

~~origin. This is particularly the case if that nation-state feels somehow threatened by the inevitable cultural "baggage" which strong links with the homeland bring with them. In the United States, for example, despite its strong and vibrant tradition of welcoming and incorporating immigrants, expression of hostility towards the use of Spanish by Latino immigrants are not uncommon.~~

~~There are, of course, ways of resolving these conflicts and they are not specific to STEP-OUT migrants. Indeed, by whetting our appetite for further discussion on these matters, the authors confirm the importance and usefulness of their book that extends beyond the apparent scope of the title. Due to the breadth of the issues it raises, the revolutionary perspective it advocates and the clear and persuasive manner in which it is written, it is hard to think of any aspect of migration studies that would not be enriched by engaging with the arguments made in this volume. I highly recommend it.~~

David E. Zammit
University of Malta

Human Rights and the WTO: The Case of Patents and Access to Medicines.

Including annexes, bibliography, and index.

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Holger Hestermeyer
Oxford University Press
(2007)

When people get serious about social justice, the "moderates" step in to show how to use existing rules to advance the social aims. This book is one of those efforts and it succeeds admirably. It will repay a good read by lawyers, diplomats, human rights advocates, and students of international affairs by illuminating the ways one might solve conflicts between legal regimes. In closely reasoned argument, Hestermeyer shows how access to medicine is a human right as is the individual right to the fruits of one's ideas and inventions. He then shows how current rules under the GATT, WTO dispute settlement rules, and even TRIPs can be used directly or with the assistance of customary and general principles of international law to advance the right to medicine. He thinks that one does not need to make overly broad claims for human rights to

achieve important advances in human rights. "Overly broad claims can do more bad than good, particularly in regime conflict, as the repetition of overly broad claims might have contributed to the critical view of human rights that has long been prevalent within the WTO (p. 204)."

Through the book one learns a great deal about the arguments for and against a right to medicine, the evolution of intellectual properties law, and some of the content in modern trade and trade-related intellectual properties as they apply to medicine. He takes great care to evaluate claims and counterclaims from those who would protect intellectual properties to a high degree and those who would do the same for human rights. As a consequence, his suggestions for further enhancing the capacity of trade law to advance human rights - without denying some protection to pharmaceutical firms - are models of legal reasoning. They reflect both the theory and practice of the law, but the book as a whole also sets law in the larger picture of the aims of international public policy. If pursued, he may well be right that the co evolution of trade and social justice will happen through jurisprudence on the matters.

The book has five chapters, with each succeeding chapter being more technical and narrowly focused. It begins with review of the debate about whether there is a human right to medicine. He concludes there is one, and that at times it could trump the protections afforded to pharmaceuticals. The second chapter discusses the history and purposes of patent law. The third considers in more detail the international law of human rights and whether medicine is among them. The fourth chapter directly addresses problems of conflict of legal regimes. The last chapter takes up access to medicine within the context of the WTO. There is a summary of his main arguments in appendix 1. Appendix 2 provides a useful list of national accessions to various treaties and international organizations. Appendix three lists WTO dispute settlement cases related to TRIPS. There is both an extensive bibliography and a useful index.

Hestermeyer establishes in Chapter 3 that there is a human right to medicine by locating the right in Article 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). That, of course, would exclude the US, which is one the nonsignatories

to this Covenant. But the author also argues that the right to life, through the provision of life-saving medicine, is also a right under Article 6 of the International Covenant on Civil and Political Rights, to which the US is a signatory. He also argues that the ICESCR provides a subsidiary right to medicine in that the Covenant says people have the right to benefits from the results of scientific progress. Moreover, he shows that access to medicine in a national emergency is part of both customary international law and a general principle of international law. Here, state practice is quite clear by a range of states, from those facing national disaster with AIDS to the United States behavior when it wanted to stockpile CIPRO in light of the anthrax attacks following 9/11.

The author is quite careful not to claim more than the agreements and law can bear. For example he notes that no reading of either the ICESCR or the ICCPR imposes human rights law directly on corporations. This is a duty for states to ensure that private parties not violate the rules (p.96). Some may object that the Covenants, coupled with the Universal Declaration on Human Rights do impose such a

duty on private entities, but he notes only the preamble suggest such a thing, a 'weak' basis for the claim. At the same time, he buttresses the argument that there is a right by noting the justiciability of the right in national courts. Thus the "softness" of human rights law is not as soft as some would claim.

