

January 1944

The New International Code

W. W. Grant

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

W. W. Grant, The New International Code, 21 Dicta 187 (1944).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

The New International Code

BY W. W. GRANT*

The world political structure has always been irresponsible. This is true for three reasons, among others:

A. It has never had any definite form or type of organization, and has been based on rights rather than duties.

B. It has no well-defined jurisdiction, i. e., among other things with reference to dependencies, colonies, mandated territories, conditional independents, directorates, vassal states, etc.; and

C. It has never had any impartial means of enforcement of its decrees.

To a considerable degree this has resulted from the lack of an international code which would meet the three requirements referred to.

The preservation of the freedom of nations as such is dependent in its degree on the same requirements as exist with regard to individual liberty—*international* freedom as opposed to *intranational* freedom. The principles of freedom differ only in degree. Of freedom of the individual, we say the freedom of one person ends where that of the next begins. Complete individual liberty to the point of license is not the test, but the common good. The greatest amount of freedom for the greatest number. This is guaranteed by the Bill of Rights in this country, for the enforcement of which we have independent courts.

Nevertheless, individuals submit to all kinds of limitations, restrictions and regulations for the enjoyment of their liberties. To drive a car, one submits to limitations with reference to speed, parking, rights of way, rules of the road, etc. Otherwise no one would be free to drive a car—it would be too hazardous. People used to dump garbage in the streets, with resulting epidemics. Now we have a sanitary code that we all obey. No one may today build a slaughter house in a residence or business district. In short, there are all kinds of restraints which are absolutely necessary when people live together in large numbers. These restraints make it possible for them to enjoy rights which they otherwise could not do at all. As people live closer and closer together liberty, freedom of action, is more and more restricted, and it has to be. If each individual were possessed of absolute freedom of action, the result would be anarchy. We have to have laws and codes, because liberty exists only under law.

The same general observations hold true with reference to international relations. Most of the discussions we hear today concern types of organizations. Extent of jurisdiction and means of enforcement are

*Of the Denver bar.

largely ignored. The most frequent argument against international organization is that we must not surrender an absolute sovereignty.

Surrender of sovereignty—what does it mean? There is no legal method I know of whereby we can surrender our sovereignty. We can of course agree not to use power, and that is different from surrendering it. Every treaty we have entered into involved some kind of a self-imposed limitation.

It is curious that the same kind of an atmosphere existed on the part of the states when our Constitution was born. George Mason, of Virginia, one of the three who did not sign the Constitution, made the ablest and most coherent argument against it. In summary, he contended the people would not be secure in the enjoyment and benefit of the common law because it was guaranteed only by the states, and the laws of the general government would be paramount to the laws of the several states—which latter, in itself, was an objection. In addition, he contended that the federal judiciary would absorb the judiciaries of the several states, and that state legislatures would be restrained from laying export duties on their own products, etc.

Pinckney said: "Nothing but confusion and contrariety could spring from the experiment. The states will never agree in their plans. The deputies to a second convention coming together under the discordant impressions of their constituents will never agree."¹ Pinckney went on to say he was not without objections to the plan, but apprehending the danger of general confusion and an ultimate decision by the sword, he should give it his approval.

Franklin said there were some things he did not approve of in the plan, but he was not sure he would never approve of them. However, the older he grew the more he doubted his own judgment and the more respect he had for the judgment of others. Most men as well as most sects in religion thought themselves in possession of all truth. Steel, a Protestant, in a dedication, tells the Pope "that the only difference between our churches in their opinions of the certainty of their doctrine is, the Church of Rome is infallible, and the Church of England is never wrong." He expresses the wish that every member of the convention who had objections to the Constitution would, on this occasion, doubt a little of his infallibility—an admirable attitude at the present time in the matter of an international organization.

Americans have addressed themselves to all kinds of material problems with conspicuous success, such as science, invention, industry, business problems, etc. They have never wholeheartedly devoted themselves to the solution of human relationships. The result is, they have always had something second-rate.

¹Mason wanted an adjournment and a second convention.

It is the insistence on absolutes that makes wars. Democracy is not something divine, every phase of which must be accepted without argument, like the Divine Right of Kings, or Fascism or National Socialism. The difference between Nazism and Democracy is the difference between Germany and America, and that is the difference between credulous acceptance and critical inquiry. When political truth is held to be absolute, and is the standard by which loyalty is measured, the only solution is force.

Every nation opposes submission of what it calls its vital interests to the judgment of other states. Every nation considers every other nation prejudiced, or incompetent to judge. An atmosphere of mutual distrust exists. That is the kind of atmosphere which exists today, and the same kind of atmosphere in which our Constitution came into being.

Individual freedom is relative. The freedom of one is limited by the freedom of others. The freedom of cities and communities in the United States is relative. The only way in which nations in the family of nations can enjoy freedom is that it shall be relative. In other words, duties and responsibilities must be co-equal with rights.

