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The Common Law of Mankind. By C. Wilfred Jenks.

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BOOK REVIEWS

THE COMMON LAW OF MANKIND. By C. Wilfred Jenks. New York: Frederick A. Praeger, 1958. Pp. xxvi, 456.

In a recent address directed to some of the current criticism of the Supreme Court, Professor Freund made this acute observation:

> There are other and subtler consequences of the irresponsible attacks on the Court. For one thing, as we weaken the habit of respect for law and legal institutions, we disqualify ourselves for leadership in the movement—groping and fragile as it is—toward a common law of mankind. The atmosphere of cynicism and lawlessness is a radioactive fallout which not only contaminates our own lives, but by spreading a pall over our aspirations for a regime of world law, poisons our own and the world's future as well.[1]

This age-old aspiration of man for a regime of world law is, not unexpectedly, represented today by a wide range of views. For example, there is the talismanic solution of the immediate past president of the American Bar Association, Mr. Charles S. Rhyne. He has suggested,

> Man has not realized what law can do for him internationally, and that is the reason why law has not been used in this field as it can and must be. The basic ungrasped fact of our time is that the lack of the rule of law in the world community is today the greatest gap in the growing structure of civilization.[2]

Mr. Rhyne's solution is what he describes as an adequate world judicial system. This is the answer, he assures us, because "within nations law plus the courts has certainly brought peace. On such a record of accomplishment it is reasonable to believe that such a mechanism can do the same if utilized in the world community."[3] Mr. Rhyne urges the adoption of a "crash" program with the same concentration of brainpower and money used for launching the satellite and splitting the atom.

Certainly, it is not the intention of this reviewer to belittle "idealism." Undoubtedly many of man's "insoluble" problems would be nearer solution if we were all more idealistic and made greater effort to live up to our ideals. Nonetheless, proposals to achieve world peace through world law should be tinged with some degree of "realism." At a minimum, a plan should not be based upon inaccurate knowledge of what has gone before. That there has been no lack of fora—and competent fora—for the peaceful settlement of international disputes has been well documented. The real difficulty is that a state is under no legal compulsion to submit its international disputes to any tribunal, except as it may consent to do so.[4] This distaste for compulsory juris-

1. Freund, *The Supreme Court Crisis,* 31 N.Y. STATE BAR BULL. 66, 70 (1959).
2. Rhyne, *World Peace Through Law,* 44 A.B.A.J. 937, 939-940 (1958).
3. *Id.* at 999.
4. See BISHOP, CASES AND MATERIALS ON INTERNATIONAL LAW 57-58 (1953).

diction reflects, I suggest, not so much a lack of confidence in the "rule of law"[5] as a lack of confidence in what the particular rule in question might turn out to be. And does not this reflect in turn the nature of the so-called "society" of nations? This suggests that far more important for a plan for a regime of world law than a knowledge of history, is some understanding of both the nature of law itself and the relation of law to society—if indeed, this is not understanding one and the same idea.[6] By no means am I suggesting that there is any generally accepted concept of the nature of law or its relation to society. However, some acquaintance with the currents and cross-currents in the world of jurisprudence would, I submit, prepare one to accept the realization that there is no panacea in the institution of a world judicial system. There might even be those who would invert Mr. Rhyne's statement to: "Peace within nations has certainly brought law plus courts."[7] Law and order are so interrelated that the facts of life of "international society" would indicate that the regime of world law will be reached only by laborious step by step process —it will be a long hard pull. In this respect, I am reminded of a pertinent observation by Professor Jessup when near the formal beginning of World War II he spoke of "The Reality of International Law":[8]

> History has demonstrated that war cannot be abolished by fiat so long as the underlying conditions producing war are not cured and alternatives to war are not provided. Had the Covenant of the League initiated viable procedures for "peaceful changes," the Kellogg Pact would have had a real place in the international system. "Vaulting ambition o'erleaps itself" in affairs of kings and nations. None doubts the need for improvement in the organization of the international society, but few have the patience to build it slowly for posterity.

