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Books Reviewed

BOOKS REVIEWED

TRADE AND ENVIRONMENTAL LAW IN THE EUROPEAN COMMUNITY. By Andreas R. Ziegler, New York: Oxford University Press, 1996, 308 pages.

At a time when concerns about an ailing earth and hopes for a bright economic future dominate discussions throughout the world, it has become apparent that improvement in one of these areas occurs to the detriment of the other. Andreas R. Ziegler, in *Trade and Environmental Law in the European Community*, provides an in-depth analysis of how the European Community ("EC") is trying to reconcile these competing interests. Ziegler outlines the framework of the European Community Treaty (the "Treaty"), offering detailed explanations of its provisions and attempting to show how trade mechanisms and environmental laws coincide. More specifically, Ziegler carefully assesses the considerations of how national policies affect trade and the environment in light of the EC's scheme of international cooperation and fairness.

The book is divided into two parts: Part I, "Undistorted Trade and Competition and Domestic Environmental Measures," and Part II, "Community Environmental Law and Domestic Environmental Measures." The book also contains a "dictionary" of relevant EC Treaty provisions. Ziegler's opening chapter introduces the problem of pursuing trade liberalization while promoting environmental protection. The next two chapters offer a broad view of the common market approach and provide an outline of the measures which allow for the free movement of goods between Member States.

Chapter 4, "Environmental Justification for National Restrictions," examines the nature of the Treaty's environmental provisions and their effect on the free movement of goods. The Treaty's strength, which rests upon the notion that the international state-system should be protected from individual-state discriminatory measures, becomes vulnerable when national environmental measures are implemented. However, Article 36 of the Treaty permits national measures for the protection of the life and health of humans, animals, and plants, and for several other reasons, de-

spite their encroachment on the free movement of goods principle. Thus, Article 36 ensures the validity of domestic environmental laws if they meet its objectives. In various cases before the Court of Justice, the lawfulness of pesticide laws have been considered. The Court has determined that since the Treaty does not specifically provide for environmental laws, but rather laws for the protection of human, animal and plant health, the individual Member States carry the responsibility for taking necessary action.

Ziegler continues the analysis of domestic environmental laws in Chapter 5. To demonstrate how the lawfulness of such measures is determined, he outlines the Court's threefold analysis: (1) whether the measure can achieve the indicated objective; (2) whether the measure chosen is the least trade-restrictive in attaining the desired level of protection; and (3) whether the restrictive nature of the measure is proportionate, not excessive in relation to the betterment of the environment. Chapter 5 also offers a comparison of the EC's construction of the Treaty to the United States' interpretation of permissible interstate commerce restrictions. Citing *Pike v. Bruce Church*, a staple in any general constitutional law course, Ziegler draws a parallel from the Court's threefold test to the balancing test used by the United States Supreme Court in *Pike*. Ziegler also emphasizes the Court of Justice's recognition that both the protection of the environment and the free movement of goods are "essential pillars of European integration." However, he makes certain that the reader understands that the national means employed must not restrict interstate trade any more than is necessary for the achievement of the permissible end.

In Chapter 6, Ziegler seeks to reinforce the idea that the EC system is based upon the notion of fair competition. In giving the reader further insight into how fairness is achieved, Ziegler explains the applicability of Article 85 of the Treaty. Article 85 prohibits "all agreements between undertakings, decisions by associations of undertakings, and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction, or distortion of competition within the common market." However, the Treaty also offers exceptions to this rule. Specifically, the Community's legal arena recognizes the need for the integration of environmental concerns. Chapter 6 also introduces the "polluter pays" principle. Under the "polluter pays" principle, those who cause harm or pollute the environment must bear the costs to avoid, eliminate or compensate for such pollution. Ziegler points out that while in theory this principle may seem effective in promoting a healthy environment, in the EC, "pollution" exists only if a legal standard is violated. As explained above, however, the treaty contains no

such standards. Hence, Ziegler concludes that the feasibility of effectively implementing the "polluter pays" principle seems doubtful.

Part II begins with Chapter 7, "The Environment-related Policy of the Community." This chapter explores the foundations of the EC and how the need for striking a balance between free trade in the common market and environmental protection came about. Chapters eight provides further analysis of the EC's efforts to harmonize these competing interests and the importance of such harmonization. In explaining the relevance of these efforts, Ziegler presents the readers with an overview of how the Single European Act of 1987 altered the EC's reliance on certain Treaty provisions in accommodating both trade and environmental laws simultaneously.

