Vanderbilt Journal of Transnational Law

Volume 14
Issue 4 *Fall 1981*

Article 6

1981

Book Reviews

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BOOK REVIEWS

SOCIAL POLICY HARMONIZATION IN THE EURPOPEAN COMMUNITY. John Holloway. England: Gower Publishing Co./Renouf, 1980. Pp. 318. $27.00. *Reviewed by James B. Boskey.**

The need for coordination of social policies has become increasingly apparent in recent years as the scope of social security coverage has increased and the number of persons benefitting from such coverage has grown. In the United States it has been argued that different benefit rates in various programs have substantially influenced internal migration as persons eligible for benefits move from state to state to obtain the best available economic results. Within the European Community the extent of this problem was traditionally limited by international boundaries which made migration difficult, and by restrictive programs which provided limited or no social security protection to non-nationals. The need for coordination of social policies among European Community nations has greatly increased, however, because the acceptance of the Treaty of Rome has reduced many of these limitations.

Within the European Community are two basic approaches to social services. The "continental" approach views social security as a system to replace wages during periods of forced unemployment due to lack of job opportunity, medical disability or old age. The "anglo-scandinavian" approach regards social security as a means of providing a guaranteed minimum income to all members of the population. The procedural and substantive differences between these approaches lead to substantial problems in the attempt to harmonize and coordinate the various social security systems in the Community.

Holloway distinguishes between two types of activity mandated by the Treaty of Rome in the social security area. The first of these, harmonization, is provided for in articles 117 and 118 of the Treaty and involves the development of similar approaches to social security problems in the member states. The second, coordination, provided for in article 51 of the Treaty, addresses the

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problems that result from the movement of persons across national borders within the Community and the elimination of barriers to such movement due to limitations in individual national social security systems.

In order to deal with these questions one must first define the scope of social security. Because of the extensive differences in social security coverage among the nations of the Community, Holloway has focused on the nine branches of social insurance listed in the International Labor Organization's Convention Number 102. These are medical care, illness, unemployment, old age, survivors, family, maternity, invalidism, and industrial accident and illness coverage. This limited survey clearly is appropriate, as most of the harmonization and coordination work has taken place in these areas.

Harmonization is the more difficult of the two tasks. The states involved have begun to recognize the need for coordination of their activities, but the goal of developing a unified system is rendered particularly difficult by cultural differences. As a result, relatively little has been accomplished in this area. Aside from the numerous studies which have been published about the various national systems, the Commission has issued only two recommendations for harmonization, both dealing with occupational disease. The first of these recommendations, issued in 1962, proposed the development of a uniform list of diseases that would be presumed occupational in origin in all member states, and called for the recognition of unlisted diseases as occupational where the claimant offered sufficient proof of the occupational nature of the disease. The second recommendation dealt with limitations on the payment of benefits for such diseases and recommended elimination of some of the conditions for proof of their occupational nature. Neither of these recommendations is radical compared with approaches used elsewhere in the world. Nonetheless, the response to them has been limited; only Germany and The Netherlands have adopted the bulk of the recommendations.

As suggested, the problem of coordination relates to the phenomenon of migrancy between nations. The problem may arise in several contexts. If an individual is entitled to benefits in his country of residence, the effect of that person moving to another nation may be unclear. The original state may be unwilling to pay benefits to one who is not a resident within its boundaries, but the conditions for the receipt of benefits in the new state of residence may not be met merely by presence in that state. An indi-

vidual who has accrued rights under the social security program of one state (even if no benefits are currently payable) and who subsequently moves to a different state may similarly lose the accumulated right to benefits from the state of origin. Other problems include payment of a family benefit where the primary claimant and his family are not located in the same country, and payment of an individual benefit where a claimant has met the requirements for eligibility in one state but was present in another state when the incident giving rise to the claim occurred.

Holloway points out that although these matters have been extensively litigated in the European Community, problems do still exist. The goal of the social security systems is a fundamental question. If the goal is protection of the individual, then benefits should follow that individual regardless of residence. If the goal is protection of residents of the state granting benefits, then there is no need for the benefits to follow the individual to another country. In addition, the payment of benefits and accrual of rights across national boundaries pose serious administrative problems for national social systems. In fact, as Holloway indicates, it is often these administrative problems, rather than a lack of desire to protect the individual, which lead to a denial of benefits. For example, most old age insurance programs have little difficulty dealing with payments across national borders. The Belgian program, in which eligibility depends on cessation of gainful employment as well as on age, however, refuses to make such payments because of the difficulty of ensuring that the recipient is not working in a foreign country.

