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BOOK REVIEWS

Public International Law and the Future World Order (*Liber Amicorum* in honor of A.J. Thomas, Jr.)

Edited by Joseph Jude Norton, General Editor. Fred B. Rothman & Co., Littleton, Colorado 80127, 1987, pp. 608, \$47.50.

Festschrift,¹ a book of scholarly works usually honoring a distinguished scholar, is an underused publication form in the United States, although quite regularly employed in Europe. Its value as an academic publication form comes from its occasional use, its honoring of significant scholarly accomplishment, and its usual provision of a collection of impressive thinking by prominent scholars on a generally important and coherent theme.² With the publication of *Public International Law and the Future World Order*, honoring the life of A.J. Thomas, Jr., Professor Joseph Norton, as able General Editor with the sponsorship of Southern Methodist University's School of Law and Center for International Studies, has introduced this valuable format to the American legal public. Like its European counterparts, this book represents a collection of impressive thinking by renowned scholars on a wide range of important international legal topics. It provides as well a glance at A.J. Thomas's life of scholarly achievement and his productive collaboration with wife and frequent co-author, Ann Van Wynen Thomas. The book also salutes the influence and incalculable value of a scholar-teacher who, through his inspired teaching and writing, impacted scores of students. As Covey Oliver writes in his sensitive tribute at the beginning of the book, Professor Thomas's con-

1. Translated as commemorative publication or publication in honor of. The editor for the volume being reviewed uses the Latin, *Liber Amicorum* (book of friends).

2. This is not to say that we do not have a publication form to accomplish these objectives. Law reviews often dedicate issues to distinguished professors upon their retirement or death, but rarely do such publications have the thematic cohesion or as extensive a collection of essays as does a *Festschrift*.

tributions to international law "lie in the minds and works of numbers of students and colleagues from all over the world."³

The book celebrates this impressive life in international law by presenting twenty essays, many of which are authored by eminent international legal scholars from the United States and abroad. General Editor Norton reveals the book's core theme in his introduction: "[T]he critical and ultimate value of international law is in shaping the preconditions of a peaceful future 'World Order.'"⁴ Thus, the interplay of public and private international law (including foreign and comparative law) becomes a consistent, if not the understated, focus of the book. Towards elucidating the range of international legal activity subject to the book's theme, the essays are organized into parts covering perspectives, dispute management, the human and natural environment, and monetary and business orders.

In Part I, entitled "Introductory Perspectives," readers are offered four thought-provoking contributions by: William Bishop, Emeritus Professor of Law, University of Michigan; Bernhard Grossfeld, then-Dean, Faculty of Law, University of Muenster; Rui Mu, Dean Emeritus, Law Department, Peking University; and Vera Bolgar of the University of Michigan Law School. Professor Bishop leads with his essay assessing "The Role of International Law in a Peaceful World." In his wide-ranging essay, in which he contributes his learned observations on the perennial questions of what role international law currently plays in creating peaceful world order and what role can it play, Professor Bishop reminds us that "international law [is] primarily . . . a law of agreement, cooperation, and coordination, rather than . . . a law of coercion."⁵ He concludes on the realistically optimistic note: "[I]nternational law 'is . . . just one institution among others which we can use for the building of a saner international order.'"⁶

Continuing to provide perspective for the broader theme of public international law and world order, Dr. Grossfeld in his chapter on "Transnational Corporations and the Reorientation of International Economic Law" observes that "the absence of economic problems is of utmost importance for the absence or minimization of frictions, for a climate of peaceful cooperation."⁷ He traces the legal development of how transnational corporations are treated. Their activities are often not subject to international or national regulation, and this gap in legal coverage high-

3. PUBLIC INTERNATIONAL LAW AND THE FUTURE WORLD ORDER at xxvii.

4. *Id.* at xxvi.

5. *Id.* at 1-9.

6. *Id.* at 1-14 (quoting Brierly).

7. *Id.* at 2-3.

lights the growing inclination to find linkages between private and public international law. In an effort to find the appropriate connections, the many codes of conduct emerging from the work of international organizations present "an integral part of a growing international law . . . show[ing] new techniques and pos[ing] new problems of enforcement."⁸

In the entertaining discussion of "The Interrelation between Comparative Law and Private International Law" by Vera Bolgar, the author explores the origins of the choice of law process and examines conflicts of law theories, making the point that open-minded appraisals of foreign legal institutions—rather than approaches geared to state interests—are the only acceptable ways to deal with conflicts problems today. Rui Mu's brief chapter adds a useful, but not new, perspective of the efforts being undertaken by a major developing country (China) to "try to transform the present International Economic System into a more equitable and beneficial-to-all 'New World Economic Order' . . ."⁹

Part II, featuring six essays on "International Law and International Dispute Management," covers a wide range of private and public international topics, and offers readers valuable insights from a variety of perspectives. Tom Franck, Professor of Law at New York University, addresses "The Prerogative Powers of the Secretary-General," in which he examines the evolutionary development of the office of United Nations Secretary-General to mediate and fact-find independent of General Assembly or Security Council authorization, but rather under the authority of the United Nations Charter and as an appropriate extension of the office itself. Franck attributes any salutary effect the United Nations may now have on world order issues to the functions performed by the Secretary-General pursuant to the prerogative power crafted and employed—effectively or not—by successive holders of that office. Werner Ebke, Assistant Professor of Law at Southern Methodist University and previously associated with the University of Muenster, adds an important chapter on enforcement approaches used in the European Communities. By addressing how the EC through its political, legal, and institutional processes manages to have states subject national interests to the greater interests of the union, Professor Ebke examines a fundamental difficulty of establishing world order. Additionally, his essay provides a valuable overview of the functioning of the various EEC institutions, which will substantially advance most readers' understanding of them.