Expanding upon the theme of harmonization under the Single European Act, Chapter 9, entitled "Selected Community Policies and the Environment," offers a detailed explanation of how the Act changed the Treaty's structure. With the addition of specific environmental measures under Articles 130r to 130t, the Member States have been charged with the duty of environmental protection. However, Ziegler explains that even though the more explicit measures were introduced with the entry of the Act, the Member States have not significantly changed the EC's structure.

Ziegler next turns to the Treaty's provisions for "green taxes." Over the last few years, the popularity of such taxes among members of the EC has soared. Under Article 99, which came into effect with the Single European Act, Member States have been afforded a great deal of latitude in introducing their own environmental taxes. Additionally, Ziegler insists that this level of discretion is directly related to the idea of forcing the polluter to pay for its pollution.

Chapter 11 discusses community participation in the creation and implementation of international environmental agreements, including trade related environmental measures affecting the EC. This chapter also explains the importance of multilateral cooperation in environmental agreements. The last chapter, entitled "Integration of the Common Market and the Environment" also stresses the importance of cooperation and loyalty among the Member States. In doing so, it reaffirms the need for shared responsibility in protecting the environment and for striking a balance between individual Member States' interests.

Trade and Environmental Law in the European Community offers a broad overview of the EC's attempts to integrate both trade and environmental laws. Although seemingly redundant at times and sometimes lacking in information for those less familiar with EC law, the book does provide the reader with an understanding of the EC Treaty's structure, the implementation of Treaty provisions and the relationship between

Member States in executing environmental laws. Ziegler constantly reinforces the difficulty in harmonizing trade and environmental laws, but stresses the importance of doing so. While tradeoffs are necessary to accommodate free trade and environmental protection, it is obvious to Ziegler that the Member States recognize that sharing responsibility for environmental protection is the only way to improving their surroundings and overall quality of life.

Lori H. Schectel

EAGLE OVER ICE, THE U.S. IN ANTARCTICA. By Chris Joyner, University Press of New England, 1997, 225 pages.

For more than three decades the United States has exerted the political and diplomatic clout necessary to create, nurture and expand the legal regime governing the Antarctic Continent. Since the Antarctic Treaty's inception in June 1961, the U.S. has invested more financial and physical resources in Antarctic management and environmental programs than any other government. Furthermore, the United States is the leading government encouraging international cooperation in scientific research involving the protection and preservation of the delicate Antarctic environment. Additionally, since the Treaty's inception, the architects of U.S. foreign policy have consistently perceived the Antarctic Treaty System as the political and legal structure most conducive for promoting American objectives in the region.

In *Eagle Over the Ice, The U.S. in Antarctica*, Christopher Joyner, an expert on U.S. policy in the Antarctic, assesses the underlying rationale behind U.S. involvement in the Antarctic. His study is grounded in history and intersects with several disciplines, including international politics, international law and diplomacy, science and national security. In the final analysis, the study lends depth and perspective to perceptions forging U.S. policy on the Antarctic continent. From this study, Joyner concludes that the notion of the national interest provides U.S. policy makers with a framework for formulating, implementing and promoting goals and objectives in the Antarctic Region. Paradoxically, Joyner contends that the U.S. lacks vital national interests in the region. But notwithstanding Joyner's views, the U.S. continues to pursue a myriad of national interests which are dependent upon the preservation of the Antarctic Treaty and the continued use of the Antarctic region for peaceful purposes only.

Joyner's opening chapter highlights Antarctica's extraordinarily fragile ecosystem, as well as its uniqueness as the world's most frigid climate. Antarctica is the coldest, least inhabited and most barren of all continents. Ice dominates about 98 percent of Antarctica, as the continent is virtually covered by a sheet of ice averaging 6,600 feet in thickness. Consequently, Antarctica's climate is the most extreme on earth. Survival in Antarctica means enduring sub-zero temperatures and violent winds. These extreme conditions are antagonistic to most organic life, making life scarce on the continent. Joyner, however, notes that the Southern Ocean is teeming with life and offers a strong contrast to the infecund, snow-covered continent.

