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Abstract

It is this integration—the reduction in trade barriers between countries—that is explored in Beverly May Carl's Economic Integration Among Developing Nations: Law and Policy. Professor Carl focuses on regional common market associations of developing nations, their benefits as well as their difficulties, and their utility as a means of reducing trade barriers and dependence on imports by member nations from industrialized nations. Integration thus can be a tool for development, as the Commerce Clause of the Federal Constitution was for the nascent United States of America and still is today.

ECONOMIC INTEGRATION AMONG DEVELOPING NATIONS: LAW AND POLICY. BY BEVERLY MAY CARL. New York, N.Y.: Praeger, 1986. xx + 285 pp. $42.95. ISBN 0-03-005973-9.

*Reviewed by Richard A. Givens**

The early success of the European Economic Community (EEC) boldly demonstrated the benefits of economic integration. Between 1959 and 1971, trade between the original six Member Countries increased nearly sixfold,[1] and by 1979 the expanded EEC accounted for 20 percent of total world trade.[2] It is this integration — the reduction in trade barriers between countries — that is explored in Beverly May Carl's *Economic Integration Among Developing Nations: Law and Policy*. Professor Carl focuses on regional common market associations of developing nations, their benefits as well as their difficulties, and their utility as a means of reducing trade barriers and dependence on imports by member nations from industrialized nations. Integration thus can be a tool for development, as the Commerce Clause of the Federal Constitution was for the nascent United States of America and still is today.[3]

Professor Carl's work also contains much practical information and useful appendices that can be of assistance to those doing business in many areas of the Third World that have regional economic arrangements.

One deficiency of the book is its treatment of the Soviet-bloc Council for Mutual Economic Assistance (COMECON) as if it were actually composed of entirely independent sovereign states: "[s]ince COMECON operates on the theory of sovereign equality of its states, no measure may be adopted against

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* Member, Botein Hays & Sklar, New York City; LL.B., Columbia University 1959; M.S. in Economics, University of Wisconsin, 1954; Assistant U.S. Attorney, New York, 1961-1971; Regional Director, Federal Trade Commission, New York, 1971-1977.

1. B. BALASSA, TYPES OF ECONOMIC INTEGRATION 18 (World Bank Reprint Series No. 69, 1976).

2. U.S. DEPARTMENT OF STATE, THE EUROPEAN COMMUNITY GIST 3 (August 1979).

3. *See* Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 350 (1977); Task Force on Simplification, *Report on the Commerce Clause of the Federal Constitution and Complex Regulation Imposing a Burden on Interstate Commerce*, 58 N.Y. ST. B.J. 52 (1986).

the will of any member concerned."[4]

The book fails to discuss the implications of the coercion of the "will" of a "member" by the intervention of Soviet armed forces or threat of such intervention, as in the cases of Hungary in 1956, Czechoslovakia in 1968 and Poland in 1981.[5] The primacy of self-promotion of political power by a ruling party[6] over ordinary economic objectives creates further differences extending beyond those brought about by the non-market aspects of state management of economic enterprises.[7]

The deeper question raised by Professor Carl is the extent to which the benefits of reducing trade barriers between developing nations can overcome economic and political difficulties attributed to disparities in the rate of development.

To the degree that integration of the kind Professor Carl describes can overcome these difficulties, Third World nations with large populations or geographic extent already have an appreciable portion of that advantage. Perhaps Japan represents the most spectacular instance of a formerly lesser-developed nation moving into the forefront of industrialized nations.[8] Yet few others have been able to emulate the Japanese example. And Japan, of course, was already a strongly industrialized nation by the end of the 1930's, as the United States discovered in 1941 and 1942.

Japan today faces many of the problems of other industrialized nations — such as difficulty in making affirmative efforts to protect its own environment[9] and in creating outlets for its

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4. B. CARL, ECONOMIC INTEGRATION AMONG DEVELOPING NATIONS: LAW AND POLICY 91 (1986).

5. Where force or threat of force cannot be brought to bear, a differing course of political and hence economic development occcurs. Yugoslavia and China, which separated themselves from the Soviet bloc, have had a different history from Poland and Afghanistan.

