

Globalization and International Law. By David J. Bederman. New York: Palgrave Macmillan, 2008. Pp. xviii, 244. Index. \$90, cloth; \$32, paper.

In this ambitious study, David J. Bederman, the K. H. Gyr Professor in Private International Law at Emory Law School and a highly accomplished legal scholar, challenges the conventional wisdom about globalization in three respects. First, he argues against the view that the current period of globalization is unique and unprecedented and therefore that "previous approaches to world legal order can have no relevance to present times" (p. x). Bederman debunks that view by presenting a vivid portrait of past epochs of globalization to show how transnational law responded to and helped drive economic and social change. Second, he argues against the view that globalizing trends are inevitable by presenting a rich history of how "globalization has proceeded through a series of historical cycles" (*id.*). Looking ahead, he opines that globalization is "quite reversible" (*id.*), but he does not predict such a reversal. Third, he calls into question the optimistic view that as the world becomes more closely knit, the legal relationships among international actors will become more clearly defined and regulated. Instead, he worries that the "institutions and process of international law are not keeping pace with changes in the international community" (p. xi).

Bederman seeks to increase our understanding of the legal problems and potential solutions arising from globalization. His book is composed of three parts and a conclusion. Part 1 provides "A Short History of World Law." Part 2, "Today's Globalism," examines its key economic and legal features. Part 3, "Challenges for Globalism and World Law," seeks to integrate the historical and legal analyses to address the "primary critiques of international law in today's globalizing processes" (p. xi). The conclusion focuses on "Values for World Law."

The broad scope and historical dimension of Bederman's book allow it to stand out among books on globalization and law. Moreover, it is accessible to the generalist while still being valuable to the specialist. This review proceeds by dis-

cussing the book's three parts and conclusion in turn.

Part 1 examines how international law has responded to globalizing trends. Bederman explicates this history in six chapters, each focusing on a particular impetus for new legal construction. The chapters cover empire, belief, conflict, commerce, dignity, and universalism (and are so titled). Within each of these chapters, Bederman traces the historical development of world law in three earlier epochs of globalization: classical antiquity, the era of exploration beginning around 1450 AD, and the age of empire from 1850 to 1914.

The thrust for empire led to a globalized law as a process and instrument of social control. In ancient Rome (circa 500 BC), a concept of *ius gentium* (law of peoples) developed to foster peaceful relations between Rome and its neighbors on topics such as shipping and commerce, rights of inheritance, and contracting. The age of empire was "heavily protective of the colonial prerogatives of European nations, of freedom of navigation and commerce, and the unfettered ability of colonial powers to project force against recalcitrant indigenous peoples" (p. 9).

Religious and moral beliefs were another important influence on the development of international law. One interesting episode was the justification from the sixteenth century for the subjugation of uncivilized peoples. This chapter also discusses changing conceptions of the role of natural law in international obligation.

As the book explains in the next chapter, frequent conflict among nations engendered the need for rules controlling war. Even in the ancient era, there were understood benchmarks of behavior preventing the destruction of crops and temples. By the seventeenth century, laws of war had been recognized as a branch of the law of nations, and in the next two centuries, elaborate rules on naval capture were articulated by prize courts of maritime powers. This development was followed by codification of the law of war in the Paris Declaration of 1856, the Lieber Code, the Hague Peace Conferences, and the Geneva Conventions.

"For millennia, commerce has been the solvent of sovereignty," Bederman writes (p. 27). In contrast to other features of world law discussed

above, the historical influence of commerce has come not directly from states, but rather from the merchants and traders who actually participated in evolving forms of transnational economic relationships. In the Middle Ages, the key innovation was specialized commercial courts that were deliberately structured to be insulated from provincialism by using panels of merchants to decide cases. The transnational corporation emerged in the age of exploration and was facilitated by new doctrines of limited liability for corporations. In the age of imperialism, the movement of investment capital led to stronger customary norms on investor protection and state responsibility for injury to aliens. In the twentieth century, such norms received greater codification in bilateral and multilateral agreements.

Efforts to vindicate human dignity were another important stimulus to international law. After natural law proved inadequate, human dignity was promoted with positivist approaches as, for example, through the abolition of the slave trade. Likening legal revolution to scientific revolution, Bederman explains that abolishing the slave trade provided a "paradigmatic structure for all international law 'revolutions'" (p. 37). The key sequential developments were initial leadership by a handful of states, followed by emergence of new doctrine, and then a slow movement to a new consensus. According to Bederman, this pattern can be seen not only in the development of the international law to protect minority rights and human rights more broadly but also in the establishment of individual responsibility for crimes against humanity.