In Chapter 3, "The Antarctic Treaty," Joyner examines the legal and political regime governing the Antarctic. The direct origin of the

Antarctic Treaty began with the International Geophysical Year ("IGY") of 1957-58, an international effort to encourage scientific cooperation in the region. The IGY revealed much about the surface of Antarctica, including the potential existence of vast amounts of non-renewable natural resources. Joyner argues that the IGY results, coupled with growing conflict among Argentina, Chile and the United Kingdom in 1959 (three states with sovereignty claims in Antarctica) solidified the United States' national interest in (1) promoting scientific cooperation; (2) ensuring the protection of the Antarctic environment and ecosystems; and (3) resolving conflicting sovereignty claims through an international regime.

Thus, the Antarctic Treaty became the key legal instrument for governing the Antarctic. The U.S. exerted much influence in drafting the treaty, as is exemplified by the preamble which emphasizes two main U.S. objectives: the peaceful use of Antarctica and scientific cooperation. Joyner describes the Antarctic Treaty as dynamic in character due to a provision calling for regular meetings as a means for identifying and responding to potential conflicts among contracting nation-states. However, he criticizes the Treaty because it contains no provision dealing with resource management. In all likelihood, this omission can be attributed to the Cold War. Given the conflicting claims of territorial sovereignty during the Cold War, a proposal to limit resource development and commercial activities would have been opposed during treaty negotiations. Finally, Joyner criticizes the Treaty because there is no clear legal jurisdiction provided in times of dispute.

In Chapter 4, Joyner identifies influential factors shaping U.S.-Antarctic policy. The chief policy makers are the President, top advisors at the National Security Council ("NSC"), the Secretary of State, the director of the National Science Foundation ("NSF") and the Secretary of Defense. Joyner argues that the NSF is extremely influential because it develops goals for scientific research and works with the State Department to arrange cooperative research with other Antarctic Treaty States. The State Department is by far the most influential decision maker because it represents the U.S. at all Antarctic Consultative Meetings ("ATCMs") and maintains diplomatic relations with other contracting governments. Congress is obviously an important actor as it authorizes appropriations and passes legislation to affect Antarctic policy. However, Joyner notes that congressional involvement in the Antarctic is cyclical and directly linked to the level of public or interest group awareness in the Antarctic region.

In the next several chapters, "Freedom of Scientific Research," "Environmental Interests," and "Geostragetic Interests," Joyner further elaborates on U.S. "national interests" in the Antarctic. He describes the Antarctic region as a "natural laboratory" offering opportunities for

scientists in various fields to understand pressing regional and global environmental issues. Furthermore, the Division of Polar Programs ("DPP"), which manages NSF-supported research in the Antarctic, produces a five-year plan grounded in science and logistical support. The five-year plan establishes scientific research goals, as well as other non-scientific goals.

The Antarctic Treaty contains no specific reference to environmental preservation. Nevertheless, the U.S. devotes much attention to the Antarctic and sets the pace for international environmental protection through a diverse set of environmental policies and controls. The U.S. convinced the Antarctic Treaty Consultative Parties ("ATCPs") of the need for many amendments to the Antarctic Treaty, such as The Convention for the Conservation of Antarctic Seals ("CCAS"), The Convention of the Antarctic Living Marine Resources ("CCAMLR"), The Convention on the Regulation of Antarctic Mineral Resource Activities ("CRAMRA") and the Protocol on Environmental Protection. Joyner posits that these amendments not only further global interests in the Antarctic region, but also support U.S. national interests as illustrated by President Johnson's 1965 remark calling for, "the preservation of unique plant and animal life," as well as by President Nixon's 1970 remark calling for suitable measures, "to ensure the equitable and wise use of living and non-living resources." Ultimately then, the United States, under the impetus of its national interests, continuously contributes to the strengthening of the Antarctic Treaty System in an effort to secure environmental security for the polar south.

Geostrategic interests in the Antarctic region are gradually evolving into an amalgam of resource and security concerns. Although many nation-states exploit Antarctica's living resources, the U.S. historically evidences little interest in exploiting the region's assets. However, Joyner argues that non-living resources continue to attract attention, despite remaining a matter of conjecture and inference. He attributes this concern to the assumed relationship between the continents and the belief that non-living resources currently exploited elsewhere may exist in Antarctica. As of 1996, however, no known mineral deposits or other non-living resources have been discovered in the Antarctic region.