The absolute as applied to anything is unchangeable, and can be neither limited nor regulated. As applied to the rights of nations it is synonymous with international anarchy—a condition that makes war inevitable. We must come to regard the independence of states as relative. When sixty nations, proudly proclaiming the absolute nature of their rights, rush periodically into war, they are not free—except to commit suicide. While boasting that they recognize no law but their own will, they nevertheless do obey one law—they are slaves to their own lawlessness.

Liberty does not exist with reference either to an individual or a nation, without freedom from absolutes. We must have some form of international organization to maintain peace. When a row breaks out in some small country whose people we don't know and whose language we don't understand, it can put your boy into a uniform, into the cockpit of a bomber, and perhaps into a grave under an alien sky. Those are the consequences of the absolute.

People are always saying that human nature does not change. That is the argument of defeatism. Social organizations do change. And they have been changing ever since the advent of the first man. In the evolution of society the unit of social organization constantly has been changing—from the individual to the family, to the tribe, to the village, to the town, to the city, to the county, to the state, and to the nation. At every change, we were told that human nature does not change. Yet the evolution of history steadily passed them by. Why should we suppose, in the light of that evolution, that the present na-

tional setup of the world is the last word? Does history and evolution stop here, and stand still? Is there any reason to suppose that further changes, that social units of greater size and greater complexity will not come to pass? History may repeat itself in certain superficialities of method and experience, but it does not go back, and the law goes along with it. The only constant in history has been change.

In the Middle Ages we had the wagers of law, trials by fire, by water, compurgation, trials by combat, etc. For the settlement of the rights of individuals they have vanished. As between nations, however, we have not progressed beyond the stage of trial by combat. That does not mean we will not progress beyond it. After all, international law, as such, has been in existence less than five hundred years in the whole period of recorded history, and it must develop and evolve as did the law within nations.

Nothing was done during the last war in the way of plans for an international order till the fighting was over. Then the League of Nations was sprung upon the world without adequate opportunity for thought or discussion. This time, under the leadership of Judge Manley Hudson, Judge of the Permanent Court of International Justice and Professor of International Law at Harvard, a code has been worked out by groups in eleven American and two Canadian cities. I had the opportunity of being a member of the Denver group. The culmination of some two years work was announced March 27, 1944, by the Carnegie Foundation.

This code is simple in structure. It has been translated in half a dozen foreign languages, and articles have appeared in dozens of papers and magazines.

There are six postulates constituting the essentials of an effective legal order in a world of states. These are the premises on which are based ten principles which form the basis of the international law of the future, and emphasize the duties of states as well as their rights. There are then twenty-three proposals which are suggestions to make the principles effective.

This code has been printed by the American Bar Association and distributed with its Journal. Every lawyer must read it for himself.

Suffice it to say that the scheme is very elastic. It makes use of various existing organizations such as the Postal Union, I.L.O. and others, and makes provision for the creation of new agencies to fill special needs. There are no ready-made solutions, but methods are provided by which they can be worked out in the future according to the "wisdom of the times."

As illustrative, postulate 5 provides: "Any use of force or any threat to use force by a state in its relations with another state is a matter of concern to the community of states."

Principle 8 reads as follows:

"Each state has a legal duty to take, in co-operation with other states, such measures as may be prescribed by the competent agency of the community of states for preventing or suppressing the use of force by any state in its relations with another state."

It will be noted that the principle springs directly from the postulate. The proposals in this connection consist in provisions for a court of international justice, a definition of its jurisdiction, and means for the enforcement of its decrees. It will thus be seen that the whole procedure is logical and orderly, and the various steps are more or less incontrovertible.

Space does not permit amplification of the various postulates, principles and proposals. I refer you to the printed copy.

When the history of this age is written, what it is and what it has accomplished will be more visible from its laws than from the figures of men. We will have the Social Security, bank guaranties, and matters of that sort. In the field of international adjustment and development we have lived in the age of two great wars, and this period may well come to be known as that in which men struggled to devise means and methods for the preservation of peace, and these means and methods will be found in our international laws.

"Since the origin of society, each unit of our race has struggled on in his allotted path through joys and griefs fashioned for the most part by the invisible network of habits, customs, and statutes which surround him on every side and silently shape his daily actions. Thus, the history of jurisprudence becomes the history of the life of man, and the society of distant ages is more distinctly presented to us in the crabbed sentences of codes than in the flowing rhetoric of the historian." *The Wager of Law*, by Henry C. Lea, Philadelphia, 1866.

The development of peace is an example of evolution. It is not to be supposed it will be easily attained. All the forces of history, however, point out that it is in order at the present time. One hundred years from now, when China has been industrialized and politically organized, when Russia has been developed, when the teeming millions of India and the Malay Peninsula have attained organized industrial development and government, the United States may not be the strongest nation in the world. As a matter of fact, its existence may depend on an established, orderly procedure for the settlement of disputes. It is in our national interest at the present time to set such a system under way, as well as in the interests of humanity in general.