C. Wilfred Jenks is one of those who has that necessary patience. He has no less a sense of urgency than Mr. Rhyne. He too urges a massive collective intellectual endeavor. But I believe that he recognizes that the movement for a regime of world law must of necessity be "groping and fragile." In this collection of ten essays, gathered under the title *The Common Law*

5. Mr. Rhyne hastens to assure us that "the rule of law is not a new concept. There is no mystery about its principles. Throughout the recorded history of mankind the rule of law has meant the application of reason and fairness." *Supra* note 2 at 940. A recent and illuminating discussion by Professor Harry Jones demonstrates that, to the contrary, the "rule of law" is not so easily defined if one is interested in meaningful discussion. Jones, *The Rule of Law and the Welfare State,* 58 COL. L. REV. 143, 144-145 (1958).

6. Perhaps more realistic is the much more limited proposal by Vice President Nixon which recently made all the headlines. He suggested that the International Court of Justice be used to settle all *differences of interpretation* of *future* United States-Soviet *agreements.* 40 DEP'T STATE BULL. 622 (1959). It also appears that the Administration may make some effort to eliminate the "Connally Amendment" reservation to United States acceptance of the compulsory jurisdiction of the International Court of Justice by which are excluded "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America *as determined by the United States of America.*" See a recent discussion by Briggs, *The United States and the International Court of Justice: A Re-examination,* 53 AM. J. INT'L L. 301 (1959).

7. *Cf.* MORGANTHAU, SCIENTIFIC MAN VS. POWER POLITICS 116-21 (1946).

8. 18 FOREIGN AFFAIRS 244, — (1940).

of Mankind, Mr. Jenks considers "the strains and stresses to which international law is exposed, and the opportunities for expanded usefulness which lie before it in the opening decade of the second half of the twentieth century."[9] The author states his thesis in no uncertain terms:

> [C]ontemporary international law has outgrown the limitations of a system consisting essentially, or perhaps even primarily, of rules governing the mutual relations of States and must now be regarded as the common law of mankind in an early phase of its development.[10]

In equally unequivocal language, the author defines the title under which he has gathered these separate essays:

> By the common law of mankind is meant the law of an organized world community, constituted on the basis of States but discharging its community functions increasingly through a complex of international and regional institutions, guaranteeing rights to, and placing obligations upon, the individual citizen, and confronted with a wide range of economic, social, and technological problems calling for uniform regulation on an international basis which represents a growing proportion of the subject-matter of the law.[11]

While most of the essays were published separately, Mr. Jenks has brought them together in a single volume to expand upon his theme. Where necessary they have been revised and expanded. Read together, and keeping the author's purpose in mind, they cannot help but provoke the reader to further thought. Mr. Jenks is an international civil servant whose name is most often associated with the International Labor Organization, of which he is Assistant Director General. This volume illustrates why he is so highly regarded among those who make a study of international law their business. Indeed, the volume is a happy example of the subject of the final essay in the collection, a discussion of "Good Craftsmanship as a Factor in the Development of the Law." One need go no further to find an illustration of his assertion that "international law has moved decisively from the plane of speculative writing based on first principles to that of a skilled craft, which consists of interpreting, applying, and developing a complex and growing body of precedent and experience."[12] In these essays attention is directed primarily to the *development* of that body of precedent and experience.

In the first three essays Mr. Jenks applies his thesis to what he designates as three of the basic problems of contemporary international law as a legal system: the scope of international law, the universality of international law, and the impact of international organizations on international law. In these three essays the author avowedly uses rather broad generalizations somewhat freely, purporting to be illustrative rather than complete, provocative rather

9. P. 1.
10. P. 8.
11. *Ibid.*
12. P. 425

than authoritative. Consequently, it is difficult to resist the temptation to overload the review with some of the more striking and provocative generalizations. In considering these three essays one is struck by how successfully the author has painted with a wide brush on a large canvas, avoiding getting bogged down in details, while steering clear of the easy generality or cliche which avoids coming to grip with real issues.

