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BOOK REVIEWS

EDITED BY A.U. DE SAPERE

Human Rights and World Public Order: The Basic Policies of an International Law of Human Dignity

By Myres S. McDougal, Harold D. Lasswell and Lung-chu Chen. New Haven and London: Yale University Press, 1980. Pp. xxiv, 1016. \$45.

This latest product of the Yale Law School's law-science-policy (LSP) approach to decisionmaking is among its best. It is a fitting high requiem for Harold Lasswell, who died a year before *Human Rights* was published. As Professors McDougal and Chen put it in their coda to the preface, "He not only believed in and wrote about the values of human dignity, he practiced such values. His dedication was to humanity and all living forms."

The book follows the familiar themes of the authors' comprehensive, multidisciplinary analysis of the place of law in the total social order. Their thrust is a macroscopic study *about* the law of human rights in the social process rather than merely a microscopic dissection of the bits and pieces *of* the norms of international human dignity. Human rights—whether viewed from national or local perspectives as assertions of "constitutional" or "civil" rights or from the international vantage point—is scarcely material for black letter treatment. Nevertheless, the author's trend studies of development in nine aspects of human rights law also demonstrate command of a more traditional analytical approach: slavery, caste and apartheid; equality of opportunity; racial discrimination; sex-based discrimination; religious discrimination; freedom of political expression; discrimination on the basis of language; protection of aliens; discrimination on the basis of age; and prospects for the future. This part of the book—chapters 6 through 16 plus an appendix that considers nationality and its relationship with human rights—is a valuable conventional text on these topics.

However, the real value of *Human Rights* does not lie in these chapters, with their recitations of developing norms and their projections for the

future, useful as such essays may be for finding "the" law on a mini-topic. The heart of the book, chapters 1, 2, 4 and 5, supplies the prelude for the series of trend studies, chapters 6-16, that follow. Chapter 1, besides describing the rising tide of demands for human rights, demonstrates why the traditional theories of law—natural law historicism, positivism, Marxism, and sociological analysis, or the social science approach—are inadequate for a comprehensive understanding of human rights law. Here the authors parallel the general jurisprudential essay by Professors McDougal, Lasswell and W. Michael Reisman, "Theories About International Law," in volume 8 of the *Virginia Journal of International Law*.

The "Social Setting of Human Rights," chapter 2, places these rising expectations of human dignity in the total context of the world community, in which law plays only a part. For example, besides mentioning the nation-states and international governmental organizations (in common understanding the chief "makers" of international law) as participants in the social process, the authors note the role of political parties, pressure groups, private associations (e.g., multinational corporations), and terror groups, or gangs, as significant interactive players in the drama of the social order. The same approach to other aspects of the total social process is followed throughout the chapter. While this kind of analysis might seem "foreign" to the lawyer, who might assert that only "legal" issues should be considered for a given problem, attorneys in fact participate in and perform a multiphase analysis with most law-related problems. Often they may use other professionals in the process, but in fact this is done every day. Employment of economics in antitrust cases is but one example. And if this be so for more settled areas of international law, LSP analysis is even more helpful in the policy-oriented arena of human rights.

A long chapter 4, "The Global Constitutive Process of Authoritative Decision," is a detailed analysis of one of eight value processes that the authors see as part of the total social order—the effective power process, or law-making—in the context of human rights norms. This is a familiar chapter, found in all LSP studies, and is useful for its consideration of aspects of the methodology and alternatives of lawmaking. For the reader not concerned with the nonlegal aspects of social interaction, it is a comprehensive theory of law that can be employed in any normative context.

The last perspective chapter, "The Basic Policies for a Comprehensive Public Order of Human Dignity" (chapter 5), sets forth the authors' refined five-step methodology for decision: statement of goals, description of past trends, analysis of factors conditioning those trends, projection of future developments, and of alternatives for a future order of human dignity. The five-step process for decision is similar to that imposed by modern legislation, i.e., in the field of environmental law, and that employed in systems analysis and military planning. Seen as part of the decision methodology, the trend studies of chapters 6-16 and the appendix are thus transformed from a series of studies in normative developments into an integral part of a

master plan for informed decision on the future of human rights rather than seriatim snapshots of the law.

