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BOOKS RECEIVED

ECONOMIC SANCTIONS AND U.S. TRADE. By Michael P. Malloy. Boston: Little, Brown and Company, 1990, 752 pp.

In *Economic Sanctions and U.S. Trade*, Michael P. Malloy examines a prominent tool of U.S. foreign policy and an issue that, in light of the Persian Gulf War, is of particular relevance. The author proposes that his book is "an extended analysis of economic sanctions in contemporary practice." In fact, the book is a comprehensive work, filled with copious charts, graphs and sources and is a significant contribution to the economic sanctions literature.

In Part I, Malloy explores the scope and basic policy objectives of economic sanctions. The author comments that as the will to wage war with our armed forces has diminished, there has been an increasing tendency to resort to economic sanctions. "To a great extent," writes Malloy, "the rattling of sabers has been replaced by the jingling of coins in the pocket." He does not, however, view this as a completely positive development, and fears that the less apparent costs of economic sanctions may encourage countries to resort to sanctions when the use of armed forces would have been intolerable.

The author provides the legal and historical context in which economic sanctions have developed by examining in detail the principal U.S. statutory authorities available for the imposition of sanctions. He scrutinizes the four major U.S. statutes governing the law of economic sanctions: the Export Administration Act (EAA), the Trading With the Enemy Act (TWEA), the United Nations Participation Act (UNPA) and the International Emergency Economic Powers Act (IEEPA).

The EAA is the broadest source of statutory authority. But, because its primary purpose is the regulation and facilitation of U.S. export trade, it is of little importance to economic sanctions. In contrast, section five of the TWEA is the "locus classicus" of statutory authority for U.S. economic sanctions. The UNPA is of little importance, since it only concerns the need for U.S. compliance with mandates of the United Nations. There is also the IEEPA, which was intended to replace the TWEA as the statutory authority for economic sanctions during times of declared national emergency. The IEEPA has become the "economic weapon of choice" and has been invoked often in the last

five years.

Part I concludes with a review of the history of economic sanctions. This is presented as a broad outline of the use of economic sanctions in practice. The survey begins by describing sanctions employed during World War II and concludes by analyzing the sanctions imposed against Panama.

In Part II of his book, Malloy focuses on the effect and the dilemmas posed by the economic sanctions programs on international trade. This part is comprised of a series of detailed chapters on economic sanctions programs. Economic sanctions imposed against East Asian countries, Cuba, Central America, South Africa and Libya are reviewed in considerable detail. Malloy's case studies are innovative in that they provide an extensive analysis of the mechanics and practical application of major sanctions programs. What one finds most helpful are skeletal but representative scenarios at the end of each case study that are intended to illustrate numerous applications of the economic sanctions. The examples successfully demonstrate the effect that economic sanctions can have on a U.S. firm.

In Part III, the author examines the legal limits of economic sanctions both as a matter of domestic law and as a matter of international law. Malloy finds that sanctions continue to operate with few legal limitations under both domestic and customary or conventional obligations of international law. The only meaningful limit that Malloy perceives to the scope of U.S. economic sanctions is the hostility of foreign governments to this country's extraterritorial application of sanctions. Malloy indicates that, perhaps as a result of this tension, there has been more sensitivity in recent U.S. practices to issues such as extraterritoriality and the treatment of binding contracts. Yet, he concludes that U.S. policy is unlikely to alter itself in any significant way in response to foreign litigation repudiating the extraterritorial application of U.S. sanctions. Accordingly, U.S. firms involved in international transactions will be left to absorb the risks of future U.S. sanctions, risks which are speculative at best and, thus, difficult to avoid through preventive measures.

Following his examination of the legal limits of economic sanctions, Malloy struggles to determine the effectiveness of sanctions. He reviews recent criticisms of the effectiveness of sanctions, and offers some economic and political criteria that can be used to evaluate sanction effectiveness. He argues for a more precise definition or formulation of what can objectively be considered "effective" when evaluating an economic sanctions scheme. He argues that the most successful sanctions have been those that apply a comprehensive range of sanctions, in coordination with a range of other seriously initiated foreign

policy measures. The sanctions against Iran are an example of comprehensive sanctions. In contrast, the least effective sanctions programs are those that apply a narrow range of economic coercion with little overall foreign policy coordination. The U.S. sanctions against Nicaragua may be an example of sanctions that were ineffective because they were imposed in a vacuum. Whether the sanctions are coordinated internationally, on a multilateral level, appears to have little impact on their effectiveness, as evidenced by the sanctions against South Africa and Southern Rhodesia.

