

are sooner quieted and the public is spared the difficulties usually attendant on the acts of a *de facto* officer.

The only possible criticisms of Professor Borchard's book are those which are minor and do not affect the work as a whole. There is some repetition, as, for example, where one quotation is repeated three times, and the same thought has been expressed in slightly different language in many places in the book. One could wish, also, that the whole volume had been more carefully digested and thereby rendered more compact and more useful. These flaws result largely from the fact that a great deal of the material originally appeared in the form of Law Review articles. There is also a failure to discuss fully the use of the jury in connection with declaratory judgments which opens a wide field of additional service for this remedy.

Only a carping critic, however, could find real fault with this great work. It is a mine of information and a credit to the scholarship of its author. To Bench, to Bar and to scholars it should prove a lasting and invaluable aid.

EDWARD R. FINCH\*

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NEUTRALITY, ITS HISTORY, ECONOMICS AND LAW. Prepared under the auspices of the COLUMBIA UNIVERSITY COUNCIL FOR RESEARCH IN THE SOCIAL SCIENCES. Vol. I. THE ORIGINS. By PHILIP C. JESSUP and FRANCIS DEÁK. 1935. pp. xiv, 294. \$3.75. Vol. II. THE NAPOLEONIC PERIOD. By ALISON W. PHILLIPS and ARTHUR H. REEDE. 1936. pp. ix, 339. \$3.75. Vol. III. THE WORLD WAR PERIOD. By EDGAR TURLINGTON. 1936. pp. xvii, 267. \$3.75. Vol. IV. TODAY AND TOMORROW. By PHILIP C. JESSUP. 1936. pp. vii, 237. \$2.75. New York: Columbia University Press.

In this useful series the authors and editor undertake to present the development of the law and practice of neutrality since about the sixteenth century, as exemplified in treaties and the practice of nations and prize courts. The first volume, dealing mainly with the seventeenth century but to some extent with the sixteenth and eighteenth, has brought together the contributions of treaties, court decisions and the views of early writers on contraband, blockade, enemy property, procedure and prize court practice, and neutral duties. It is important for it shows that the historic struggle between belligerent and neutral claims—the belligerent to prevent trade with his enemy, the neutral to continue that trade—eventuated in a compromise by which the neutral foregoes distinctly military aid to the enemy and the belligerent must permit non-military trade. Around this principle rules have been worked out, set forth succinctly by Mr. Jessup in the Preface (p. x) to volume three.

The second volume deals with the striking period of the French Revolutionary and Napoleonic Wars, from a historical and political, rather than strictly legal point of view. Yet the author emphasizes some of the legal issues which gave rise to political conflicts. The arbitrations under Article VII of the Jay Treaty, the evolution of the Orders in Council and the pecuniary claims made thereunder, the diplomatic controversy between the United States and Great Britain which preceded the War of 1812, the effect on both countries of the Napoleonic decrees, are ably sketched. While the point of view is largely British, and most of the material not essentially new, the arrangement is effective and the recital entirely competent.

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A second part does present new material, namely, a description of the economic effects of those twenty-two years of war on belligerent and neutral trade, especially the gains made and the losses suffered by neutrals. This was an intricate and difficult task, even when it rests on estimates, but greatly as the statistical research and the industry of the author are to be appreciated, one wonders whether the results achieved teach any lesson except that war disorganizes trade and creates a period of speculation in which some lose and others gain; although in general the losses seem far to exceed the gains, especially when belligerents play ducks and drakes with international law, as they did in 1793, in 1806-1812, and in 1914-1917.

Mr. Turlington's volume (vol. 3) on the so-called World War deals primarily with the economic effects of the belligerent measures on neutral interests, country by country. The British Orders in Council which gradually completely violated practically every legal safeguard protecting neutrals in the matter of contraband and blockade and by municipal prohibitions like blacklists and orders to British vessels, coaling stations, and merchants crippled trade in neutral countries, are classified and summarized and their economic effects traced or estimated. So long as Great Britain purports not to admit the illegality of the Orders in Council, the possibility of a limitation of armaments becomes a hollow mockery, for every nation that expects to be neutral (and prospective belligerents as well) must arm to the feasible limit to prevent similar impositions in the future. As Mr. Jessup suggests in the fourth volume, neutrals should seek protection for their legal rights in joint representations and common defense.