In the last chapter of Part 1, the book posits that world law has been influenced by important rounds of universalism and solidarity. The Hague Peace Conferences, the League of Nations, and the Permanent Court of Justice are covered, and in this regard Bederman could have also discussed the Pan American Union. This chapter further notes the recourse to general principles of law by the International Court of Justice and how these principles can serve as a gap filler.

Part 2 of the book turns to contemporary globalization, which Bederman aptly characterizes as the fourth era of globalization. Part 2 is divided

into six chapters, and each chapter examines an important theme of "Today's Globalism": movement, commons, disciplines, crime, culture, and technology. In discussing these themes, Bederman brings in new historical insight.

The movement of people, ideas, money, goods, and services across political frontiers is the "crucial characteristic of globalization" (p. 55). A world law has emerged to help manage that "highly mobile globalism" (p. 69). Indeed, as the book explains,

The globalization of mobility has thus brought about one of the signal developments of modern international law: the creation of functional international organizations or institutions, the primary purpose of which is to unify the laws of various nations in order to standardize best practices and to prescribe at least a minimum level of regulation." (P. 57)

The chapter discusses several types of mobility and how they are being managed. For example, with ocean and air transport, the key organizations are the International Maritime Organization and the International Civil Aviation Organization, whose work and achievements are highlighted. The chapter also discusses the management of the mobility of capital, species, and disease.

The chapter on the global commonage ("Commons") features several mini studies of particular regimes. For instance, the study of the Antarctic regime discusses the nonratification of the Convention on the Regulation of Antarctic Mineral Resource Activities, and notes that "[t]his is the first, and probably only, time that an international regime was defeated through NGO [nongovernmental organization] action after negotiation and signature" (p. 74). The write-up of the endangered species regime discusses the story of attempts to halt trade in ivory and faults the regime for a "one size fits all" approach (p. 78). In his mini study of cyberspace, Bederman perceptively observes that the "hackers, spammers, child pornographers, copyright violators, and fraudsters that inhabit cyberspace are the modern equivalent of the pirates of old" (p. 83).

"Disciplines" are characterized as a "style" of international regulation in which national leaders

control themselves with “international standards” so as “to try to avoid countervailing domestic pressures” (p. 87).¹ Bederman illustrates this style through a brief examination of the regimes addressing trade, labor rights, deep seabed mining, and the environment. With regard to the environment, the author points out that “[w]hen the nominal participation of developing nations is procured by delaying (or deferring indefinitely) the effects of the regime on those countries until some date later to be determined, the essential legitimacy of the regime is undermined” (p. 94).

As to “Crime,” the book explains that “[t]ransnational organized crime is hard to suppress in the same way that transnational business is hard to regulate” (p. 104). In this chapter, Bederman relates the basics of transnational law enforcement cooperation. Among the particular criminal issues discussed are corrupt practices, blood diamonds, and terrorism.

The cultural dimension of globalization is addressed in a chapter that explains: “Culture remains a lightning rod for disputes about the nature and reach of globalization and international law” (p. 130). The chapter considers a wide array of issues including underwater cultural heritage, language extinction, indigenous people, and cultural exceptions in trade agreements. There is also a thoughtful discussion of the tension between the obligations of states to protect human rights and cultural practices that do violence to young girls.

“Advances in technology have been a driving force for globalization and a challenge for international law for much of the twentieth century” (p. 131). The chapter goes over a number of approaches used to manage transnational problems. For example, Bederman discusses treaties that impose liability on private actors in areas of oil pollution and nuclear power. In addition, he considers the increasing challenges of protecting privacy.

¹ Bederman notes that this can occur when “[e]lite associations” favor elevating an issue to an international mechanism to “avoid or subvert domestic legislative or judicial bodies that might have been ‘captured’ by more parochial interests” (p. 169).

The third part of the book integrates the historical and legal frameworks noted above and explores the major critiques of the performance of international law in today’s globalizing processes. Four chapters comprise this part and address diversity, permeability, legitimacy, and exceptionalism.

By “Diversity,” Bederman means the “major rivals to the State-wielded levers of power in international governance” (p. 147). The “two competing sources of non-State power” examined are transnational corporations (TNCs) and NGOs (p. 150). While reminding readers that transnational businesses go back to the 1700s, Bederman points to something new in contemporary practice as TNCs “weave distinctive threads into the fabric of international law” (p. 152). For example, “TNCs are increasingly making binding international norms completely outside the usual mechanisms for international lawmaking . . .” (*id.*). Bederman leaves open the question of whether the rise of TNCs and NGOs has led to an actual decline in state power. Instead, he cogently suggests that “we are changing our notions of State sovereignty to accommodate the new realities of non-State actors and diverse sources of international law-making authority and enforcement” (p. 157).