In conclusion, Malloy notes, with some trepidation, that the current sanction programs reflect an expanding use of the President's powers. The president has been more willing to use economic sanctions as a foreign policy weapon in recent years. As a result of the IEEPA and the National Emergencies Act, the President is now obliged to declare a national emergency each time he wishes to impose economic sanctions. Malloy correctly points out, that among recent sanctions episodes, only the Iranian sanctions, imposed in response to the Iranian Government's hostage taking, represented a genuine emergency situation.

It is less clear, however, whether national emergencies were at stake when the President declared them against Nicaragua, South Africa and Panama. "The rate at which sanctions have been imposed over the past decade," writes Malloy, "cannot help but call into question the legitimacy of the uses of presidential emergency powers, if not trivialize sanctions practice." Malloy warns that if sanctions are imposed merely to placate some domestic constituency, then when they are ineffective in achieving their objective, their use trivializes what may otherwise have been a legitimate instrument of foreign policy. Thus, the matter remains political in nature, and the standards of what can be considered to be truly effective sanctions remain murky at best.

Throughout his book, Malloy recognizes that sanctions should not represent policy goals in themselves, but should rather be instruments employed for specific objectives. Accordingly, sanctions need to be judged on their own terms. *Economic Sanctions and U.S. Trade* assesses economic sanctions on their own terms and, in doing so, provides an important contribution to a contemporary and controversial issue.

LATIN AMERICAN POLITICS: A THEORETICAL FRAMEWORK. by Torcuato S. Di Tella. Austin, Texas: University of Texas Press, 1990, 236 pp.

From three historian friends I have learned: (1) the decline of medieval Scholasticism was due in part to a debilitating fascination with hyper-exact definitions; (2) a thinker who quests for an explanatory taxonomy must not lose sight of the fact that she cannot stand outside of the taxonomy; and (3) if a book is not a very good book or it is a book that appears to have little value, the reader's task must be to extract that which is useful.

All three insights are relevant to *Latin American Politics: A Theoretical Framework*, written and translated from Spanish by Torcuato S. Di Tella, professor of sociology at the University of Buenos Aires. Mr. Di Tella's work, which explores the past and present history of Latin America, presumes an extensive background in Latin^aAmerican history, not to mention a penchant for modern intellectual thought and proximity to a dictionary. In order that an observer may have a grasp of what is being discussed, Mr. Di Tella sets out to create a complex sociological model that can be fine-tuned for an individual Latin American country. Mr. Di Tella asserts that he is committed to a "scientific approach" to the study of modern life, which he contends "distinguishes between the study of reality and the attempt to change it, however much both tasks are connected in practice." This scientific approach requires a painstaking attempt to derive narrow, precise definitions that will serve as levers and pulleys in his "explaining machine." When all this is completed, such a machine should be able to ingest massive sociological information and regurgitate a picture of "short-term and detailed events." It will not generate predictions for the future or "long-range forecasts" because Mr. Di Tella contends that such are scientifically invalid. At first glance, this sociology does not appear to have great relevance for legal scholars.

Nonetheless, it is useful to apply the historical insights set forth above to Di Tella's work. It is arguable that Mr. Di Tella makes the mistake of Duns Scotus: he wants to complicate definitions and hypotheses past the point of meaningful return. It is not that the incessant reticulation is not a sound intellectual challenge or that Mr. Di Tella is not up to the task, but rather that life, being short, requires that we cut our losses and make concessions. For example, the reader gets the feeling that Mr. Di Tella is en route to an unnecessary complication when he states that "it [a prior theory] is so simple that it almost becomes common sense, but that is no reason to abandon it." One wants to grab Mr. Di Tella by the scruff of his neck and exclaim, "what a great rea-

son to embrace a theory." Nonetheless, because the lawyer's trade is to identify, define and distinguish, Mr. Di Tella's project may be of assistance to the practitioner in an indirect manner: it exemplifies the possibility of overboard behavior, of periphrasism.

