

February 1936

Neutrality, Its History, Economics and Law, Vol. 1: The Origins

Thomas E. Ennis
West Virginia University

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Law and Politics Commons](#), and the [United States History Commons](#)

Recommended Citation

Thomas E. Ennis, *Neutrality, Its History, Economics and Law, Vol. 1: The Origins*, 42 W. Va. L. Rev. (1936).
Available at: <https://researchrepository.wvu.edu/wvlr/vol42/iss2/17>

This Book Review is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

It is based upon the experiences reported by some ninety cities distributed over thirty-seven of the United States, and operating under various enabling acts and ordinances. These enabling acts and ordinances are sampled and classified under acts invoking the right of eminent domain and those making use of the police power.

Court decisions and the opinions of many experts are quoted. It is shown that in recent years the police power type of act is gaining favor.

A short chapter is devoted to "Economic Aspects" in which some data are given on costs of, and estimated savings from planned procedure for street widening.

The final statements of the text are: "Methods of protection (for future widening or opening of city streets S. L. G.) are still a little uncertain and perhaps a little crude, but as to need there is no uncertainty. Methods are evolving and will be perfected."

About one quarter of the book is given to appendixes on "Bibliography," "Excerpts from Model Legislative Forms," "Excerpts from State Legislation," "Excerpts from City and County Ordinances" and "Names of Persons who Furnished Major Information." The book is well written and indexed. The arrangement of material and the choice of illustrations is good. The contents are of particular interest to city planners, street and highway engineers and city solicitors. Many others should find interest and profit in reading and studying the book.

—S. L. GALPIN.

Morgantown, West Virginia.

NEUTRALITY, ITS HISTORY, ECONOMICS AND LAW, Vol. 1: THE ORIGINS. By Philip C. Jessup and Francis Deák. Columbia University Press, 1935. Pp. ix, 294.

Can the United States keep out of a second World War? This is a question in the minds of serious thinkers to-day. No problem of the many facing the Department of State is more to the front than the vital problem of neutrality. The book under review shows that the case of neutrality is one which has bedeviled diplomats for over three hundred years and in its economic aspects motivated Thomas Jefferson, (when later President), who had therefore been responsible for the first American neutrality policy of 1793.

This volume, one of a notable series, deals with the historic origins of neutrality and suggests in a vivid manner that the assumed unique status of the United States before its entrance into the World War is one as old as the modern state. The chapters of this book should be studied by all experts in international government and especially by those idealists who dreamed, in 1919, a vision of a League of Nations as a means to end for all time the thorny problem of neutrality, only to awaken a decade later to see a universe where neutral nations were virtual pariahs.

The work is one planned upon a logical basis. Chapter one considers "The emergence of a law of neutrality"; chapters two through seven deal with treaties and the evolution of legal rules, war contraband, the law of blockade, enemy property, maritime law, and prize court procedure during the sixteenth and seventeenth centuries. Chapter eight surveys in detail the duties of neutrals, and the final chapter offers and answers some of the salient questions connected with neutrality. The student of international law will find herein an excellent bibliography, as well as a list of treaties of the principal maritime states and a convenient table of cases according to the country in which the settlements were decided. So much for the skeleton of a vital body. The living tissues and coursing blood must be outlined, in order to appreciate the importance of this series which will rank as a standard work.

It is true, as the authors point out, that concepts of international law can be found long before Christian times, but the legal status of neutrality was not prominent until the advent of the modern states, whose features began to emerge about 1648. Prior to this date the influence of the church specifically, and feudalism generally prevented the evolution of definite principles of neutrality, except in isolated cases and small units. Furthermore, with the creation of large national naval forces, neutrality became a marked characteristic of international relations. Professors Jessup and Deák thus describe the embracing results of this change in society:

"The state-operated naval fighting forces meant concentrated action, larger control of the operation of these forces and, consequently, more likelihood of obedience to certain rules established by usage and necessitated by circumstance, than was to be expected at the time when everybody was left to his own devices as to how to defend himself and had seldom to account for whatever bloody acts he might

have committed on the high seas. To put it in another way, the somewhat precarious responsibility of private men-of-war and merchant vessels armed by citizens or groups of citizens was replaced by the collective responsibility of the sovereign state.