Coordination has been effected among the states of the Community first under Regulation Number 3 and more recently under its replacement, Regulation Number 1408/71. These regulations seek to restrict deprivation of a worker's benefits that may result when he moves from one party state to another. For example, the more recent regulation requires that family benefits be paid by the country of residence rather than by the country of employment, eliminating administrative problems for the country which may never have direct contact with the beneficiaries. Similarly, unemployment benefits which traditionally posed a very serious problem when the worker moved from state to state are now payable across national boundaries, albeit for a period of only three months.

Holloway separates his discussion into three parts: the law, the socio-political context, and the law in its socio-political context.

The division is a highly artificial one and does not serve his purposes as well as it might, but it does provide all of the desirable information. It is regrettable that the book was offset from typed copy; it is of sufficient value to be set in a more readable form.

Holloway's work provides an excellent introduction to the two problems of harmonization and coordination. He had originally hoped to demonstrate that the two problems could be seen as a unified whole, but he concludes that as a practical matter they must be dealt with separately. The work is not designed to, and does not, provide sufficient guidance to attorneys seeking to evaluate the probability of winning litigation over social security problems in the Community. It does, however, fulfill well its intended function: that of providing an overall understanding of the problems of social security in a multinational system.

ISRAEL, THE WEST BANK AND INTERNATIONAL LAW. Allan Gerson. Totowa, New Jersey, and London: Frank Cass & Co., 1978. Pp. 285. $30.00. *Reviewed by John Quigley.**

This book is devoted to international legal issues concerning Israel's 1967 acquisition and subsequent military occupation of the West Bank of the Jordan River. The topic is fascinating and difficult. Unfortunately, Mr. Gerson does not bring the necessary objectivity to the topic. His conclusions consistently follow positions taken by legal advisors to the Israeli Government. He readily justifies many Israeli actions which have been the subject of serious dispute. He neglects to discuss the legality of many Israeli actions which have been deemed illegal by scholars and international investigatory bodies. Knowledgeable readers will find the book useful for its wealth of detail, but the book should not be relied upon by the uninitiated.

Gerson justifies Israel's acquisition of the West Bank, arguing that it acted in self-defense during the 1967 war. This argument fails for two reasons. First, he admits that Israel commenced the hostilities with its Arab neighbors, but he justifies this use of force on the ground that it was a lawful response to Egypt's closing of the Straits of Tiran and threats of war against Israel. Neither the threats of war nor the closing of the Straits gave Israel the right to use force. Article 51 of the United Nations Charter limits that right to situations involving armed attack. Second, even if Israel had acted in self-defense, it was still not entitled under international law to do more than repel the attack. A nation may not hold territory of its adversary once the fighting ends.

After providing an introductory chapter, Gerson traces the Palestinian-Zionist conflict through 1967, discussing competing claims to land and the legality of the wars of 1948, 1956, and 1967. The bulk of the book deals with the law of belligerent occupation in the context of Israel's post-1967 occupation and military rule of the West Bank. Gerson's analysis of the Israeli occupation of the West Bank includes an examination of both the military institutions used by Israel to rule the West Bank, and the acquisi-

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tion of land by Israeli nationals and the Israeli Government for military and civilian settlements. He then analyzes the difficult issues of sovereignty over the West Bank and the legal status of Jerusalem. He concludes by discussing the post-occupation legality of property transactions carried out during the occupation.

Gerson's brief discussion of the law of belligerent occupation does not reveal the complexity of the topic. The most important document concerning this subject is the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949). It requires that an occupying army treat the civilian population humanely, but permits it to punish civilians who challenge its authority. At another level, the right to self-determination gives civilian inhabitants a right to resist an unlawful military occupation. It is therefore anomalous that the Geneva Convention permits the occupant to punish for resistance.

The Protocols of 1977 to the 1949 Geneva Convention indicate that persons captured while undertaking military operations against an occupation are entitled to prisoner of war status. This status is contingent upon participation in the regular army and precludes punishment of military operations.

Another curious feature of the law of belligerent occupation is that the Geneva Convention provides citizens with only minimal rights, on the assumption that military occupation is a precarious situation warranting repressive measures to contain dissent. Thus, the Convention provides no freedom of speech. Article 19 of the Universal Declaration of Human Rights (1948), however, states that all persons shall enjoy freedom of speech. By its terms, the Declaration is applicable regardless of the political status of a territory (article 2). This seems to be in contrast with the Geneva Convention although it could be argued that the Geneva Convention is *lex specialis* for the situation of belligerent occupation and therefore prevails over the Declaration. Furthermore, the binding force of the Declaration is subject to question.

Discussion of these matters is outside the scope of Gerson's book since it is not wholly devoted to the general issues involved in belligerent occupation. These issues are, however, of great relevance for the West Bank. Palestinians on trial in Israeli military courts in the West Bank have unsuccessfully claimed to be prisoners of war. Freedom of speech is not guaranteed to West Bank residents, and numerous Israeli military regulations severely limit their speech.