Two developments in the evolution of LSP jurisprudence distinguish the book from previous studies. The first is the statement of the need for feedback in the articulation of goals. The other is the heightened emphasis on the relationship of the "civic order"—those features of social process not part of the public order, i.e., private choices, rights and coercive techniques—to the domain of public order decisions. An analogy is the distinction between "public" international law issues, i.e., war-peace, rights of states, etc., and "private" international law, or conflict of laws principles.

The flow and clarity of the text are excellent. To be sure, the policy-science approach with its rich analysis and use of meta-language is not easy to follow. However, once the reader has become familiar with the vocabulary (explained by Professor Moore in volume 54 of the *Virginia Law Review* or by Mr. Suzuki in volume 1 of *Yale Studies in World Public Order*) and is comfortable with the broad gauge approach, he will like the clearer, more readable style of this volume.

The authors assert that respect—"an interrelation among human beings in which they specifically recognize and honor each other's freedom of choice about participation in other value process"—is the "core value of all human rights." If that be so, and if the central theme of law-science-policy is human dignity and the realization of human capabilities, then this most readable of the LSP studies is also the most important.

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Foreign Investment in U.S. Real Estate

By Ronald S. Barak. New York City: Harcourt, Brace Jovanovich, 1981.
Pp. 202. Appendices.

This book, written by an experienced practitioner, is a practical guide to analyzing the legal, tax, and business issues of foreign investment in U.S. real estate. The text of the book contains 202 pages. It is followed by appendices of legal authorities and sample documents, which are in excess of 300 pages.

Part One, which contains six chapters, introduces various elements of the subject, and would be particularly useful to a foreigner unfamiliar with the U.S. legal, business and cultural setting for real estate investment.

Part Two—entitled "The Investment Vehicle"—discusses how to structure foreign investment in U.S. real estate. This part is one of the strongest

aspects of the book because the author provides illustrations of sophisticated transactions for which he uses his extensive experience. For example, the author discusses how a foreign corporation can advantageously engage the services of a U.S. executive through adept tax planning in conjunction with real estate holdings. Another example demonstrates how a foreign father can make gifts to his son who resides in the United States at optimum tax consequences by using foreign trusts and intermediary entities in an offshore jurisdiction. Part Two contains useful descriptions of how to restructure existing U.S. real estate investments and how a foreign investor can convert his U.S. real estate investment from onshore to offshore by using nominees, making sales, and making like kind exchanges.

Part Three describes the legal and business considerations in the various stages of involvement with U.S. real estate, such as acquisition, development, operation, disposition, and financing at the various stages. Part Three can be of enormous utility to both the novice and the experienced practitioner because it is integrated with approximately two hundred pages of documents in an appendix and because the author uses his experience to provide useful tips on drafting and investigating transactions.

Part Four—entitled “Recent Developments”—discusses the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). A weakness of the book—as for all books on this subject—is that the bulk of it was written prior to the enactment of FIRPTA. Even Part Four was written prior to the enactment of the Economic Recovery Tax Act of 1981 which contains important technical amendments to FIRPTA. Another important limitation of the book is the absence of many footnotes and a bibliography. Nevertheless, the book is comprehensive and well written and provides an excellent framework and reference tool for persons who are involved in foreign investment in U.S. real estate.

BRUCE ZAGARIS
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Offshore Lending by U.S. Commercial Banks (Second Edition)

Edited by F. John Mathis. N.Y.: Bankers' Association for Foreign Trade and Robert Morris Associates. 1981. Pp. 347. \$22.

The Bankers' Association for Foreign Trade and Robert Morris Associates have produced a welcome update of this excellent text, which first appeared in 1975. The first edition has served as a training tool for lending officers and as a textbook in university courses; uses to which the second edition doubtless will be put.

The book's thirteen chapters analyze international accounting practices, the risks of international lending, methods of evaluating foreign credits, import and export trade financing, considerations involved in loans to foreign local companies, foreign subsidiaries of domestic companies, foreign banks, and foreign governments and agencies, and the mechanics of eurocurrency syndications. The book closes with an overview of the directions in which international banking is likely to head during the eighties. Many of the distinguished authors are responsible for the international credit operations at major banks. Of particular interest to lawyers is the chapter on the legal aspects of international lending, authored by Henry Harfield.