Professor Francisco Amador of the University of Miami Law School also tackles a fundamental issue in international law, the conflicting views of the law governing state expropriations of alien property. In his essay

8. *Id.* at 2-13.

9. *Id.* at 3-7.

he argues that current criticisms are not always based on correct perceptions of the traditional principles. He does so, however, as he expresses it, without being unpersuaded "of the necessity and advisability of revising the traditional law of international claims in some important aspects."¹⁰

Professor Otto Sandrock of the University of Muenster's Faculty of Law, and Co-Director of the Institute of Private International there, analyzes the role of arbitration in providing a practical international process for resolving transnational disputes among private parties. While his essay adds little new to the currently burgeoning literature on this general topic, its compact and well-annotated elucidation of the issues (particularly his discussion of European treatments) will serve as a useful resource.

Argentine practitioner, Cesar Bunge, contributes a chapter on codes of conduct that nicely supplements Professor Grossfeld's earlier chapter in Part I by adding a Latin American perspective. He writes that "by adapting the Calvo Doctrine (as well as the Calvo Clause) to modern international law . . . TNEs [transnational enterprises] would have the same access to world markets as they do to markets within the boundaries of their home country . . . and would then be able to make the maximum contribution to LDCs [less developed countries]."¹¹

Last in Part II, Professor Covey Oliver writes about his personal impressions about the International Court of Justice. He joins others who lament the disappointing performance of the Court as contrasted with the expectations many had for it, but he also acknowledges the successes of the Court in resolving certain kinds of international disputes. He further points out that courts cannot do everything and encourages continued support for the ICJ, especially with respect to efforts to "rehabilitate" it.

Part III of the book is directed at "International Law and the Human and Natural Environment." Theo Van Boven, former Secretary-General of the United Nations Commission on Human Rights and currently Professor of Law at Rijksuniversiteit Limburg in The Netherlands, writes of the role of international human rights law and of some of the basic concepts underlying this legal area. His chapter is followed by two essays on Law of the Sea topics. Professor Kenneth Simmonds, the well-known British observer from the University of London, analyzes the continuing tension between the states supporting the deep sea mining provisions contained in the UNCLOS III Convention of 1982 and the reciprocating states regime adhered to by a number of important western, industrialized states. Raul

10. *Id.* at 7-10.

11. *Id.* at 9-4.

Trejos, then-Director of the United National Information Centre in Rio de Janeiro and former student of Professor Thomas, examines the contributions made by Latin America to the development of international legal principles for a "rational and equitable regime" for the use and exploitation of marine resources.

Ann Van Wynen Thomas, Emeritus Professor at Southern Methodist University, writes the concluding chapter to Part III on the important concern of the legal control of chemical and biological weapons. She writes, "[T]he world is still searching for the magical legal formula which, first, will assure that the laws of war completely prohibit the use of such weapons, and which, second, will establish legal ways and means limiting the freedom of nations to produce, stockpile and possess such weapons."¹² Given current disarmament initiatives, the sporadic uses of such weapons, and the ominous threats of use and development emanating from various conflicts around the globe, her call for agreements with "effective verification and compliance mechanism" commends reflection.

The longest essay of the book is Sir Joseph Gold's article on "Public International Law and the International Monetary System." Written by the Senior Consultant to the International Monetary Fund, this essay keynotes Part IV of the book, addressing the general topic of "International Law and the International Monetary and Business Orders." In his essay, Gold wrestles with the underlying theme of the book and its organization, and offers important observations of the role of international law in the operation of the international monetary system.

In one of the book's most interesting essays, Professor Richard Buxbaum, Professor of Law at the University of California at Berkeley School of Law (Boalt Hall), discusses the multidimensional influences of public international law on international business transactions. His essay is valuable reading for those who consider the legal framework that governs (and perhaps more frequently, affects) the structure and effectuation of international business transactions. Dean Salacuse of the Fletcher School of Law and Diplomacy complements the Buxbaum chapter with his piece on "Toward a New Treaty Framework for Direct Foreign Investment." He reviews some of the same relationships of MNEs and developing countries that Buxbaum did, but then focuses on direct foreign investment, assessing the role of bilateral investment treaties and multilateral efforts at establishing harmonized norms for foreign investment. Furthermore, he breaks new ground with his bold call for a General Agreement on Direct International Investment modeled on the GATT. This new initiative would address both issues of investment encouragement and

12. *Id.* at 14-3.

investor regulation, rather than deal with them separately and in different fora.

