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Pathways in International Law (Book Review)

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BOOK REVIEWS

PATHWAYS IN INTERNATIONAL LAW. By Arthur K. Kuhn. New York: The Macmillan Company, 1953. Pp. ix, 240. \$4.00.

The name Arthur K. Kuhn is indeed not unknown to any student of international law and to the many readers of the "American Journal of International Law." His numerous articles and editorials in that journal have caused him to be known as an international lawyer keenly interested in the many problems confronting the nations of the world and which, directly or indirectly, play an important part in the maintenance of international peace and security.

Pathways in International Law, a title perhaps suggested by Mr. Justice Hughes' book, *The Pathway of Peace*,¹ is a personal narrative in which Mr. Kuhn records the part that he has played, in his long and distinguished career, towards the advancement, promotion and development of international law. In this well-written and interesting book the reader finds what might otherwise be referred to as the memoirs of a most conscientious and industrious international lawyer. The author, in autobiographical style, tells a story, of interest and importance both to the layman and the lawyer alike, of one man's professional career "both as a practitioner and as a participant in efforts to substitute law for war."²

The book not only reveals a man of great talent and industry but a most orderly lawyer who doubtlessly kept an extremely accurate diary of his daily activities. In a well-organized and chronological fashion the reader is made familiar with the author's career from 1893 until the present. At the same time the reader will find interesting sidelights, and perhaps gain a new perspective, about many outstanding events of international significance.

In 1893, while a sophomore at City College, the author participated in a contest sponsored by the American Peace Society. The assigned topic was "The Economic Waste of War." He suspects that his having won one of the intercollegiate prizes in this contest determined his future interest in international affairs and perhaps also in international law. He pursued his law studies at the Law Department of Columbia University at a time when the adoption of the so-called case method of law teaching was still in its experimental stages. The author states that this method, introduced at Columbia by Dean William A. Keener, supplanted the professorial or lecture method which had formerly prevailed. At this point the author expresses the view that ". . . [a]s a mental exercise it was probably unequaled by any other system."³

Doubtlessly this was an extremely important formative period in the career

¹ HUGHES, *THE PATHWAY OF PEACE* (1925).

² P. 1.

³ P. 7.

of Arthur K. Kuhn. It was in the first year of the law school that he became acquainted with John Bassett Moore. Upon graduation from law school the author served a clerkship and in 1904 enrolled as a graduate student in the Law Department in the University of Zurich. It was at Zurich that he met some of the outstanding men in international legal literature including Friedrich Meili and J. C. Bluntschli. Since the author has always had a preference for law teachers who have been in active practice he refers to Meili as a jurist after his own heart.⁴ At Zurich the author received sound and thorough training in public and private international law and in comparative law. Zurich also offered the opportunity to observe the difference in method between the American system of instruction and the European system which places a much greater stress upon legislation rather than upon "jurisprudence" (decisional law).⁵

By virtue of an extremely interesting law practice Mr. Kuhn played a part in many fascinating and extremely important cases. A reading of *Pathways in International Law* will present an array of outstanding jurists, great statesmen and distinguished teachers and lawyers. A reading of the many interesting incidents, conferences, symposia and projects in which the author was privileged to participate will cause the reader to appreciate how much can be done in the cause of law and peace by a lawyer of industry and ability.

With remarkable accuracy of statement the author refers to the part that he has played in the trial and appeal of many leading cases. For example, the important New York case of *Johnston v. Compagnie Generale Transatlantique*⁶ was finally argued before the Court of Appeals upon the brief written by the author and resulted in the unanimous opinion of the Court of Appeals which reversed the holding of the Appellate Division and of the Supreme Court. Judge Pound, who wrote the opinion in that famous case, refused to follow the reasoning of the leading case decided by the Supreme Court of the United States.⁷ The New York court, unlike the Supreme Court of the United States, reasoned that comity did not rest upon reciprocity but rather upon the persuasiveness of the foreign judgment. Commenting upon the decision in the *Johnston* case, the author states, "In other words, the New York Court of Appeals decided to follow the rule of the English common law rather than the judicial legislation represented in the opinion of the United States Supreme Court which Judge Pound said might be regarded as 'magnificent dictum.'"⁸ Shortly after the decision was rendered by the Court of Appeals, the author received a congratulatory letter from Judge John Bassett Moore who was then sitting as a judge on the World Court at The Hague. In this letter, dated June 17, 1926 and written in Judge Moore's own handwriting, he expressed satisfaction that the State of New York had finally recovered ". . . from the thralldom or menace of the decision thirty years ago in *Hilton vs. Guyot*."⁹

⁴ P. 10.

