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Book Reviews

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BOOK REVIEWS

INTERNATIONAL ENVIRONMENTAL LAW. By Bo Johnson. Liber-Forlag, Stockholm, Sweden, 1976. Pp. 225.

International Environmental Law, although useful as a general subject introduction and treaty citator, does not provide significant insight into the motivations underlying recent international environmental legal activity.

The book begins by stating that the prevailing view of man's relationship to the environment has been that of man as "master of the earth," whereby he was free to exploit its resources as he saw fit. Unfortunately, this concept has also entered the international sphere resulting in only a few principles of general international law regarding the global environment. General international law, as contrasted from treaty law is the non-legislative body of law based upon the practices and customs of nations. It is binding because nations hold the opinion that a certain custom or practice is a rule of law.

Since the end of World War II however, a new, highly specialized field of international law has developed which reflects the concern many nations have over the effect their actions, whether individual or collective, will have upon the global environment.

This change in attitude is readily seen by the current shift away from the theory of man as "master of the earth," to a notion of "man as custodian of the earth" where man must learn to co-exist with the environment and it's dwindling resources.

International Environmental Law attempts to present some of the highlights of this new attitude in a concise, understandable fashion. The book's scope is seemingly for those with little background in international environmental law, although the numerous treaties mentioned or cited may serve as a reference tool for the practioner in international environmental law.

The book is divided into three main parts. Section One introduces the reader briefly to general international environmental law, while Section Two covers the important treaties in this area. Section Three, presented in an appendix-like format consists solely of selected treaties in international environmental law.

The author's philosophy about international environmental law is guided by the maxim: *Sic utere tuo alienum non laedas* (use your prop-

erty so as not to injure your neighbor). Professor Johnson recognizes that this principle has not always been followed by the nations of the world as they strive towards economic expansion and development. Indeed, an excellent example is the use of the high seas, which has traditionally been controlled by the principle of freedom of the seas. The author notes that general international law, is often slow and unresponsive to the changing needs and technology of the modern world. He suggests that the only practical way to implement the *sic utere* principle is through treaty law originating from bilateral or multilateral conventions.

The extensive treatment of treaty law in section Two reflects the author's belief that the current trend in international environmental law is towards a position of common responsibility among nations extending to regions outside their borders. Treaties such as the *Declaration of the United Nations Conference on the Human Environment* adopted in 1972 represent the increasing acceptance of the "custodian of the earth" concept. By signing treaties, nations declare their willingness to abide by specific rules regarding environmental affairs. The author notes however, the several limitations that consistently plague treaty law. Quite often the number of participants in world conferences is larger than the actual number of nations who subsequently ratify the documents produced by these conferences. Furthermore, the time lag between drafting of the documents and ratification is such that they often become obsolete or irrelevant.

The book's main weakness is that it is long on documentation and short on analysis. The author satisfactorily presents a broad range of treaties now regulating international environmental law, but fails to explain the substantive motivations, including the economic and political concerns behind those treaties. For example, Professor Johnson states that many nations, either individually or regionally, have extended their domestic fishing limits to 200 miles. However, he neglects to explore whether such actions were based upon nationalistic, environmental, or economic considerations.

Although the book gives some initial realistic observations, it is tainted with the simplistic premise that once the nations of the world realize what's at stake, they'll all cooperate to save the environment from self-serving destruction. This failure to critique the gains and shortcomings of the present policies in international environmental law, as reflected through treaty law, prevents the book from achieving it's enormous potential. To a great extent then, the book merely lists the various international environmental treaties in force today.

International Environmental Law is a good introduction to the general theories and treaties of international environmental law. However, for the reader who demands a more thorough analysis, the book's lack of depth greatly hinders it's usefulness.

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THE IMPACT OF INFLATION AND DEVALUATION ON PRIVATE LEGAL OBLIGATIONS. By Eliyahu Hirschberg. Bar-Illan University, Ramat-Gan, Israel, 1976. Pp. 370.

