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LAW, MORALITY, AND THE RELATIONS OF STATES. By *Terry Nardin.* Princeton, N.J.: Princeton University Press. 1983. Pp. xii, 350. Cloth, $35; paper $14.50.

This unusual book is at once an attempt to revise and refine the nineteenth-century conception of international relations and an argument for its moral superiority to some prominent recent theories of the international system. Professor Nardin, an associate professor of political science at the State University of New York in Buffalo, claims that the statements of shared purposes in the United Nations Charter and in the programs of movements like the New International Economic Order misstate the basis for international association and misapprehend the nature of moral conduct in international affairs. Professor Nardin's argument falls short in several respects and his tone is occasionally a bit strident, but this spirited defense of a controversial position should stimulate discussion among theorists of international law and jurisprudence.

Nardin begins by positing a distinction between "purposive" and "practical" associations of states. Purposive associations exist to further shared goals or ends: the abolitionist movement in America was an example of a purposive association of individuals dedicated to ending slavery. Practical associations, on the other hand, are based on rules or practices that are "proper to be observed in acting, regardless of one's end" (p. 8). One example of a practical association might be a debating society, in which the members may not share any political goals but are willing to follow common rules of debate.

Nardin argues that international society is emphatically the latter kind of association, a practical association of states based on a few shared rules and practices. It is "an association of independent and diverse political communities, each devoted to its own ends and its own conception of the good, often related to one another by nothing more than the fragile ties of a common tradition of diplomacy" (p. 19). He rejects the idea that states associate with other states in order to further goals of world peace or economic justice, arguing that such a notion is logically incomplete, historically inaccurate, and morally questionable.

Nardin's argument from logic is not very satisfying. For Nardin, the purposive conception of international society is logically incomplete because its proponents "forget that any international agreement presupposes commonly acknowledged rules and procedures according to which agreements can be made" (p. 24).[1] The idea here is that no

1. This classic formalist argument appears in different guises again and again in the book. *See, e.g.,* p. 172 (*"Pacta sunt servanda* is a rule of customary international law and not itself the product of explicit agreement, for if it were one would have to ask why the agreement to respect agreements should itself be respected."); p. 194 ("The view that there is no law apart from what officials decide is indeed self-contradictory, for the very idea of an official presupposes rules ac-

association can be purely purposive: some kind of practical association, some set of rules independent of the common goals and accepted by all, must lie behind a purposive association if it is to act at all. Even an anarchists' convention needs procedural laws, or else no one can say when the group has agreed. Yet this does not prove that international society is not purposive — just that it must be practical as well. Nardin's developed theory of the practical association of states must go beyond this weak formalism.

Professor Nardin's historical and political argument is stronger: the "practical" conception of international society can better account for the actual diversity of ends in the world and can generally provide a more satisfactory explanation of international law. His analysis of the history of international relations is perhaps the most interesting and valuable section in the book. Nardin combines intellectual and social history by exploring the tension between practical and purposive conceptions of international law both in the theories of Kant and Bentham and in the actual workings of nineteenth-century and twentieth-century international organizations. His treatment of the Concert of Europe (pp. 86-97) is particularly good. Historians have viewed the Concert as both an instrument of collective interests and as a set of practices designed to achieve security and stability among nineteenth-century European states regardless of their individual goals. The early congresses of the Concert can be seen as purposive efforts to advance the shared goal of monarchical rule, but they were also practical efforts to preserve the European states system by promoting legitimate monarchy in most — but not all[2] — countries. Nardin suggests that the Concert maintained an essentially practical character even late in its history, when theories of world community and shared goals were on the rise. He states that, "although it was colored by successive versions of the view that it existed to promote the shared purposes of its members, it never entirely shed its character as a forum for setting limits to the conduct of sovereign powers whose national pride, preoccupation with security, and competitive rivalry stood as evidence of their divergent purposes" (p. 96). This descriptive passage seems close to Nardin's idea of what an important international organization should be.

Nardin's treatment of the League of Nations and the United Nations is more problematic, and his rather surprising conclusion that the United Nations represents a more radical departure from traditional forms of international relations than does the League relies too much on a very formal reading of the United Nations Charter.