Of greater concern, according to Joyner, is the strategic significance of the Antarctic region, particularly the Drake Passage, as it is the only direct open sea passage between the Atlantic and the Pacific. The only other comparable passage way is the Panama Canal, which is becoming increasingly incapable of housing modern oil tankers and battleships for passage to the Pacific. Given the global military commitments of the U.S., safe passage to the Pacific is vital. In addition, American foreign policy makers voice concerns over the military potential of the Antarctic.

Joyner posits that the U.S. perceives the Antarctic region as (1) a potential base for launching attacks on southern hemisphere nation-states; (2) a base for long range bombers and missiles carrying nuclear weapons; and (3) a base for submarine raiders attacking ships in the Indian Ocean, Cape Horn and the Cape of Good Hope. Therefore, largely due to the geostrategic fears and perceptions forging national security interests, U.S. foreign policy makers have ensured nonmiliterization, nonnuclearization and peaceful methods for dispute settlement in the Antarctic Region.

Joyner's *Eagle Over the Ice, The U.S. in Antarctica* provides insight into the national interests shaping the U.S. policy in the Antarctic Region. The geostrategic interests outlined by Joyner are of particular interest because they illustrate the rationale for nonmiliterization and nonnuclearization, as well as the importance of the Drake Passage in U.S. foreign policy. Furthermore, Joyner provides a thorough analysis of all perceptions forging U.S. foreign policy in the Antarctic. He does not, however, discuss relationships with other countries in the Antarctic region and their effect on U.S. foreign policy in that region. Nevertheless, uninformed readers and experts alike should find the book an enjoyable introduction to learning more about U.S. involvement in the Antarctic continent.

Jeffrey Aaron Miller

FREE MARKETS AND SOCIAL JUSTICE. By Cass R. Sunstein, New York and Oxford: Oxford University Press, 1997, 386 pages.

The twilight years of the twentieth century have witnessed the vindication of capitalism's power and efficacy around the world. Among world leaders and academics alike, free markets are increasingly being touted as engines of economic growth and opportunity for the masses. Indeed, one of the truly remarkable developments of the 1990's has been the spread of free markets throughout much of the world. The spread of capitalism is evidenced by such diverse events as the privatization of nationalized industries in England and France, the wholesale adoption of free markets in the former Soviet Union and Eastern Europe and the measured incorporation of capitalism into the Chinese economy. This trend is likely to continue as world markets become increasingly integrated and globalized.

In *Free Markets and Social Justice*, Cass R. Sunstein, the Karl N. Llewellyn Distinguished Service Professor of Jurisprudence at the University of Chicago Law School and Department of Political Science, offers a provocative examination of the free market model as a provider for human well-being in a just society. The book's main focus is on the question of what types of regulations are most appropriate for promoting human well-being in different contexts within a free market system.

Sunstein rejects the classic "command and control" form of regulation as inefficient and frequently ineffective and concludes a new approach is necessary. He endorses the use of economic incentives as a far superior method of altering market outcomes. Sunstein proposes that these market incursions be scrutinized by using a quantitative based "cost-benefit analysis" with a multivariable qualitative element that would incorporate democratic goals into an otherwise purely economic model. Finally, Sunstein advances the notion that government regulation would benefit from being formulated in a more reasoned process. He suggests that political deliberation could be strengthened at the policymaking level by decentralization of the public and private spheres and by greater information dissemination.

Professor Sunstein divided this work into three general parts. Part I concentrates on the free market philosophy's foundational assumptions. In this section, Sunstein develops ideas that recur throughout the book regarding the inherent fallacies underlying the free market system. He focuses in particular on the role of existing market preferences in the populace, the importance and function of social norms, the effects of distributional equity (or lack thereof) and the impact of whether human goods are commensurable. Sunstein also emphasizes that economic analy-

sis of the law should be based on an understanding of how humans actually behave and not restricted to rigid and unrealistic assumptions.

Part II highlights issues that are prevalent in the interaction of fundamental human rights and free market mechanisms in a democratic society. Sunstein discusses the essential nature of the free flow of ideas and information to the efficient and effective operation of both economic markets and the democratic deliberative process. Moreover, he asserts the hypothesis that the dispersion of information, when combined with constitutional guarantees of property rights, lowers the risk of oppressive and arbitrary governmental actions.