Our second insight should alert Mr. Di Tella that he is attempting to explain a phenomenon of which he compromises an element. By assuming a scientific pose outside of the machine he proposes to create, he illuminates a central dilemma: he is both acting and acted upon and no recourse to scientific terminology will set him free. Likewise, an international attorney must learn how to check her biases at the client's door in order to see objectively and how to empathize with a client when her own interests are intertwined with the client's. In other words, Di Tella is an academic and a sociologist, of which certain stances are required and certain pressures are exerted. He is unwittingly a participant in the story he wishes to tell, and as such, unable to account for himself objectively.

What, ultimately, can be salvaged in this work for a lawyer with international ambitions? First, Mr. Di Tella informs us that an emerging political stability in Latin America is complicated by several factors, including the lack of legitimate authority, the outbursts of contumacious behavior, the military presence, and tensions in the class structure. On the other hand, the existence of an aspiring middle class bodes well for the development of an increased trade in goods. Second, we learn that the road to democracy in most Latin American countries will not be an easy journey. Mr. Di Tella recognizes the need for a benevolent dictator, a possibility, however, that is complicated by the factors articulated above. Finally, the Latin America of which Mr. Di Tella writes has developed an elite intellectual class, of which he is a member. This class is not unlike that of the United States and Western Europe. It is prone to the same conspiracy theories that purport to explain why socialism has not captured the hearts and minds of the majority: the middling and lower classes are "co-opted" by the potential for social mobility. The rise of such university-based flaneurs and their backward theories is certainly, if nothing else, an indication of a sophisticated economy.

In sum, we can only strain to make connections between Mr. Di Tella's work and international law. If the process of straining has redemptive value, it is only because it requires creative effort and not because it necessarily succeeds.

WHERE NORTH MEETS SOUTH: CITIES, SPACE, AND POLITICS ON THE U.S.-MEXICO BOUNDARY. By Lawrence A. Herzog. Austin: Center for Mexican American Studies, University of Texas at Austin, 289 pp.

Lawrence Herzog begins his book, *Where North Meets South*, by explaining how the nature of international borders is changing. Traditional analyses of boundaries examined the context of "political and military dividing lines between nation-states," and focused on the power relationships between the respective political units. Border areas now, however, are loci of economic activity with rapidly growing urban populations and political boundaries are increasingly blurred. Moreover, the growth occurring in the border lands is a reflection of the changes in "political-economic and technological relationships" that have occurred on a global level. Herzog argues that to analyze these new border cities within the global economic system requires broadening the narrow view of international borders traditionally employed by political geographers and others.

Traditional theorists present international borders as hindrances to private investment and economic growth because of their politically sensitive nature. In sharp contrast to such views, Herzog offers the development of the border area between the United States and Mexico as an example of the changing nature of international borders. Growth rates on both sides of the geographical dividing line surpass national average rates and the urbanized areas are emerging as a significant economic force.

Herzog presents an extensive overview of the forces that have created and shaped urban areas along the U.S.-Mexico border and their effects on the future analyses of international borders. The areas present a particularly challenging analysis because of the socio-economic inequalities present therein. The border between the United States and Mexico illustrates the growth of human settlements, largely reflecting the disparities found in the larger nations. This is the line where the Third World bumps up against the New World and the economic interdependence is largely one-sided in favor of the United States.

Following his introduction to the evolution of the economic environment along the U.S.-Mexico border, Herzog examines the processes that shaped urbanization in these borderlands. In particular, the author discusses the extent to which border cities are a product of national urbanization processes, while subject to social, economic, cultural and political forces that penetrate the artificial boundary. A multi-chapter case study on the border zone between San Diego, California and Tijuana, Mexico offers a close and detailed look at the impact of an inter-

national border on urbanization.