In considering the scope of international law, the author is concerned not with the substantive content of the law but rather with its structure. He asserts that his concept, which views international law as the evolving common law of mankind, demands a complete recasting of the traditional arrangement and presentation of the law in order to satisfactorily present the newer developments.[13] Mr. Jenks seeks to illustrate his point that

> the emphasis of the law is increasingly shifting from the formal structure of the relationships between States and the delimitation of their jurisdiction to the development of substantive rules on matters of common concern vital to the growth of an international community and to the individual well-being of the citizens of its member States.[14]

Avoiding what he refers to as "verbal innovations rather than a solid rethinking of the structure of the law,"[15] the author concentrates on marking out the main divisions of "the common law of mankind," only one of which is the law governing the relations between States. Whether the author's organization of contemporary public international law results in a "complete recasting of the traditional arrangement and presentation" is subject to doubt. For example, if a budding legal writer took Mr. Jenk's organization as a table of contents for a new treatise on international law, I am not at all certain that he could more successfully deal with what are currently considered to be qualifications or exceptions to the traditional scope of international law. For example, I question whether raising "human rights protected by international guarantees, including civil liberties and political, economic, and social rights" to the dignity of a main division would substantially aid the treatise writer in explaining current developments—especally when one considers that the author suggests no "radical" departure in this respect. He looks essentially to the treaty for guaranteeing human rights, without purporting to reject the acknowledged limitations on law-making treaties.[16]

Nevertheless, the essay stands as a superb stock-taking on the state of international law at the mid-twentieth century. If I find no "complete recasting," there is in compensation not only an excellent analysis of the qualifications and exceptions to the traditional scope of international law, but also provocative signposts for future developments. Some examples of the more valuable aspects of this essay may be listed. There was a proper emphasis

13. P. 58.
14. P. 17.
15. P. 15.
16. Pp. 43-46.

on the impact of the law-making treaty.[17] The author points to the growing concern with the parliamentary law of international organizations.[18] Under a major division, which the author entitles "the law governing peaceful relations between States," one finds what is essentially the traditional core of the public international law of peace. The innovating point here is the annexation of what he designates as "the law governing economic relations between states." His suggestions are really not as startling as this rubric might indicate, for he emphasizes that this body of law is based mainly on the provisions of law-making treaties. But there is this tantalizing suggestion:

> One can conceive of a situation in which economic loss to one State resulting from action taken by another State unreasonably or in violation of its international obligations relating to monetary or economic policy might be regarded as giving rise to a claim for compensation. These, however, are speculations which outrun the present stage of development of the law.[19]

Another emphasis, deserving special attention, is on what Mr. Jenks refers to as "common rules applicable in virtue of international instruments."[20] There is a close analogy here to the growing concern among the law schools in the United States that adequate attention has not been given statute law, especially the jungle of statute law at the state level. There is a complex and rapidly multiplying network of multilateral and bilateral treaties establishing common rules applicable to numerous forms of international intercourse. In the past such rules have received scant attention in any systematic expositions of international law. Yet, as the author suggests, "There are . . . large sectors of international economic, social and cultural relations which are almost wholly governed by the provisions of such instruments."[21] He admits "the difficulty of disentangling principle from detail in this new mass of law,"[22] but those who work in the field of international law can no longer ignore this source of multiplying rules. As Mr. Jenks rightly emphasizes, while these rules are formally obligations between states to the treaties, they have no inherent connection with the relations of states as such but are "in essence . . . common rules which apply irrespective of frontiers to matters which are of wider than national concern or, reverting to the first chapter of Grotius, a law 'which is broader in scope than municipal law.' "[23] The author seems to be concerned primarily with the multilateral conventions which, while not universally applicable, do bind a large number of states. I would only suggest that the network of bilateral treaties dealing with common matters is not to be slighted, although

17. P. 30.
18. Pp. 24-25. *Cf.* Jessup, *International Parliamentary Law,* 51 AM. J. INT'L L. 396 (1957).
19. P. 43.
20. Pp. 49-51.
21. P. 49.
22. P. 50.
23. P. 51.

it may be even more difficult in regard to them to "disentangle principle from detail."

