

Buchbesprechungen

Cassese, Antonio: Five Masters of International Law. Conversations with R.-J. Dupuy, E. Jiménez de Aréchaga, R. Jennings, L. Henkin, O. Schachter. Oxford: Hart Publishing, 2011. ISBN 978-1-84946120-7. xx, 286 p. £ 34,99; ISBN 978-1-84731638-7 (eBook). £ 34,99

The late *Antonio Cassese* wrote and edited a number of books throughout his life. Works such as *International Law* and *International Criminal Law* stand out for being standard works in their fields. In others, such as the edited *Realizing Utopia*, he took a more normative approach, showing what international law could and should be in the future. Other books disseminated important questions of international law to a wider audience. *The Human Dimension of International Law*, which consist of his “collected papers”, displays all of these impulses: It combines the dogmatic analysis of international law with normative evaluation of its contents, while also placing the law in its broader societal context. The book under review (hereinafter *Five Masters*) is among his final works, and is in some sense rather unique. It is not about law as such, but rather about lawyers. It is a collection of interviews (or, as per the title, “conversations”) that may be classified (if necessary) as “sociology of law”, albeit with significant helpings of history and jurisprudence. *Five Masters* can be seen as a follow-up to *Cassese’s* book-length interview with *B. V. A. Röling*, (*B. V. A. Röling/A. Cassese, The Tokyo Trial and Beyond: Reflections of a Peacemonger*, 1993) whose “unexpectedly favourable reception” inspired *Cassese* to attempt *Five Masters* (p. v).

The interviews in *Five Masters* were conducted by *Cassese* between 1993 and 1995. The five masters in questions are *René-Jean Dupuy* of France, *Eduardo Jiménez de Aréchaga* of Uruguay, *Robert Jennings* of the United Kingdom, and *Louis Henkin* and *Oscar Schachter* of the United States. The book provides a brief (and one might say subjective) biography of each interviewee, before presenting an edited transcript of the interview itself.

The interviews were based on a “basic questionnaire”, but *Cassese* did allow the interviewee to expand on and digress from it. The questions were divided into five groups: “the beginnings” (covering academic influences and philosophy, and public engagement), “scholar v. practitioner” (on participation in legal practice), “contributing to international law”, “the outlook for the World Community”, and “personal matters”.

The interviews manage to reveal something about the character of each “master”. To simplify somewhat (and perhaps too much), *Dupuy* comes across as a legal philosopher, *Aréchaga* as an advocate, *Jennings* as a univer-

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sity administrator and director, *Henkin* as a reformer and activist, and *Schachter* as an international bureaucrat (in the finest sense of the term). That the relatively short interviews manage this is a reflection of *Cassese's* selection of subjects, as well as of his skills as an interviewer.

Cassese noted how all of the interviewees were affected and influenced by the Second World War (p. 252): *Henkin* was a soldier, *Jennings* was an intelligence officer, *Schachter* was a legal adviser, *Dupuy* was part of the Free French Forces (p. 15), while *Aréchaga* worked in the United Nations immediately after the war (p. 49). In one sense we are still living in the “post-war” period, and in the shadow of the Second World War and the legal institutions that it spawned. In another sense, that war belongs to a previous generation. The Cold War was the defining conflict for the subsequent generation of international lawyers, whereas the “Forever War” (*H. H. Koh*, How to End the Forever War, speech at the Oxford Union, Oxford, 7.5.2013) against terrorism may play the same role for the following generation. As noted in the introduction to this review *Five Masters* is also a work of history, and the centrality of the Second World War provides both a link and a contrast between the past and the present.

The book moreover reveals something about lost eras in international law. *Aréchaga* mentioned a time when the International Law Commission was “composed mostly of scholars, who were guided by the goal of having a good draft” (p. 84), and *Cassese* noted that the ILC used to be marked by “mutual intellectual respect and a free communication of ideas” (p. 254). Both statements seem to imply a contrast with the current state of affairs. Similarly *Jennings* longed for the days when “many of the best teachers [...] hardly got around to writing their books and felt that if they’d imparted their ideas to pupils, they were doing their job” (p. 121). This is in clear contrast to the current pressure in most universities to “publish or perish” with the result that “simply too much is getting published” (*J. H. H. Weiler*, Editorial: On My Way Out – Advice to Young Scholars II: Career Strategy and the Publication Trap; Roll of Honour; In this Issue, *EJIL* 26 [2015], 795, at 795).