⁵ P. 11.

⁶ 242 N. Y. 381, 152 N. E. 121 (1926).

⁷ *Hilton v. Guyot*, 159 U. S. 113 (1895).

⁸ P. 62.

⁹ *Ibid.*

This letter contains a statement that sheds an interesting sidelight upon the decision of the *Hilton* case. Judge Moore, who, like the author, had also taught the conflict of laws at the Columbia Law School, wrote as follows in this letter: "In my lectures I usually adverted to the circumstance that the opinion in that case was not filed until five months or more after the decision was announced. An old friend, who was exceptionally well informed in such matters, told me that the delay was caused by the difficulty in framing an opinion to support the decision."¹⁰

It is not to be believed, however, that the book consists merely of a chronological presentation of the career of the author in which his achievements are neatly listed. On the contrary, the particular value of the book may be said to lie in the many suggestions and personal views expressed by the author. These views deal with topics of current importance and clearly reflect the mature deliberation of a scholarly lawyer, teacher and statesman whose theoretical analysis of problems has always been tempered and placed into proper focus by a profound appreciation of the realities of human life and an uncompromising respect for facts. The author does not merely state in professorial-like fashion that the comparative method and study of foreign and comparative law are invaluable to the training of the lawyer. He goes further and makes concrete suggestions. For example, commenting upon a study that he made of the Workmen's Courts of Belgium, he says that ". . . [i]t is surprising that the provisions of the Belgian law have not been taken into account as a possible model for similar legislation in the United States even at the present time, because the law is well adapted to many of the problems which are presented under our industrial situation."¹¹

It is to be expected that the reader will not always necessarily agree with the particular view that Mr. Kuhn expresses on certain current controversial questions. For example, he states that it is his belief that ". . . if the Declaration of Human Rights and the Covenant which was designed to put it in effect had been more modest in their scope and had not embraced also economic and social so-called 'rights,' the Genocide Convention would not have aroused serious opposition. The two subjects were confused with each other in the minds of the public. Many lawyers who were heartily in favor of a genocide convention were quite justifiably alarmed at the somewhat irresponsible nature of undertakings for the enforcement of human rights without due regard for the excellent separation of State power from Federal power in our own Constitution."¹² In addition to the question of human rights, Mr. Kuhn discusses other topics of current interest such as the nationalization of private property, the Egyptian blockade of the Suez Canal, international monetary cooperation and the international protection of the individual against the state.

Pathways in International Law will carry the reader through a half century of international legal developments, two world wars and many of the efforts of man to organize man's resources and strength to develop agencies of peace.

¹⁰ Pp. 62-3.

¹¹ P. 75.

¹² P. 208.

Mr. Kuhn attended the Paris Peace Conference in 1919 and therefore speaks with a wealth of experience when he discusses certain phases of the work of the League of Nations and the United Nations. He was uniquely qualified by temperament and experience to be a pioneer in the field of international air law and an adviser to the Harvard Research in International Law. In his *Pathways in International Law* Mr. Kuhn has not only told a remarkable story of personal achievement but has included much information of value to all those interested in the establishment of peace based upon sound judicial and moral norms. It is toward the achievement of this peace that his pathways were always directed. The author concludes by stating that ". . . [s]ome day the pathways of international law will emerge from this mid-century Inferno of world relations, and, like Dante, we shall then be able to say:

"Thence issuing, we again beheld the stars." ¹³

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WEST'S FEDERAL FORMS, VOLUME 7, SECTIONS 10651-11417, ADMIRALTY. By Frederick K. Arzt and Thomas F. McGovern. St. Paul: West Publishing Company, 1953. Pp. xxxv, 752. Set of 8 volumes, \$125.

Having examined with care this presentable and most useful volume of admiralty forms, I am ready to concede that the authors have in a most satisfactory manner demonstrated that ". . . the difficult part of admiralty is not practice, but the application of a full and detailed body of substantive law to the facts as they come out on the trial."¹

In the "Introduction to Admiralty Forms" the authors concisely state their purpose to be twofold:

- "(1) To provide standard types of forms for proctors in districts where the admiralty practice is growing; and,
- (2) To provide precedent forms for unusual types of actions which even an office in a busy seaport may not customarily use."²

How successful they have been in accomplishing their purpose is evident to the admiralty practitioner who has perused this volume. In a step-by-step progression the authors have provided the necessary forms for every stage of the action from the Monition (in rem) and the Citation (in personam) through the Motions, Libel, Answer, Depositions, Trial, Judgment, to the execution and distribution of funds.

¹³ P. 233.

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¹ P. 6.

² P. 1.