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Books Received

BOOKS RECEIVED

PRIVATIZATION AND STRUCTURAL ADJUSTMENT IN THE ARAB COUNTRIES. Edited by Said El-Naggar, Washington, D.C.: International Monetary Fund, 1989, 269 pp.

Recent developments in the Soviet Union and Eastern Europe, as well as the changes in the United Kingdom under Prime Minister Thatcher, provide ample evidence to even the casual newspaper reader that the socialist model of economic development has failed to provide long-term prosperity to people in many nations. Thus, this review on *Privatization and Structural Adjustment in the Arab Countries* was initially approached with a great deal of enthusiasm. After all, what could be more interesting than learning about privatization (the private sector's gradual takeover and control of enterprises dominated by the generally inefficient public sector) in an area of the world with a rich tradition of trade, commerce, and private enterprise? However, enthusiasm quickly subsided while reading. This reviewer's opinion was that reading this book was akin to eating Moroccan couscous without any accompanying spicy chicken stew — flat and boring with only a modest amount of value.

The book consists of a series of papers on the theories of privatization and of four case studies from Arab countries including Egypt, the Gulf countries, Jordan, and Tunisia. A comment that purports to evaluate each paper follows.

The most helpful papers were those written by the editor, Said El-Naggar, and by Alan Walters. Mr. El-Naggar prepared an introductory chapter which addresses the basic issues related to privatization in a Third World economic setting. He discusses the general failure of the public sector economic model to perform efficiently; the need to continue public enterprise monopolies such as public utilities, and industries with high inadequacy of incremental privatization; and the problems in the transition from the public to private sector, especially with regard to the inertia and self-interest of the entrenched people who run public sector enterprises.

Mr. Walters also offers some basic background on the theory of privatization. But the interesting part of his essay deals with the British experience with privatization under Thatcher's administration. This experience includes Jaguar, British Telecom, National Freight Corporation, and the British housing market.

With the possible exception of the case study on Egypt, the remainder of the book attempts to explain the status of privatization in several Arab countries. While the authors of the papers bemoan the fact that they have insufficient statistical data to evaluate privatization accurately, the reader is nevertheless expected to understand the failures of privatization in selected Arab countries. It is difficult to see how this is possible, absent an honest appraisal of the political situation in the country or some specific case examples.

In conclusion, this book has some value in that it exposes the reader to some of the modern economist's arguments concerning the process of privatization in developing countries. It is unfortunately only a modest beginning because the reader must do much more research before he/she can get a true picture of privatization in the Middle East.

RIGHT v. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE. By Allan Gerson, Louis Henkin, Stanley Hoffman, Jeanne J. Kirkpatrick, William D. Rogers, and David J. Scheffer. New York: Council of Foreign Relations Press, 1989, 124 pp.

Right v. Might provides an enlightening discussion of the "great debate of the 1980s." Specifically, to what extent if any, should the United States or any other country be allowed to invoke the shield of international law when applying the sword of force. The book succeeds in simplifying a potentially complex issue. The United Nation's [hereinafter U.N.] Charter Article 2(4) provides the backdrop for all international legal issues raised by this discussion. Article 2(4) requires member countries to "refrain from the threat or use of force against the territorial integrity or political independence of any state."

The book begins with a forward by John Temple Swing, executive vice-president of the Council on Foreign Relations. Mr. Swing presents the broad framework for the book. He focuses on specific historical events such as the 1983 U.S. invasion of Grenada and the U.S. mining of Nicaraguan harbors that caused the Council of Foreign Relations to reexamine foreign policy under former President Reagan. The current writers co-authored *Right v. Might* to examine international law and the use of force, and to present the pros and cons of the Reagan Doctrine.

In the introduction, David T. Scheffer, a senior associate of the Carnegie Endowment for International Peace, narrowly evaluates the issue of the appropriateness of using force against a nation in terms of the Reagan Doctrine. The Reagan Doctrine articulates a U.S. right to intervene on the behalf of democratic governments threatened by anti-democratic forces. Traditional interpreters of the U.N. Charter, Article 2(4), suggest that the Reagan Doctrine liberally reinterprets the Charter in such a way that will likewise enable the Soviet Union to justify intervening on the behalf of communist countries facing anti-communist insurgencies.

The co-authors of the second chapter, Jeane J. Kirkpatrick, a former representative to the United Nations, and Allan Gerson, her colleague at the American Enterprise Institute, justify the Reagan Doctrine as consistent with previous American foreign policy doctrines of furthering democratic governments. Ms. Kirkpatrick begins by asserting that contrary to popular belief, the U.S. did not invoke the Reagan Doctrine when intervening in Grenada, intercepting an Egyptian airline carrying a suspected attacker of the Achille Lauro, bombing Libya, and mining Nicaraguan harbors. They feel the true Reagan Doctrine advances the view that armed revolt is justified as a last resort when

the rights of the masses are systematically violated. This view remains consistent with the U.N. Charter's declaration that member-states respect human rights and democratic self-determination.

Louis Henkin, president of the United States Institute of Human Rights, concisely summarizes the history surrounding Article 2(4) and various acts invoking Charter issues in chapter 2. He further notes recognized exceptions to Article 2(4). Most noteworthy is Article 51 which permits self-defense when threatened by an armed attack. Mr. Henkin firmly rejects the Reagan Doctrine of foreign policy as contrary to the Charter. He recommends the Truman Doctrine as a more workable foreign policy alternative.