To this reader the highlight of the book was the second essay, "The Universality of International Law." It is only a slight exaggeration to say that there is hardly a page in this essay which does not contain some proposition calculated to make the reader either nod vigorously in approval or insert bold warnings in the margin to reserve judgment. The *raison d'etre* of this essay is succinctly stated by the author:

> Among the profound transformations which international law has experienced in the course of the last century none has been more significant or far-reaching than the transformation of the community within which the law operates from a family of nations based primarily on Western Christendom into a universal world community.[24]

This transformation is being given increasing attention. For example, the program for the 1959 spring meeting of the American Society of International Law was built around the theme of "Diverse Systems of World Public Order Today."[25] The author traces very briefly the historical development which by 1956—through the United Nations—resulted for the first time in history in a general international organization which for all practical purposes is of a world-wide character. With this development came the end to European dominance in world affairs. But within this formal framework of a universal world order, Mr. Jenks notes the two major cleavages, "one between traditions of constitutional government derived from the West and the Soviet challenge, and the other between the economically underdeveloped countries which seek and claim external assistance for their development and the industrialized countries

24. P. 62.

25. The program is listed at 53 AM. J. INT'L L. 396 (1959). Another effort to attack this problem, but with an entirely different approach, is found in McDougal and Lasswell, *The Identification and Appraisal of Diverse Systems of Public Order,* 53 AM. J. INT'L L. 1 (1959). A rather unsympathetic review of Jenk's book by one of the McDougal-Lasswellian persuasion is found in Feliciano, 68 YALE L.J. 1039 (1959). It is devoted in large part to a restatement of the McDougal-Lasswell article. I am reminded of a statement by Professor Lissitzyn made in commenting on a restatement of "The Policy-Science Approach to International Legal Studies" by Professor McDougal at the Summer Institute on International Law and The United Nations, held at the University of Michigan in 1955. "Professor McDougal's system . . . purports to clarify the role of law as an institution in the political processes of mankind. If law is to be integrated with the social sciences, as I strongly believe it must and will be, systematization in the framework of the concepts of the social sciences seems essential. Unfortunately, within the social sciences themselves, there is as yet no generally accepted conceptual framework. The Lasswellian model chosen by Professor McDougal is one of the several systems struggling for recognition. . . . I think we must recognize . . . that the seeming novelty and difficulty of Professor McDougal's ideas tend to be magnified by the strangeness to most of us of the Lasswellian terminology he often employs, and the semantic shifts it involves. Perhaps he should be more generous in translating this language into more familiar terms for the benefit of the uninitiated.

"In this connection, it is interesting that in Professor McDougal's discussion of the lawfulness of the H-Bomb tests in the Pacific, in his recent, truly excellent article, the criterion that emerges is one of reasonableness. Now this is a very familiar concept to all of us. In fact, if one reads the reputedly conservative and positivist treatise of Hyde, one comes time and again across the criterion being employed to appraise various doctrines and claims." UNIVERSITY OF MICHIGAN LAW SCHOOL, EIGHTH SUMMER INSTITUTE (1955), pp. 62-63.

to which they look for such assistance."[26] The author also stresses that "legally we have for the first time the formal elements of a universal legal order."[27] This formal framework of a universal legal order follows from the members of the United Nations being bound by the formulation of the sources of international law contained in Article 38 of the Statute of the International Court of Justice.[28] The author traces the history of the universality perspective from universality as expounded by the "fathers" of modern international law, through the more limited conception of western writers in the nineteenth century, to contemporary non-western protests against this more limited conception, and finally, as the author views it, to the universality established in principle by the acceptance of the sources of international law enumerated in Article 38 of the Statute. Thus, Mr. Jenks can assert that

> our concern now is with the adequacy of the substantive content of these sources of law on the world scale. In examining their adequacy we shall start from the principle that *the problem is not one of changing the bases of international law but of restating them in terms applicable to and understandable by the new national communities which now play so decisive a part in international life.*[29]

