We are the people, and we have the power to change things. We have this power whether or not our government supports our efforts. We will be stronger when we acknowledge, overtly and without hesitation, that anyone who denies that nuclear war will result in ecocide is clinically insane.

We have this opportunity and responsibility regardless of any transient attitudes of so-called leaders, or failures of the media to give the UN, the UN Charter, and the Nuremberg Principles their proper place in the day's news. It is time to salute the UN for educating the people of the world, including Americans, about the horror and illegality of apartheid, for teaching us about starvation in Africa and facilitating distribution of food there, and for running refugee camps in many war-torn regions. It is time to welcome the integration of the Nuremberg Principles into the hearts and minds of millions of people in the United States and throughout the world, with its call to action for peace and against war.

To recognize the 40th anniversary of the atom bomb, to celebrate the 40th anniversaries of the United Nations and the Nuremberg Principles, and to participate in 1986 as the International Year of Peace, I propose that courses in Peace Law blossom in law schools throughout our country.

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12. See discussion of this phrase in Ginger, "Reform in the Chessgame of the Law," 1983 DET. COLL. OF L. REV. 1255 at 1261.