General Editor Joseph Norton, Professor of Law at Southern Methodist University, contributes a lengthy chapter on "The Contributions of the Treaty Establishing the European Economic Community," in which he expands on his introductory comments to the book and expounds on the "continuing vitality of international law in the remaking of the Western Europe and in providing a comparative model of integration for other regions in the world torn by warfare and political disarray."¹³ In the chapter he covers much territory and effectively conveys the profound effects the Treaty of Rome has had on the post-World War II political, economic, and legal development of Europe.

Nicely complementing the Norton chapter are the two concluding essays on economic integration efforts in Latin America and economic investment cooperation in the Pacific Basin. Southern Methodist University's Professor Beverly Carl's chapter on "The Latin American Integration Association" introduces readers to the LAIA and its failed predecessor, the Latin American Free Trade Association. Professor David Allan, from Monash University in Australia, and Mary Hiscock examine potential areas of conflict between MNEs and Pacific Rim host governments, predominantly the developing countries, in the field of direct private investment. And the book concludes with an anomalous, but interesting postscript on the value of Anglo-American law for developing countries by Winston Chang, a former Thomas student and currently Dean of Soochow University's School of Law in Taiwan.

With the exception of the assessment of public international law and related issues reproduced in the annual *Proceedings of the American Society of International Law*,¹⁴ it is rare to have published in a single volume the range of topics addressed by as diverse and distinguished a group of authors as are presented in this book.¹⁵ Contained herein are some germs of new thinking about fundamental concerns in international law, a few nuggets, and a great deal of useful information and valuable perspective. In making these contributions to the literature of public international law, the book appropriately honors the life of Professor Thomas,

13. *Id.* at 18-4.

14. It is regrettable that this publication receives limited circulation and remains—even after valiant efforts by the Society and its editors to put it on schedule—several years in arrears. For example, at the time of this writing, the *Proceedings* of the April 1986 meeting have yet to be published.

15. A recent publication that rivals this book in this category is R. FALK, F. KRATOCHWIL & S. MENDLOVITZ, *INTERNATIONAL LAW: A CONTEMPORARY PERSPECTIVE* (1985). Unlike the book being reviewed here, that publication is really an anthology, drawing its material largely from the finest articles on international law published in various journals over the last several decades.

who dedicated himself to employing the many tools available to teachers and scholars of international law to advance the prospects for a future peaceful world order. The message of his productive and successful life as a teacher-scholar, echoed by Professor Bishop in his opening essay,¹⁶ will inspire many readers.

Robert E. Lutz II
Professor of Law
Southwestern University School of Law

Legal Opinions in International Transactions

By Michael Gruson and Michael Kutschera. Graham & Trotman Ltd. (101 Philip Drive, Assinippi Park, Norwell, MA 02061), 1987, pp. 80, £35 (£29.75 for IBA members).

Given the paucity of literature in the field, any book on the subject of legal opinions is most welcome. This is particularly true of *Legal Opinions in International Transactions*, which was prepared as a report of the Committee on Banking Law of the International Bar Association's Section on Business Law.

The focus of the book is on the opinion of foreign counsel to be furnished in conjunction with or as a back-up to the opinion of a lead U.S. counsel. Utilizing the example of an opinion to be given with respect to an unsecured credit agreement, the book explores the relationship between the U.S. and foreign opinions and the meaning of various expressions used in the foreign counsel's opinion. Too often, these expressions are employed in legal opinions without any real consideration of the significance or effect of the wordings.

The principal authors of the book, *Michael Gruson* of New York and *Michael Kutschera* of Vienna, have assembled a team of lawyers from around the world to provide commentary on a variety of issues that may arise within the context of a legal opinion. First, a sample opinion of foreign counsel acting as counsel to a foreign borrower is presented. The balance of the book is an analysis of the principal sections of the opinion from the point of view of the countries represented in the team of lawyers.

16. "[W]e, as [students and teachers of international law] . . . can help increase the role of international law in the 'World Order.'" PUBLIC INTERNATIONAL LAW AND THE FUTURE WORLD ORDER at 1-14.

These countries are the United States, Austria, Germany, Argentina, Canada, the U.K., France, Italy, Japan, The Netherlands, and Switzerland.

While the sample opinion only applies to one transaction, a credit agreement, the breadth of issues taken up by the analysis is quite broad and extremely interesting. For example, the issues examined by the various commentators include formal ones such as dating the opinion, the appropriate addressee, a description of the documentary investigation undertaken by counsel, and limitations on the scope of the opinion. The commentators also discuss the meaning of such substantive opinion formulations as corporate status, corporate power and authorization, due execution and delivery, and qualifications to the opinion. The book does not, however, deal with the question of lawyer's liability for his opinion.

The book could have been more complete if it had contained the sample opinion of the lead U.S. counsel so the reader could study the precise relationship between the U.S. and foreign opinion. In addition, U.S. counsel's request for an opinion of foreign counsel could have been included.