Herzog argues that "a new ecological form is evolving" along international borders. The result of urban growth along these borders creates what he terms the "transfrontier metropolis." This transfrontier metropolis is a transnational settlement "functionally unified by common daily activity system," but interrupted by the political border defining two culturally different cities. There are two opposing forces present in these areas — traditional cities (defined by national culture) and integrated metropolises (defined by "evolving social, cultural, and economic processes that connect the United States and Mexico" on a daily basis). Herzog applies this framework to the San Diego - Tijuana region, highlighting the consumer market and labor market linkages between the two cities.

Herzog then undertakes to examine "transfrontier linkages" in the context of a functional "ecosystem" and the impact of an international border on such an ecosystem. Herzog's model of the "transboundary urban ecosystem" consists of a geographical system composed of three subsystems: the natural environment, the human environment and the built environment (e.g., transport, housing, industry, commercial development). The San Diego - Tijuana border zone is imposed on the model to examine how these systems interact in the management of this spatial area. An important component of management of the "ecosystem," recognized by the model, is management of negative externalities associated with national boundaries.

"Good fences make good neighbors." With this quote from Robert Frost, Herzog begins and ends his closing chapter. Recognizing that foreign policy agendas significantly affect negotiations over border problems, Herzog points to the social, economic, and political asymmetries that exist between Mexico and the United States. Establishing the interaction necessary to cooperatively manage border regions, he posits, "may lead into a new area of foreign policy." Yet, Herzog asserts, there may be an unappreciated consequence to the strong feelings of national sovereignty that still pervade each side of the border. Perhaps, he muses, the barriers created by national sovereignty serve as protection to Mexico from abuses by business and capital from the United States. Perhaps good fences do make good neighbors.

Where North Meets South is an ambitious and well-organized volume presenting a vast amount of information on the study of international space. While largely presented from the perspective of political geography, this book would serve as an excellent introductory survey to the study of international borders. The text is supplemented with substantial and comprehensive references to the literature of the field, as well as numerous tables providing empirical data to supplement the au-

thor's discussions. Herzog's application of the analytical models to the San Diego-Tijuana border zone sheds light on the problems of planning in an international border area, and raises significant questions regarding the future of international relations along border zones.

GOVERNMENTS AND CORPORATIONS IN A SHRINKING WORLD: TRADE AND INNOVATION POLICIES IN THE UNITED STATES, EUROPE & JAPAN. By Sylvia Ostrey. New York, NY: Council on Foreign Relations Press, 1990, 99 pp.

Governments and Corporations in a Shrinking World, by Sylvia Ostrey, grew out of a Council of Foreign Relations study group which met six times in 1989. The study group's discussion was confined to issues revolving around global corporations, and participants included corporate executives, policymakers and academics.

The book examines the inconsistencies among foreign policies worldwide which have developed concomitant with recent technological advances and telecommunications revolution. The author posits that the multilateral trading system is clearly under stress, and that international economic governments will be shaped by the interplay between corporations and governments. Moreover, it is suggested that a number of factors in the environment have the potential to generate significant changes in the evolution of the world trading system, especially in light of the recent Uruguay Round of GATT.

The book focuses on several specific areas in order to analyze how global corporations operate worldwide on a strategic level. These include trade and innovation policies, on both a microeconomic and macroeconomic level. On a macroeconomic level, wide swings in exchange rates, an increase in unemployment and severe account imbalances have led to the notion that the United States deficit is a purely domestic problem. The author disagrees with this theory, stating that the impact is on the international arena, with political pressures for microeconomic policies that deal with Far Eastern regimes.

The author tracks three developments in her criticism of slow progress by international government policies: a decline in the foreign policy goals which governed the United States postwar, an increasing focus on competitiveness in international trade and an erosion of multilateral trade policies. Ostrey argues that the GATT rules which were once relevant to international interdependence have been eroded, resulting in much uncertainty to global corporations.

Finally, the book concludes that although the Uruguay Round of GATT is highly ambitious in dealing with the problems resultant from a "shrinking world," several key issues could not be discussed because of the rapid changes in trade developments which have occurred since 1986.

