

BOOK REVIEWS

JUS ET SOCIETAS: ESSAYS IN TRIBUTE TO WOLFGANG FRIEDMANN.
G. Wilner, principal ed. Martinus Nijhoff, The Hague, Boston,
London. 1979, Pp. 381.

This is an extraordinarily wide-ranging and instructive Festschrift in honor of Wolfgang Friedmann, whose untimely death took away a warm, compassionate and brilliant scholar. The high merit of the essays which make up this tribute is a reflection not only of the quality of the writers but of the capacities and interests of Friedmann. For one whose scope was broad and deep, and whose contributions to law and to social policy were seminal, the book is a fitting memorial.

As the principal editor, Professor Wilner, points out, the diversity of the essays and their range both in subject matter and point of view "is consistent with the universality of Friedmann's interests in the law." The essays deal with matters of fundamental concept; for example, some of the essays treat the structure of international law and its relation to the evolving world order (or, as some might gloomily say, disorder). The essays also deal with matters of more specific content; for example, the role of the World Bank and other institutions like the Andean Group in the formulation of norms. A particularly interesting article by Professor Harry W. Jones deals with the jurisprudence of contracts, and discusses the historical progress from status to contract to diffusion of power, and relates the traditions of state power to deny enforcement to oppressive or socially injurious private engagements. Concepts such as these in turn have much to do with the views of an emerging social and economic order, with the claims of the poor nations, or the poor people within such nations, made on the rich nations or on the rich persons within such nations. It may be said, at least as perceived by this reader, that the entire volume deals with the interaction between claimed rights and obligations, between the aspiration toward change and the need for order, and with the role of law in the difficult management of the relation between human desires and external forces, often themselves ill-defined.

As Oscar Schachter puts it, social justice, while long accepted as an ideal in national political life, has only relatively recently come to be seen as relevant to the distribution of resources among

nations. A good many of the articles in this volume are concerned with just that issue, from varying perspectives. Richard Falk, emphasizing the importance of the emerging global multilogue on the future or world order, underlines as an essential structural element a "system of nonterritorial central guidance", thereby ruling out a territorial world state as a replacement for the present inadequate international order. His perspectives form an interesting contrast with the views on a new system of international law of a Soviet scholar, Gregory Tunkin. In both cases, and in the more philosophical as well as in those articles which focus on function and form, there seems to be agreement that "something needs to be done," and that the present institutional arrangements, promising though some of them may be, are inadequate. Agreed solutions are somewhat less evident.

Whether an article deals with the jurisprudence of the International Court of Justice, or the resolutions of the United National General Assembly, or regional institutions such as those of the Andean nations, the theme is of change in response to issues of great importance. Philip Jessup's introduction cogently describes the fundamental nature of Friedmann's contribution to the study of these matters. As Jessup points out, Friedmann was skeptical about theories based on abstract philosophic postulates, and faced squarely the continual conflict of values which lies at the heart of solutions to legal problems, national or international. To the analysis of such issues, this volume makes a very significant contribution.

That it does not do as well in normative as in analytic terms is not the fault of the authors, or of the Friedmann technique. It may be a peculiarly American fallacy to believe that all problems have solutions. Or, as has been suggested, every problem has an easy solution, and it is always wrong. Some of the problems of international world order are in that insoluble category in which the analytic effort is itself as much of a contribution as one can make to progress toward a viable international order.

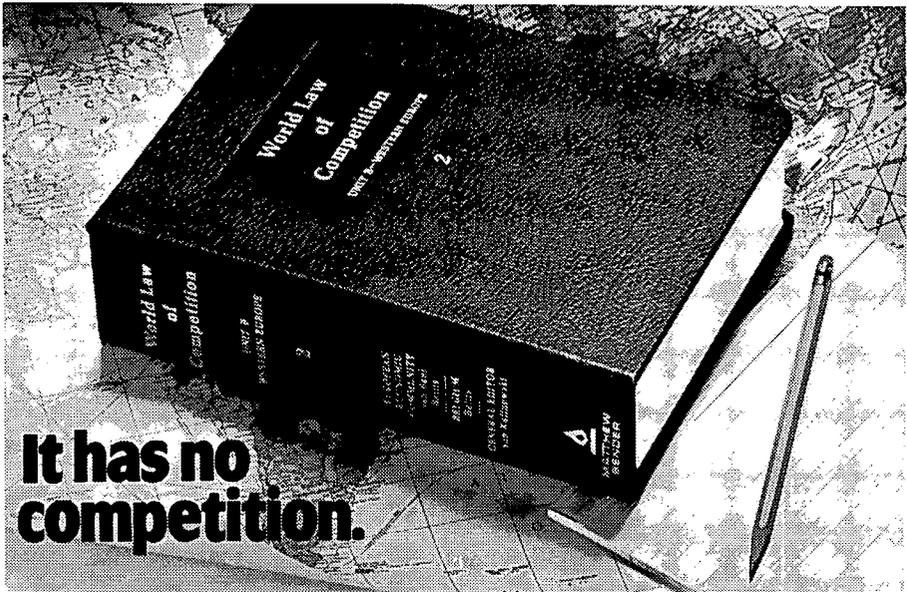
Clearly, in the relatively few years which have elapsed since the writing of these articles, resolution of issues of world order and of world equity has become increasingly difficult. The formulations of the 1960s and early 1970s, as for example in the Sixth and Seventh Special Sessions of the United Nations General Assembly, which strove to establish a basis for a "New International Economic Order" need re-examination in the light of changed world circumstances. A more equitable distribution of world

resources, an increased perception of considerations of equity, and mechanisms for better sharing of the benefits of increased knowledge remain valid objectives. But the formulations of the innumerable conferences, private and public, of the recent past, which festoon the international landscape, seem more likely tattered banners than cogent responses to actuality. Friedmann would have been troubled, as an idealistic pragmatist, by the evident discrepancy between the word and the deed, and by the inadequacy of the slogans as guides to solutions. The vast balance of payments deficits accumulated by most of the world, the plight of the non-oil producing developing nations which requires them to spend all earned income to service debts recently accumulated and to pay the current costs of essential energy, demand responses other than those which have now become traditional. When these difficulties threaten the very existence of nations and people, when they co-exist with a balance of payments surplus which, in 1980 alone, will probably amount to \$50 to \$70 billion in the hands of a few small nations, something more needs to be said than that industrialized nations ought to contribute more to useful but limited institutions like the World Bank. A crisis larger in significance than that which evoked the response of the Marshall Plan, designed to revive a devastated Europe, requires new analysis and bold measures with new actors assuming their evident responsibilities. At the same time, it has become clear that the struggle for global equity begins at home, that nations which do not provide a better distribution of wealth within their own borders will find that existing distortions increase, whatever the international response. The world financial crisis which is now with us emphasizes that the formulas of an era which is only a few calendar years ago, but seem nevertheless to be eons away, are not an adequate solution.

This is an interesting and valuable book. But the recent revolution in international economic relations suggests that perhaps another book ought to be written—one which would look to the realities of the 1980s than to what was the reality of the 1960s. Such a book would be a further, and a deserved, tribute to the memory and to the spirit of Wolfgang Friedman.

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