correlative policy of extending economic *privileges* to those and only to those nations which contribute to the maintenance of peace. Thus the joint declaration of August 14, 1941, made by President Roosevelt and Prime Minister Churchill announced a policy of economic favor as part of the program envisaged by their respective countries. In the fourth point of their declaration it was announced that these countries "will endeavor, with due respect for their existing obligations, to further the enjoyment by all states, great or small, victor or vanquished, of access on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity." This may be taken to be a corollary to the strong economic measures taken both by the British Commonwealth and by the United States against the Axis nations. Such a peace policy gives force and direction to the measures of non-intercourse and blocking represented by the "freezing" orders and related measures.

ARTHUR K. KUHN

THE SHIFTING BASES OF INTERNATIONAL LAW

Since the object of law is the protection of interests, the constant solicitude of the international jurist should be to note when interests change and how the law must change. Never in all history has there been so profound and so rapid a change in international interests as during the past quarter of a century. It would be beyond the scope of this editorial comment either to summarize the causes of these changes or to attempt their classification. Certain it is that the evolution of international society is swiftly taking the form of a revolution involving cataclysmic changes in social relations. Vast forces of an imponderable nature are at work. We cannot accurately appraise them or calculate their effects. We realize, however, that we poor humans are being swept along by these forces and that we gradually are jettisoning many old accepted political, economic, social, legal, ethical, and spiritual standards of value. About all we can do, as the current carries us along, is to note certain general trends which involve profound changes in the interests of international society, and hence alterations in the principles of law which may be applicable.

First of all, is the amazing political revolution which exalts the state above the individual and announces a new concept of sovereignty, namely, that it does not emanate from the people or from a supreme ruler, but from a political faction which absorbs the state itself. This new form of government might correctly, though paradoxically, be termed a *popular dictatorship*. We are witnessing in many nations a radical change in ideology. Even traditional democracies, such as France, are abandoning cherished ideals of popular sovereignty.

This new political concept completely annihilates systems of law and substitutes arbitrary procedure dictated by motives of expediency. International law, therefore, finds itself almost completely ignored by the devotees

https://doi.org/10.2307/2192567 Published online by Cambridge University Press

of totalitarianism. It is a good deal like a crippled ocean liner, sailing rather aimlessly, with no hospitable ports open to it.

Another trend to be noted is the concept of class rights that denies any legal status to the individual except as a member of a privileged class. This movement, which has had the effect of leveling down rather than up, is rapidly assuming momentum under the form of international labor unions or syndicalism. It cuts across frontiers, interferes with domestic matters, and claims special rights that transcend normal diplomatic relations. Before the rise of totalitarianism this laboring class movement found definite and sane expression in the International Labor Office at Geneva, which seemed destined to play an increasingly important rôle. At the present moment, one would be rash to prophesy whether this Office will ever again be able to function effectively within the ambit of normal international relations.

Still another trend is the concept of state capitalism in control of international commerce through ownership of raw materials, and power over finance, transportation, and barter. The state, either for purposes of offence or defence, is now definitely engaged in trade, and codes of commercial law which have been laboriously built up are now subject to governmental dictation. This results, of course, in an enormous curtailment of the freedom of the individual to engage in commercial ventures and emprises, except as the representative of the state.

The evolution and fate of the law of nations is unpredictable, though it is clear that the "new world order" of which Hitler and his criminal accomplices speak will be one where international law will play a negligible rôle or be discarded altogether. Even if these outlaws should be defeated, in the long run, there is a strong possibility that they may have succeeded in altering the character of European basic interests and interstate relations. The law of nations is based on the concept of the equality of peoples, on respect for human rights. If another concept of human interests issuing from totalitarian ideology should become rooted among the peoples who have been conquered and demoralized during the present war, it will be very difficult, if not impossible, to reassert the universality and ascendancy of international law.

This alarming situation places a heavy responsibility on England and the United States, should they be able to prevent world domination by Hitler and his allies. The reorganization of international relations and institutions will be a titanic undertaking. The specific task of the renovation of international law will present enormous problems to the publicists and jurists.

The very menace of the totalitarian concept would seem to indicate the main direction to be taken in the renovation of international law. Its emphasis must be on the rights of individuals and of democracies. We need to remind ourselves constantly that the primary object of law is the protection of the rights of individuals, and that the law of nations, as conceived by

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Grotius, was concerned with peoples rather than with sovereigns. The totalitarian concept, on the contrary, is the entire negation of law as a logical system having a long, natural, and historical growth, and obeying innate and ineluctable principles, *ex necessitate juris*. We must return to those principles, particularly where they apply to the rights of human beings who constitute the *aerarium vivum* of states. If this fundamental truth is kept in mind, the general trend of the renovation of international law will be to exalt and fortify that neglected branch of law, contemptuously termed Conflicts of Law by the Anglo-American jurists, and honored by the European jurists as Private International Law.

It is painful to have to admit that the insidious notion of law, as the capricious product of legislation or of administrative fiat, has long held sway in the fields of common law and international law. Statute law has become more important, while established principles of law have received less consideration. Many of the publicists in international law seem to have succumbed to this demoralizing influence, especially since the advent of the League of Nations. They have too often held that whatever the League ordained would be the supreme law of nations. Interest in the *science* of international law has therefore become greatly lessened. The pragmatic or empirical school has been in the ascendancy. In recent years attention has been centered too little on the historical and philosophical origins of international law. Stress has been laid on what the law ought to be—*lege ferenda*—rather than on existing law—*lege lata*. A return to first principles is imperatively demanded if the law of nations is to be restored and renovated for its sacred function in the new world order.

The task set before us would seem to be threefold: first, to determine the exact nature of the interests to be protected in this new world order; second, to re-examine and re-assert the fundamental principles of international law, the *fontes juris gentium;* and third, to oppose to the totalitarian concept of the state the concept of the inherent, inalienable rights of human beings. Along these lines it may be possible to accomplish the restoration and renovation of international law to meet the needs of a changing world order.

PHILIP MARSHALL BROWN

THE LEGISLATION OF THE PEACE CONFERENCE

Out of the depths of that sadness and sense of discouragement which the war must bring to rational and humane persons, there radiate gleams which relieve the darkness. Among these gleams the current emphasis upon the necessity for studying now the problems of the post-war world are among the brightest; here is hope for the future. During the first months of the war there was much stir of post-war planning in England, and that activity crossed the Channel and embraced groups in France, in the then neutral countries, and, surreptitiously, even persons in Germany. Then there seemed to intervene a period when the exigent demands of the immediate

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