Part III scrutinizes the proper role and efficacy of regulation in an attempt to "improve" market outcomes from a political/human perspective. Sunstein focuses in particular, on regulation in the context of environmental protection and various risks to health and safety. Sunstein then engages in a detailed analysis of what he terms "regulatory paradoxes." By "regulatory paradoxes," Sunstein is referring to self-defeating regulatory strategies or schemes that achieve an end that is precisely opposite to the one intended. For example, Sunstein cites the requirement to use the "best available technology" in many environmental regulations as a self-defeating regulatory paradox because in practice, "best available technology" requirements perversely hinder innovation by skewing market incentives.

Sunstein's book develops seven basic themes: (1) the notion of laissez-faire is a harmful and pernicious myth; (2) preference formation and choices that form optimality in the market are dynamic and highly contextual; (3) the social norms of a given community directly affect the preferences of its members and therefore market choices; (4) free markets maximize economic growth but tend to exacerbate distributional inequities; (5) humans value diverse goods in diverse ways; (6) law is an effective way to shape market preferences by altering social norms; and (7) humans do not always rationally act in the marketplace as profit-maximizers.

In chapter one, Sunstein establishes the idea of market preferences as a mental state of individuals or groups that lead inevitably to market behavior termed choices. He focuses on the phenomenon of "endogenous preferences" which are a wide range of factors including context, which Sunstein illustrates as not being fixed, global or stable. The dynamic and context dependent nature of preferences is emphasized repeatedly throughout the chapter. He points out that the notion that preferences are neither fixed nor homogenous across the population violates the basic assumptions of both classic economic theory and those held by the American founding fathers.

Sunstein also identifies three categories of cases where private preferences as expressed in the marketplace should be overridden by government action. They are preferences that represent "collective action" judgements; preferences that have evolved out of unjust background conditions or limitations in available opportunities; and intrapersonal collective action problems that over a lifetime, impair personal welfare or freedom (such as drug addiction). The interdependence of social norms and the expression of market choices and preferences is explored in chapter two. Sunstein effectively illustrates how little we really grasp the true nature of this connection, and yet how crucial this understanding is to coherent policy choices. This is particularly important and insightful in the areas of environmental protection and safety regulations generally.

One of Professor Sunstein's most insightful propositions is the issue of incommensurability of goods, the subject of chapter four. The idea that goods are commensurable is an implicit assumption that undergirds much past legal thought. The concept of incommensurability is that diverse people value diverse goods differently. More explicitly, this speaks to a valuation of a different kind, type or level rather than a different magnitude of the same scale. The notion of incommensurability is important for basic communication because clarity of expression or understanding depends on common perceptions and definitions. Thus, according to Sunstein, the use of dissimilar scales or "metrics" inevitably leads to comparisons of "apples and oranges."

Later in the book, Sunstein links the importance of information dissemination and deliberative processes to rational policy choices. He illustrates this link by examining the often illogical results derived from the inaccessible policy process of environmental and safety risk assessment. Using the empirical results of numerous studies, Sunstein demonstrates that expert and lay evaluations of risk are quite divergent. For example, lay persons perceive higher risks involved with nuclear power versus coal burning electric power generation, but experts actually rate coal burning facilities as far riskier. He concludes that this dichotomy is a result of informational differences. These differences have obvious implications for regulatory priority setting and disconnect the populace from government policy.

With his conceptual basis established in the first five chapters, Sunstein applies these concepts by analyzing contemporary issues over the balance of the book. For example, in chapter six he concludes that markets will never eradicate discrimination without government intervention because of the effects of social norms that arise from circumstances of poverty and the limited opportunities for positive choices found in those communities. Thus, according to Sunstein, the comparable differences be-

tween the relatively well off and the poor will therefore not only be reinforced, the disparity will widen.

Sunstein's *Free Markets and Social Justice* provides an in depth analysis of many of the most pressing regulatory and social issues of today. The critical reader may question Sunstein's dilution of the impartial predictive capacity of the cost-benefit analysis by the addition of qualitative variables; however, from an overall theoretical and practical perspective, he provides an insightful, innovative and provocative account of how to use free markets as a tool for improved social outcomes. Although his prose sometimes lacks discipline and clarity, he succeeds in elevating the debate over regulation from one of "unfettered markets" versus "governmental paternalism" to one of determining the best means.

John R. Doody

HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY. By Fernando R. Teson, Irvington-on-Hudson, New York: Transnational Pub., Inc., 1997, 338 pages.