One of the most useful (and enjoyable) features of the book are the footnotes with “mini-biographies” of prominent international lawyers and others that are given when the individuals concerned are mentioned in the text. These should be particularly useful to younger international lawyers who want to learn more about the recent history of their discipline.

Similarly *Five Masters* is useful for its discussions of classical works of international law from the period when the interviewees were active. For younger lawyers who have mostly studied contemporary classics, the book provides a valuable if impressionistic bibliography of works that are no

longer on the curriculum but that nonetheless should be consulted by international lawyers who are looking for new (or, rather, old) arguments. Even though *Cassese* lamented that it “is the ineluctable fate governing our legal contributions” that “new legislative and jurisprudential developments are destined to render [them] obsolete” (p. 6), he provided a list of four “classical works of international law that will never die” (p. 228). These were *Anzilotti's Corso de diritto internazionale* (French translation by *Gidel*), *Brierly's The Law of Nations* (ed. by *Waldock*, and lately also by *Clapham*), *Verdross' Völkerrecht* (ed. by *Simma*), and *Kelsen's Principles of International Law* (ed. by *Tucker*). *Cassese* also ranked *Aréchaga's International Law in the Past Third of a Century* as “among the best lectures delivered at the Hague Academy” (p. 50).

Five Masters is not only a work of history, but also of jurisprudence. One of *Cassese's* aims with the book was “to discover the influence of positivism” (p. vi). Based on the interviews he concluded that “the [...] scholars interviewed [...] paved the way for a new positivism [...] which one could call *critical positivism*” (p. 258). The “assumptions” behind this new positivism are to understand the societal context and purpose behind a rule, to interpret it according to a “strict methodology”, albeit with the possibility of “teleological interpretation” based on “universal values” or even the interpreter’s “personal ideological or political leanings”, and “critically to appraise” the rule, and possibly “suggest new legal alternatives” (p. 258 et seq.).

In this connection the book also touches on an important dichotomy of legal thought, between two important functions of the law. One function is to make society function smoothly, but another is to achieve substantive justice. These functions may be incompatible in specific cases, for example when an (otherwise) just outcome disrupts established expectations. The same dichotomy can be seen, for example, in the opposition between the “apology” and the “utopia” in the title of the celebrated book by *Martti Koskenniemi* (*M. Koskenniemi, From Apology to Utopia*, 2nd ed. 2006). In *Five Masters* the dichotomy comes up for example in the interview with *Louis Henkin*, who said that he recognised “the distinction between *ferenda* and *lata*”, but that he did not “think it [was] as firm as and fixed as some of [his] colleagues in the profession” did (p. 257).

The book also engages with other fields of philosophy. It is scattered with references to thinkers from relevant disciplines, including *Hegel*, *Kant*, *Wittgenstein*, *Plato*, *Nietzsche*, *Freud*, *George F. Kennan*, *Hans Morgenthau*, *Einstein*, *Camus*, *Sartre*, *Rawls*, *Kierkegaard*, *Marx*, *Trotsky*, *Spinoza*, *Bertrand Russell*, *Karl Popper*, *Max Weber*, *Rousseau*, *Voltaire*, *Montaigne*, and

others. This is part of *Cassese's* tendency, mentioned in the beginning of this review, to place international law in a broader context.

In short, *Five Masters* is a unique and fascinating work, and the field of international law would be poorer without it. One can only hope that similar books will be produced by and with the current and future generations of great international lawyers.

