

societies). Teachers in law and sociology faculties alike will find Deflem's book a useful resource, but it has much more of the flavour of a memory-jogger than a book bursting with pedagogical creativity.

MAKSYMILIAN DEL MAR

*International Law on the Left: Re-examining Marxist Legacies*. Edited by SUSAN MARKS. [Cambridge: Cambridge University Press. 2008. x, 307, and (Index) 10 pp. Hardback £55.00. ISBN 9780521882552.]

MOST UNDERGRADUATE STUDENTS who have just started university this year were born in 1989 or 1990. For them, the expression "Soviet Union" smells of an historical atlas, much like "Prussia" or "Ottoman Empire". Yet, nearly twenty years after the fall of the Berlin Wall, the much-announced end of Marxism as an intellectual endeavour has not materialized. Despite the hasty "end of history" claims à la Fukuyama, liberalism in its many declinations is not the only substantial worldview surviving. Literature on the contemporary relevance of Marxism is now "a staple of the social sciences and humanities" (p. 1), and it is part of the mainstream in certain areas of continental Europe: a law student in France or Italy would not escape at least some exposure to it. This is less true in the Anglo-American tradition, especially when it comes to international law.

This collection of essays edited by Susan Marks is thus a very welcome contribution. It is a kaleidoscopic introduction to nine different approaches to the issue of "Marxist legacies", held together by a skilful preamble setting out the general conceptual framework. Multifariousness remains a salient characteristic of Marxist dialectics, and no single thesis is developed by the book as such. Nonetheless, most contributors share both unease at the current state of world affairs and a rejection of the "official" Soviet theory of international law, which merely consisted in "taking the dogma for a walk" (p. 135). They challenge orthodox approaches to Marxism, but each from a different perspective – making it impossible to do justice to all essays in this short review.

Possibly the furthest away from communist or socialist orthodoxies, Martti Koskenniemi proposes an "instrumental and heretic use" (p. 31) of dialectic discourse through the practice of deconstruction (see his *From Apology to Utopia* (Helsinki 1989)). International lawyers should learn from Marx the ability to overcome appearances and identify the "secular political theology" of our time, *i.e.* the inextricable tension between human rights and statehood. To those in search of true human emancipation, international law can provide the framework through which "a sense of universal humanity" (p. 51) may be constructed, almost as a myth, by fostering the perception of certain international law violations as involving us all.

However, it is clear to Koskenniemi that "international law will not bring about world revolution" (p. 31). In this last respect, he would agree with China Miéville. But the latter goes radically further in the third chapter. He sees "no prospect of any systematic progressive political project or emancipatory dynamic coming out of international law" (p. 130), because "the attempt to replace war and inequality with law" is both "utopian" and "self-defeating" (p. 132): imperialist violence is a structural element of international law. This view arises from the commodity-form theory of international law (see his

*Between Equal Rights* (Leiden 2005)), drawn and elaborated from the 1920s writings by E.B. Pashukanis, a major Soviet legal scholar executed in 1937 during Stalin's Great Purge. The legal form postulates the conceptualization of the state as a fictional "legal subject". It holds rights, exchanges them and "fetishises" them in a similar way as persons do with commodities in the capitalist market. But factual inequalities in power or wealth are irrelevant to the functioning of legal systems. In the absence of superior enforcement, all legal subjects, including states, are entitled to resort to force to protect their property or their "commodified rights". Self-help and (asymmetric) force are thus rooted in the international legal form, not confined to the realm of politics; this means that "the chaotic and bloody world around us is the rule of law" (p. 132).

From an historical perspective, Bowring criticises Miéville's approach for overlooking the Soviet practice on self-determination and the relevance of Bolshevik and Soviet international legal theory. But a more general critique can be respectfully advanced. Miéville's approach discounts the fact that law has progressed from the late nineteenth century. It now also protects human dignity and a certain redistribution of wealth – and it does so also through the creative activity of "bourgeois" judges, a perspective Marxism usually fails to see. Secondly, his theory could be described as an "upside-down" Morgenthau: despite opposite premises and inverted conclusions from the latter, the end result is strikingly similar in its rejection of international law as a possible solution to world problems. Seventy-five years ago, Hersch Lauterpacht had already advanced powerful arguments against all sorts of "realism" (and in favour of "enlightened" judicial activity) in his *Function of Law in the International Community* (Oxford 1933).