Certain occasions in history compel even the casual observer to lament the seeming helplessness the world suffers when a country oppresses and persecutes its own people. The most recent example of this phenomenon can be found in war-ravaged Bosnia. Such occasions call into question the responsibility of international onlookers and their level of culpability for inaction. However, the defense of such onlookers is very much akin to the defense of the individual who knows of abuse taking place in his next door neighbor's house: "Who am I to intervene in a situation that is not mine?" Indeed, international law is presently premised on this principle. Fernando Teson, in what is a thesis first put forward in 1987 and continually updated to include subsequent events to support the thesis, attempts to undermine the reasons for this instinctive reluctance from a philosophical standpoint in *Humanitarian Intervention: An Inquiry Into Law and Morality.*

Teson's first task is to challenge the notion that international law should be devoid of a philosophical foundation. He begins with the assumption that present international law operates on the premise that nation-states should place blanket reliance on state sovereignty. Interference with this sovereignty, regardless of the reasons, and regardless of the degree of perceived harm by the spectator, is akin to intruding in your next door neighbor's affairs. Teson then proceeds to attack this assumption on philosophical grounds that find their root in the origins of the state.

Teson argues that the state is nothing more than the product of a social contract between individuals and their leaders. Individuals cede some of their freedom to a central authority with the understanding that in return they will receive greater protection of their rights. It then follows that no rational individual would trade any of his freedoms for an almost absolute repression of his fundamental rights. If this is in fact the case, then the state is not fulfilling its end of the social contract, and thus other states are not bound to respect their state sovereignty. This is the thesis that Mr. Teson urges us to adopt. He then spends the remainder of the book challenging the tenets of present international legal thought.

Chapter Three is devoted to the analysis of what contemporary legal thought entails, a notion he titles "The Hegelian Myth." This myth consists of the idea that nations, like corporations, are entities of their own. As such, they are deserving of rights and freedoms separate and discernable from those of the individuals that comprise them, regardless of the form of government that makes up the state. While the author does not reject the Hegelian Myth in its totality (or at least does not afford it

much attention), he certainly refutes the notion that state rights can be given greater priority than the fundamental rights of its individuals. Teson takes this argument to its extreme, though only briefly, by posing the question of why we should have states at all. While this is not a point discussed at length, it is useful to the extent that it exhibits the philosophical vision of the author in subsequent chapters.

The common thread that winds through the entire book is the idea that there is an objective sense of morality that all cultures of all nations can agree on and this sense of morality should form the foundation for future international law. Thus, according to Teson, international law should not be based upon artificial, politically imposed boundaries that are subject to constant change, but rather on a system of values that transcends these boundaries and applies without regard to nationality. In a sense, the nation-state model is a game that individuals are forced to play due to the present political climate, but if not for the pre-existing system (in which the present players have no control), the game might not exist at all.

What is unclear is how the author expects this book to be received. As a theoretical model, the book works insofar as it provides an idealistic standard that might work in a much different world. As a practical guide to international activity and responsibility, it encounters problems. While Teson attempts to tackle the real concern for the practical implications of his suggestions, his explanations do not take sufficient account of the stark philosophical and practical realities of the present international climate. As mentioned earlier, Teson's thesis is based upon the idea that there is an objective standard of morality. He blames cultural relativists for dividing the world into spheres, each of which have their own set of subjective moral standards, which are not necessarily congruous with each other. This phenomenon Teson blames on Western racism more than any other factor. Setting aside for the moment Teson's contentions regarding relative theory, the greater problem is that he doesn't really enunciate what an objective standard of morality would entail, if such a standard in fact exists. This perhaps illustrates the problem the author encounters because he relies on a proposition that is in itself difficult to articulate. For instance, even if all peoples could agree on rights that all should enjoy, it is unclear whether the accumulation of all agreed upon rights would even warrant embodiment or enforcement.

Once Teson is finished refuting the Hegelian Myth, he uses the next chapter to outline the types of governments worthy of recognition in the international community. Quite clearly, governments that by their systems tend to protect human rights are the most worthy of Teson's recognition. Democracy, the author concludes in Chapter Seven, is the form of government most conducive to the assurance of rights. Teson contends that

this is so primarily because democracies are based upon the popular support of the governed, as opposed to dictatorships, which apparently are not (although that certainly does not explain Hitler's general popularity in the Germany of the late 1930's). His response to the popularity of some dictatorial regimes is that "even if dictators sometimes come 'naturally,' in the sense of enjoying the support of the majority of the population, the crucial point is that they are still illegitimate with regard to the oppressed minority. This minority has the right to revolt against such government . . . and foreigners have the right to furnish that help." Why minority oppression is unique to dictatorships and where the logical end to his argument lies are questions left unanswered by Teson. However, almost by definition, the minority in any system feels oppressed. It is perhaps the minority's greatest characteristic. Furthermore, as long as objective rights deprivation remains undefined, all that can be relied on is the minority's subjective expectations.