Nevertheless, the book has a lot to offer to lawyers working on international transactions where legal opinions involving more than one legal system are required. It will also be useful to all lawyers in reaching a better understanding of the terms and expressions found in standard legal systems. Finally, the book contains a bibliography of existing articles on the subject of legal opinions, the first such bibliography this reviewer has seen. In sum, this is an important and valuable work that deserves to be on the bookshelf of every international lawyer who deals with legal opinions.

Robert S. Rendell
Dallas, Texas

East-West Trade: Comecon Law: American-Soviet Trade

By Thomas W. Hoya. New York, London, Rome: Oceana Publications Inc., 1984, pp. xxi, 501, \$60.00.

A significant part of Mikhail Gorbachev's promised reform of Soviet society includes fundamental changes in the state monopoly of foreign trade. One result has been a move to decentralize major segments of foreign trade operations by removing them from the exclusive control of the state-run middlemen traders—the Soviet foreign trade organizations (FTOs), which operate primarily under the aegis of the USSR Ministry of Foreign Trade. Soviet foreign trade is no longer limited to the FTOs,

which previously enjoyed a virtual monopoly of foreign trade activity even though they were neither producers nor consumers. It may also be conducted by ministries other than the Ministry of Foreign Trade, and even by individual enterprises and organizations that had hitherto been excluded from direct foreign trade activity until the first limited relaxation of centralized control over foreign trade in the mid-1980s. This relaxation had already allowed a certain amount of foreign trade to be transacted between Soviet enterprises and their counterparts within the Council for Mutual Economic Assistance (CMEA or "Comecon" as it is commonly known in the West). Legislation enacted in 1986-1987 *inter alia* now allows these Soviet entities to trade directly with Western firms without utilizing the services of the FTOs if they so choose. This same legislation has also widened the scope of permissible business activities to permit Soviet enterprises and organizations to enter into joint ventures with Western firms (as well as with enterprises and organizations from Comecon states). This type of business activity has been promoted by an increasing number of Comecon states over the past ten years. Until the onset of the Gorbachev reforms, however, it had failed to attract any favorable attention from Soviet policy makers.

It remains to be seen how effectively these changes can readily—if at all—be translated into benefits for the Soviet economy given the inherent bureaucratic resistance to change of any nature whatsoever. Further hindering change is the fact that a potentially large number of Soviet managers and bureaucrats who lack any meaningful experience in the foreign trade sector will be expected to function in what to them is in essence a totally alien environment. They will have to become involved with, among other things, such unfamiliar concepts as market competition rather than rigid state monopolies, generally less rather than more governmental control and involvement, and primarily legal, rather than administrative or political, dispute resolution. Indeed, it is the opinion of many commentators in both East and West that one needs to go as far back in Soviet history as the New Economic Policy (NEP) of the 1920s to find any parallel to the current reforms in Soviet foreign trade and economic activity.

The post-NEP period—when the Soviet State completed its monopoly over foreign trade and established the middlemen FTO traders as the virtual sole conduit for Soviet import and export operations—extends in fact to the mid-1980s. It is this highly centralized monopoly of Soviet foreign trade, characteristic of the lion's share of Soviet history, that forms the basis of inquiry for Thomas W. Hoya's impressive volume on East-West trade. The effects of the Gorbachev reforms or revolution—as some including Gorbachev have on occasion described the period of *glasnost* and *perestroika*—on the model used in Hoya's research already appear to be significant. Nevertheless, a major portion of the information col-

lected and the ideas put forward by Hoya retain their relevance even in the era of the Gorbachev reform movement. One reason is that East-West trade in the 1970s and early 1980s, on which Hoya has focused a major portion of his examination and analysis, encompassed the Nixon-Brezhnev era of detente and the resulting expectation—not unlike that engendered by the current Gorbachev reforms—that East-West and especially U.S.-Soviet trade would blossom. This was the period of inter alia Soviet-American trade, grain, and maritime agreements, Pepsico's penetration into the Soviet market, and the construction of the Kama River truck plant. That there was ultimately a withering, rather than a blossoming, at least of U.S.-Soviet trade does not diminish the value either of the proposals that were put forward during the period of detente or of those legal, economic, and political changes that were ultimately implemented as bases to evaluate current changes and assess future prospects.

Added to this is the increasing importance of foreign trade in general, apart from any specific focus on trade between East and West. It was not that long ago when foreign trade, at least in the United States, was perceived as a relatively unimportant element of the economy as a whole. The oil crises and regional trade skirmishes, if not global trade wars, have radically altered these perceptions. Today, foreign trade, foreign investment, foreign competition, foreign government subsidies, foreign market accessibility, product dumping, and the like, are issues of vital importance for the U.S. economy and ultimately for the whole of U.S. society. Indeed, they appear to be shaping up as major issues in the forthcoming presidential primaries and election campaign.

While U.S.-Soviet trade has been of minor economic importance if measured as a percentage of total U.S. foreign trade, the ever-growing importance of foreign trade in general, and the Gorbachev reforms in particular, may well result in a renewed emphasis on and interest in, or arguably even an increase in the overall volume of, East-West trade.