Appendices contain government regulations covering the eurocurrency market, overseas lending by U.S. banks, and the activities of foreign banks in the United States, as well as suggested forms of various trade financing instruments, and a reprint of American foreign trade definitions adopted by various trade organizations. There is also a detailed bibliography listing works on international banking practice and procedures, government regulation, international accounting and law, and capital flows and foreign exchange.

The second edition of *Offshore Lending by U.S. Commercial Banks* will be of the most benefit as a training resource and reference work for commercial bank loan officers, but it should also serve as a useful tool for lawyers whose clients engage in borrowing or lending in the international financial markets.

F. WALTER BISTLINE, JR.
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Extradition Laws and Treaties of the United States

Compiled by Igor I. Kavass and Adolf Sprudz. Buffalo, N.Y.: William S. Hein & Co., Inc., 1979. 2 vols. \$150.

In the post-World War II period extradition has gradually become a subject of continuous interest to international lawyers not only in civil law countries but also in the common law world. The great majority of nations have come to look upon extradition of fugitives from justice as the major means of international cooperation in the suppression of crime. There is, however, no universal rule of customary international law in existence which commands extradition. Hugo Grotius took the view that extradition is a duty imposed by natural law and that every nation has the obligation to either try fugitives within its boundaries who have committed a crime

abroad or to surrender them to the custody of a nation requesting extradition. Nevertheless, the great weight of authority and practice of nations contradicts such a contention and the right of nations to grant asylum is firmly established in international law. Customary international law imposes no obligation upon a nation to surrender fugitives to other states and thus permits the asylum nation to protect them at its discretion.

Consequently, the law of extradition has developed largely by means of international treaties and domestic legislation. The United States alone has entered into extradition treaties with almost 100 countries (or approximately three-fifths of the world's nations). It is the purpose of *Extradition Laws and Treaties of the United States* to make the texts of these treaties readily accessible in a convenient format. It does so by organizing alphabetically the texts of some 116 extradition agreements under the names of the ninety-seven countries with which the United States had concluded extradition treaties as of September 30, 1979. This two volume looseleaf set will be of greatest convenience and value to individual practitioners and small law firms which have occasion to do extradition work but which do not want to invest in a complete set of the *United States Treaties*, now in over 100 volumes costing more than \$2,000, and Bevans's *Treaties and Other International Acts of the United States 1776-1949*, in 13 volumes costing almost \$200; neither set is entirely in print and certain volumes might be difficult to obtain. If updating for this looseleaf service is maintained, then this would obviate the necessity of a subscription to the *Treaties and Other International Acts Series* (TIAS), which costs an additional \$110 per year; unfortunately, the proposed annual supplementation, which has yet to appear for 1980, would be too infrequent to bring the thorough researcher au courant. A careful researcher will always check the most recent edition of *Treaties in Force*, the treaty information sections in the State Department *Bulletin* or *International Legal Materials*, the TIAS prints for the current year, and perhaps even call the Treaty Affairs Division of the State Department (Tel. 202-632-1074), just to make sure that there have been no recent developments of which he or she is unaware.

This compilation of extradition laws and treaties of the United States is the first part of an ambitious undertaking to cover the available texts of all international extradition treaties. The value of such a project would be greatly enhanced if it would include English language translations of domestic extradition statutes, thereby updating and expanding the Harvard Research in International Law project on Extradition published in volume 29 of the *American Journal of International Law* (1935). In the meantime, to find extradition treaties to which the United States is not a party, the most comprehensive listing is to be found in Rohn's *World Treaty Index*, (Santa

Barbara, Cal.; ABC-CLIO, 1974 5 vols.), a second and expanded edition of which will be appearing this year.

ARMINS RUSIS
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The Modern Corporate Manager: Responsibility and Regulation

By William A. Groening. New York: McGraw-Hill Book Company, 1981.
Pp. xii, 274. \$25.95.

This book was written for both corporate managers and their counsel. Though far from a primer, it will be easily and absorbedly read by nonlawyers. There is balanced and accurate presentation of a subject of ever-growing concern: the social responsibility and governmental regulation of U.S. corporations and the obligations and liabilities imposed personally on corporate officers and directors. Managers will welcome this book. Lawyers can feel comfortable at clients' having it and will want a copy of their own close at hand.