Having stated his outlook, the author then re-examines the several sources enumerated in Article 38 in order to make a tentative chart of the tasks confronting the international lawyer. Initially, he looks to the place and function of law-making treaties, international custom, and judicial precedent as elements in a universal legal order. Appropriately, he stresses the role which may be played by both multilateral and bilateral treaties. The author does not gloss over the continuing imperfections of the international legislative process with its limitations stemming from the nature of the world "society" of states, but it *is* the international legislative process and, as such, may be increasingly relied upon.[30] In discussing the role of international custom the author points out that customary law is no stranger to the non-western systems and suggests that one of the major obstacles to development in this respect may be the Soviet attitude towards accepted custom. He emphasizes that in the future it will be imperative to marshal the evidence of existing custom on a much wider geographical basis than in the past. As the author notes, this approach will require a major effort of collective research involving substantial use of Oriental and Slavonic languages.

But the substance of the essay on "The Universality of International Law" centers on "the general principles of law recognized by civilized nations as an

26. P. 64.
27. P. 80.
28. P. 78.
29. P. 92, emphasis supplied.
30. His discussion of law-making treaties raises the question whether the orthodox doctrine concerning treaties and third states must be re-examined. This is only hinted at in the text by Jenks, see pp. 30, 96-97. But see the suggestions by this reviewer in the MICHIGAN SUMMER INSTITUTE, *supra* note 25, at pp. 229-31.

element in a universal system." The author stresses that in deducing the law from general principles recognized by civilized nations we can no longer confine our purview to the civil law and common law systems. Of course, this raises the obvious question:

> Can we deduce a sufficient consensus of general principle from legal systems as varied as the civil law with its multifarious European, Latin American and other variants, the common law with its variants, Islamic law with its variants, Hindu law, Jewish law, Chinese law, Japanese law, African law in its varied forms and Soviet law to give us the basic foundations of a universal system of international law? Herein lies the heart of our contemporary problem.[31]

Mr. Jenks cogently points out the extent to which disparate elements have little relevance for a universal system. Specifically, he refers to ritualistic elements, family law, real property, and criminal law.[32] "Superficial contrasts sometimes mask fundamental resemblances."[33] It is these "fundamental resemblances" with which the author concerns himself in a broad survey of the several legal systems in relation to selected major areas of the law: first, the fundamentals of the law of peace; second, the contemporary law of international economic relations; third, the relationship of the law to human freedom and the equality of man. But before proceeding with this survey, the author in a few provocative pages asserts that the mutual interaction of the different legal systems has been greater than often recognized. Stressing the difficulty of the language barrier, the author cautions that he does not purport to survey in depth and points out that good secondary sources are available in western languages for the major non-western legal systems which facilitate this sort of tentative exploration.[34] In surveying and comparing as to certain fundamentals of the law of peace the author concentrates on the following provocative topics (1) Sovereignty within the law: he notes the relation of the domestic jurisdiction limitation, but asserts that in Soviet law alone does the concept of sovereignty as a power outside the law remain a major factor. He concludes that "the concept that sovereignty is limited by the law is familiar to and accepted by all of the major legal systems with the qualified exception of Soviet law."[35] (2) Third-party judgment: he points out that difficulties here concern the manner and extent of the application of certain general concepts as illustrated by judicial independence, third-party judgment in matters involving the State, and third-party judgment in international relations. (3) The author also concerns himself with some common principles concerning self-defense and *pacta sunt servanda.* (4) The author touches upon a more explosive and controversial area of the law when he turns to "the law of international economic relationships." Admitting that here we are still in large measure

31. P. 3.
32. Pp. 106-08.
33. P. 106.
34. Pp. 120-22.
35. P. 129.

groping towards the future, the author suggests that three broad principles may be identified around which much of the developing law of international economic relationships appears to revolve. The principles are

> the principle of respect for acquired rights subject to due process, the principle of consultation with others prior to action so directly affecting their rights and interests as to give them a legal title to such consultation, and the principle of a broad liability for legally recognized harm to others. The first of these principles has a long history in international law; the second and third, in their present form, are more recent developments.[36]