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Oduntan, Gbenga: International Law and Boundary Disputes in Africa. London/New York: Routledge, 2015. ISBN: 978-0-415-83892-4. xviii, 410 p. £ 90,-

1. *Objectives and Scope*

In his book, *International Law and Boundary Disputes in Africa, Gbenga Oduntan* claims to dispel popular myths about the endemic nature of boundary disputes in Africa and critiques the content and application of current international law to the resolution of African territorial and border disputes. Next to principles of public international law and aspects of international relations theory, this book is based on recent debates and influences in socio-legal studies, politics, critical legal studies and general social theory. With this work, the author aims to synthesize an African jurisprudence of international boundary law. The added value of the study rests on the fact that it is one of the few works by an African scholar to interrogate the disciplines of international law and diplomacy in relation to their relevance, specifically to African boundary disputes. By this book, *Oduntan* wants to provide aid to researchers and scholars of African boundaries and international relations in formulating useful answers to the many problems that continue to arise in this area. In addition, he wants to support those practitioners charged with the task of aiding boundary disputants in Africa to deliver “multidisciplinary” solutions of their cases in accordance with the general principles of public international law.

The question “Why Africa”, is obvious to the author. According to him, Africa is a continent since the era of political emancipation from debilitating colonialism is no stranger to border problems, conflicts and territorial disputes of all descriptions. Military clashes around borders are near common place although the vast majority go unacknowledged. Cattle rustling, terrorism, smuggling, ethnic violence, prostitution, people trafficking, drug trafficking, agrarian revolts, straddling villages and communities are just some of the issues that afflict African states in their border areas and boundary zones. As a consequence, human rights abuses, discrimination, political exclusion and economic stagnation are of the order of the day in

Africa, especially in those areas that are at forefront of territorial or boundary disputes.

One of the main objectives of the book is the development of viable political, diplomatic and legal mechanisms and institutions in which African scholars, jurists, technocrats, leaders and elders participate as the main engines of decision making in resolving African boundary disputes. It is argued that the predominant use of foreign-based adjudicatory mechanisms in attempting to deal with African boundary disputes alienates those institutions and mechanisms from African people and is perhaps a cause for the recurrence of conflicts and disputes in and among African territories even in relation to disputes to which legal decisions had already been taken. In this light, *Oduntan* spends, for example, a whole chapter on the *uti possidetis* principle.

In *International Law and Boundary Disputes in Africa*, the author shows that the vast majority of African boundaries and borders are maintained in a constant state of peacefulness. The African international boundary is predominantly a place of immense intercultural exchange, multiculturalism, international trade, tourism, economic opportunities and peaceable interactions. The book focuses on the law and practices of the Regional Economic Communities (RECs) and the African Union (AU). In this way, it attempts to establish points of positive practice that are unique to Africa and ought to be recommended to other regions and areas of the world, even the developed western world. One of the main hypotheses to be tested includes whether the physical and cultural distance between the key institutions and personnel that usually decide over African disputes and the continent itself contribute to the perception of dissatisfaction with the justice prescribed by international tribunals.

Oduntan claims that the combination of non-African venues, judges, arbitrators and experts as well as the application of Euro-centric, modern public international law – to use the author's words – appear to have created a widespread impression that the justice in relation to African international boundary disputes continues to be handled in an unsatisfactory and biased manner. Consequently, it had to be determined whether the lack of ownership of the processes for resolution of international disputes in Africa generally has contributed to the increasing porosity of the continent to foreign intervention by other technologically advanced countries and corporate interests.

The book identifies the major principles of law at play in relation to territorial and boundary disputes. By the treatment of the topics, *Oduntan* tries to develop a critique of the content and practice of international law espe-

cially where the applicable principles of law are deemed to work against the interests of developing states, particularly those of Africa. In doing this, the author highlights the weaknesses of contemporary international law and in the general framework of international relations and diplomacy and suggests corrective measures.

The most important, but at the same time, most difficult objective of the book is to provide a discussion of the problems afflicting African boundaries and particularly to identify necessary changes to the way African boundary disputes are handled. It provides a “multidisciplinary” analysis for the purposes of strengthening the knowledge base and understanding of African boundary related institutions and mechanisms and those of their experts and judges, as claimed by *Oduntan*.