The author has had more than forty years' experience, all at the Dow Chemical Company, in the fields about which he writes. Prior to recent retirement he had been vice-president and general counsel. In this work, he targets what has been almost a void in legal and management education.

The first three short chapters sketch the common-law origins of the corporation and of the liabilities imposed on shareholders and management.

There follow six chapters covering the emergence of federal and state regulation of corporations and of industry. Apart from early safety requirements for steamships, federal regulation of business began in 1887 with the Interstate Commerce Act, followed later by controls over pipelines, air carriers, and communications. Elaborating regulation also brought the anti-trust laws; standards of health, safety, and environmental protection; employee relations controls; the securities laws; and standards of international commercial conduct. More than half the book is devoted to examining these statutes one by one, briefly, clearly, and always with attention to the personal liabilities, civil and criminal, of officers and directors, as well as those of the corporation. Presentations are balanced, with pros and cons well stated. For a manager seeking to update himself or herself on what regulations affect the corporation for which responsibility is being carried and what risks are being imposed personally, these chapters are just the thing.

The latter part of the book turns to responses the corporation and its managers may make to protect against the risks to which regulation subjects

them. Indemnification and insurance are considered. There is also an analysis of major current suggestions for improving control and governance of corporations.

At the end, the author expresses his own personal optimistic views. The trend to continuing overregulation can be slowed, perhaps reversed, as managers learn increasingly to give attention to compliance with existing laws and to the role of the corporation in society. Continuous dialogue between managers at all levels, with each other and with legal counsel, is essential. Good faith among all concerned and enlightened self-regulation by managers sensitive to the needs of society as much as to the bottom line of financial statements are the way to greater heights of well-being.

There are over six hundred footnotes to statutes, commentaries, and more extensive sources. The text throughout is up to date as of late 1980. Pending and proposed legislation, and major areas of current discussion, are all highlighted. The table of contents is excellent, and there is an index.

For international lawyers, the book is ideal for foreign clients wanting an overview of U.S. regulation of corporations and managers. Especially useful may be the sections on parent-subsidiary relations in foreign commerce, importation of products to the United States, the Foreign Corrupt Practices Act of 1977 (bribery), and the Export Administration Act of 1979 (foreign boycotts).

WILLIAM MILLER YATES
Midland, MI

Legal Imperialism: American Lawyers and Foreign Aid in Latin America

By James A. Gardner. Madison: The University of Wisconsin Press, 1980.
Pp. 401. \$20.

This is a valuable, well-researched, extensively documented intellectual inquiry into serious well-intentioned efforts by the U.S. public, academic and private sectors (e.g., Ford and other foundations, the International Legal Center and AID) to comply with the objectives of the UN Development Decade of the 1960s by initiating ambitious legal transfer and legal assistance programs by American lawyers to assist Third World movements for change, through what was later termed law and development movements, especially in Latin American during the 1960s and early 1970s.

The book should be read by each person involved in those movements and involved in or desiring to be involved with variations on this theme in the 1970s, 1980s or beyond. It should also be read by practitioners with significant and ongoing contact with lawyers in the countries involved (e.g.,

Brazil, Chile, Colombia, Peru, Costa Rica, and those in Asia and Africa not covered in detail), as well as academicians and researchers involved in public international law, international business or economic law, international relations, the law of development, or legal assistance programs in or with these countries. It should also be read by government officials, technocrats and staff assistants in congressional or administrative agencies involved with these programs or issues.

The author develops points throughout the book which are significant, and strikingly critical of, and contrary to conventional wisdom in these areas treated. However, he tends to repeat throughout points made early in the book, resulting in unnecessary length and poor organization in certain chapters. He also tends to get tangled in his own web of methodology discussions and academic terms (e.g., "legal instrumentalism," "rule skepticism," "legal formalism") which unnecessarily obfuscate his important points. In addition, he includes a very long analysis of why the Allende government in Chile failed to accomplish its objectives, lost the support of its political coalition partner (the Christian Democrats) and the people, and was eventually overthrown. Although of great interest to this reviewer and others, the essential conclusions relevant to the Chile law project described earlier in the chapter could have been reduced to a couple of pages (from over 30), further shortening the book and making it more readable. Likewise, the discussion of the debate on the "U.S. legal model" and philosophies of legal education in this country could have been substantially reduced and simplified in the discussion of the legal models and teaching approaches which were the subject of transfer or transplant.