In this discussion, the author certainly will stir the reader to thought and speculation—perhaps even re-examination of firmly held beliefs. It makes for interesting and stimulating reading. However, the author is compelled to confess that "in the field of international economic relations . . . at best, there are gems in different legal systems of principles on which patience and skill may be able to secure a substantial measure of agreement; at worst, there is obscurity, controversy and complete uncertainty."[37] (5) Turning to the area of human rights, Mr. Jenks suggests that this field "presents a refreshing contrast with that of international economic relationships."[38] This rather optimistic assertion must be balanced by his admission that

> the concepts underlying the basic civil liberties are so general in character that they are susceptible of widely varying interpretations not only in different major legal systems but in different States belonging to the same major legal system. Even when a concept is understood in much the same manner in two different States, its practical application may vary considerably . . .[39]

for numerous reasons. Mr. Jenks does not underestimate the difficulties here, but he does not lose faith, suggesting that

> we have in the Universal Declaration of Human Rights the point of departure for a universal system of rights and guarantees common to all legal systems. To secure the recognition of these rights as binding on an international basis, to secure reasonable uniformity in their interpretation and application in a manner acceptable to the free world, and to devise adequate national and international procedures and guarantees for their effective implementation, may well represent a succession of tasks for several generations.[40]

It is the author's general conclusion that one can find the elements of a universal legal order in the major legal systems of the world, but he recognizes

36. P. 152.
37. P. 163.
38. *Ibid.*
39. P. 165. Thus, it is unfair to assert as one reviewer has that Mr. Jenks ignores the fact that different cultures may have different senses of "right and justice." Feliciano, *supra* note 25 at 1048.
40. P. 166.

that a sustained effort of intellectual reorientation in all parts of the world will be necessary to create and consolidate such an order.

In his third essay the author considers "The Impact of International Organizations on International Law," but one does not find the same degree of innovation and speculation found in the essay on "The Universality of International Law." However, this essay is an interesting review of the growth and influence of international organizations, and it stands as a finely drawn reappraisal of those aspects of international organizations which have most to offer in contributing to world peace. In reviewing the progress of the last forty years the author considers, for example, the legal status of violence and evaluates the impact of the Covenant, the Pact of Paris, the Nuremberg Trials, and the United Nations. He concludes, "To proclaim the King's peace is not, of course, to enforce it, and the problem of self-defense continues to be an acute one and has given us new forms of international co-operation such as the North Atlantic Treaty; but from the standpoint of legal evolution, the decisive step was taken by the renunciation of war as an instrument of national policy."[41] In discussing the impact on international law of the lack of a "secular arm" the author has some difficulty in assessing the "institutional significance and effect of the double crisis of November, 1956, when the United Nations was called upon to deal simultaneously with the Suez and Hungarian problems."[42] Most important, one finds constant emphasis throughout this essay on the broad variety of international organizations which are engaged in operational activities in the economic and social fields. The general organization, the United Nations, gets most of the public's attention. However, one cannot overlook the crucial role being played by the many specialized organizations in creating the conditions which make a well-ordered international society possible.

In the remainder of the essays, Mr. Jenks deals with particular problems as extensions of the general development of the first three essays. The fourth and fifth essays are, as the author describes them, "illustrations of the borderlands of international law and international politics."[43] In essay four he examines "World Organization and European Integration." He reviews those forces which were naturally conducive to the evolution of regional organization in Western Europe, namely, mutual interests and common strains of history. However, the author does not view World organizations and European integration as rival and alternative approaches to the problem of the future of Europe, "but essentially complementary tendencies, each of which can greatly strengthen the other."[44] The fifth essay concerns "International Law and Colonial Policy." It makes for most interesting reading as the author develops his proposition that international law has played a significant role in the past

41. P. 178.
42. P. 195.
43. P. 1.
44. P. 230.

in the liberalization of colonial policy and that international law has still a part to play in the promotion of self-government and the full enjoyment of human rights by all people.