This book offers the reader a comprehensive discussion of a current and long existing problem—inflation. Until the twentieth century, private parties could rely on the relative stability of their country's currency when engaging in various commercial transactions. This economic security was shattered by the German inflation of the 1920's and the worldwide inflation since World War II. These effects are felt in varying degrees by all of the Western industrialized countries. The author, Eliyahu Hirschberg, examines and compares the approaches of several of these countries in their attempts to deal with the problems encountered by private parties when changes in the value of money disturb the nature of legal obligations arising from contracts and from damage awards. In his admittedly "theoretical work" (p.50), Mr. Hirschberg offers an alternative solution to what he perceives as an unjust position taken by most legal systems.

Of the three approaches taken by modern legal theory to the problem of the extent of monetary obligations, nominalism is the view commonly accepted by European and Anglo-American courts. This view treats a unit of currency as a numerical unit which does not change in value. The monetary obligation is based on these units. For example, one party enters into a contract with another for a period of three years to sell certain products at $10 apiece. During this time the value of the money is eroded by inflation, decreasing the profitability of the contract to the party selling the products. In what Mr. Hirschberg views as a very unjust result, the law ignores the change in value and upholds the amount in the contract. In other words, $10 is $10 notwithstanding the fact that it may equal only seventy percent of the same goods

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three years later. The expressed intent of the parties, the prestige of the national currency, and the efficiency of a standardized approach to the value of money demonstrates the reasons for the nominalistic principle's dominent position.

The second theoretical principle regarding monetary obligations is metallism. "According to the metallistic theory a unit of account is identical with a certain quantity of standard metal." (p.55) A particular metal, usually gold, is established as the standard from which the currency takes its value. The metal and the currency are interchangeable. Money is viewed as a commodity, of which the external and the intrinsic values are considered the same. However, Mr. Hirschberg notes that the metallistic principle is no longer of use. Under modern economic views it neither holds up in theory nor in practice. There is a difference between the external and the intrinsic values, for the exchange value of the currency is different from the value of the metal itself. Although Mr. Hirschberg feels that this view might be useful under certain circumstances, he feels the metallistic view cannot be revived.

Valorism is the third approach, which defines the unit of currency by its value, that is, the purchasing power of the currency, rather than by a nominal sum of units of currency. Valorism is the only one of the three theories which has never been put into practice. Because it is based on the purchasing power of the currency rather than on a set standard it is more difficult to apply. Mr. Hirschberg notes that the inadequacies of the nominalistic principle, in dealing with the increasing depreciation and devaluation of money, may force adaptation of the valoristic approach.

In order to determine which approach offers the best solution to the problem of determining the extent of monetary obligations, Mr. Hirschberg looks to the aims and functions of money (p.92) and distinguishes between the ideal unit and the concrete means of payment. He argues that private parties are interested in the value of money rather than with stated monetary units. Concerned that private law should consider decreases in the value of money so that just results may be obtained in times of monetary crises, the author advocates qualified valorism based on a cost of living today. When the index indicates changes in monetary value which make the nominalistic principle unjust, the valoristic principle would be put into effect. This qualified valorism would only apply to medium- and long-term transactions of three or more years, for changes in the value of money are

difficult to foresee and may cause more problems. Short-term transactions of less than three years derive greater benefit from the stability of nominalism. Mr. Hirschberg points out that the classification by time is arbitrary; where monetary changes are more rapid, adjustments are necessary. If this solution is not accepted in practice, the author would like to see it used as a model for a more equitable solution of the problem created by changes in monetary value.

Basically, *The Impact of Inflation and Devaluation on Private Legal Obligations* is divided into an introduction and four parts. The introduction gives the reader a basic explanation of the problem of devaluation of currency. The introduction also provides a short historical background, theories and public policy reasons behind devaluations, and how devaluations are carried out.

In Part One the author presents the three approaches to monetary policy; nominalism, metallism, and valorism. The careful explanations offered are necessary to an understanding of the author's proposed solution to the problem. Mr. Hirschberg carefully examines the history, nature, theoretical foundations and arguments for and against the nominalistic principle. Though biased against it, he attempts a fairly balanced discussion.