With these developments and possibilities in mind, the significance of *East-West Trade* lies not only in its detailed picture of past practice but also in its ideas and suggestions vis-à-vis the future of U.S.-Soviet trade. Hoya, an Administrative Law Judge with the U.S. Department of Commerce, brings to bear in this volume both his scholarly contributions to the field of U.S.-Soviet trade and commercial law and his experience in the Commerce Department, where among other activities, he has presided over administrative proceedings in 1982 on the Soviet gas pipeline dispute. The author has chosen a somewhat unique and at first blush perhaps unexpected methodology for examining and discussing East-West trade, which is to be seen in the volume's subtitle: *Comecon Law and American-Soviet Trade*.

The importance of the former is obvious when one speaks of intra-East Bloc trade. Yet as Hoya aptly illustrates, the General Conditions for the delivery of goods between organizations of member-countries of Comecon as well as other General Conditions devoted to similar aspects of trade and intercourse among the Comecon member or associated states—the primary legal bases of Comecon law—are significant because they are an important unification of international sales law and represent one of the only major unifications of sales law enforced in every country of a significant trading area. (p. 91) The fact that the General Conditions in their first redaction date back to 1958 means that Soviet FTOs have become accustomed to routinely interpreting and applying the provisions of the General Conditions in their foreign trade operations. Thus, even in trade with the United States and Western nations, where the General Conditions do not normally apply, an introduction to and knowledge of their provisions can enlighten Western firms and their legal counsel. Hoya's analysis will enable them to understand more fully past practice and experience of Soviet FTOs, which, at least at present, remain important, if no longer the exclusive, channels of Soviet foreign trade with non-Comecon states in the Gorbachev reform era.

To assist the reader in gaining an introduction to the Comecon General Conditions, Hoya compares and contrasts its substantive provisions with those of Unidroit's Uniform Law on the International Sale of Goods (ULIS) and the Uniform Law on the Formation on Contracts for the International Sale of Goods (ULF). Now, of course, more than the required minimum of ten nations, including the United States, have ratified the U.N. Convention on Contracts for the International Sale of Goods, which went into effect on January 1, 1988, and which governs the formation of, performance under, and remedies for breaches of international sales contracts among buyers and sellers having places of business in Convention states. Nonetheless, Hoya's exercise in comparing the Comecon General Conditions with ULIS and ULF is a useful one. His comparison highlights and discusses specific areas of trade law and practice in which, as a result of the almost three decades of the General Conditions umbrella, the experience of Soviet FTOs is different to a greater or lesser degree from that of Western firms. These areas include: formation of a contract; allocation of risk and payment terms; quality of goods; delays; nonconformance; buyers' and sellers' remedies; time limits; and relief from liability. In addition to pinpointing areas that might require additional thought and consideration by Western firms when negotiating with Soviet FTOs, "[t]he American contract negotiator can use these Comecon resolutions [of buyer-seller conflicts common to any Comecon trade transaction] as a standard against which to measure the terms

offered him by the Soviet FTO." (p. 177) In a similar vein, an entire chapter of Hoya's opus entitled "Contracts in American-Soviet Trade" is devoted to consideration of three basic questions relevant to trading with entities in the USSR as well as in other Eastern European states: (1) What is the legal status of the Soviet party? (2) Which provisions of Soviet law apply to Soviet foreign trade transactions? (3) What clauses are likely to be proposed by the Soviet side for inclusion into a foreign trade contract?

However, *East-West Trade* is more than simply a manual on how to negotiate and draft contracts with Soviet FTOs, although it would still be useful to American lawyers and business persons if its scope were so defined. It may well be Hoya's duties and experience in the U.S. Department of Commerce that cause him to be mindful of another field relevant to international business activity but all too often initially overlooked or vaguely understood: inter-governmental undertakings as well as domestic policies and legislation that may either be a complement thereto or even potentially in conflict with part or all thereof. Hoya's decision to include this perspective has significantly enhanced the value of his work for American businesses of whatever size that seek to do business with Soviet firms. An analysis is presented of portions of the 1972 U.S.-Soviet Trade Agreement, the 1975 and 1983 Grain Agreements, and the 1972 and 1975 Maritime Agreements. To provide a basis of comparison, a brief discussion is also included of similar undertakings between the U.S. and Romania, Hungary, and China, as well as Anglo-Soviet trade arrangements. The author also examines the related issues of U.S. antitrust law, arbitration, trade promotion, import barriers, and military exports.

Hoya may be challenging the preconceptions of at least a portion of his readership by questioning whether private U.S. corporations can bargain effectively with units of a centralized plan economy without transferring some of their authority to the U.S. Government. In addition, he surveys potential antitrust problems inherent in any strengthening of the position of American corporations vis-à-vis Soviet FTOs through collective efforts without U.S. governmental assistance, or at least sanction. The author also contends that certain trade issues can be more effectively negotiated with the Soviet side by the U.S. Government on behalf of U.S. industry rather than by individual American firms alone. All these are perhaps thorny, but certainly important, issues that need to be kept in mind as one ponders the future of U.S.-Soviet trade in general.