“The consequences of the establishment of standing navies, so far as favoring the development of rules of neutrality is concerned, may be summed up as follows;

“(1) The simultaneous restriction on private warfare: From the middle of the sixteenth century onward an increasing reluctance can be observed in issuing letters of mark or reprisals. The grant of such letters of reprisals had been instrumental in bringing about an almost incessant private warfare on the seas.

“(2) The extension of admiralty jurisdiction: The governments regulated the conduct of their naval forces through their respective admiralties. Also, private men-of-war came to be controlled more effectively by the admiralty. The different marine ordinances and maritime laws provided for money guarantees or bonds to be given by privateers or by grantees of letters of reprisals which were to be forfeited or used for compensation in cases of illegal conduct.

“(3) The stabilization of procedure in and the more rigorous enforcement of prize law: The often reiterated provision that prizes should be brought into the home port of the captor, and the prohibition against disposing of prize goods before adjudication in the courts of admiralty, were serious and effective checks on private warfare as well as on illegal seizure and spoliation of foreign ships.” (P. 16.)

Throughout the entire discussion, bolstered by a mass of historico-legal data, the economic features of neutrality are not neglected and form a prominent background. The fact that neutral governments naturally attempted to achieve agreements advantageous to their respective national interests is emphasized. A conclusion also is reached which is obvious but all too frequently forgotten by most writers on neutrality. The entire passage is worthy of inclusion in these pages because of its supreme importance in the days to come:

“They [*i. e.*, governments] sought to assure the prosperity of their people if neutral and their protection if belligerent. Even if an individual merchant in a particular case were well taken care of, or if, from the opposite point of view, the particular cargo were prevented from reaching the enemy, the question of principle involved might warrant the strongest efforts of diplomacy in order to establish a favorable precedent.

“All of this indicates the highly artificial and unreal nature of that body of illogical compromises known as the international law of neutral and belligerent rights at sea. Governments were often realistic in instructing their own representatives regarding the economic interests they sought to serve through treaties and other agreements, but the weight of precedent and the traditional finesses of diplomacy usually prevented a frank bipartite statement of the bargain concluded. Thus the treaties and precedents accumulated, providing endless occupation for the jurists and the statesmen. This process is not abnormal in international affairs but it is equally far from helpful when one considers the problem as a whole in its general aspects and not merely as a series of specific issues.

“We are not unmindful of the current expectations and visions of a warless world. Neutrality is said to be incompatible with the principles of the Covenant of the League of Nations, and also, or still more so, perhaps, with those of the Kellogg-Briand pact. It has been suggested that the legal status of neutrality should be replaced by that of ‘partiality’. But all this has not deterred the members of the League from concluding ‘neutrality’ treaties, or the nations of the western hemisphere from concluding recently an elaborate convention on maritime neutrality. This Pan-American Convention, in its first article, reaffirms the belligerent right of visit and search but offers no solution for the centuries-old struggle regarding ship’s papers. It will be remembered that the war of 1914-18 witnessed constant disputes over this subject although these gradually disappeared as the belligerents, through economic and financial pressure, brought the neutrals to their knees and compelled them to conduct their maritime commerce and utilize their shipping according to the directions of the belligerents. This issue (the method and manner of belligerent endeavor to control neutral trade) during the World War, precisely as in the sixteenth and seventeenth centuries, was argued and decided, not on the basis of what was assumed to be law, whether conventional or customary, but on the basis of hard facts presented by existing economic conditions, strategic necessities, whether real or alleged, and political exigencies — conditions, necessities and exigencies produced by a multitude of factors whose combinations and reactions were, and always will be, far beyond the control of theoretical assumptions.” (Pp. 268-270.)

A consideration of volume one leaves the reader with an interest keyed for volume two which will show the conflict between neutral and belligerent in the eighteenth and nineteenth centuries and volume three with its analysis of the World War and the situation through 1934. But, even when the series is completed, the

reader must realize that the greatest problem of neutrality lies in the future, and its solution, as the authors suggest, "may be expected only when governments and their spokesmen, especially the 'experts' and technicians, are willing to appraise the experience of the past in a realistic spirit, and to agree upon rules of conduct which will be based less upon logic and theory than upon the real 'life of the law'".

And only upon a universal acceptance of this not unreasonable hope for mankind becoming slowly conscious of the barriers preventing man's life from becoming fruitful in its widest sense rests the expectation for civilization reaching a truly civilized state.

—THOMAS E. ENNIS.

West Virginia University,
Morgantown, West Virginia.