The reviewer can wholeheartedly agree with the assessment that "the vital problem of the present day is a thoroughgoing investigation and analysis of the multitudes of discretions which are vested in administrative authorities with a view to determining how they may be regularised and systematised and what types of control, both in the ordinary courts and in the departments of government themselves ought to be instituted for the protection of the citizen".[19] Although neither of the books reviewed even attempts such analysis there is in both of them a recognition that a new and constructive approach is needed.

HARRY WHITMORE*

Law and Minimum World Public Order: The Legal Regulation of International Coercion, by Myres S. McDougal and F. P. Feliciano. New Haven, Yale U.P., 1961. xxvi and 872 pp. ($12.50 in U.S.).
Studies in World Public Order, by Myres S. McDougal and Associates. New Haven, Yale U.P., 1960. xx and 1058 pp. ($15.00 in U.S.).

A reviewer of these two books approaches his task with awe, for not only are they intimidating in size, but they are highly polemical in character, and rather unrelated in subject matter. Among the topics discussed are aggression, self-defence, neutrality, and the law of war and belligerent occupation. It is obvious that Professor McDougal does not see eye to eye with Professor Stone in many of these matters, and the reader will obviously be drawn to make comparisons between the works of the two authors. Whilst Professor McDougal accuses Professor Stone of escaping into "verbal illusion", Professor Stone might well reply that Professor McDougal, despite all his social science language, and his dedication to relativism, is in fact excessively legalistic and of a fundamentally conservative turn of mind.

These two works are the product of a co-operative undertaking within the Yale Law School. The presiding genius of the enterprise is Professor Lasswell, and this explains the strong jurisprudential undertones of the work. While Professor McDougal obviously has done most of the writing, he has been backed by a large research organization with a number of associates. The articles are the result of a great deal of thrashing out of problems in Yale seminars. One important outcome of this community effort is that Professor McDougal's associates are now to be found as junior professors in a number of American Universities, and as a result, several institutions of international law look to Yale as the fountainhead of authority.

It is impossible in a review to do more than notice the thin thread of doctrine which holds all these disjunctive articles together. The theme is the necessity for public order on the international level. Education and a hard hearted appraisal of politics are two of the preconditions of the achievements of this order. The law of war, which occupies three-quarters of the two volumes, is seen as a strategy for the achievement of minimum order, in which is involved the outlaw of aggression, the preservation of self-defence and the humanising of war situations when they occur.

The field of international law today is so extensive that real scientific research work is only possible by team effort. Furthermore, when the topic of research lies on the border of law and international relations the team must include both lawyers and political scientists if the problems raised are to be examined completely in context. These two books represent such an under-

[19] At 215-216.
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taking, extending over several years, and their contents have been appearing in the *American Journal of International Law* for some time. Now that all the articles have been assembled they have acquired a coherence formerly lacking.

The dominant themes are two: that the commencement point for a study of international law is man and not the State, and that a structure of law depends upon the universal acceptance of a structure of belief. These are points of profound philosophical implication, and it is to be enquired if a social science approach to them suffices for intellectual conviction.

From a lawyer's point of view one of the most interesting essays—if a treatise of 300 pages may be so called—is that concerning treaties and executive agreements. The topic was a hot one in the United States a few years ago, and the American experience is instructive for other constitutional systems, particularly those of French derivation, in which the executive has a treaty-making function in some respects outside legislative control. Unfortunately this monumental monograph was written in 1945 and is inevitably dated. The authors, in this case McDougal and Lans, merely assume that the President's wartime power is greater than his peacetime power, basing this upon the Yalta Agreement which, in the light of the United States' subsequent coy attitude to this as a legal commitment, is rather to beg the question. Had the essay been written ten years later we might have had the advantage of the author's, no doubt devastating, analysis of this particular excursion of the Presidency into foreign relations obligation. We might, too, have had the benefit of a critique of the muddled understanding of the executive agreement which lay behind the Bricker Amendment, and which McDougal and Lans do not appear to have illumined. Since the issue of State Department Circula 175, the dangers of the President escaping the legislative traces have been pretty well eliminated. The internal status of the executive agreement is still a matter of hot controversy, and an essay which does not get as far as treatment of the *Capps Case*[1] is of limited value. This said, however, the chapter is a useful historical description of the treaty-making power as distributed between the legislative and the executive. When it deals with international law issues it is conservative. It does not, for example, retreat from the notion that the United States can plead unconstitutionality as a means of avoidance of an executive agreement. Again, in the light of the International Law Commission's work on this point, the essay has the appearance of being a little out of context.