Hoya concludes the main portion of his opus with a "look ahead" at the three components of his study: Comecon, the General Conditions, and U.S.-Soviet trade. His statement regarding trade within Comecon that there "are serious problems . . . in the present system" is as valid

as it was when this book was published in 1984 and also applies as much to Soviet foreign trade with Western nations as it does to intra-Comecon commerce. In considering the past as well as the future of U.S.-Soviet trade, Hoya rightly examines not only the economic but also some of the various political perspectives and issues. Yet despite a recognition of the problems that seem to be inherent in the political sphere, Hoya comes across as an ultimate optimist who does not seriously doubt that U.S.-Soviet trade will again expand. He likewise foresees a renewed, active U.S. government presence in East-West trade, similar to if not more all-encompassing than that which produced the bilateral trade, grain, and maritime agreements of the 1970s, although only when the dollar volume of U.S.-Soviet trade increases and the Soviet-American political climate improves. The same rationale that led to the inclusion in the 1972 U.S.-Soviet Trade Agreement of a clause recommending third-country arbitration could, Hoya believes, be used as an argument for the U.S. Government to again lend a helping hand to American industry, especially small- and medium-sized U.S. corporations. A survey of contracts concluded between Soviet FTOs and U.S. companies compiled in 1975 provides Hoya with at least three specific proposals for intergovernmental treatment: (1) encouragement of an escalation clause as a qualification to otherwise fixed contractual price terms; (2) support for inclusion of labor disputes as a force majeure circumstance; and (3) promotion of a contractual provision that would specify the substantive law of a particular third country in the hopes of avoiding the practice frequently encountered in the past of merely designating Swedish conflicts rules, which has, in turn, often led to the application of Soviet substantive law. An appendix to *East-West Trade* contains an artful translation by Hoya of the Comecon General Conditions in their 1979 redaction as well as the Comecon-Finnish General Conditions and a sample FTO foreign trade contract.

Several secondary themes permeate Hoya's treatment of East-West trade that will need to be researched further to take into account potential or actual developments arising out of the Gorbachev reforms. Such themes include: the sources as well as the accessibility (or lack thereof) of Soviet law (both written and unwritten); the process of the transformation of international treaty norms into domestic Soviet legislation; and the problems of gaps in Soviet domestic legislation and/or practice—especially concerning less traditional forms of business activity than have heretofore been encountered in Soviet-U.S. trade, such as joint ventures, the choice of competent Western and/or possibly even local Soviet counsel to assist in negotiations, litigation, and arbitration.

Although the publication of *East-West Trade* predated Gorbachev's foreign trade and domestic economic reforms, Hoya's work remains an invaluable source book for Western, and especially for U.S., lawyers who

may simply wish to acquire an introduction to East-West trade in general or who may be called upon to evaluate past experience and consider its potential effect on future commercial relations with Soviet FTOs, enterprises, joint ventures, or the like. Those interested in the broader topics of international business transactions or comparative law will also find Hoya's study of Comecon law and the General Conditions to be a welcome addition to the available literature.

The level of U.S.-Soviet trade failed to increase significantly during the 1970s and 1980s despite an overall increase in Soviet foreign trade, especially with other Western nations such as West Germany and Japan. Assuming that the problems inherent in the political dimension of Soviet-U.S. trade can be rationally rather than emotionally discussed, and ultimately resolved in some reasonable compromise acceptable to the many sides that have an actual or perceived interest therein, an opportunity may well be created for U.S. business to do battle with foreign competitors for trade opportunities with the USSR on more even ground. Recent past experience of U.S. business in the marketplace of the People's Republic of China lends support to the argument that trade relations need not be totally subservient to political considerations and/or expediency. Yet given the many and several differences between the U.S. and Soviet socioeconomic and legal systems, consideration of the information, insight, and analysis contained in Hoya's opus will be a *sine qua non* for a prudent and professional, and I would argue profitable, approach to East-West trade.

William B. Simons
Legal Counsel
Fike Corporation
Blue Springs, Missouri

Comparative Tax Systems: Europe, Canada, and Japan

Edited by Joseph A. Pechman. Arlington, Virginia: Tax Analysts, 1987, pp. xiv, 447, \$14.95.

Joseph A. Pechman, the editor of this 450-page paperback, is former director of Economic Studies and now senior fellow at the Brookings Institution. The book provides readers with basic but thorough information about the technical and policy structure of the tax systems of six Western European countries (Sweden, The Netherlands, the United King-

dom, France, West Germany, and Italy), Canada, and Japan. Each of the eight well-documented essays is written in an accessible style by experts from the countries described; and each is organized in the same logical format used in Pechman's now-classic *Federal Tax Policy*.¹ An introductory chapter by the editor summarizes the collective findings and offers observations based on both the country chapters themselves and on personal interviews with tax experts and other sources in the various countries that he visited in the summer of 1986.

Each country chapter describes the following ten aspects of the tax system of a given country in approximately 30-40 pages: the individual income tax, the corporate income tax, the tax treatment of saving and investment, payroll taxes, the value added tax, the hidden or underground economy, the taxation of wealth, the distribution of tax burdens, local tax systems, and proposals and prospects for tax reform. While the depth of coverage and quality of supporting information varies and is not entirely consistent from country to country, the reader gains a thorough and comprehensive overview not only of the complete structure and fiscal role of each country's tax system, but also of the technical operation (and sometimes even computation) of the various taxes imposed by each country.

