

Japan and between China and Vietnam, as well as an index. A map or maps of the region would have assisted this reviewer at several points as geographical settings cannot always be described clearly by words alone. The position of States outside the region in regard to some of its troublesome issues is addressed primarily in the rather special context of the incident between China and the US. In general, the work is primarily about China and its East Asian neighbours, rather than a systematic study of East Asia as a whole.

Overall, the volume gives the reader the impression that a re-examination is underway of some old attitudes and some long-standing international issues against the new benchmarks of the LOS Convention. This is clearly a worthwhile exercise, to be undertaken by both commentators and governments in the region. The author's particular strength is his ability to interpret China's laws and practice, as well as those of Taiwan, to an English-speaking audience. He is able to explain Chinese history and thinking and, at the same time, to apply international concepts. He has looked at the standard international source materials and trusted authorities in order to open new windows on some old problems. By bringing the ten essays together in a single volume, he has been able to give an overall conspectus of the Law of the Sea as it affects China and its East Asian neighbours. He has certainly achieved his aims to inform the reader about the outstanding issues and to suggest solutions to them. The volume will be of interest to all those concerned with the law of the sea worldwide, as well as those concerned with international relations in the East Asian region and the peaceful handling and settlement of its many maritime disputes.

*reviewed by H.E. JUDGE ANDERSON*

*Lawless World: America and the Making and Breaking of Global Rules* by PHILIPPE SANDS [London: Penguin, 2005. xxviii + 324 pp. Softcover: £12.99 and CAN\$38.00]

The virtue of *Lawless World* lies in its modesty. A member of a line of literature detailing the foreign policy of the United States at the start of the 21st century, *Lawless World* exudes a simplicity and ease of reading that allows the conventional view of international law to permeate beyond the bookshelves of international lawyers and onto the nightstands of basically

anyone with a general interest in international relations and international law.

The lineage of scholarship with respect to contemporary US foreign policy is rather varied. Henry Kissinger's *Does the United States need a Foreign Policy? Towards a Diplomacy for the 21st Century* (New York: Simon and Schuster, 2001) introduced us to the internal struggle that the US faces as a global hegemon. In his book, Kissinger utilises the clash between foreign policy moralism/idealism and interest analysis/realism to describe the dilemma facing the US as the emergent post-Cold War hegemon. From his perspective, the US, at the start of the 21st century, stood at a foreign policy crossroads where the best path is a merger of these two schools of thought into a coherent holistic foreign policy. Understandably, Kissinger was able to reach these conclusions with use of a lifetime's worth of "behind the scenes" perspectives to dissect the "whos" and the "whys" behind past US foreign policy decisions.

Niall Ferguson shares a Kissinger-esque view of the role of US hegemony. In *Colossus: The Price of America's Empire* (New York: Penguin Press, 2004), he argues (some may say quite presumptuously) that the US is the most powerful empire (in both military and economic terms) that the world has ever seen. However, instead of analysing this issue by providing an internal or "behind the scenes" perspective, as Kissinger does, Ferguson applies an external perspective on US "imperialism" and examines it as a phenomenon. That is, he addresses how the world views the US "empire". In his view, US "imperialism" is generally beneficial to the world at large as it brings with it the same technological and economic advancement as perhaps the Roman Empire did.

Both Kissinger and Ferguson have provided us with examples of scholarship on US foreign policy that are illuminating and yet easily understood. On the other side of the spectrum, Hardt and Negri in *Empire* (Cambridge, Massachusetts: Harvard University Press, 2000) have constructed a complex post-modern Marxist interpretation of global imperial power that is based on US hegemony but transcends the traditional boundaries of US sovereign power as international lawyers are familiar with. To Hardt and Negri, the empire is not the state. Empire is far less material and physical in nature. Accordingly, the US and the international political framework that the US has created is only the substratum on which a supranational empire is created.

Kissinger, Ferguson, Hardt and Negri represent a segment of scholarship that revolves around the political scientist/historian's perspective. Undoubtedly, the international lawyer cannot ignore the political scientist/historian's perspective. Power and politics are inextricably linked with international law creation and the international lawyer often relies on the political scientist/historian to provide him with examples of *opinio juris* and state practice from which the international lawyer distills his rules. Political science and history have also allowed the international lawyer a fresh market to hawk his wares as law, political science and historical analyses conflate into basic social theory. Anthony Carthy's response to Hardt and Negri in "Marxism and International Law: Perspectives for the American Twenty-First Century?" (2004) 17 Leid.J.Int'l.L. 247 is one such example.

*Lawless World* turns this paradigm on its head. It is an international law book written for the political scientist/historian. In other words, this book represents a discussion of US foreign policy from an international law context by an international law practitioner which aims to engage the political scientist/historian.