Sir Eyre Crowe in his famous memorandum of January 1, 1907<sup>1</sup> spoke of the British necessity for preponderance of sea power, but sagaciously remarked that such preponderance, if abused, will arouse feelings of resentment throughout the world, for which reason it must be exercised with the utmost benevolence and a minimum of provocation. That wise injunction was thrown to the winds in 1914-1917, and abuses were practised which seem likely in time to produce a widespread reaction against the British monopoly and its assumption of exemption from rules of law. It is a misfortune for humanity that the greatest neutral of all, the United States, failed to insist on the rights of neutrals, succumbed to the war fever and helped to drive the world back to primitive reliance on force instead of law as the arbiter of international relations.

In the fourth volume Mr. Jessup undertakes to draw together the thread of the earlier volumes and to present his conclusions as to what should be future neutrality policy, especially for the United States. It is regrettable that here we must record an anti-climax. The main conclusion that neutrals should cease to trade with belligerents but should cultivate only inter-neutral trade, is based not on the experience of history, so diligently pursued in the earlier volumes, but on the ideology of Article 16 of the League of Nations Covenant by which nations are to be coerced and starved into peace, a theory without roots in human experience. The theory has just come to an untimely but none too early an end, for it threatened the world with disaster, promising in effect peace through war. Had Mr. Jessup published his book six months later, in July instead of January, 1936, possibly a somewhat different conclusion would have been reached. Mr. Jessup is too good a student of law and history to purport to consign neutrality to obsolescence and in contrast to some teachers of international law who have worshipped at the

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<sup>1</sup> III GOOCH AND TEMPERLEY, *BRITISH DOCUMENTS ON THE ORIGINS OF THE WAR, 1898-1914*, (1928) 397.

League shrine, he concedes neutrality's legal survival and political necessity. But for some reason he seems also to be a believer in sanctions and purports to reconcile sanctions with neutrality by suggesting that neutrality is still possible through gaps in the Covenant, *e.g.*, when it is not possible to agree on an "aggressor" or when such a decision, as in the case of the Chaco War, is delayed for months or years after the outbreak of the war. But when such a decision is reached, the obligation of neutrality is transformed into an obligation of unneutrality, namely, sanctions.

The humiliating demise of this whole ideal structure makes it no longer necessary to attempt the herculean task of reconciling the irreconcilable, sanctions and neutrality; but it is regrettable that so earnest a student as Mr. Jessup should have permitted his thinking to be dominated by so unrealistic an idea. The divided loyalties he has perforce avowed make his conclusions ambiguous and of questionable validity. How can it be supposed that neutrals will ever agree not to trade with belligerents, or that belligerents will permit such boycotts? The very possibility would be ruinous to political and economic relations even in time of peace, and in war belligerents would be made desperate by the withholding of supplies they most need. Indeed, such a suggestion would rather compel the enlargement of the area of war, for belligerents would be stimulated and provoked to harass and prey upon neutrals and inter-neutral trade, forcing neutrals to become their enemies or their allies. As a method of preserving neutrality or of exorcising the scourge of war, the idea seems to the reviewer, with greatest respect to the admitted attainments of the author, his former student, little short of romantic. And to except foodstuffs from the total embargo, out of the "milk of human kindness" (p. 198) only seems to the reviewer to expose the fallacy of the theory and to defeat one of the author's own arguments in favor of non-intercourse. It is around foodstuffs that the principal controversies between belligerent and neutral have turned. To continue that trade alone, therefore, exposes neutrals to all the dangers from which non-intercourse was to liberate them, whereas foodstuffs are the one item that the powerful industrial nations of large population cannot, as belligerents, do without. If foodstuffs can therefore still be supplied, it is not perceived why other useful goods, not necessarily lethal weapons, cannot be supplied; nor is there any reason to believe that either neutrals or belligerents will support legally or factually the distinctions the author would draw.