The same is not so true of the essay on the Veto and the Charter (though the sub-heading "An Interpretation for Survival" will frighten off many readers), for this was written after the Korean War resolutions, and largely because of them. Not much has happened since to modify the analysis of the Veto Power, though the Uniting for Peace Resolutions receive treatment that seems disproportionately economical.

One could hardly suspect the legality of H bomb tests at sea to appear under the heading "Strategies for Management of Sharable Resources", but it does; and, despite the heading, it is one of the ablest analyses of the freedom of the seas in all its modern relativity that we have had from any pen (or two pens, for Schlei on this occasion is the collaborator). It must be realised that the article was stimulated by an article of Mr. Margolis published in the *Yale Law Journal*, and as a reply it has a necessarily polemical character. History, precedent, politics and technology are all seen as pressures weaving a texture of law, and analogies are drawn and comparisons made in a most persuasive manner. The following chapter, on the law of the sea (again despite the horrible sub-title "Community Perspectives versus National Egoism") is a heavily documented work which analyses in the light of modern sociological and

[1] *U.S.* v. *Guy W. Capps, Inc.*, (1953) 204 F. 2d. 655 affirmed on other grounds (1955) 348 U.S. 296.

technological changes the inherent logic of the traditional distinctions between high seas, territorial seas, inland waters and contiguous zones. This reviewer finds himself in complete agreement with both these chapters.

The work of Professor McDougal and his associates, perhaps because the net has been spread to catch so many controversial subject matters, is of major importance, and for this reason, the collection of these articles, although with one or two exceptions readily available elsewhere, is probably worthwhile. With this said, however, it must be recognized that the influence of Yale, widespread as it is in America, is largely confined to that country, and in the United Kingdom it has not made a significant impact. No doubt this is because the work is stamped with an American character: it is both law and political science, and its relativism tends to be offensive to the English lawyer with his system of precedent and his sharp distinction between law and politics. Whether it is the English lawyer who is at fault is a matter which need not be discussed. It is sufficient to conclude with the query whether these two books will be treated outside the United States with the seriousness they clearly deserve.

D. P. O'CONNELL*

Commentary on the Constitution of India. Fourth edition. Volumes I and II. By Durga Das Basu. [Calcutta: S. C. Sarkar & Sons Ltd. 1961 and 1962. Vol. I, lxviii and 746 pp., Vol. II, lxxxii and 842 pp. £E4 each].

Few of us can have cherished the ambition to write a review of the *Encyclopaedia Brittanica* or *Halsbury's Laws of England.* Some of us have reviewed the two massive volumes of the third edition of Mr. Basu's *Commentary* with awe but without a sense of manifest inadequacy. But now matters are really getting out of hand. The fourth edition is to run to five volumes; the tally of pages in the first two volumes reaches the auspicious number of 1588. Clearly Mr. Basu does not expend his energies in playing bowls or on other distracting pursuits; for during the course of the last few years he has produced three editions of a shorter work for practitioners, two editions of a general textbook on the Constitution, two volumes of a casebook and various law review articles, as well as carrying out his work as a member of the Indian Law Commission. Those of us who have never listed indolence among our more serious failings are humiliated.

To describe Mr. Basu's treatise as an annotated commentary on the Indian Constitution would be misleading. The Indian Constitution is the longest in the world, and it has already begotten a teeming family of leading cases, so that one would expect a leading commentary to be of substantial dimensions. One would not expect, however, to find 325 pages of comment on two of its shorter articles (13 and 14). If Mr. Basu fails to justify his sub-title of "a comparative treatise on the universal principles of Justice and Constitutional Government", he can at least say that several books lie secreted within the interstices of his annotations. For example, the notes on article 14 (the equal protection of the laws) incorporate sizeable chunks of English, American and Indian administrative law. (Incidentally, the author makes the telling point that the right to carry on an occupation, which has been dismissed as a revocable privilege in some well-known English cases, is constitutionally protected in India as a fundamental right of the individual.) Again, in the second volume he includes a good deal of very helpful material on parliamentary privilege, a subject which Indian writers have tended to neglect; one observes

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