The two essays on human rights law provide for other interesting reasons why Miéville's approach should be deemed extreme. Obiora Okafor discusses Upendra Baxi's approach (see the latter's *The Future of Human Rights* (Delhi/Oxford 2002)). According to Okafor, this gainfully combines Marxism and Third World approaches to international law. In turn, Brad Roth queries whether there can be any compatibility between Marxism and human rights. In *On the Jewish Question* (1843) Marx famously held that human rights are no more than the bourgeois liberties of the egoistic man, unsocial and unhappy. Roth, however, holds that a "human-rights-friendly reading of Marx is both available and edifying" (p. 221), as proved by the analysis of his other works; according to Rosa Luxemburg (and in contrast with Lenin), Marx always believed the rule of law and bourgeois political freedoms to be essential in the path to emancipation. Also, Marxism can provide an essential "source of critique" for liberal human rights theories "on the basis of the very values of human freedom and dignity that they espouse" (p. 250). This is accomplished through the unveiling of undergirding economic implications in liberal theoretical assumptions.

In fact, the aim to unmask the law's ostensible neutrality is one of the recurring themes of the book. Claire Cutler, for example, focuses on international trade law and explicitly builds on Miéville's commodity-form theory to describe the reification of services in the GATS agreement as an instance of commodification performed by the hegemonic intellectual elite (in the Gramscian sense). And Anthony Carty would agree with Miéville's finding that colonialist imperialism is connatural with international law. In his essay, he strongly criticizes the notorious work by Michael Hardt and Toni Negri (*Empire* (Cambridge, Mass. 2000)) as a postmodern pastiche of "convoluted

rhetoric" displaying a "nonsensical" and "virtually magical style" (p. 174). As postmodernism is only "the exhausted moral spirit of the old Europeans" (p. 169), a Marxist analysis is much better placed to explain why international law is constantly violated: not because of a "new" imperialism, but because of the same old capitalist one, personified by the United States (p. 187).

The editor's own groundbreaking contribution also seeks to unveil some ideological liberal assumptions by focusing on the "classic" Marxist concept of exploitation. While international lawyers readily use the concept with relation to topics such as sexual trafficking or slavery, they do not register its meaning of deprivation linked to someone else's privilege: "exploitation belongs with the normal functioning of a system in which capital accumulation depends on labour exploitation" (p. 300). One should thus focus on beneficiaries of violations rather than just perpetrators: *is fecit cui prodest*. For instance, how are profits made by pharmaceutical companies' shareholders connected to the protection of intellectual property of HIV drugs in developing countries? "Those who have benefited from patent revenues remain comfortably out of view" (p. 294). According to Susan Marks, the liberal illusion that international law is neutral to such questions is wholly ideological.

In sum, should undergraduates born at the twilight of the Soviet regime be bothered at all with Marxism and international law? The book provides nine different reasons why they might, ranging from the most iconoclastic opinions against the rule of law to the more positive faith in the emancipatory power of law. As B.S. Chimni suggests in his chapter outlining a Marxist course on public international law, "alternative stories have to be told" to students, scholars and practitioners for international legal regulations not to translate into injustice (p. 53): it is the task of lawyers to "speak the truth to power" (p. 54). International law, like all other law, is never politically innocent.

FRANCESCO MESSINEO

*International Investment Arbitration: Substantive Principles*. By CAMPBELL MCLACHLAN QC, LAURENCE SHORE and MATTHEW WEINIGER. [Oxford: Oxford University Press, 2007. xlix, 445, (Bibliography) 7 and (Index) 19 pp. Hardback £145.00; Paperback £44.95. ISBN 9780199286645.]

INVESTMENT TREATY ARBITRATION is arguably the most rapidly-growing international dispute resolution mechanism. Premised on direct treaty protection rather than diplomatic protection, it is a relatively new phenomenon and was little used until the late 1990s. The International Centre for the Settlement of Disputes ("ICSID"), established under the Washington Convention on the Settlement of International Disputes between States and Nationals of other States is now designated as the institutional means of dispute settlement in over 900 bilateral investment treaties and 20 domestic investment laws, in addition to four significant multilateral investment treaties: the North American Free Trade Agreement, the Energy Charter Treaty, the Cartagena Free Trade Agreement and the Colonia Investment Protocol of Mercosur. At present there are over 120 cases pending before ICSID, including those submitted under the Additional Facility Rules, in addition to investment disputes which have been pursued through *ad hoc* arbitration under other institutional or designated rules.