This was in many ways a necessary exercise. International law is becoming increasing publicised. As Sands notes, the English House of Lords decisions in the *Pinochet* case were broadcast on CNN and BBC just as International Court of Justice decisions are accessible via the internet. The world is becoming increasingly exposed to the international law aspects of international relations for two main reasons.

First, technology has provided the world with greater access to the goings-on of international relations. Millions witnessed the former US Secretary of State Colin Powell as he submitted the US case against Iraq before the United Nations Security Council. To these viewers, the message was clear. The US was seeking legal validation of its then prospective actions. International law arguments were being offered to the world at large and the world at large craves to understand international law.

Second, the corpus of international law has become increasing expansive. International law actors are no longer merely states but include international organisations, non-governmental organisations and multinational organisations. International law has extended its reach beyond the traditional topics of territorial disputes, human rights and jurisdiction. Surely, the world understands that international law can affect the amount of pollution the corporations in a state

may emit or the price of tuna or bananas or beef in a particular state.

Ultimately, these developments show that international law, or at very least the fact of its existence, should be understood by the man on the street. In *How Nations Behave* (New York: Columbia University Press, 1979), Professor Louis Henkin was able to describe international law without the need for any mental gymnastics and yet provide his reader with a discourse of international law which provides the subject with the justice and respect it deserves. However, I doubt that this was Sands' intention. Hence, *Lawless World* cannot be reviewed in comparison to this seminal piece of international law scholarship.

*Lawless World* cannot be reviewed as a textbook and never professes to be so. *Lawless World* is merely an international law book written for non-international lawyers with an interest in international relations in the post-Second World War era. Yet, to undertake this ambitious task, *Lawless World* had to be narrow in scope, at least chronologically, and shallower in substance.

What Sands has embarked upon is a sweeping commentary on the state of international law in several aspects. Namely, international human rights law, international criminal law, international trade law and international environmental law. Sacrificing depth for readability, Sands discusses these subjects within the same analytical framework despite the fact that these topics in international law have their own nuances and idiosyncrasies. For example, international human rights law draws heavily on customary rules while international trade law is governed by written rules. By doing so, Sands has probably not provided the reader with a full view of the US' interests as the US' interest in each aspect of international law is necessarily different or at least nuanced.

In Chapter 1, Sands provides the reader with a brief introduction to international law and its history. Sands has chosen to use the Atlantic Charter as his analytical starting point in introducing the workings of international law today. In so doing, Sands does not engage the reader in the pre-Second World War development of international law and the theories which modern international law has been born out of. For his purposes, he has reduced the pre-Second World War state of international law into a primitive and patchwork system of law. Some may say that he has ignored centuries of customary international law and state practice. Granted that a post-Second World

War analysis suits Sands' purposes in exploring US "flouting of international law", failure to provide adequate attention to pre-Second World War development of international law reinforces some misconceptions that the Atlantic Charter is the genesis of international law as we know it today. Nonetheless, Chapter 1 is striking as Sands has identifies the fact that international law has "gone public" as a necessary consequence of globalisation, technological innovation, the "democratisation" of international polity and the increasing role of private enterprise and ownership.

In Chapters 2 and 3, Sands explores, in a rudimentary manner, the clash of norms between the international law of jurisdiction and the law of human rights by examining the decision in *Ex Parte Pinochet* as well as recent developments in the International Criminal Court (ICC). He describes the Pinochet affair in stark and simple terms and hails the *Pinochet* decision as a triumph of international norms over state power. This sets the stage of an analysis of the ICC and the Bush Administration's attempts to frustrate the operation of the Rome Statute by coercing fellow signatories into entering Article 98(2) agreements. However, Sands fails to provide an adequate discourse on the counter-point of the enforcement of international human rights law. Sands, while able to provide a good and detailed account of the factual matrix of the issues, ignores the legal framework in which the clash between sovereignty, jurisdiction and human rights norms should be discussed. Hence, Sands does not give sufficient attention to the importance of jurisdiction in international law. While Sands was perhaps attempting to avoid being overly technical in his discourse, perhaps a deeper discourse into these other factors that affect foreign policy decisions with respect to the criminal jurisdiction of states against human rights violators would have been merited to provide his readers with a more balanced perspective.

Chapter 4 focuses on international environmental law and the Bush Administration's withdrawal of the US from the Kyoto Protocol and the Blair Administration's failure to convince the Bush Administration otherwise. Sands explains that the Kyoto Protocol is a small but necessary first step towards addressing the world's climate change problems and that the Bush Administration frustrates the Kyoto Protocol's purpose by causing the US to absent itself from accession to the protocol. In particular, Sands describes, in some detail, the change of position between the Clinton Administration

and the Bush Administration with respect to accession to the Kyoto Protocol.