2. Assessment

This book offers the necessary African view on international law and international relations indeed. It counterbalances the Euro-centric approach of international law and is a viable correction to this inherent bias of international law. The legacy of Africa’s colonization in international law is that it was in this particular period of time that international law was founded on the premise of the divided world between civilized and non-civilized introduced by European legal doctrine and politics to justify of the acquisition and partition of Africa. Euro-centrism in international law and the lack of historical contextualization and critical evaluation of international law by its agents make that cultural differences determined the nature of international law. New Imperialism, more specifically, the acquisition and partition of African territory at the end of the nineteenth century was constitutive for the creation and development of international law. International legal norms were not just imposed by Europeans; international law was shaped by the European-African confrontation too. In this sense, the establishment and evolution of international law is a product of a mutual process in the confrontation between political entities. Recognition of the colonization of Africa by European States as constitutive for the historical development of international law can give this past a place in international law and make a reflection on the nature of international law as an impartial body of law possible.

The biased nature of international law is the main inheritance of New Imperialism. But what are further legacies of New Imperialism in general and the colonization of Africa in particular in the establishment and development of international law? First, the acquisition and partition of Africa proved theoretical categorizations within nineteenth-century international legal doctrine to be flawed. Traditionally, the Age and phenomenon of New

Imperialism is characterized by dichotomies, oppositions and divisions – civilized versus non-civilized, European versus non-European, sovereign versus non-sovereign, public versus private, sovereignty versus property, centre versus periphery, theory versus practice, law versus politics, formal versus informal, advanced versus backward, domination versus subordination, positivism versus naturalism, we versus them and toleration versus civilization mission. The scramble for Africa, however, evidences how these dualities were exploited arbitrarily and how they became unworkable, invalid and out of touch with reality. In this sense, the European acquisition and partition of African territory has to be understood as the emancipatory force in and of international law breaking through these dichotomies. Although international law retained its biased character, the scramble for Africa was an important initiator and catalyser for the diversification and universalization of international law in the twentieth and twenty-first centuries.

Second, New Imperialism showed that Africa's colonization did not take place in a lawless world and that the law of nations was a living body of law. In nineteenth-century international legal doctrine, these dualities were employed to explain and justify what happened on the level of relationships between nations. Moreover, this dualistic world view determined mainstream or European international legal doctrine until recently. This mainstream prioritized the theoretical explanation and justification of colonialism over the empirical evidence, i.e., what happened on the ground. The premise on which legal doctrine based its views and arguments was that international law was only applicable to and between the members of the family of civilized nations, i.e., a select group of nations in Europe, America, the Ottoman Empire, Japan, China, Siam and Persia. Obtaining membership of this family depended on being recognized as a sovereign State by the other family members. Although it is true that some norms of international law applied to and between the members of the family of civilized nations, the more general law of nations regulated the relations between nations beyond the family of civilized nations and between members and non-members of the family. The practice of the conclusion of cession and protectorate treaties beyond the realm of the family of civilized nations is the first and foremost evidence of the law of nations as an existent, applicable and functioning body of law before and at the time of the European scramble for Africa.

Although times, involved parties and obligations changed since the Europeans colonized African territory, international law remained biased and a-historic. Not only legal practitioners, but also legal scholars have a role to

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play to turn international law into an inclusive body of law. The Eurocentric approach in international law has to be abandoned, international lawyers have to be aware of the historical roots and development of international law, and they have to be critical in assessing and applying international law in their day-to-day work. The ultimate aim of reflecting on and, subsequently, correcting the nature of current international law is to draw a line under cultural difference as the basis of international law and to develop an impartial, unbiased and universal international law, in theory and practice. What happened in the past cannot be undone, but legacies of this past can. With this book, *Oduntan* provides concrete solutions and comes up with realistic recommendations to overcome international law's inherent bias. Most interestingly, the author succeeds in both establishing theory and bringing it into practice.