In the next four essays, Mr. Jenks concerns himself with four fascinating examples of the impact on contemporary international law of certain developments in the social and natural sciences. In these essays the author shifts from his broad overview to an attempt at specific application of contemporary international law to four specific problems. First, in essay six entitled "Employment Policy in International Law," Mr. Jenks enters the controversial area of Keynesian economics. It is his contention after surveying constitutional provisions, statutory provisions, and "policy" papers, that there is a general acceptance by governments of a recognized responsibility for promoting and maintaining full employment. Further, he sees this obligation reflected in numerous international conventions. The author concentrates his attention first on an obligation of consultation in regard to matters of economic policy of international concern. But this legal obligation is essentially a treaty obligation—self-imposed. More controversial is his discussion of the possibility that "economic harm to one's neighbors resulting from failure to fulfill the international obligation to promote and maintain full employment" might be regarded as an international tort.[45] There will probably be numerous aspects of this essay as to which one would reserve judgment. The obligation which he would draw from Article 55 of the Charter of the United Nations is but one of these.

The impact of the natural sciences next hold the author's attention, and he successively concerns himself with "Atoms for Peace in International Law," "An International Regime for Antarctica," and "International Law and Activities in Space." These are valuable papers. They analyze in varying degree the multitude of legal problems which have been raised by the utilization of atomic energy for peaceful purposes,[46] the growing interest in the Antarctic in connection with the International Geophysical Year, and the space satellite programs now occupying so large a part of the daily headlines.

Mr. Jenks has certainly helped us take a step closer to a "common law of mankind." There will be disagreement on many particulars, but this the author anticipated. As he suggested in the essay on the "Scope of International Law,"

> It is not to be expected that such agreement [upon a new definition of the scope, province, and content of international law] will be readily or easily secured. There is likely to be considerable divergence of views on the subject and a long period of exploration and definition may be required before any substantial measure of agreement is

45. P. 299.

46. The author excludes from his discussion the use of atomic energy for military purposes. P. 305.

> reached. The present paper is but one of the many contributions to this process of exploration and definition which will be required for the purpose of formulating in a generally acceptable manner on the basis of current practice the alternative conception that international law represents the common law of mankind in an early stage of its development and comprises a number of main divisions of which the law governing the relations between States is only one.[47]

Mr. Jenks has made his contribution, and a major one it is. It is also a standing invitation to others to do likewise. However, when they do so, they will fail to take into consideration Mr. Jenk's development at their peril.

It is perhaps superfluous to add that this reviewer would find many points of disagreement as well as agreement. For example, the author—explicit as he is on other counts—never really makes it too clear, by implication or otherwise, what his conception of law is. It may well make a difference, and a re-examination of one's beliefs concerning the obligatoriness of law may have real relevance to numerous important conclusions. But one must remember what the author reminds us of, that his is only one of several recent contributions to this process of exploration and definition of the scope and universality of international law.[48] The important point is that efforts are being made, and from this diversity of opinion perhaps some consensus may be reached. Senator Fulbright, Chairman of the Senate Foreign Relations Committee, recently considered "What Makes U.S. Foreign Policy,"[49] and he spoke of a problem, closely related to Mr. Jenks' essays, which is one of the illustrations of those borderlands of international law and international politics. Asserting that the choice facing European democracies is this: "Federate or perish" and that "the task facing America is to so conduct itself that it will help nurture those tentative roots toward federation like Euratom and the Common Market that have managed to take hold," he concluded with these stirring words:

> In striving to bring this [grand design for a closer union] to pass in our time, we may make mistakes; but in striving, we may find our salvation. If we do not strive for it at all, our epitaph will read: They chose to stand still, and so were lost forever.[49]

And so it is for "the movement—groping and fragile as it is—toward a common law of mankind."

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47. P. 14.
48. The author lists some of the more important current efforts at p. 14. And see note 25, *supra*.
49. The Reporter, May 14, 1959, p. 18 at p. 21.