Perhaps more importantly, the reader gains an appreciation for the fiscal, political, and sometimes social forces that shape the tax system of each country, and a heightened sense of the historical and policy significance on the international level of the reform of the U.S. tax system that occurred in 1986. For example, each discussion of a country's tax structure notes which tax preferences or incentives are political accommodations to special interest groups, while the discussion of the prospects for tax reform in that country analyzes the question from the perspective of those same groups. This approach helps bring to life the dry but necessary underlying information such as revenues from various taxes as a percentage of gross domestic product and effective tax rates by income levels. Copious Tables are provided to present the latter type of information.

The best feature of the book for the nonexpert, however, may be Pechman's introductory chapter in which he summarizes the findings of the contributors and draws conclusions regarding not only the salient common features of the tax systems of some of the United States' major trading partners, but the aspects of each most in need of reform and the prospects, mostly dim, for such reform in the future. Here, we realize for instance, that while most of these eight countries have indexed income tax systems, none of them are fully and permanently implemented. We also come to

1. *FEDERAL TAX POLICY* (J. Pechman ed. 4th ed. 1983), published by The Brookings Institution, Washington, D.C.

appreciate the fact that duplicating U.S. tax reform will be difficult for most of these countries for various reasons. For example, unlike in the United States, capital gains have never been substantially taxed in most of these countries, which makes it difficult to tax them as ordinary income, a move that would both simplify their tax systems and provide the revenue offset necessary to reduce tax rates. On the other hand, it appears that many of these countries have simpler return filing systems than the United States, including return-free systems in many instances.

Altogether, this book comprises both a wonderful introduction to comparative taxation and an analysis of the practical and political difficulty of reforming the tax systems of some important countries in the world, including the United States. It is useful both as a reference and resource book and as a beginning point for critical analysis.

Charles T. Terry
Assistant Professor of Law
Southern Methodist University

Defending Civil Resistance Under International Law

By Francis A. Boyle. Ardlsey-on-Hudson, New York: Transnational Publishers, Inc., 1987, pp. 378, \$45.50.

Professor Boyle has prepared, apparently at the request or suggestion of the Lawyers' Committee on Nuclear Policy, "a practical legal manual" for use by the defense in situations where arrests are made of civil protestors. The focus is on bringing in aspects of international law supportive of the positions held by the protestors and aimed at demonstrating the illegality of a variety of governmental positions (and hence the lawfulness of protest). The emphasis is on protests of nuclear arms policy, but protest actions concerning Central American and South African policies are also dealt with. Despite its broad title, the book is not a manual for lawyers in all nations; only protest movements in the United States against U.S. policies and actions are considered. It is essentially, as noted, designed as a defense lawyer's manual in U.S. courts; thus, it is possible to sympathize readily with many of Professor Boyle's views concerning the improprieties of many of the U.S. actions noted, as compared with in-

ternational law standards, while wishing that he had been somewhat more scholarly and objective in his treatment of some of these issues.

Howard J. Taubenfeld
Professor of Law
Southern Methodist University

Butterworths Medico-Legal Encyclopaedia

By J.K. Mason¹ & R.A. McCall-Smith.² London, Boston, Durban, Singapore, Sydney, Toronto, Wellington: Butterworths, 1987, pp. vi, 650, \$145.00.

It is rapidly becoming a commonplace that the field of law and medicine has in the last decade experienced explosive growth—both as a matter of academic interest in the law schools and in practice. It is a highly varied, somewhat unruly discipline that includes, in the United States, forensic medicine and psychiatry, professional malpractice, public health, health policy, public and private reimbursement systems, biomedical ethics, and substantial doses of torts, family law, tax law, corporate and securities law, criminal law, and antitrust. The field thus presents the same problem and offers the same challenge for teachers, students, and practitioners alike: how to identify and use the basic law applicable to an unfamiliar problem.

The vast array of legal doctrines and statutes in the United States is accessible through the usual digests, annotations, encyclopedias, and legal periodicals, as well as more specialized medico-legal sources. Those interested in a comparative view of analogous law in the United Kingdom, however, are faced with a formidable obstacle. Many American lawyers are unfamiliar with the tools of English legal research and lack ready access to those tools (unless they are within easy driving distance of a good law school library).

For lawyers and students looking for a reliable introduction to the basics of law and medicine in the United Kingdom, help has arrived, in the form of *Butterworths Medico-Legal Encyclopaedia*. Intended primarily as a

1. Regius Professor (Emeritus) of Forensic Medicine, University of Edinburgh.

2. Associate Dean, Faculty of Law, University of Edinburgh.

reference work for students and as a desk reference for the general practitioner, this volume goes a long way toward taking the pain (and the risk) out of beginning research into the medico-legal jurisprudence of the United Kingdom.