The most interesting chapter, in some respects, is devoted to an extended discussion on the conflict between intellectual properties and access to medicine. The conflict is not inherent in trade law, but rather in the fragmentation of law caused by growing law beyond bilateral rules of coexistence into multilateral rules of community interest. This careful discussion explores how regular international law might inform the application of more specialized law. He argues that hierarchy in law is necessary to resolve the gaps between different legal regimes. The fragmentation of international law is producing less clarity than it might, but a consideration of both normative and factual hierarchy might be useful. Normatively, human rights trumps trade and, especially, intellectual properties protections for firms (as opposed to individual inventors). But

factually, it is the world of trade that has the growing capacity to adjudicate a range of issues (p. 200, 206). Trade will touch on environmental and human rights concerns, so the emphasis in bringing the broader world of customary international law and general principles must operate here.

GATT, Art XX, offers considerable leeway to cope with regime conflicts due to the factual hierarchy between trade and human rights. But, TRIPS has no similar mechanism. Rather interpretation of flexibilities in TRIPS will need to be employed to achieve a better balance between human rights and trade. Again use of the broader system of international law could help as the WTO dispute settlement processes operate to interpret the flexibilities. In fact, says Hestermeyer, the WTO has shown an “astonishing willingness to disregard its own decision-making rules when deciding on the issue” of access to medication (p. 207). But he argues that either the appellate or the political bodies will need to clarify this to provide more certainty in the process. Hestermeyer does not think that the WTO regime is a law apart from international law. Non WTO law may be applied under

limited circumstances to clarify and resolve conflicts between duties. He notes ways this could happen and rulings where non-WTO law has been applied.

The Doha Declaration is a start on correcting the imperfections in TRIPS relative to human rights to medicine. At the time of the writing of the book, it was far too early to say whether the deal made pursuant to Doha would work. Hestermeyer said the uncertainty and doubts would remain in TRIPs and that the action will have to take place in WTO Panels. His assessment seems correct, give the difficulties associated with using the new flexibilities. In July 2007 “Rwanda notified the World Trade Organization’s (WTO) Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) that it plans to import the HIV-drug TriAvir from the Canadian company Apotex and will not enforce any patents granted in that respect in Rwanda” (*ASIL Insight*, Dec 14, 2007). It took considerable twists and turns in Canada to get the law right and it is not clear if Rwanda really got a good deal in the end. Thus, Hestermeyer’s view that more will need to be done seems sustained.

In sum, this is a meaty book.

While those unfamiliar with international law would struggle with the volume, particularly in the later chapters, it does offer a very effective base on which lawyers, activists, and scholars of international regimes could build a dialog. More generally, its thoughtful analysis of regime conflicts and the ways specialized legal settings like the WTO could use general international law should generate serious work by practitioners and scholars alike on ways forward. It is possible to square the public welfare that comes from freer trade with the public welfare based on human rights.

Mary Durfee

Michigan Technological
University, Houghton, MI,
USA

~~**Poverty and Human Rights:
Sen's 'Capability Perspective'
Explored,
Polly Vizard
Oxford University Press
(2006)**~~

~~'Poverty itself is a violation of
numerous basic human rights.'~~

~~Polly Vizard starts off her
monograph by presenting this
quote from Mary Robinson,
Honorary President of Oxfam
International and Former UN
High Commissioner on Human
Rights.~~

~~*Poverty and Human Rights* is
a revised version of a Ph.D. thesis
written by Vizard at London
School of Economics and further
developed by her while she was
Postdoctoral Research Fellow
and Research Associate at the
Centre for Analysis of Social
Exclusion (CASE).~~

~~Polly Vizard examines the
thesis put forward by Mary
Robinson by considering what
freedom actually is, moving on to
analyse poverty and eventually
examining why global poverty is
indeed a human rights issue,
especially through the lens of
Sen's contributions in the fields
of ethics and economics and the
consequences of such theories.~~

~~Amartya Sen is Lamont
University Professor at Harvard
University. He was previously~~