6. For early recognition of some relevant aspects, see M. DILAS, THE NEW CLASS: AN ANALYSIS OF THE COMMUNIST SYSTEM (1957); G. ORWELL, HOMAGE TO CATALONIA (1969 ed.); S. PÉTREMENT, SIMONE WEIL: A LIFE (1976) (describing Simone Weil's perceptions in the 1930's).

7. *See* Keren, *The Ministry, Plan Changes and the Ratchet in Planning*, 6 J. COMP. ECON. 327 (1982); *cf.* N. LEITES, SOVIET STYLE IN WAR (1982).

8. *See* F. GIBNEY, MIRACLE BY DESIGN: THE REAL REASONS BEHIND JAPAN'S ECONOMIC SUCCESS (1982).

9. On possibilities of "positive" technology assessment for such purposes, see BUSINESS ROUNDTABLE, STRATEGY FOR A VITAL U.S. ECONOMY 31 (1984); Thomas, *How Should Humans Pay Their Way?*, N.Y. Times, Aug. 24, 1981, at A15, col. 3;

products. Likewise, Japan has been unable to avoid the tendency to exhaust scarce resources, such as species of whales, which has caused international hostility.[10]

Perhaps even more seriously, Japan's economy is heavily dependent upon exports, which tend to trigger import restrictions generated by loss of jobs among its trading partners. These restrictions can set off trade wars — with obvious harm to all parties, including consumers.[11] Such events can also harm political relations among the countries drawn into an economic free-for-all.[12] Trade wars cause all concerned to forfeit the very benefits of a "common market" described by Professor Carl.[13]

Professor Carl acknowledges that mercantilist tendencies represent a weed almost impossible to extirpate, i.e., witness the fact that large aggregations which themselves benefit from their internal "common markets" are riven by internal disputes over differential export advantages sought by member nations.[14] Efforts to deal with such disputes by offering transitional aid to victims of reductions of trade barriers have partial success at times, but run into problems because of the difficulty of distinguishing injury due to imports or reductions in barriers from that due to general economic circumstances.[15] Further, the cost of compensation may tend to become prohibitive. Similarly, economic blocs often become even more avid to obtain export advantages over outsiders. An example is

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Worsinger, *New Technologies and Antitrust*, 47 N.Y. St. B.J. 651 (1975), *reprinted in* 81 Case & Comm. 33 (1976); Bus. Wk., July 6, 1963, at 62;

10. Japan Whaling Ass'n v. American Cetacean Soc'y, 106 S. Ct. 2860 (1986). *See generally* Douglas & Torman, *Understanding Nonrenewable Resource Supply Behavior*, 219 Sci. 927 (1983).

11. *See* Weil, *'Anti-targeting' as Bad for Trade as Smoot-Hawley Tariffs in 1930's*, N.Y. Times, Feb. 18, 1984, at A23, col. 2.

12. *See generally* R. Gardner, Sterling-Dollar Diplomacy in Current Perspective: The Origins and the Prospects of Our International Economic Order (1956).

13. *See also* E. Ellsworth, The International Economy (1951); P. Samuelson, Economics: An Introductory Analysis (9th ed. 1973). *See generally* M. Wasserman, Modern International Economics (1971).

14. B. Carl, *supra* note 4, at 13.

15. *See* 19 U.S.C. §§ 2271-2394 (1982); Givens, *The Search for an Alternative to Protection*, 30 Fordham L. Rev. 17 (1961); Wilcox, *Relief for Victims of Tariff Cuts*, 40 Am. Econ. Rev. 884 (1950).

found in the trade disputes between the politically friendly EEC and the United States.