The old cliché is revived that "neutrality" brought the United States into the Wars of 1812 and 1917, hence presumably the time has now come to try unneutrality. But the premise is false. It was the expansionists of 1812 (*cf.* Turner, Adams, Pratt), plus French deception and British and American blundering that produced the War of 1812, and stark unneutrality, not an "insistence" on neutral rights, that propelled us into the war in 1917.<sup>2</sup> Unhappily, the devotees of the League of Nations have had to make an attack on neutrality, especially American neutrality, the keynote of their policy, which consciously or unconsciously has been calculated to project the United States, in the name of the Moral Uplift, into the next European War. Whether the collapse of sanctions will bring us surcease from this propaganda remains to be seen. But it is regrettable that so competent a student as Mr. Jessup should have succumbed to an impractical and dangerous emotional appeal, the purpose and effect of which is to disparage neutrality, and, given the facts of international life, to undermine American independence and the

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<sup>2</sup> *Cf.* LANSING, WAR MEMOIRS (1935).

very definite interest of the United States to remain out of European and other wars.

And even though compromise was the method by which the conflicting interests of neutral and belligerent were brought to a state of equilibrium, that does not mean that the resulting agreement is fluid, unstable, unsatisfactory to both parties, and therefore uncertain and subject to unilateral change. Much of the law consists of a compromise between conflicting interests, as in the case of the police power and the fourteenth amendment, but the line drawn between them represents the law and is not necessarily uncertain. To throw doubt upon the law of neutrality is one of the methods employed to challenge its further utility, but it should not be successful. It is a distortion to suggest (p. 215) that a certain critic of unneutrality "apparently" objects to "that factual discrimination which an uneven balance of sea power between belligerents always makes inevitable." That critic has insisted that neutrality was *not* designed to cure or counterbalance the inequalities of nature. The United States obtained \$11,650,000 (not \$3,500,000, p. 149) from Great Britain in the arbitration under Article VII of the Jay Treaty. For Palmerston (III, viii) read Salisbury. There is practically no discussion of the question of armed merchantmen, or of the American insistence on the immunity of neutral passengers and crew on armed belligerent merchantmen, a position that never should have been assumed, and that led to the ultimatum of "strict accountability" and to the limb on which the Administration found itself ensconced on January 31, 1917. A little more sophistication and a little less devotion to an assumed Higher Morality, which seems mainly to produce visions and mirages and when put into practice, a fair degree of irresponsibility, (*cf.* Italo-Ethiopian sanctions) would do much to restore that detachment and integrity which underlies the principle of neutrality. It may be hoped that in time American traditions and international law will again recover the prestige which well-intentioned but ill-advised short-cuts to salvation have denied them, and that Mr. Jessup will then be found unqualifiedly among the defenders of genuine neutrality as the best, and for the United States, the only hope of peace and dignity, if not indeed, of survival.

EDWIN BORCHARD\*

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LAW OF FUTURE INTERESTS. By LEWIS M. SIMES. St. Paul: WEST PUBLISHING Co., 1936. pp. xv, 1666. 3 Vols. \$25.00.

The author's generosity in his Preface, in acknowledging his indebtedness to others, including this reviewer, might well have evidenced the undiluted strain of canniness derived by this author from his sandy-haired ancestry. A reviewer does find it hard to criticise a product in the preparation of which he is said to have had a hand. But this author needed no extraneous bulwark. His product has that outstanding quality which furnishes the most complete protection against carping criticism.

This is the first adequate textbook on the Law of Future Interests which has been written in either England or America. The well deserved reputation of Gray's *Rule Against Perpetuities* was earned by the careful historical exposition of a small fraction of the area of law treated in the present book. Professor Kales' treatise, excellent in those topics as to which he had made special research, contained an overdose of Illinois attitudes and lacked both sustained quality and comprehensiveness. No one except Professor Simes has organized this vast area

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