The *Encyclopaedia* has 665 entries whose average length is a bit less than one page. The scope of this book is best appreciated by considering its major themes: Anatomy, Physiology and Pathology; Medicine and Professions Allied to Medicine;³ Medical Treatment and Research;⁴ Disease; Injury; Poisons and Drugs; Death;⁵ Sexual Activity; The Fetus, Neonate, and Child; The Family; Alcohol and Road Traffic Offenses; Torts; and Detention and Prosecution.⁶ Considering the vast scope of the authors' subject, and their apparent desire to keep the length of their project down to a single volume, Professors Mason and McCall-Smith have succeeded admirably. At a page per entry, the authors can realistically aim to do little more than introduce the reader to a topic and provide suggestions for further reading. For American readers who seek an entree into British law on a subject of interest, rather than a lengthy exposition of each topic, the *Encyclopaedia* fills the bill. My main criticism of the book concerns the authors' decision to keep it short. A two- or three-volume work would have given them the space to deal with many complex and important issues at greater length. On the other hand, students and generalists are likely to be pleased with the *Encyclopaedia's* brief introductions and explanations, and at \$145 per volume, a multi-volume work would be beyond the means of all but institutional purchasers.

In many instances, the authors accomplish the near-impossible, summarizing neatly the principal legal and medical features of a topic and even providing some of the flavor of the accompanying ethical or public policy debate. The entry on "Surrogate Motherhood" (p. 548), for example, contains no surprises for anyone who has followed the development of that practice with care, yet it outlines in a single page the noteworthy aspects of surrogacy, including the most important arguments for and against the practice, and does so with a clarity and style that seem inconsistent with such mighty compression.

3. This topic includes entries on autonomy and paternalism and the institutional lines along which British medicine is organized.

4. Topics include consent to treatment, emergency medical care, resuscitation, triage, and ethical committees.

5. Topics range from the definitions of death and types of natural and unnatural deaths to autopsies, death certification, and disposal of the dead.

6. See pp. 623-30 ("thematic index of entries").

The organization of the *Encyclopaedia* is alphabetic, so to a considerable extent, the reader is at the mercy of the authors' choice of headings. In that respect, the *Encyclopaedia* is neither better nor worse than most examples of the genre. It does have its share of unpredictable titles,⁷ some of which reflect British usages that may not be well-known to American readers, but the authors have attempted in three different ways to make their entries accessible to the reader. First, most entries contain cross-references to relevant notes elsewhere in the book, so that a reader who finds one useful entry has a good chance of being directed to other helpful material. Second, the *Encyclopaedia* is equipped with a quite detailed index. Third, and perhaps most useful of all, the authors have arranged the entries in a "thematic index" that groups the notes under thirteen subject headings⁸ so that variant usages and related entries may be spotted easily.

For American readers interested in informing their scholarship or advocacy with a comparative view, this book provides a very useful beginning point. The authors offer some comparative commentary on United States law,⁹ but such comparisons are not a frequent or particularly important feature of the book. This is not likely to be a drawback for American readers, however, since the ostensible purpose of consulting the *Encyclopaedia* is to obtain an introduction to the body of British, not United States, law.

Ultimately, of course, the decision to purchase such an expensive volume comes down to a close weighing of the benefits against the cost. Other books deal more extensively with some important topics than does the *Encyclopaedia*,¹⁰ but they are narrower in scope and, thus, less generally useful. The recently published *Oxford Companion to Medicine*¹¹ is a treasure trove of physiology, anatomy, and professional history, sociology, and biography, but its legal coverage is spotty.

I know of no single volume that is as ambitious in its scope as *Butterworths Medico-Legal Encyclopaedia* or as consistently successful in its

7. See, e.g., pp. 97 ("Changes After Death"), 100 ("Child Destruction"), 124 ("Contrecoup Injuries"), 224 ("Flick-knives"), 504 ("Separate Existence"), 556 ("Throttling").

8. See *supra* note 6 and accompanying text.

9. See, e.g., pp. 200-01 (hospital ethical committees), 201-03 (eugenics and euthanasia), 304-06 (informed consent), 319 (compelled blood transfusions for Jehovah's Witnesses).

10. British forensic medicine, for example, has received quite detailed coverage by a number of authors. See, e.g., GRADWOHL'S *LEGAL MEDICINE* (F. Camps 3d ed. 1976); J. MASON, *FORENSIC MEDICINE FOR LAWYERS* (2d ed. 1983); C. POLSON, D. JEE & B. KNIGHT, *THE ESSENTIALS OF FORENSIC MEDICINE* (4th ed. 1985); TAYLOR'S *PRINCIPLES AND PRACTICE OF MEDICAL JURISPRUDENCE* (A.K. Mant 13th ed. 1984).

11. *THE OXFORD COMPANION TO MEDICINE* (Walton, Beeson & Scott eds. 1986).

purpose to canvass the vast legal landscape that deals with issues of medicine and health in the United Kingdom. My only regret is that Butterworths has not yet seen fit to publish a comparable medico-legal encyclopedia based upon United States law.

Thomas Wm. Mayo
Assistant Professor of Law
Southern Methodist University
Dallas, Texas