The chapter on “Permeability” considers the legal implications of the “ever-increasing porosity of national boundaries” to movement of capital and human migration (p. 159). Here Bederman notes three important trends. First, he documents the “revival of the *lex mercatoria*” (p. 160, format adjusted),² meaning the “customary law governing international commercial relationships” (*id.*) that is now being increasingly “harmonized by uniform law treaty instruments” and made subject to dispute settlement through international commercial arbitration mechanisms (p. 161). This use of arbitration “reflects a realization that private market forces are more likely to adopt rational and reasonable rules for the conduct of international

² This relationship between the historic and modern *lex mercatoria* is explored in a new book published after Bederman’s study. See BENN STEIL & MANUEL HINDS, *MONEY, MARKETS, AND SOVEREIGNTY* 23–29 (2009).

business transactions than traditional State authorities" (p. 162). The second trend is the way that certain leading nations "can press changes in the global legal order by simply enacting their own regulatory solutions and giving them extra-territorial effect" (p. 164). The third trend is the "growing interpenetration of domestic and international legal systems" as, for example, through review of national court decisions by international bodies (p. 167).

"Legitimacy" can become a challenge when individuals and civil society "realize that many of the decisions that affect their everyday lives are made by transnational governance mechanisms" (p. 171). The book points to the World Trade Organization (WTO) as an example of a "supranational governance institution" (p. 174) that has been challenged for lack of accountability, transparency, and legitimacy.³ As Bederman sees it, "Many NGOs and watchdog organizations were largely justified in their belief that WTO was totally unresponsive to many global constituencies" (p. 175).

The last topical chapter addresses "Exceptionalism" (p. 181) and considers the ways that individuals, communities, and polities can, and have, opted out of globalization and how their absence affects world law. Earlier, Bederman notes the "tensions between the goals of universalism and uniformity in international law-making, counterpoised with the objective of preserving distinctive elements of national and local autonomy (even when that can be manifested as parochial or discriminatory behavior)" (p. 51). He subsequently explains that the generalist impulse of international law can "be a real impediment to a sensible legal approach to the challenges and problems of globalization" (p. 185). In his view, the "new globalized world order we are confronting has both winners and losers, and no just system of transnational legal regimes can operate without that recognition" (p. 188).

In the book's conclusion, entitled "Values for World Law," he states that in the modern era, starting at the dawn of the twentieth century, was

³ One way that this chapter could have been improved would have been to more carefully explain what is supranational about the WTO.

the first serious challenge to "State sovereignty's monopoly over international law's value system" (p. 191). In 1945, at the founding of the United Nations, the UN Charter "explicitly dissolved State sovereignty in its twin goals of preserving peace and protecting human rights" (p. 192). Today, "new social ideologies and forces are impacting international law to a degree not experienced for centuries," according to Bederman (*id.*).

A key overall finding in this study is that while the current problems in world law from globalization are serious, to solve them we need "to place contemporary globalization in historical perspective" and to recognize that "we are repeating many past patterns of change and growth" (p. 201). Bederman concludes that "it is a profound mistake to assume that the political, economic, social, and cultural skeins of contemporary globalization can be separated from their legal textures, the warp and weave of world law" (p. 200). No reader of this well-organized study could easily make that mistake, as Bederman illuminates past trends and charts a course for "the practical realization of a just world under law" (p. xii).

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The United Nations Secretariat and the Use of Force in a Unipolar World: Power v. Principle. By Ralph Zacklin. Cambridge, New York: Cambridge University Press, 2010. Pp. xiv, 163. Index. \$60.

In 2008, Ralph Zacklin, the former United Nations assistant secretary-general for legal affairs, gave the Sir Hersch Lauterpacht Memorial Lectures at Cambridge University. This volume, slim though it is, presents an expanded version of those lectures. Zacklin provides a behind-the-scenes view of how the UN Secretariat dealt with the legal issues raised by four outbreaks of armed conflict: the Iraq-Kuwait conflict and its aftermath, in 1990–1991; the hostilities in Bosnia in 1992–1994; NATO's air strikes relating to Kosovo in 1999; and the run-up in 2002–2003 to the Iraq war of 2003. Each of the four chapters contains an