After suggesting an alternative approach to nominalism, the author deals with the problem of what standard should be used. Value clauses are discussed in the Second Part of the book. Value clauses are inserted in contracts and protection from changes in the value of currency by linking the currency to an outside standard. In his view, value clauses are the only means to escape nominalism. Again, the author evaluates the available (and not so available) alternatives. He supports the cost of living index as most closely tied to the valoristic principle. This type of clause, looking to purchasing power, protects the parties "against the loss of purchasing power of the internal currency." (p. 107) Instability which may arise from use of this index is not adequately discussed.

Part Three examines special problems; different types of legal obligations which are affected by changes in the value of currency. The problems considered in this section appear almost randomly chosen. Some are more pertinent to the author's thesis than others. A section discussing how equity should handle changes in the value of money does not coincide with his basic theme. In contrast, the author presents an interesting argument suggesting that devaluation should be considered under the doctrine of frustration.

The Fourth Part encompasses public policy and monetary law. Mr. Hirschberg takes the position that "public policy requires the curtailment of the supremacy of public interests within the monetary field [the government's use of nominalism] and more adequate protection of the private interests within this field." (p.353) Nominalism is based on a fiction of monetary stability which no longer applies. Reform of the nominalistic solution is required to protect the rights of private parties.

Although the book is well documented, it is not without difficulties. Many of the cases cited are 50 to 100 years old, and none are more recent than 1968. Another problem is the citation of an unrepresentative case to support a point. While discussing the doctrine of frustration, for example, the author refers to a case which "has a most important bearing" (p.171) on the problem of monetary changes. That case is *Societe Franco Tunisienne d'Armement v. Sidemar S.P.A.*, [1960] 3 W.L.R., one of the Suez Canal cases. This is the only case which supports his view, the others[1] do not. Despite these errors, this book should encourage further inquiry into the problems created by inflation and devaluation among the members of the legal and economic communities.

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THE INTERNATIONAL AND NATIONAL PROTECTION OF MOVABLE CULTURAL PROPERTY. By Sharon A. Williams. Dobbs Ferry, New York: Oceana Publications, Inc., 1978. Pp. 302.

This work is a valuable tool for researching global attitudes on the subject of "cultural property." There is no generally accepted definition of "cultural property," but for purposes of this study it is "that property movable or immovable which possesses a special value due to its prehistoric, historical, archaeological, ethnological, artistic or scientific importance. The value is assessed in relation to the property's importance to the cultural heritage of all peoples . . . ." (p. 2)

This study is organized chronologically and provides a systematic analysis of what various nations, *e.g.*, United States, England, Canada,

[1] Transatlantic Financing Corp. v. United States, 363 F.2d 312 (1966); Glidden Co. v. Hellenic Lines, Ltd, 275 F.2d 253 (1960).

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France, Italy and Mexico, are doing to protect cultural properties during conflict and peace, and why more should be done. The control of cultural property is becoming a separate and identifiable area of international law. However, Ms. Williams dwells on a self-defensive posture to convince the reader of the vital nature of the study and improved methods of protection. Cultural artifacts are irreplaceable and have great educative value; they preserve and record the history of a nation. The author volubly declaims that were nations to exchange cultural properties with one another willingly, then each state could more readily understand the others' philosophical and historical perspectives. Such exchanges would facilitate improved communications and would lessen prejudices. Unfortunately, Ms. Williams skims over political and ideological priorities in favor of a museum-piece dialogue. The author does recognize that cultural exchanges often are intertwined with the political climate and that improper handling of one state's property by a foreign state has led to diplomatic hostilities and misunderstandings.

Each borrower nation has a fiduciary responsibility for the loaned articles. Cultural property is part of the common heritage of mankind, and all nations, both borrower and lender, are merely trustees. The world is purportedly divided into culturally rich and culturally poor states. Culturally impoverished nations (whether due to a lack of historical identity or through war and natural disasters) seek to enrich themselves at the expense of the better-endowed states. There are numerous motivations for one state to acquire cultural properties—they are a sound investment and will appreciate in value; they will heighten national prestige; and they are negotiable on the world market. Since these artifacts are such a valuable commodity, states are inclined to be overly protective and hesitant to loan their articles. Also, beggar states might appropriate a borrowed item. Clandestine dealings and illegal traffic are rife. Ms. Williams contends that global cooperation is necessary to provide proper safeguards against illegal exchanges, confiscations, thefts or wartime destruction.