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cording to which public offices are created, their lawful incumbents identified, and the scope of their jurisdiction delimited.").

2. Nardin notes that the rights of nonmonarchical states like the Swiss Republic were protected as well. *See* p. 89.

Nardin writes that the United Nations "is really an attempt to establish a new regime in which states, associated on the basis of an agreement to pursue together certain specified substantive ends, will follow the directives of the body that is set up to organize the pursuit of these ends" (p. 107). Nardin may be right that such an attempt was made; five Secretaries-General would agree that it did not succeed.

The heart of Nardin's book is his attempt to show that the practical conception of international society is compatible with traditional theories of international law. First, Nardin seeks to establish that international law is law, arguing that legislation, enforcement, and a common judge are only contingent features of law and that their apparent absence in the international system does not negate the existence or obligatory nature of international law. Yet Nardin's treatment of the problem of enforcement is disturbingly casual:

> First, we must dispose of what is now generally agreed to be the most egregious error made by Austin concerning the relation between enforcement and law. . . . That one agent is able by force to compel another to act in a certain manner can hardly mean the first has right to demand such conduct, nor can it mean that the second has a duty or obligation to comply. . . . Coercion alone cannot create rights or obligations of any sort, legal or nonlegal. On the contrary, enforcement *presupposes* the validity of the law that is enforced.[3]

This is unpersuasive. It is not quite so clear that Austin was wrong that law must carry sanctions to be law, and Nardin's argument does not inspire confidence. Austin could reply that any sense of obligation to obey the law other than fear of sanction is a contingent feature of law, and that coercion does oblige a person to obey if she wishes to avoid the sanction. That is, law need not be morally binding to be considered "law." In any case, Nardin's argument that enforcement is not a sufficient condition for law — "Coercion alone cannot create rights" (p. 126) — does not prove that enforcement is not a necessary component.

Nardin next attempts to delimit the specific character of the international legal system. He argues that international law is largely customary law, created not intentionally but rather as "the indirect consequence of innumerable and substantively motivated acts, decisions, and policies" (pp. 166-67). Empirical investigation and inductive reasoning are needed to determine whether a particular norm is a valid international law: there is no "rule of recognition," in H.L.A. Hart's terms. According to Nardin, "Customary international law arises wherever there exists a general or uniform practice together with the general acceptance of this practice as law" (p. 167).

There are two related problems with this conception of international law. First, Nardin does not explain how international legal

3. Pp. 125-26 (emphasis in original).

rules change.[4] Second, Nardin's model will not be very helpful to someone who wants to predict whether particular acts of one country are likely to be accompanied by strong sanctions, weak sanctions, or no sanctions at all from the international community. The Soviet invasion of Czechoslovakia was followed not by superpower confrontation, but by the first stirrings of detente. The Soviet invasion of Afghanistan had very different consequences, and Nardin's model cannot explain why.[5]

Nardin ends his book with an argument for the moral superiority of the practical conception of international society. The fact that the rules and practices of international law are limited in number and scope allows the world's societies to remain diverse and encourages self-determination. Yet surely other values are lost. A system of international law premised on the formal equality of states that aims only to place a few restrictions on international conduct will do little to overcome the dire poverty of the developing countries and little to equalize the real power of nations. Perhaps it is unrealistic to suggest that the countries of the world can engage in a purposive association to bring about these changes, but Nardin comes uncomfortably close to justifying the status quo.

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4. Nardin writes:

> The rules of customary international law are a distillation of the constantly changing practices of states, and they reflect the collective will of the international community only in the sense that certain patterns of conduct from time to time attain a degree of acceptance sufficient for them to be acknowledged as a distinct practice entitled to govern future conduct.

P. 167. Nardin completely fails to explain how the changing practices of states attain this degree of acceptance or why accepted practices fall into disrepute.

5. Both the problem of change and the likelihood of sanctions in the area of international relations are treated with sophistication by Professor Myres S. McDougal and his colleagues at the Yale Law School. *See generally* M. MCDOUGAL, STUDIES IN WORLD PUBLIC ORDER (1960); Reisman, International Lawmaking: A Process of Communication (1981) (April 24, 1981) (unpublished Harold D. Lasswell Memorial Lecture).