Only three small points of critique came to my mind while reading the book. Unfortunately, *Oduntan* offers the (practical) solutions for past, current and future boundary disputes in Africa only in his last two chapters. These last two chapters form the innovation the book brings and should be in the centre of the argumentation. Second, the book is quite descriptive; it really comes near being a handbook, as showed by the chapters two and three on "Sovereignty, jurisdiction, territorial integrity and territorial acquisition in international law" and "Frontiers and boundaries in the context of international legal framework of territorial sovereignty and jurisdiction". A positive aspect in this respect is, however, that many African disputes on boundaries and frontiers are closely analyzed and discussed. A third point of critique is that the structure of the book is not always clear to the reader. While reading, some more support would had been welcome in understanding why the reader had to consume a piece of text and where he or she had to place it within the overall argument of the book. Consequently, the reader loses the red line throughout the book in the superfluous descriptions of basic assumptions within international law.

All in all, *Oduntan's* work can be considered as an original and progressive contribution to international law and politics. It sets ambitious challenges, but first and foremost hopeful perspectives for the future of resolving boundary disputes on the African continent.

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Tomuschat, Christian: Human Rights: Between Idealism and Realism. Collected Courses of the Academy of European Law. Oxford: Oxford University Press, 3rd ed. 2014. ISBN 978-0-19-968372-7. liii, 528 p. £ 80,-

This book by Prof. Christian Tomuschat is a comprehensive cutting-edge overview of human rights practice. In essence, the author argues for the effective institutional promotion and protection of universally applicable human rights at the international level. He offers opposition to contemporary human rights critiques that decry the “Endtime of human rights” or deplore the “Dark Sides of Virtue”. For the purposes of his argument, the book combines a conceptual analysis of human rights – including chapters on their history (chapter 2), conceptual foundations (chapter 5) and determinative legal parameters (chapter 6) – with an elaborate account of their practice, particularly focused on the implementation by international and regional political and judicial bodies (chapters 11-14), but also covering humanitarian, international criminal, and reparation law (chapters 16-18).

Two fundamental questions need asking in order to estimate in how far Tomuschat’s position is idealist or realist: First, does he confirm the universality of human rights; second, does he believe that institutionalized international human rights protection can effectively contain political power? In short, to both questions his answer is yes. Yet, Tomuschat’s account is not fully idealist, but often navigates a pragmatic path between idealism and realism.

Concerning the universality of human rights, the author contends the existence of “a global *ius commune* of human rights” (p. 73). The common conceptual baseline is to ensure a dignified existence for the individual (p. 69). This consensus, so the author claims, is mirrored by common legal practice and corresponding converging values. With respect to legal practice, he relies particularly on the fact that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were supported by Third World countries (p. 8). In his opinion, the common practice “cannot be downplayed as the outcome of purely contingent processes, since it generally owes its emergence to protracted negotiations that took place among the nations of the world in a patient quest for equitable compromise solutions” (p. 7). Furthermore, the author suggests a broad commensurability of social values. For this, he mainly relies on the Universal Declaration of Human Rights: the “compass for the policies of all responsible agencies wielding public power”.

Concerning the international institutionalization of human rights protection, the author contends that the mechanisms and procedures are (potentially) effective. By carefully evaluating the strengths and deficits of the current mechanisms and procedures, he makes a constructive contribution to possible improvements. The author provides a thorough analysis of the international and regional standard-setting, monitoring, and institutional and

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procedural implementation of human rights. His analysis emphasizes that the United Nations (UN) expert bodies have a decisive role in the whole process of human rights protection. While he problematizes the non-binding nature of the UN expert bodies' views, he acknowledges that individual complaints and onsite inspections have an overall good record. Regional tribunals display an impressive balance. In a very salient part, *Tomuschat* elucidates how the European Court of Human Rights (ECtHR) has gained the status as the constitutional court of Europe through its bold jurisprudence (p. 286 et seq.). General measures have expanded the effect of its decisions beyond the single case, and specific measures have reduced the discretion of Convention states in the enforcement process. The role of the Committee of Ministers for the execution of the Court's judgments is given particular weight, as it fills a gap in international law: the provision of an international institution or mechanism for enforcing international law obligations on the ground (p. 300 et seq., 312). The transparent process of supervising the execution of ECtHR judgments brings pressure to bear on states to comply with their obligations. He furthermore underlines how the lack of political willingness for further progress has hampered an effective contribution to human rights protection in the areas of humanitarian, international criminal, and reparation law. More emphasis should be placed on prevention, as post-violation redress is only modestly conducive to the protection of human rights. The author directs the reader to possible means that could alleviate this political restraint: in the area of international criminal law, for example, he supports employing hybrid tribunals in order to counter concerns of geographic remoteness, social and political detachment, and inefficient cost allocation. The author adduces the same reasons to underpin why he rejects the idea of an international human rights court (p. 285 et seq.). Notwithstanding the most formidable hurdle of state immunity, the author advocates the adoption of a regime of secondary rules on reparation designed to complete and buttress the regime of primary rules on human rights protection (p. 400).