Chapters 5 and 6 discuss international economic law and in particular international trade and investment rules. In Chapter 5, Sands explains how WTO Dispute Resolution Panel and Appellate Body decisions are increasingly holistic and have ramifications beyond the realm of trade law. Sands uses the Shrimp/Turtle case juxtaposed with the Tuna/Dolphin case as examples. More importantly, Sands argues that trade law is one of few areas of international law where the US has a history of compliance and not recalcitrance and that this allows for the possibility that trade law may be used in the future to bring the US to comply with international law in trade linked international issues relating to human rights law and environmental law. While Sands' arguments are fairly detailed in these chapters, Sands may have wished to take the opportunity to address the failure of the Doha Round of WTO negotiations and the role that the US is playing in negotiation of the Doha Round.

Chapters 7 to 9 address the US war on terrorism and the legal consequences behind the war in Iraq, the detention of "prisoners" of the war on terrorism in Guantanamo Bay and the instances of torture in Guantanamo Bay and the Abu Garib prison in Iraq. In Chapter 7, Sands argues about the illegality of the detention of foreign nationals in Guantanamo. He describes the legal limbo that these detainees of the US' "war on terror" exist in, where they are denied their rights under international law. Further, Sands dismisses the legal arguments postulated by the Bush Administration to justify the continued detention of these "prisoners" of war. The Bush Administration has sought to argue that the US is entitled to continue to detain these "prisoners" because the Guantanamo detainees have no rights under international law because they are not "prisoners of war" as defined by the Geneva Conventions, but "unlawful combatants" whose capture do not attract the application of international humanitarian law. Further, the international rules in the 1984 Convention against Torture cannot impose any additional legal obligations beyond those found under American law. Hence, if the detentions are lawful under American law, they are also lawful under international law. Finally, the Bush Administration has advanced the technical argument that as the detainees are held in Cuba, which is outside US sovereign territory, they are beyond the supervision of international law.

In Chapter 8, Sands dissects the events leading up to the invasion of Iraq by the US and UK-led coalition. Sands' position is that the invasion was in violation of international law. In explaining his position, Sands relies on a clear yet modest interpretation of the use of force provisions in the United Nations Charter which prescribe when a state may use force against another state.

In Chapter 9, Sands addresses the instances of human rights abuses, in particular torture, suffered by detainees held by the US in the Abu Gharib prison in Iraq and Guantanamo. Sands specifically refers to policy statements and pronouncements by the Bush Administration on the treatment of detainees. In particular, he provides an insight into legal advice provided by the legal advisors from the US State Department and the Army's Judge Advocate General to the Bush Administration. These pieces of advice justify the use of more aggressive interrogation techniques on detainees on the bases that interrogation of detainees are governed exclusively by American law and that American law on the prohibition of torture is in line with the international. A more in-depth advice provided by Assistant Attorney General Jay Bybee has placed a high and exacting standard for what kind of activity constitutes torture. Sands does not attempt to hide his contempt for these advices. Indeed, Sands speculates whether these advices were provided as *bona fide* attempts to explain the international law position of torture, or whether they were manufactured to provide political cover for the Bush Administration.

*Lawless World* is a reasonably clear commentary on US state practice in the last decade. Yet, while Sands has identified the phenomenon, he has not provided the explanation for it. At best, Sands has identified two main culprits of the state of the world, US President Bush and British Prime Minister Blair. Sands does not explain the manifestation of US foreign policy. While hinting that US foreign policy is driven by the neo-conservative agenda, the neo-conservative agenda is not explained. A Kissinger-esque dissection of how US foreign policy decisions are made and the domestic pressures that drive US foreign policy is not attempted.

The value of *Lawless World* lies in its simplicity and innocence. Sands knows his audience and does not over-reach or over-extend the legal aspects of his book. In this book, Sands' position is clear. International law is law and is to be abided by, global hegemon or not. Cynics may scoff this proposition as being simple-minded.

Yet, cynics are not Sands' intended audience. Similarly, the international law professor may criticise *Lawless World* as too one dimensional and shallow. Yet again, the international law professor is not Sands' intended audience. It is refreshing to have an international lawyer attempt to engage readers outside of his peers through the simplest account of international law that is possible.