The study is written in a textbook format with detailed outlines and summarizations at the end of each subchapter. Ms. Williams writes succinctly and often gives a clear and accurate exposition of confusing legal issues. Unfortunately, the author lapses into annoying discourses in French without translation. Also, legal terms of art are too casually bandied about without definition. She refers the reader to a footnote, yet the footnote is merely a case citation and fails to clarify the term. Otherwise, the main chapter subjects and inner subsections flow well.

The author starts with a comprehensive introduction and preface, again pointing out how imperative the protection of cultural property is to the well-being of the world. The scope of the study concerns the various international and domestic efforts to protect cultural pieces during wartime (both international and non-international conflicts) and peacetime. Ms. Williams does not speak to protecting cultural articles from the ravages of nature, just the depredations of man.

The author first speaks to the historical underpinnings of cultural property protection from Napoleonic rampages to recent UNESCO Conventions. Next, attention is drawn to an analysis of customary international legal protection of properties during armed conflicts and peacetime. A state by state comparative treatment is stressed, with a survey of domestic attempts to control clandestine traffic through export and import controls. Williams provides an overview of the situation, the relevant international law and legal analogies and what states and international organizations are doing. The author summarizes experts' opinions and critiques of transnational conventions. The reader is offered considered opinions as to rectifying the situation. The citations, extensive footnotes and ninety-odd pages of appendices and texts of written agreements, are invaluable as a collection of the scholarly guideposts. Museums or international organizations which wish to discover what is currently being done or proposed may turn to this book. The author continually exhorts all international bodies to band together in a common effort to thwart the parochial attitudes of culturally-wealthy nations. It is repeatedly suggested that if states were more willing to share their cultural abundance, there would be less incentive for a state to hoard its wealth out of suspicion and fear of mishandling or appropriation. And too, museum collections might be more selectively grouped to stress quality not quantity. As a further possible benefit, stolen pieces might find their way back to their homeland.

Ms. Williams displays an impressive accumulation of facts, drafts, and final texts of international agreements, and national statutory or proposed definitions and categories of cultural property. The problem of competing definitions for cultural property is also detailed. Ms. Williams offers vignettes of conquering militia desecrating a nation's cultural heritage and statistics of illegal traffic in art. The author's premise that independent state action is insufficient to provide adequate protection is firmly backed by this empirical data and by the intuition that a self-interested, well-endowed state is naturally loath to share its blessings with the immediate world.

Ms. Williams concludes that international cooperation is mandated and critiques the numerous efforts to control and protect cultural pieces, *e.g.*, The Lieber Code, Hague Conventions, Nuremberg Charter, The International Organization for the Protection of Works of Art, UNESCO Conventions and the Quebec Cultural Property Act. She believes that there is a trend away from protective parochial attitudes towards the notion of cultural property as the common heritage of mankind. The author feels that this new view may be the underpinnings of a viable protection system. One of the most necessary ground rules is a working definition for cultural property. Provisions must be made at least to protect the rights of states where an artifact either originated or has rested a long time. Perhaps the possessor state might restore the property to its homeland where the object has some special significance, *e.g.*, the Crown of St. Stephen. However, independent state regulation has historically proven to engender hostility, suspicion and over protectiveness rather than generosity. The international community must define universal aims and basic principles, *e.g.*, establishment of import-export and traffic controls to prevent illegal exchanges. The purpose of any international regulation would be to facilitate exchanges of cultural properties. Thus, a pool of cultural objects would evolve for international distribution and appreciation. Such a fund might serve to reduce the motivations of illegitimate traffic and save museums from an inflated commercial art market.

This study emphasizes the importance of cultural property. The author in a self-conscious effort to persuade the reader to her opinion, somehow succeeds. These items are the products of man and are unique and irreplaceable. One small, seemingly insignificant artifact may be truly representative of aesthetic, scientific, historical or philosophical advances of a nation. Laws to protect human rights are being updated, and the areas of protection of cultural properties, products of human endeavor, should receive similar attention. Cultural property is a fundamental element of civilization and it is necessary that states find the means to protect and control this heritage.

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