Gerson's analysis of Israel's belligerent occupancy of the West

Bank is questionable. Gerson erroneously concludes, for example, that Israel's practice of sending civilians to establish settlements on the West Bank is permitted by the Geneva Convention. No state other than Israel has condoned this settlement policy, and numerous United Nations resolutions have condemned the settlements as illegal. Moreover, these settlements are unlawful under article 49 of the Geneva Convention, which prohibits the transfer of inhabitants of the occupant state into the occupied territory. The concept underlying article 49 is that the occupant may not change the character of the territory pending ultimate resolution of its status. Article 49 anticipates that land is normally returned to the former sovereign.

Gerson claims that the Israeli land acquisition and settlement policy is "not unlawful as it neither aimed for, nor neared, a stage involving displacement of the existing population as a prelude to future annexation." Yet article 49 does not require displacement before a violation occurs; the mere "transfer" of population into the territory is prohibited. Israeli Government officials claim sovereignty over the West Bank on the ground that these lands were once the districts of Judea and Samaria in the ancient state of Israel. Furthermore, Gerson's description results in a distorted picture of the settlement policy which, he asserts, is "more in the nature of incipient ad hoc populist trends than the outgrowth of established government policies." In fact, the settlement activity is for the most part organized, financed, and supervised by Israeli Government agencies. The settlements are even positioned strategically to enhance Israeli military control over the West Bank.

Gerson concludes that Israel's annexation of East Jerusalem does not violate the Geneva Convention, even though Israel's incorporation of East Jerusalem by a statute of June 28, 1967 has been universally condemned as unlawful under article 47 of the Convention, which prohibits annexation of military-occupied territory. The global community, including the United States, refuses to recognize Israel's claim to sovereignty over East Jerusalem. Since the basic premise of the Geneva Convention is that the character of occupied territory should not be changed, annexation is the most serious violation. Gerson admits that Israel has established what it hopes will be permanent control over East Jerusalem. Despite this admission, he argues that Jerusalem should be administered as a single entity and ignores this legal issue. He never mentions the existence of article 47. Gerson states that Israeli military courts on the West Bank (courts that try security-

related offenses) are required to apply the procedural and evidentiary law applicable in Israeli criminal courts. He does not mention article 9 of the Security Provisions Order of June 7, 1967, promulgated by Israel's military governor for the West Bank, which states that a military court "may deviate from the rules of evidence for special reasons which shall be recorded, if it deems it just to do so." Gerson also cites the Israeli military government's decision to permit municipal elections on the West Bank as "an example of democractic rule during occupation." That statement is misleading because effective control rests with the military government, which enacts and enforces laws and makes all important administrative decisions. Gerson further states that "with the exception of the PLO, tampering with the electoral process has not been alleged." He does not mention that two weeks prior to the April 1967 West Bank municipal elections, Israeli military authorities expelled from the West Bank two strongly anti-occupation candidates for mayor of the town of Hebron in the West Bank. In addition, two years after the publication of Gerson's book, scheduled quadrennial elections for municipal councils were cancelled by the military governor who feared the selection of candidates more hostile to Israel than the incumbents.

Gerson does not view the Israeli practice of demolishing the houses of persons arrested on security offenses as a violation of article 53 of the Geneva Convention. That article prohibits destruction of private property "except where such destruction is rendered absolutely necessary by military operations." Gerson merely states that such demolitions "bear a direct relation to the legitimate end of deterring terrorist activity," without explaining that they might negate the clear import of article 53.

Gerson does not mention a number of serious allegations that have been leveled at Israel's occupation practices. These include Israel's expulsion, on political grounds, of numerous Palestinian inhabitants from the West Bank; the Israeli detention of West Bankers without charge for substantial periods (administrative detention); denial of many procedural rights of Palestinians in Israeli military courts; extreme overcrowding in prisons where Palestinians are incarcerated; and the widely supported allegations that Israeli interrogators torture Palestinian detainees. In addition, Gerson does not note that Israel has seriously encroached upon the jurisdiction of the Palestinian courts that continue to function for nonsecurity criminal cases and for all civil cases. A 1980 study by the International Commission of Jurists,

The West Bank and the Rule of Law, details this encroachment. The study also makes the point, omitted by Gerson, that there is no regular publication of the military orders issued by the West Bank military governor. These orders affect many aspects of economic and political activity of West Bankers.

Probably the greatest strength of Gerson's book is his account of the development of Israeli policy regarding the West Bank. He presents much interesting data and draws on a wealth of published material. Yet his errors and omissions prevent this book from constituting a significant piece of scholarship.