Such tendencies may be reduced, although not eliminated, when demand surges for labor, goods and services and everyone in a nation's labor market is needed. Competition under these conditions takes different forms, as during the Second World War.[16]

After that war, President Harry S. Truman proposed his Point Four program, designed to provide technical assistance to developing nations.[17] This view that technology transfer at the "rice roots" would permit a leap forward by developing economies also formed the foundation of the Peace Corps.[18]

It was unforeseen, however, that much of the assistance granted would instead merely fill balance-of-payments deficits swollen by uneconomical governmental expenditures by Third World governments and even hurt local industry competing with imports subsidized by the aid.[19] Nor was it foreseen that imported concepts might work entirely differently in a different environment[20] or that technological advance might focus chiefly on industries whose primary function was to sell goods back to the industrialized nations at lower prices due, in large part, to lower wage rates paid, thus depriving workers of jobs in nations such as the United States.

Proposals to require higher wages to be paid in such industries as a condition to allowing imports ignore the difficulty of enforcement of such rules,[21] as well as the impossible situation created, at least theoretically, by far different wage scales

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16. *See* G. THOMSON, VOTE OF CENSURE (1968) (concerning Britain); *see also* L. SULLIVAN, BUILD BROTHER BUILD (1969) (Apollo program in the United States in the 1960's). *Compare* B. KLEIN, GERMANY'S ECONOMIC PREPARATIONS FOR WAR (1959) *with* A. SPEER, INSIDE THE THIRD REICH (1970) (concerning Germany).

17. *See* 3 STATE OF THE UNION MESSAGES OF THE PRESIDENTS 1970 (1966).

18. *See* J. KENNEDY, THE BURDEN AND THE GLORY 15 nn. 25 & 32, 21 n. 72 (1964).

19. *See Foreign Assistance Act of 1969: Hearings Before the House Comm. on Foreign Affairs*, 91st Cong., 1st Sess., *reprinted in* 1969 U.S. CODE CONG. & AD. NEWS 2611. *Improper Practices, Commodity Import Program, U.S. Foreign Aid: Hearings Before the Subcomm. on Investigations of the Senate Comm. on Government Operations*, 90th Cong., 1st and 2nd Sess. (1968).

20. *See* M. YOUNG, SHAREHOLDER RIGHTS AND SHAREHOLDERS' MEETINGS IN JAPAN: A CASE STUDY IN INSTITUTIONAL DISTORTION, Working Paper No. 5, Center for Law & Economic Studies, Columbia Law School, July 1983.

21. *Cf.* the situation described in C. VIDICH, THE NEW YORK CAB DRIVER AND HIS FARE (1976).

for export and domestic industries existing side by side in the same local environment. Moreover, the United States and similar advanced nations themselves must export, and cannot do so if their domestic industries are protected at higher cost levels. Therefore these nations cannot compete with, e.g., Hong Kong, Taiwan or Korea, in selling many manufactured products in, e.g., Italian, German or Pakistani markets.

Technological advance is, of course, the engine that has made much of the world, including major parts of the Third World, wealthier economically than ever before.[22] In order to increase the benefit of an advance that can be captured by an inventor or investor, removal of unnecessary artificial barriers, including but far from limited to international barriers reduced by the common markets discussed by Professor Carl, is important.[23] Much benefit may also flow to the nation's economy as a whole, a phenomenon described by economists as an "externality,"[24] which is the reason that basic research has long been subsidized by nations that can afford to do so.[25]

But in order to be useful rather than counterproductive, a technology must fit its environment and thus cannot be imported as if it fell out of the sky — as were huge coffee bean storage elevators placed in Ghana under Nkrumah when there were no adequate roads to carry the crop to the elevators. "Appropriate" techniques that take advantage of local resources such as labor, or manure to make cooking gas, may be especially important in this respect.[26]

In order to prevent injury arising from competition by developing nations, which focus on external markets for manufactured goods in developed nations rather than on their own

22. *See generally* V. CHILDE, WHAT HAPPENED IN HISTORY (rev. ed. 1964).

23. *See* Richardson, *Cutting Regulatory Tape*, N.Y. Times, Dec. 13, 1984, at A31, col. 2.

24. *See generally* N. TERLECKYJ, EFFECTS OF R&D ON THE PRODUCTIVITY GROWTH OF INDUSTRIES (1974); Mansfield, *Basic Research and Productivity Increase in Manufacturing*, 70 AMER. ECON. REV. 863 (1980); Starr & Rudman, *Parameters of Technological Growth*, 182 SCI. 358 (1973).