Mr. Gardner, who has studied and taught law and has been with the Ford Foundation for the last ten years, reminds us that the concept of "legal transfer" is probably as old as international commerce, domination, and interpenetration generally. He cites numerous examples of France transplanting the Napoleonic Code, and other colonial powers (e.g., Spain, Portugal, England) sending to or imposing on diverse countries all or portion of their "imperial" legal systems, constitutions, and fundamental legal concepts. Constitutions, codes and specific statutes have been exported and continue to be transplanted to Third World cultures. The process of legal transfer involves not only the substance of what is being transferred (which the author refers to as the "American legal models") but the transferors (American lawyers, mostly governmental and academic) and the recipients, as well as the transfer process itself. The author is critical of all of the above.

Perhaps a parallel to the legal transfer process can be drawn from the current controversy over technology transfer. The essence of technology is the application of accumulated intangible knowledge and experience to improve production or productivity, or to commercial products developed by laboratories, scientists or engineers. Technology is transferred through a long-term, person-to-person activity requiring close interaction between

supplier and recipient. It has been established within the technology community that this process cannot be accomplished in one-time transfer, and the importance of the recipient infrastructure has been strongly emphasized in recent years. The author makes the identical points in describing the failure of legal transfer to Latin America.

The term "appropriate technology" arose from examples of technology being transferred to another culture in which it was inappropriate and eventually rejected. This point is made in vivid terms about the American legal models transferred by the American lawyers in an overly ethnocentric experience.

The author challenges the assumptions underlying early (1960-65) statements and questions conclusions from leaders of government, and the bench and bar that the American lawyer, as "legal engineer," is a vital and essential instrument in the development process, and that the American legal engineers have much to contribute to the Third World in the Development Decade. Moreover, he praises a subsequent retrenchment into more intellectually honest research and inquiry into true relationships between law and the society, and law and social change in general.

From legal transplant, one could draw an analogy to the heart transplant concept which was hailed with great anticipation and high expectations some years ago. One is hard pressed to recall a single heart transplant that successfully continues to this day.

Gardner's candid and accusatory use of terms such as "egregiously ethnocentric" (p. 243) is revealing of the confident, overambitious and interventionist attitudes maintained by even "the best and the brightest" in our profession with respect to our role and the contributions that we might make to social change in other cultures.

He also suggests certain basic criteria with respect to the role and functioning of the "legal engineer" model which he has placed at issue in this important work, and pointedly asks whether "the distance between the lawyers as founding fathers, well versed in democratic, constitutional, and . . . social theory, and contemporary legal pragmatists and engineers, even at the highest levels of the judiciary and the executive office, seemed worryingly vast" (pp. 259-260).

Among the problems identified as having been encountered by the American legal missionaries parachuting into the hearts of foreign legal cultures were the anthropological layers of attitudes, culture, tradition, legal system, and social interaction waiting to greet the intervenors. The reviewer is reminded of the description of the Mexican personality by a leading Mexican author, Octavio Paz, who also uses the term "layers" in describing the tip of the iceberg (the "mask") seen by outsiders and the depth and complexity of personalities, tradition and culture lying beneath.

One could draw another parallel with the international human rights movement to which Gardner makes reference, which seems to have begun where the law and development movement have left off. This and other

movements related to local societies and local cultures also have to deal with social orders in generalities, yet applying American norms and concepts to societies as diverse as socialist, democratic or authoritarian (e.g., the socialist Chilean, democratic Colombian and authoritarian Brazilian examples developed extensively) raises the same questions discussed at length in this book. The mission of lawyers from the Association of the Bar (New York) to Argentina (1979) to "investigate" the human rights situation of lawyers in that country might have made another interesting case for discussion.

The lessons Mr. Gardner is suggesting should lead one to ponder the shortcomings in the American models of the legal profession and legal thought, as well as the collective self-image of American lawyers.

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