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MYRES S. MCDOUGAL DISTINGUISHED LECTURE

LOOKING, STARING AND GLARING:
MICROLEGAL SYSTEMS AND PUBLIC ORDER .... *Michael Reisman* 165

The University of Denver College of Law was honored to have Professor Michael Reisman, Hohfeld Professor of Jurisprudence at Yale University Law School, as its guest speaker for the seventh annual Myres S. McDougal Distinguished Lecture. Professor Reisman chose to address the topic of microlegal systems and their role in the public order, and he notes that his objective is "to alert and sensitize scholars and the diverse official, as well as non-official, custodians of the private sphere or civic order, to the fact that key aspects of individual lives are affected by microlegal arrangements." In his remarks, Professor Reisman discusses the norms of eye communication and draws some generalizations about the law in microsocial settings. Specifically, he states that "[t]here is a rule and an attendant set of expectations about proper subjective and objective responses to norm violation, intimating some sort of system for enforcing the norm." In addition to microlaw which accompanies microsituations, there exist microsanctions which serve to maintain the norm. Professor Reisman concludes his remarks by stating that although microlegal systems may encounter rejection by jurisprudential scholars and remain low in visibility, their "significant effects . . . on social order and psychopersonal organization" should not be ignored.

ARTICLES

THE TREATY POWER OF THE
EUROPEAN ECONOMIC COMMUNITY ..... *Paul B. van Son* 183

To aid the understanding of the European Economic Community's treaty power, Mr. van Son first gives us a background of the legal documents which created this power, particularly, the Treaty of Rome. Next, he poses six hypothetical models in which he discusses how a court would apply the treaty power to each in light of past court opinions. From this, the author attempts to contrast the theoretical development of the treaty-making power with the EEC treaty-making procedure in practice. Mr. van Son illustrates the conflict between the progressive and forward-looking evolution of the treaty-making power espoused and bestowed on the Community by the European Court, and the practical application of that power. He contends that this tension continues to be the major problem confronting the Community with respect to its treaty-making power, and it arises mainly from the ongoing political struggle between the Commission and the Council. It is generally agreed that the European Court "is leading both the Council and, at times, the Commission, toward the practical application of

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a treaty-making power that permits the Community to act as a fully independent international legal personality."

TERRORISM AND THE LAWS OF WAR ..... *Alfred P. Rubin* 219

Professor Rubin begins by distinguishing the "law of peace" from the "law of war" and then attempts to clarify the underlying perceptions of the law of war as they have been growing in regard to "irregular" combatants. Specifically, the author contends that "recognition of 'belligerency' is frequently denied for political reasons, but recognized by implication when the legal results of recognition are sought by states who simultaneously deny the overt label. Thus 'terrorists' may be labeled 'criminals' while in fact treated as 'prisoners of war' when captured by a state denying that the law of war applies even to that particular outbreak of political violence." Professor Rubin scrutinizes treaties and codifications of the laws of war, including the latest attempt of the international community to address entitlement prisoner of war status, the 1977 Geneva Protocols. He proposes that these codifications are too narrow, resulting in a pattern of prescription that is "unsatisfactory" and "inconsistent" with the most basic precepts of humanitarian law. In conclusion, the author contemplates that the muddled legal categories of soldiers and irregulars are, in practice, becoming irrelevant due to the humanitarian legal protection which nation-states currently afford to common criminals and to participants in armed conflicts of non-international character.

THE USE OF DISCRETIONARY AUTHORITY BY INTERNATIONAL ORGANIZATIONS IN THEIR RELATIONS WITH INTERNATIONAL CIVIL SERVANTS ..... *Bruno Michel de Vuyst* 237

This article reviews the "exercise of discretionary authority by international organizations with respect to treatment of their staff," and it then examines "the reactions by some international administrative tribunals to such exercise of discretionary authority as perceived through the judgments of such tribunals . . . ." Mr. de Vuyst starts by noting that the source of international administrative law is primarily international organizations, rather than general principles of law. He then turns to the nature and functions of international organizations and concludes that certain inherent characteristics therein necessitate executive discretionary powers with respect to treatment of a staff, so that flexibility and the ability to act may be preserved. After lengthy analysis, it is concluded that administrative tribunals have allowed international organizations a wide berth in exercising their discretionary authority with regard to their staffs so long as the authority is not wielded deviously or unreasonably. Mr. de Vuyst closes by noting that this judicial reluctance to override the decisions of an international organization is correct because the role of an international administrative tribunal is to adjudicate, rather than to legislate.

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