Furthermore, the author shows that both the status of human rights in the domestic legal order and institutional cooperation are vital to the successful protection of human rights "on the ground" (chapter 10). For *Tomuschat*, the practical expertise of domestic authorities and their democratic legitimacy place the international institutions into a subsidiary position (p. 103 et seq.). He thus acknowledges subsidiarity as a structural, and the margin of appreciation as a substantive, legal parameter of human rights law. However, he criticizes the ECtHR's application of the latter principle for "lack[ing] a coherent and persuasive doctrine" and for "proceed[ing] in a

haphazard way without any clearly defined guiding criteria” (p. 109). He emphasizes that particularly the right of access to the judiciary should not be relativized by the Convention states’ margin of appreciation.

His limiting of the democratic social reality to the domestic level and his implementation-oriented focus prompt *Tomuschat* to criticize the expansion of the scope of human rights in their “second and third generation”. Lacking prescriptiveness collapses some “second generation” human rights into (binding) guidelines for implementation (p. 148), and “third generation” rights into mere political objectives (p. 153 et seq.). Judicial procedures are ill-suited for their vindication. Albeit allowing for the idea that human rights discourses and good governance policies may complement each another substantively, he rejects the idea that human rights are tools to foster societal change and to promote distributive justice. For *Tomuschat*, human rights “do not aspire to build a general framework of justice in society” (p. 74). Yet, he acknowledges that a “duty to respect” exists with regard to economic and social rights.

Overall, the book is rightly situated between idealism and realism. While *Tomuschat*’s view on the conceptual consensus and converging values is rather idealist, his account of the human rights practice is nevertheless pragmatic. He accepts that effective human rights enforcement suffers from the deficiency that it is dependent on the cooperation of nation states. Acknowledging this does not make his argument collapse into a realist stance, however. His sharp assessment demonstrates that shortcomings in human rights implementation do not entail the conclusion that the institutionalization of human rights is per se bound to fail. Nor does he profess the idealist view that states act according to universal ethics. Rather, he presumes the capability of institutionalized human rights to determine political power. Adopting a constructivist perspective, he contends that states abide by universally shared human rights norms as they have become both a yardstick and constitutive of their behavior (p. 276). This way, he tackles strands of the pragmatic critique that may be deemed symptoms of the practical difficulty of implementing human rights. Institutions robustly protecting human rights help to prevent massive human rights violations. Consequently, they also avoid ensuing “humanitarian” interventions that have been perceived as “imperial aggressions”.

The whole discussion is consistently based on the theoretical precept of international constitutionalism. *Tomuschat* situates his book within the paradigm shift in public international law towards the purpose of guaranteeing the individual its basic human rights. He asserts that both states and the international community act as trustees of the individual’s welfare. As part of

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a substantive rule of law human rights “have become an essential ingredient of the structural foundations of the international legal order, imparting directions to states and international organizations in all of their fields of competence” (p. 3). As part of a substantive rule of law ..., “they have advanced to the highest level of the rules and principles making up the international legal order” (p. 2 et seq.).