Although the book is well-written, its flaw is that it presumes its readers are knowledgeable in several highly technical areas of economics. However, without an extensive background in international capital

markets, it is extremely difficult to grasp concepts which are essential to the author's argument.

COMMON LAW IN SOUTHERN AFRICA: CONFLICT OF LAWS AND TORTS PRECEDENTS. By Peter B. Kutner. Westport, Connecticut: Greenwood Press, 1990, 372 pp.

In Common Law in Southern Africa, Peter Kutner undertakes to explore the legal principles and rationale underlying Southern African judgments whose approach lies within the body of common law. In so doing, it is his express objective to provide a reference for lawyers of other common law countries to the Southern African treatment of Delict and Conflict of Laws cases. The author, however, makes clear in his introduction that this book is not intended to be an exhaustive study of Southern African law in either of these areas, nor a comparison of the common law precedents in other countries with that of Southern Africa.

It should also be noted that although Mr. Kutner's focus is on English common law, the Southern African countries studied adopted Roman-Dutch law. As a result, many lawyers traditionally have not considered Southern African judgments when presented with a common law case in their own countries. Though there are unquestionably substantial differences between Roman-Dutch and English common law, there has been, nevertheless, an infusion of English common law influence as a result of British colonization prior to the existence of the Union of South Africa in 1910. Kutner has targeted those cases whose judgments reflect that influence. The reader may well forget at times that these are Southern African judgments and not those of the United States.

From a technical perspective Mr. Kutner has divided the book into two parts: Part I: Southern African Precedents for Conflict of Laws; and Part II; Southern African Precedents for the Law of Torts. Each part is logically subdivided by the major issues in each area, and each of these issues is further subdivided. A table of statutes and cases as well as a listing of the principal works cited along with abbreviations follows the last chapter.

Stylistically, the author's discussion appeals to both the attorney and the layperson. There is a refreshing absence of legal rhetoric, making for a clear and concise presentation of the issues. His factual summaries are not laden with technical detail, but instead are related in plain language with sufficient detail for the reader to comprehend the issues being presented. His account of the facts of *van der Vyver v. Netherlands Insurance Co. of S. A. Ltd.*, and its relation to the assumption of risk defense provides an appropriate illustration of the clarity of his writing. The facts read much like a fictional narrative: "The plaintiff and van der Merwe crept toward Ozen's car. They could

see that there were people in the rear of the vehicle. Ozen then climbed out, clad only in a shirt and socks, and began to put on his trousers. . . . Upon seeing them, Ozen jumped inside and began driving in the direction of the dirt road.”

This is not to suggest, however, that Mr. Kutner has been remiss in including substantive discussion of complex issues — to the contrary. Each division is replete with the progression of the case law in that area. This point is illustrated by his discussion of domicile in Part I where he begins by detailing *Smith v. Smith*, an opinion which narrowly defined the requisite intent necessary for determining domicile. Kutner briefly excerpts the language of the decision and then guides the reader through the progression of the subsequent case law in the areas of immigrants, children and servicemen, illuminating the resulting inequity when applying the *Smith* Court’s definition. The reader is able to follow with ease, the erosion of the rigidity of the court’s decision and the development of a more pliable and equitable standard.

Despite Kutner’s self-imposed limitations on the scope of his discussion and his deliberate avoidance of excerpting large portions of the various courts’ opinions in the interest of reducing the volume’s length, there remains, nevertheless, a tension throughout the book as to what is intended for the reader. Should *Common Law in Southern Africa* be approached strictly as a point of departure for further research concerning common law or should it be considered a substantive presentation of Southern African common law? If the approach is the former, then Kutner has indeed been effective in creating a Southern African reference to common law. With numerous citations and discussions, regardless of brevity, one interested in Southern African approaches will undoubtedly be focused in the right direction. If however, the latter was his intention, then his objective has been somewhat sacrificed by the myriad of cases cited. At times one feels as if cases are being hurled past significant cases with only the most precursory attention.

In general, however, Kutner has presented complicated materials and issues into a format accessible by all kinds of readers. In the final analysis, his coverage is complete and successful in providing the reader with a perspective on Southern African common law.