Sands has conveyed the idea that the American approach to international law under the Bush Administration is highly selective (*i.e.*, that the US will pick and choose which international rules it will abide by) and even hypocritical (*i.e.*, that the legal obligations that bind the US are not the same as those that bind other states). The conventional criticism of the US is that this approach is illogical and even dangerous as it undermines the importance of the existence of an international rule of law. If *Lawless World* is read in this manner, Goldsmith & Posner, *The Limits of International Law* (Oxford: Oxford University Press, 2006) provides a remarkable and distinct counter-argument to *Lawless World*. Without expressly referring to US foreign policy at the start of the 21st century, Goldsmith and Posner argue that international law and its rules are part of the process of realising a state's interests. In a manner that applies "game theory" to international law, *The Limits of International Law* unravels the conventional assumptions that *Lawless World* is based upon. While Sands challenges the manner in which international rules are broken by the United States, Goldsmith and Posner challenge the very rules themselves. In so doing, they have subversively explained what Sands terms as "breaches of international law by the United States". However, if I were to attempt to respond to Sands' views on the state of international law today, I would start with a quote from Professor Tommy Koh, "(w)e live in an imperfect world. It is not, however, a lawless world. The world community has evolved by custom, and adopted by treaty, a very considerable body of laws, principles and rules to govern the conduct between states as well as between states and their citizens" (Tommy Koh, "Can Any Country Afford a Moral Foreign Policy" in Amitav Acharya, ed., *The Quest for World Order: Perspectives of a Pragmatic Idealist* (Singapore: Times Academic Press, 1998)).

*Lawless World* is generally a good read. I personally found Sands' recounting of his personal experiences in each aspect of international law rather refreshing and insightful. As a way of whetting his readers' appetite for international

law, Sands peppers his book with a healthy dose of his own war stories, for example, his personal experience acting as *amicus curiae* in the Pinochet trial and as negotiator on behalf of the Alliance of Small Island States. In my view, a non-international lawyer will find this book a good introduction to international law and an international lawyer (or aspiring international lawyers) will find that Sands' personal accounts provide a nice biographical peek into the life of a leading international law professional.

*reviewed by JEREMY LEONG*

*Frontiers of Justice: Disability, Nationality, Species Membership (The Tanner Lectures on Human Values)* BY MARTHA C. NUSSBAUM [Cambridge, Massachusetts: Harvard University Press, 2006, xv + 487 pp. Hardcover: US\$35.00]

In this book which began as the Tanner Lectures in Human Values, Professor Martha Nussbaum's approach is that theories of social justice, while necessarily abstract to enable them to reach beyond the political conflicts of their time, must also be responsive to the real and changing dilemmas of the day, capable of addressing the world and its present problems. With this in mind, Nussbaum embarks on an ambitious project — tackling three urgent, and unsolved, problems of social justice neglected by the contractarian theories — (i) the problem of doing justice to people with mental and physical disabilities; (ii) the scope of extending justice beyond the nation state to all citizens of the world, and how it is possible to realize a world that is just as a whole; and (iii) the scope of elevating the issue of the treatment of non-human animals, from its usual ethical boundary, to the notions of social justice.

The significant contribution of this well-argued, closely-arranged book lies not in its criticism of John Rawls' ground-breaking work, nor does it lie in its attempt to apply old, well-established contractarian theories in new ways. Instead, what truly matters is the direction it takes to a possible reshaping of the theoretical structures themselves — through a conception of the dignity of the human being, and of a life that is worthy of that dignity, from an outcome-oriented theory that starts with an intuitive grasp of a particular content as having a necessary connection to a life worthy of human dignity - by providing the philosophical underpinning for an account of core human

entitlements that should be respected and implemented by all governments as a bare minimum of what respect for human dignity requires.

Rawls' work has probably made the most powerful case for the superiority of the social contract theory over the many other versions of utilitarianism in expressing our considered judgments about justice, and through his rigorous and complete pursuit, of the implications of the idea of social contract. The idea of a social contract — in which rational people get together for mutual advantage, deciding to leave the state of nature and the broad socio-political framework to govern themselves by law — has had enormous political and legal influence historically. For over 30 years, the work of Rawls has provided the dominant framework for liberal theories of justice, and is generally regarded as one of the most distinguished theories in the Western tradition of liberal political philosophy.

It is thus a difficult endeavour to make any marked critique as well as substantial improvement over his work from within the framework of liberal political philosophy. Nussbaum is successful in doing precisely that — going beyond merely being critical of the idea of social contract, she sets out, in well-arranged arguments, how her capabilities approach can do a better job.

A substantial portion of the book is devoted to showing that even Rawls's theory, which suggests a contract among approximate equals for mutual advantage, is not without its limitations, which Rawls himself acknowledged in *Political Liberalism* (New York: Columbia University Press, 1996). The success of this book lies in its ability to prove, in a convincing manner, why Rawl's theory cannot address some of the most important questions of social justice posed by unequal parties, and the political problems of our contemporary world.

The book also demonstrates, through the use of many cogent examples, that the three issues raised are not merely academic. One such example is the staggering differences between rich and poor nations in terms of mortality, education, health and food, all of which are areas critical and central to basic chances of human survival

Even if the capabilities approach laid down in the book should not be entirely convincing that it can become "the object of an overlapping consensus among people who otherwise have very different comprehensive conceptions of the good", and even if the threshold level of each capability mentioned is disagreeable to some, the book should still contribute to the triggering of more systematic thoughts into: (i) the