Notwithstanding the generally positive appraisal, a few suggestions shall be adduced. *Tomuschat* makes a considerable effort to prevent a “Western bias”, expanding his analysis to all regions of the world. Yet, I would contend that it is a normative overextension to declare an existing consensus on the universality of human rights. It appears more adequate to see universality as a normative vantage point and to focus on the process of universalization. Notably, *Tomuschat* concedes that there is no consensus on whether concepts of rights or duties are appropriate for operationalizing those governmental policies that aim to ensure citizens a life of human dignity (p. 70). This seems to be a point of fundamental importance, however, as the means of enforcement are an inherent part of the concept of human rights. Ignoring this may prompt the reproach of liberal imperialism. Moreover, his classic liberal reasoning entails boundaries of human rights, to which non-Western countries would not agree. This includes the narrow reading of socio-economic rights, the exclusion of “third generation” rights, and the refusal to accommodate “peoples” rights’. Apart from these points, however, *Tomuschat* counters the cultural-relativist critique by his well-balanced view on human rights implementation. He reminds us that the Universal Declaration of Human Rights “does not prescribe a uniform way of life for all nations, [...] but leaves ample room for societal models of all kinds” (p. 68 et seq.). The weight *Tomuschat* gives to the principle of subsidiarity underlines this stance. He concedes that human rights cannot be fully imposed top-down, but have to emerge “bottom-up” as well. This “relative universalism” tempers a *Kantian* idealism with a realist stance on the pertinent differences in culture. It suggests it is possible to conceive of human rights as both transcending contingent social, political, and cultural values at a conceptual level and as being shaped by the practice of local values.

Tomuschat’s restrictive view on classifying “second and third generation” rights as individual entitlements undermines his own ambition to work towards making human rights a global endeavor. Admittedly, with this argument he escapes the deconstructivist critique that human rights are used to depoliticize questions of distributive justice and preserve liberal capitalist structures. Yet, this view can also be rebutted, for instance, by the factually emancipatory, anti-capitalist impact of socio-economic rights in Latin

America. Limited to concerns of execution, his argument gives too little weight to the socio-economic rights' emancipatory potential for the individual. *Tomuschat* also concedes that the demarcation line between negative "first" and positive "second generation" rights is not clear-cut. In fact, private entities increasingly fulfill tasks formerly discharged by the state. This calls for more state intervention to protect negative rights. I would suggest that the gap between "first and second generation" rights has thus not only been closed to *some* (p. 148), but to a *considerable* extent. Hence, even if one accepts that the criterion of prescriptiveness hinges on this simplistic distinction, categorically denying "second generation" rights beyond the "duty to respect" as individual entitlements seems at least questionable.

At the level of legal practice, the author's positive account of European human rights protection is challenged by the fact that not only former socialist Eastern European states (p. 287) but more recently also Western European states have started to question the legitimacy of the ECtHR and defied compliance with the Court's judgments. Moreover, the Inter-American Court of Human Rights (IACtHR) has had to face similar institutional challenges. Concerning the interaction of the domestic and regional level in the process of human rights implementation, the author's examination could profit from a deeper analysis of the jurisprudence of other regional tribunals. For instance, the examination of the *control de convencionalidad* that was developed by the IACtHR would be fruitful in this regard.

To conclude, this excellent book gives a profound account of the status quo of international human rights law. It fills a gap in the literature on human rights that is largely substance- but not implementation-oriented. It displays an in-depth, careful weighing of the strengths and deficits of the international and regional implementation mechanisms for human rights. It will be of great value to students, but also to anyone interested in learning more about the functioning of human rights regimes. Yet, more process- and policy-oriented approaches should additionally be consulted, as they take into account the social and political effects of human rights law. Only if these perspectives are considered will human rights policy transcend its good intentions and arrive at good outcomes. *Tomuschat* indirectly concedes this point by ending on the note that the true effectiveness of human rights depends on their social internalization (p. 432). The importance of this point is reinforced by the contemporary refugee crisis. Restricting the right to seek asylum may have an alienating effect on the "passively by-standing" refugees. Yet, the willingness of European societies to grant refugees their minimum human rights has come under strain. Notwithstanding these socio-political tempers, the ECtHR has set high standards for the

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need to consider the individual case, broadly banning collective expulsion of refugees. Ultimately, socially embedding these human rights standards will be decisive for their effectiveness. Hopefully, the institutionalized framework of European human rights protection will stay strong and prove *Tomuschat* right in his constructive argument for a less bleak and more forward-thinking human rights discourse.

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