25. *See* 1 STATE OF THE UNION MESSAGES OF THE PRESIDENTS 3 (1966) (George Washington in 1790); *id.* at 88 (Thomas Jefferson); *id.* at 249 (John Quincy Adams); Bronk, *The National Science Foundation: Origins, Hopes, and Aspirations*, 188 SCI. 409 (1975).

26. *See* ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *Technological Innovation: Key to Progress in Less-Industrialized Countries*, 126 OECD OBSERVER 7 (1964).

internal markets, the developed nations would have to see to it that they remain ahead. This may require deliberate attention to technologies that will keep them several jumps ahead of what can workably be copied.[27]

It must be recognized that, on balance, technical advance creates rather than destroys jobs[28] because ultimately what people want to do seems to expand to meet their ability to do it.[29] In any event, to retain jobs, advanced countries *must* maintain their technological advantage, for if country *A* does not do so it will lose jobs to country *B* that does.

Politically, as well as economically, the form of society, open or closed, that shows itself superior in moving forward technologically is likely to have an expanded role in determining the future.[30] Areas of sharing[31] between nations at different stages of development may provide a common basis from which each can benefit from both the knowledge and mistakes of the other. It is here that Professor Carl's book may have its greatest application.

Cooperation between *independent* nations, of course, is the very opposite of the kind of control exercised within COMECON and ignored by Professor Carl in Chapter Six of her otherwise excellent volume. The ability to develop mutually beneficial political and economic relationships with Third World countries that are based on mutual respect rather than extortion or predation is an important part of this larger competition between systems.

Just as a bicycle remains stable if it moves ahead, technological advance within the open societies of the industrialized world may provide energy and spinoffs that can promote if not automatically provide stability and benefit all.[32] In such a con-

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27. *See* Levin, *Interindustry Differences in R&D Appropriability and Technological Opportunity*, Table 2 (Preliminary Report 1984).

28. *See* C. FREEMAN, UNEMPLOYMENT AND TECHNICAL INNOVATION (1982), *discussed in* Dickson, *Technology and Cycles of Boom and Bust*, 219 SCI. 33 (1983).

29. *See* G. ALLPORT, BECOMING: BASIC CONSIDERATIONS FOR A PSYCHOLOGY OF PERSONALITY (1955); K. LORENZ, ON AGGRESSION (1966).

30. *See* 3 STATE OF THE UNION MESSAGES OF THE PRESIDENTS 3008-09 (1966).

31. *Compare* Norris, *Halting the Flow of High-Tech Bargains*, N.Y. Times, Feb. 26, 1986, at F3, *with* Dickson, *New Push for European Science Cooperation*, 220 SCI. 1134 (1983).

32. *See* T. SCHELLING, THE STRATEGY OF CONFLICT (1960).

text, open societies with a marketplace for both ideas[33] and for goods and services[34] may have a tremendous advantage.[35]

Of course, there are many other obvious challenges, among them: How can the disruption of economic activity by political events be overcome? How can the ceaseless pressure of totalitarian expansion be defeated where it takes advantage of weakness? How can the tendency to become enmeshed with unpopular or corrupt regimes that are doomed over a period of time be avoided?

In addition to the challenges enumerated above, how can aid be supervised so as to be used for intended, rather than corrupt, purposes and simultaneously critical independence of the developing nations be fostered? Even with sophisticated and dedicated personnel, these difficulties seem often insuperable.[36]

Ultimately, one returns to the obvious: the fate of the Third World rests primarily and necessarily in the hands of its own people. Heroic figures from Ghandi to Anwar Sadat to the new democratic leaders of Argentina and Brazil show that innovation grows in their soil as much as in that of more highly industrialized nations. Part of the message of Professor Carl's work is that the Third World must determine its own destiny, and that regional common groupings of the kind Simon Bolivar envisioned for Latin America, must be part of the means to this end.