In chapter Five, an important section of Teson's work, the author discusses the practicality of humanitarian intervention. The chapter's main thrust is to rebuke those who argue that it is impractical to intervene in the internal affairs of other nations. Among the utilitarian arguments that Mr. Teson attempts to challenge are that intervention can cause more harm than that which already existed, that the intervention would result in exploitative abuse by the intervening country and that intervenors rarely have enough knowledge of another country's internal affairs to warrant intervention.

Teson's refutations are all well taken; however, they are based upon the assumption that all nations are of equal strength, and the fact remains that only strong nations are capable of intervention. However, this assumption is inaccurate. For instance, many observers both within and outside the United States consider capital punishment a serious human rights deprivation. Yet it would matter little if a country such as Canada felt compelled to remedy this perceived violation through intervention because of the United State's military and economic strength. Thus, the author's model of intervention does not seem to apply to countries strong enough to defend themselves from outside intervention, whether that intervention is justified or not. But while this conclusion, and some of Mr. Teson's other conclusions are subject to debate, he has, in *Humanitarian Intervention: An Inquiry Into Law and Morality*, undertaken an admirable task. The frustrations of Bosnia, Rwanda and other recent tragedies call upon us all, especially Americans, to rethink our role in the post-Cold War world. Mr. Teson has provided the impetus and the model for that rethinking, and in that regard, his book is a success.

Jonathan Pasterick

A CRITICAL INTRODUCTION TO EUROPEAN LAW. By Ian Ward, London, Dublin, and Edinburgh: Butterworths, 1996, 217 pages.

Economies all over the world are becoming more interdependent. The most significant example of this trend is the development of the European Union. In *A Critical Development to European Law*, Ian Ward provides a detailed analysis of the European Union, from the formation of a common market to the development of an economic and political union. The book critically examines the history behind the need for a European partnership between nations, the development of the European Union's laws and the economic agreement's effects since the Treaty of Rome was signed in 1957. By doing so, Mr. Ward effectively presents valid criticisms of the Union and explanations for its shortcomings.

Chapter one of the book gives a detailed history on the idea behind a "United States of Europe" and attempts to explain the development of the European Union. The chapter is broken into sections that discuss four time periods: (1) the history leading up to the Treaty of Rome and the establishment of the European Community; (2) the stagnation the Community experienced during the 1960s and 1970s; (3) the developments leading to the signing of the Maåstricht Treaty in 1992; and (4) and the developments since Maastricht.

In discussing the history before the European Community, the book attempts to dispel the popular misconception that the idea for a united Europe was unannounced until World War II. Next, the author examines various motivations after World War II that led to the development of the European Community. Mr. Ward points to the needs of different nations as a reason for a "liberal based economic policy." For example, Germany appeared to profit most from economic unity because it would aid in Germany's post war reconstruction and foster international respectability for Germany. On the other hand, France desired a union to gain access to the German coal and steel industries. Finally, Mr. Ward also points to the desire to get the United States out of Germany after reconstruction as a motivating factor behind unity. Overall, Mr. Ward's analysis enables the reader to have a clear picture behind the reasons for developing a union and the reasons why "[t] he partial surrender of sovereignty in certain areas was the price necessary in order to preserve the nation state."

After laying a historical foundation, Mr. Ward discusses the stagnation the European Community experienced during the 1960s and 1970s. Besides a worldwide recession during this time period, two main reasons are given to explain the sluggish development of the internal market. First, tension existed between alternative intergovernmental and federal supranational political ideas. While each individual nation wanted the ad-

vantages of an open market, none wanted to sacrifice its sovereignty. Consequently, no city was allowed to become Europe's capital city, and the three major institutions, the Council, the Parliament, and European Court of Justice, were each located in different cities. Mr. Ward also blames France for much of the stagnation because of its instance on a common agricultural policy, which resulted in high surpluses. Additionally, France's requirement that agricultural agreements in the European Council must be approved by unanimous vote led to further stagnation.

