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Book Review

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BOOK REVIEWS

SPACE LAW AND GOVERNMENT By Andrew G. Haley New York: Appleton-Century-Crofts, 1963. Pp. 608. \$15.00.

The nature of law is such that its formulation into positive rules normally, if not invariably, follows rather than precedes human and social experiences. Sometimes this is deplored as an unwholesome lag between law and social realities. However, to some extent a lag is inevitable, since rules are designed to regulate human relationships, and there can be no occasion to formulate rules until the relationships come into existence. Sometimes these relationships exist by way of anticipation of actual association, and codes of rules may be devised in advance of such association. But, even in such cases, the rules are normally projections of known rules based on previous experience from analogous relationships.

With regard to the increasingly lively topic of space law, the problem seems to be whether we have the raw material at our disposal to devise a regime of law for outer space before substantial human relationships, and their attendant problems, arise there. There seems to be a general consensus of opinion that it would be highly desirable to have human activities in space regulated by law before such activities become sufficiently numerous and complex to generate collisions of national interests. A primary stimulus for this concern is the fact that the two states that have manifested so far a capacity to penetrate into outer space are the two power colossi of the world that maintain habitual or instinctive attitudes of mutual antagonism. It is feared that if this rivalry is permitted to accompany the activities of these two powers into space, without more in the way of regulation than uncertain projections into space of existing principles of international law, new opportunities for quarrels will arise, with the spectre of the ultimate catastrophe of nuclear war lurking nearby. It is a thoroughgoing exploration of the possibilities of such a legal regime that is the theme of Andrew G. Haley's SPACE LAW

He speaks from the standpoint of a government lawyer who has had extensive and intimate dealings with agencies and institutions of a governmental or professional character having to do with nuclear developments and space exploration. His task has been to construct and operate the legal frameworks within which the scientists labor. In the process he has become conversant with scientific concerns, and is able to bring to his discussion of legal problems a good bit of scientific analysis to illustrate the practical effects or feasibility of applying various legal rules to outer space relationships. The book abounds in references to the various organizations and agencies carrying on the scientific work related to space exploration and in quotations from persons connected with them. If this sometimes gets tedious, it nevertheless represents a valuable collection of this type of information.

Mr. Haley is clearly optimistic and enthusiastic that a viable regime of space law can be worked out, but he stops short of a sentimental belief in any inevitability of the happy ending. As partial support for his thesis of a possible, and perhaps probable, satisfactory evolution of law to encompass space problems, he analyzes the development of international law, particularly with regard to the period of the discovery and colonization of the Americas. He also discusses current international organization and cooperation for specific purposes, and considers particularly significant the attitudes and accomplishments of the International Geophysical Year.

His basic attitude toward law is overtly aligned with natural law theories. Only in them does he find any reality, or any theoretical basis for evolving a law of outer space. We must be flexible in our approach, and conscious that our overriding obligation is to do what is just and rational under the circumstances that we will find confronting us in outer space. We should not (or perhaps cannot lawfully) extend into outer space in a positivistic fashion our existing doctrines of international law where they would be irrational or absurd. And any rules we may fashion in anticipation of experience in outer space must necessarily be tentative and subject to revision as experience demonstrates need. Already certain broad principles are urged for acceptance, however, such as

the one that outer space and celestial bodies shall not be subject to appropriation and that rules for outer space shall not be unilaterally promulgated by individual states.

One specific issue that has engaged the attention of many commentators is that of the dividing line between "airspace" and "outer space" The need for such a demarcation is generally conceded. Mr Haley discusses various suggestions, and rejects them all in favor of the "von Karman line" This represents the point at which atmospheric navigation and propulsion of space craft, sustained by fuel and the original thrust from the earth's surface, ceases and space navigation, generated by the centrifugal forces of the motions of the earth, takes over This is all explained in considerable technical detail. While this point in space cannot be established with complete precision, with reasonable consistency it remains fairly close to an altitude of about 275,000 feet, or 50 miles. But there is less precision in explaining why this particular factor is of decisive importance in establishing this dividing line. It is rather vaguely suggested that this represents the extent of control of celestial regions from the surface of the earth, somewhat analogous to the theory whereby the extent of the marginal seas was determined.

Despite Mr Haley's adherence to the natural law outlook, he nevertheless seems to think it may be too narrow to encompass the needs of space law This is because he considers that natural law is limited to being anthropocentric, and can be summarized by the injunction to "do unto others as you would have them do unto you." Our space law must contemplate the possibility, which can be demonstrated scientifically to be a high probability, of our coming into contact with intelligent, sentient beings elsewhere in space. Behaving toward them as we would have them behave towards us might be a formula for war and disaster if their needs should be drastically different from ours; under such circumstances trying to be nice to them by mentally putting ourselves in their place, which is such a laudable attitude in intra-terrestrial affairs, might be wholly inappropriate. However, this seems like a naive and unnecessarily restricted view of natural law While it may be true that natural law

is "anthropocentric" in the sense that hitherto there has been no occasion for its application to other than men of earth, its concepts of the just and the rational are not necessarily so limited. If we look upon our rational processes and capabilities as our link with the infinite, and as the essence of the natural law theory, there is no impediment to their operating successfully on whatever problems or circumstances that may be presented to human intelligence, including that of how to deal with sentient, non-human beings. The difficulty would not be in the theory of natural law, but in the accuracy and efficiency of its application in unaccustomed circumstances.

The last chapter, dealing with "Metalaw", forces the mind to range over the staggering possibilities and issues of law as applied to space and the sentient beings we may expect to encounter there eventually. From our ancient history astronomers have unfolded to us concepts of the infinite physical dimensions of the universe. Long acquaintance with these concepts permits us to view with equanimity the infinitesimal physical scope of our earth in the astronomical scheme of things. We are less attuned to the philosophical implications of space, and their particular legal manifestations. But man's penetration of space brings such issues forcefully before us as practical realities, perhaps minor in scope at the moment, but of unlimited potential expansion. We are going to have to inform ourselves of these issues so as to bring our best intellectual analysis to bear on them. We are in the first pioneering stage of space activities — figuratively, Columbus has just returned from his first voyage across the Atlantic. Informative literature is indispensable to permit us to analyze our pioneering efforts and conduct them intelligently. With regard to the legal aspects of these developments Mr. Haley's book represents a substantial contribution.

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