Stanley Hoffman, a professor of the civilization of France at Harvard University, examines the ethics and rules of the behavior between the superpowers in Chapter 4. Mr. Hoffman points out that the law of the U.N. Charter and informal agreements between the U.S. and the Soviet Union reflect moral concerns. Contrary to Ms. Kirkpatrick and Mr. Gerson, Mr. Hoffman finds little political or ethical justification for the Reagan Doctrine. He feels that the United States will need to play a larger role in "establishing ethically legitimate rules of the game while the Soviet Union undergoes extraordinary changes internally and in its external behavior."

In the concluding chapter, William Rogers, a senior partner practicing international law at Arnold & Porter, admits that Article 2(4) provides the abstract standard for measuring uses of force. Mr. Rogers concurs with the book's other authors in that the ideal goals of the Charter have not been realized. Yet he points out that the central premise of Articles 2(4) and 51 is that states should stay out of each other's way. This interpretation invalidates the Reagan Doctrine supported by Ms. Kirkpatrick and Mr. Gerson. Mr. Rogers concludes that the Charter's ideal goals of restricting force can best be achieved through specific agreements between countries.

The book provides a thoughtful analysis of the game of using force as a foreign policy tool. The layman and the foreign policy scholar will similarly benefit from the book's discussion. As Americans we all often wonder to what extent international law provides a justification for American and Soviet intervention in other countries. *Right v. Might* answers the question from both ends of the spectrum.

LAW UNDER STRESS: SOUTH AFRICAN LAW IN THE 1980s. Edited by T.W. Bennett, D.J. Devine, D.B. Hutchinson, I. Leeman and D. van Zyl Smit. Cape Town, South Africa: Juta & Co., 1988, 258 pp.

Law Under Stress: South African Law in the 1980s is a compilation of essays written by South African lawyers describing the ways in which South African law has reacted to changes in the country's political and legal structure during the period between 1976 and 1986. The changes which already have been witnessed by the people of South Africa and the men who write about them can be traced to the twin considerations of repression and reform. The stability and efficacy of the legal system which stood unchallenged under apartheid have broken down under newfound emphasis on fundamental rights and liberties contained in the common law. This series of essays traces the changing role of the legal system in the present and in the future South Africa.

The series, compiling nine separate essays, begins with a discussion of the state of "political disaffection, punctuated by periodic outbursts of violence, which reflected an endemic malaise in South African society." Entitled "Unrest, Reform and the Challenges to Law 1976 to 1987", this first essay by T.R.H. Davenport introduces the major issue of the unequal division of power in South Africa, and the beginning of black protests with the rise of African nationalism. The essay discusses confrontation in political and social spheres, from constitutional changes, to rebellion in the schools, and the unions challenging the economic power. The reform sought by the opponents of apartheid, found in some part in power-sharing, was a frontal challenge to a political system which stood in the way of racial equality.

The next three essays discuss in a provocative tenor some specific areas of law in a changing South Africa. J.R.L. Milton, in "Criminal Law in South Africa 1976-1986", gives the reader a perspective of the criminal justice system in South Africa through a discussion of its origin in contrast to the recent period of reform in the past decade. Particularly, the lack of procedural or normative safeguards for the preservation of human rights and civil liberties in South African legal order have become a target for reform.

L.J. Boulle, in "Constitutional Law in South Africa 1976-1986", discusses how the allocation, exercise and control of state power in South Africa in the past decade has been the source of considerable political upheaval. Boulle shows the reader several facets of constitutional law, from its social context, to formal state initiative, informal developments, constitutional doctrine, and ending with a discussion of its effects on the legal system.

"Labor Law in South Africa 1976-1986, The Birth of a Legal Dis-

cipline", by Johan Roos, discusses the new face of labor law in the court system and within the legal system at large. There emerged a new "legal" nature to the employment relationship, different from the relationship governed by private law which had been the history of labor law. Labor law underwent new regulation under a combination of private law and public law principles.

Co-authors Jean Burdzik and David van Wyk, both professors at the University of South Africa in Pretoria, outline "Apartheid Legislation 1976-1986", with a well-defined structure: (1) Political apartheid, (2) Non-political apartheid, (3) Change (reform), (4) Apartheid legislation, and (5) Reform of apartheid legislation. This essay embodies an interesting discussion of how to define the phenomenon historians have coined "apartheid".

On a larger scale, D.J. Devine theorizes about "International Law Tensions Arising from the South African Situation 1976-1986". This essay examines the strains which the internal South African situation have placed on the system of international law over the past decade.

"Security and Integrity," by Etienne Mureinik, is a discussion about the role of the judiciary and legislation in the past decade in South Africa. The article concludes that the decade began in much the same way as it ended — "with fresh libertarian initiatives from below, and dour stultifying responses from above." However, the author does admit of scratches in the surface of political establishment: Progress toward a more equal South Africa in its political makeup.

D.M. Davis and John Dugard author the last two essays, which focus on what has yet to come. Davis' essay, "Post-apartheid South Africa — What Future for a Legal System?," poses the threat that South African law could become a form of social engineering if the pendulum of anti-discrimination swings too far to the left. At present, the commitment is not so much to a protection of the rights of all South Africans, but to dislodge the dominant political power at large today. The role of law, according to Davis, depends on the nature of dominant social practices.

Finally, Dugard's essay, "The Quest for a Liberal Democracy in South Africa", proffers the opinion that the institutions and principles of liberal democracies offer the best hope for a new South Africa. Though liberals have been criticized for their efforts to create a political environment through the advancement of civil rights, it is the author's opinion that this is the optimal route for reform in South Africa.

The value of this compilation of essays on the state of the law in South Africa is that it is seen through the glass of political reform. The strain which has been placed on the legal system in South Africa in the past decade is seen through a need for political reform. While some

factions propose to change the law from within and others from without, it seems clear to all that the present state of the law is unworkable under the rubric of racial equality.