Eduardo Frei Montalva, the last great democratic (and by party designation Christian Democratic) president of Chile, who preceded both Augusto Pinochet's coup in 1973 and Salvador Allende Gossens' minority-candidate victory in 1970,[37]

33. Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). *Compare* A. SAKHAROV, PROGRESS, COEXISTENCE AND INTELLECTUAL FREEDOM (1968) *with* G. ORWELL, NINETEEN EIGHTY-FOUR (1949).

34. Axinn, *Response*, 52 A.B.A. ANTITRUST L.J. 643, 652 (1983), *quoting* Pitofsky, *The Political Content of Antitrust*, 127 U. PA. L. REV. 1051, 1055 (1979).

35. *See* LEGAL STRATEGIES FOR INDUSTRIAL INNOVATION (R. Givens ed. 1982).

36. *Compare* H. SUMMERS, ON STRATEGY: A CRITICAL ANALYSIS OF THE VIETNAM WAR (1982) *with* B. TUCHMAN, STILWELL AND THE AMERICAN EXPERIENCE IN CHINA, 1911-1945 (1970).

37. Allende won by a plurality of 36.3% in a field of five candidates and was elected by Congress based on rhetoric that Congress had to confirm the candidate with the most popular votes, contrary to the very purpose of the constitutional provision which enabled Congress to prevent a minority candidate from changing the nature of the society.

proposed a convergence of democratic nations on a larger scale than hitherto seen.[38] The economic summits of non-totalitarian industrialized powers may be a foreshadowing of future economic relations among these nations — perhaps common markets and common enterprises on a grander scale.

These undertakings could embrace technological consortia involving new industries not yet entwined in protectionist brambles and relevant to Third World needs, such as cost-effective sea water desalinization.[39] However, such common ventures are not likely to succeed if obstructionist, totalitarian, or non-contributing countries are given an "equal" voice. In order for economies of scale to be gained,[40] treating unequal contributors equally would hardly be workable — or true — equality. One-nation-one-vote or one-nation-one-veto is hardly a way to run a technological effort. Admission of all to a technological enterprise may mean maximum results for none.[41]

Disparities often lead to corrective measures that overbalance in other areas. For example, purchase of raw materials from developing nations by industrialized trading partners on terms unfavorable to the developing nations was temporarily counterbalanced in the case of oil during the heyday of the OPEC cartel. The wealth transferred, however, did not necessarily benefit the bulk of the population in the developing nations that controlled the oil. And the precipitous rise and fall of oil prices may have left such nations worse off than before the rise.

Coalitions of developing nations such as those discussed by Professor Carl may tend to promote OPEC-type behavior by their members expressing pooled self-interest.[42] This may

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38. Similar goals were put forward by Montalva and Lester Pearson of Canada in *Crying for a Vision*, and by other distinguished contributors, in ATLANTIC COMMUNITY QUARTERLY (Fall 1966).

39. *See* Hamilton, *What Will We Do When the Well Runs Dry*, HARV. BUS. REV., Nov.-Dec. 1984, at 28; Johnson, *If We Could Take the Salt Out of Water*, N.Y. Times, Oct. 30, 1960 (Magazine), at 17.

40. *See* Dickson, *supra* note 31.

41. *See also* H.R. REP. No. 1659, 90th Cong., 2d Sess. (1968). *Compare* Franck, *Going Outside the U.N.*, N.Y. Times, June 4, 1985, at A29, col. 1 *with* Winston Churchill in the House of Commons, Jan. 27, 1942, *quoted in* NEVER GIVE IN! 22 (1967) (consulting everyone on everything is the best way to lose).