The second reason offered for the slow development of the open market was the desire to promote general economic growth while compromising overall growth to ensure an economic equilibrium between member states. Again, Mr. Ward puts much of the blame on the French and their desire to protect their agricultural industry, which resulted in price increases and low productivity. However, Mr. Ward also points to the Luxembourg accord that gave each member a veto power as a block to instituting reform measures because it allowed member states to block any legislation that, while beneficial to the European Community, could be detrimental to the member state.

Finally, the end of Chapter One analyses the goals of the Maastricht Treaty of 1992 and the treaty's success in meeting those goals. Three main goals were identified: (1) reform of the Common Agricultural Policy that subsidized agricultural production; (2) enhancement of the communities "own rescouses"; and (3) reform of the community's structure. In response to these goals, Mr. Ward expresses the view that "Maastricht is full of collateral good intentions most of which are hopelessly naïve inadequate or both." He believes that the real failings of Maastricht are in its constitutional inadequacies. In particular, the ambiguity of the agreement leads to wide interpretations and "the council remains effectively unaccountable and Parliament effectively disempowered."

Mr. Ward next turns to an analysis of the European Court of Justice. First, Mr. Ward explains the supremacy of the Court over the courts of member nations. "If the European Community has legislated in certain areas or the European Court of Justice has interpreted as such, than member states and their Courts are preempted from any subsequent legislation or alternative interpretation of existing legislation." The author then criticizes the Court because it often does not provide remedies for individuals; it only hears rights of actions by individuals against a state. Consequently, individuals often cannot find justice from the European Community and must rely on member state courts. This leads to prejudices against individuals who are not citizens of a particular state and incoherent application of European Community laws.

The author next addresses the politics of the European Court of Justice. In particular the Court has been criticized for judicial activism. Mr.

Ward points to the fact that many commentators believe the Court has tried to assume the role of a constitution maker. In response, however, Court proponents contend that the Court is simply supporting the institutions of the European Community as they struggle to maintain legislative authority. Finally, at the end of this chapter Mr. Ward turns to the difficulties of integrating "European Law" into national courts. As examples, Mr. Ward discusses recent cases before the European Court of Justice that have conflicted with national courts on issues of relief against government bodies.

In chapter three, Mr. Ward discusses the economics of European Law. First, the author mentions that economic policy has always been designed to satisfy the "need to create a package deal satisfying the participant's national interest." However, the economic development of the community has suffered because member countries often do not coordinate their economic efforts. For example, at a time when Germany was adopting anti-inflationary measures, France and the United Kingdom promulgated growth strategies. Thus, Mr. Ward contends that what was missing was a coordinated macro economic attempt to solve economic problems. Furthermore, the common polices that were in place were designed to work in times of prosperity, but did not work in times of distress.

Chapter four is titled "The Morality of Europe" and deals with the work of the European Community in the areas of human rights and social policy. Because many of the treaties establishing the European Community do not address human rights, the European Court of Justice often relies on the jurisprudence of member states. This results in some state members having less protection than others. Moreover, some commentators have suggested that the Court is using human rights as a means of judicial activism to extend existing European law. In regards to social policy, the book criticizes member states because they do not follow the treaty's provisions regarding the free movement of capital and immigration. This is likely because member states are sensitive in giving up their autonomy in these areas and want to avoid having poor non-European migrants enter their borders. Finally, chapter four addresses industrial relations and sex discrimination in the European Community. Mr. Ward contends that while some good work has been done in these areas, much of the legislation is watered down and ineffective. Additionally, Mr. Ward believes that the hope for a stronger and more unified social policy may rest with the European Court of Justice and its willingness to expand the impact of statutes.

In the end, *A Critical Introduction to European Law* provides an excellent analysis of the development of the European Community and reasons for the Community's successes and failures. For those wanting to

know more about the Union's formation, chapter one provides an excellent chronology of the events leading up to the establishment of an internal market and why the establishment of the market is considered necessary for Europe's prosperity. Additionally, the material on the European Court of Justice provides an interesting analysis of decisions of that Court and a discussion of how the Court has attempted to influence the policy of the European Community. While the author admits, "this book is not comprehensive," the book is an excellent tool into learning more about the economics, politics and law of the European Community. After reading *A Critical Introduction to European Law*, the reader will surely develop an appreciation of the difficulties of establishing an economic and political union.

David B. Jackson