42. *See* Int'l Ass'n of Machinists v. OPEC, 649 F.2d 1354 (9th Cir. 1981).

be impossible to prevent. However, development of substitutes for items subject to import disruption — which may themselves become even more valuable for new purposes — is one defense against industrialized nations' vulnerability to this kind of blackmail by developing nations.[43]

Another troublesome disparity relates to credit. There is as yet no international equivalent to Chapter 11 of the United States Bankruptcy Code, which allows an entity that wishes to reorganize to stay all litigation throughout the United States merely by filing a petition in Bankruptcy Court. Perhaps the closest thing to a formal international system is that of the International Monetary Fund (IMF) and various auxiliary institutions.[44]

And, ironically, accounting rules permitting banks to keep questionable loans on their books support favorable balance sheets in some instances, even though the money is not collected. This suggests that the actual collection of the funds may be less important than the accounting treatment of the assets.[45] Once a developing nation becomes an industrial competitor, such as Hong Kong or Korea, perhaps the old loans might serve as a set-off to balances due to the former debtor if they had been kept alive. Some form of longer-term deferral of loans may in fact be developing informally through the device of rolling them over despite the lack of realistic hope of payment within a foreseeable period. Obviously the impact of debt depends on the purposes for which the credit is used, e.g., whether it is income-producing or for meeting current expenses, or in the case of foreign loans, for making international payments or supporting governmental budget deficits.[46]

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43. *See* Cohen, Heine & Phillips, *The Quantum Mechanics of Materials*, 246 SCI. AM. 82 (1982); Goeller & Zucker, *Infinite Resources: The Ultimate Strategy*, 223 SCI. 456 (1984).

44. For background, see GARDNER, *supra* note 12; SAMUELSON, *supra* note 13 at 642, 703-14.

45. *Cf.* AMERICAN BANKERS ASS'N AND ERNST & WHINNEY, OFF-BALANCE SHEET FINANCING ARRANGEMENTS IN BANKS AND BANK HOLDING COMPANIES (1986).

46. *See generally* V. CHILDE, *supra* note 22; C. FREEMAN, UNEMPLOYMENT AND TECHNOLOGICAL INNOVATION (1982); J. ROBINSON, THE ACCUMULATION OF CAPITAL (2d ed. 1965); J. SCHUMPETER, BUSINESS CYCLES (1964); J. SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY (3rd ed. 1962); Clinger, *Capital Budgeting*, N.Y. Times, Feb. 2, 1982, at A25, col. 3.

In these and many other respects, attempts at collaboration that seek to ignore difficulties run into almost automatic misunderstanding between partners of grossly unequal bargaining power.[47] Such difficulties can best be overcome where there is an overarching common goal that makes the differences largely irrelevant[48] or where the disparities are not particularly pertinent to the area of joint endeavor.[49]

The path of closer technological, and hence economic, collaboration with those willing and able to share, in a manner that is a true two-way street, may lead to benefits on a broader scale, so that one may be able to say in the future as did a famous statesman:

> [p]rodigious hammer strokes have been needed to bring us together . . . he must indeed have a blind soul who cannot see that some great purpose and design is being worked out here below, of which we have the honor to be the faithful servants.[50]

47. *Cf.* E.M. FORSTER, A PASSAGE TO INDIA (1981 ed.).

48. *Cf.* E. COOKRIDGE, THEY CAME FROM THE SKY (1965) (divergent experiences involving the French Resistance during World War II).

49. *E.g.*, the view of Abraham Lincoln that the Declaration of Independence "gave promise that in due time the weight would be lifted from the shoulders of all men," *quoted in* HARNSBERGER, THE LINCOLN TREASURY 67-68 (1950). Much earlier, Thomas Jefferson had said, "(m)ay it be to the world, what I believe it will be (to some parts sooner, to others later, but finally to all), the signal of arousing men to burst their chains." White, *The American Idea*, N.Y. Times, July 6, 1986, § 6 (Magazine), at 13; 3 STATE OF THE UNION MESSAGES OF THE PRESIDENTS 2860, 2868, 3008-09 (1966); *see also* 2 A. DAVIES, AMERICAN DESTINY (1942); 2 R. HOFSTADTER, GREAT ISSUES IN AMERICAN HISTORY: A DOCUMENTARY RECORD 398-99, 444-45 (1958).

50. Winston Churchill, address to the Congress of the United States (Dec. 26, 1941), *quoted in* THE UNRELENTING STRUGGLE: WAR SPEECHES OF THE RT. HON. SIR WINSTON CHURCHILL 339 (1942).