

Gaete, Rolando, *Human Rights and the Limits of Critical Reason*, Aldershot, UK, Brookfield, VT: Dartmouth Publishing Company Ltd (1993) xiii + 195 pages + Indexes. \$69.95.

This book is a synthesis of legal and philosophical perspectives on human rights. It discusses the question of the nature of rights against the background of continental critical philosophy. Its heroes are Nietzsche, Adorno, Horkheimer, Lyotard, Derrida, its aim is the demolition of 'grand narratives' and its rallying cry is the 'end of modernity'. The author explores the significance of these themes for human rights law and its application. Legal texts, leading cases, academic commentary and doctrine are seen in the light of critical or postmodernist insights. The author states, for example, that 'the essential task is to describe the bounds of Reason, following the ways in which Reason becomes Unreason' (p. 5). He also tells us that his intention is 'to look with curiosity and without cynicism at the ways in which the metaphysical subjectivism of the Liberal jurisprudence that dictates our thoughts on Man and Power has lost its head' (p. 7). For someone who accepts these philosophical presuppositions the question to answer is this one: how much of the human rights discourse survives the 'end of modernity'?

It is unclear, however, whether the question is the right one. Gaete takes for granted that the discourse of rights is necessarily based on some deep metaphysical assumptions about their a-historical 'truth'. But this assumption, which grounds his view that postmodern epistemology poses a threat to rights-based theories, is not evident at all. Reference to the equality of men, to the value of freedom or to the virtues of republican government as the justification of rights is not a reference to metaphysics or epistemology – or to a divinely revealed 'natural law'. These arguments derive their force not from a theory of 'what is' but from a *political* view of man and society.

This view is abstract but not a-historical and is perfectly at home in a wholly pragmatic philosophical framework. This is very well shown in the recent work of liberals like Richard Rorty, John Rawls and Bruce Ackerman.

But in another sense too the identification of rights with the 'project of the Enlightenment' seems problematic. It fails to take into account the fact that the most typical political ideal of the philosophers of the eighteenth century is enlightened despotism: a strong but benevolent and well-informed central government. The intellectual heirs of this movement are the classical utilitarians and Jeremy Bentham, whose views on the rights of man are well known ('nonsense upon stilts'). This, of course is not accidental. Contemporary political theory is still preoccupied with the fact that maximizing human good does not always leave room for 'rights as trumps'.

As a matter of historical fact, rights as we know them today emerge very late in legal and political discourse. They appear of course in the works of Locke and become popular among radicals and revolutionaries. But the idea of constitutional rights as *justiciable standards of good government* becomes effective only in the United States and only at the beginning of the nineteenth century. This matures in the US after the Civil War and is transposed back to Europe at a very slow pace. Britain and France refuse to accept them into their main constitutional structures even today. The general framework of constitutional review that prevailed in Europe in the post-war period is based on Kelsen's work on the Austrian Constitution that comes as late as 1920 – although some isolated examples of constitutional review can be found earlier. It is plainly wrong then to assert, as Gaete does, that '[h]uman rights are the foundations of the liberal State' (p. 152).

This brings us back to a point made earlier. It seems that metaphysics is indeed a very rough guide to politics. Both within the 'enlightenment project' and within its

critics there is a variety of more or less coherent political positions. In other words, political theories face the same substantive disagreements even when they begin from the same or similar foundational assumptions. If this is true, what is the significance of metaphysics and epistemology for issues of politics and law? This question divides theorists of all persuasions. Within the critical movement that Gaete sides with, this is the familiar debate between 'external' and 'internal' critique. Some believe that the achievements of critical or postmodernist or anti-foundational epistemology are somehow crucial to the critical evaluation of modern law and jurisprudence. Others believe that this debate is only marginal to jurisprudential debates (for an excellent commentary on this question see now M.H. Kramer, *Critical Legal Theory and the Challenge of Feminism: A Philosophical Reconception*, Rowman and Littlefield, 1995). The problem with Gaete's book is not that it fails to resolve this difficult question. Nor is it that it sides with the first approach, while this reviewer agrees with the second. The problem is rather that Gaete takes this debate as settled and closed and has no time for rival conceptions of his project. This is a serious fault in a book of such admirable ambition. It is disappointing in this respect that a book on anti-foundationalism and rights has no extended discussion either of Kant or of his admirers in contemporary political theory.

It is unfortunate that this book has kept its vision away from these important questions. Although its central claims are thus rendered ineffective, the book is full of imaginative argument and interesting points. It is based on a very wide range of scholarship and succeeds in mastering several diverse areas of study. This unusual and difficult synthesis is a project long overdue and the author deserves praise for taking it up. One hopes it is not the author's last word on the subject.

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Jackson, B.S., and D. McGoldrick, *Legal Visions of the New Europe. Essays Celebrating the Centenary of the Faculty of Law, University of Liverpool*, London, Dordrecht, Boston: Graham & Trotman, Martinus Nijhoff Publishers (1993) viii + 348 pages + Indexes.

'The most profound truths are also the least familiar' says Francois Ost at the beginning of his contribution to this volume and he is undoubtedly right, at least as far as the topic of this book is concerned. The current changes in the institutional shape of Europe are, to be sure, the subject of the closest scrutiny by scholars and others. However, academic practice has it that one is expected to focus on particular aspects of these changes according to one's area of specialization and almost never leave the confines of their respective disciplines and methodological paradigms. As a result, legal academics rarely have the chance to stand back from doctrinal questions of their respective fields in order to view these developments in a more synthetic or interdisciplinary way. Even more rarely do we see the results of this process of self-reflection in published form.

Nevertheless, this is precisely what this volume sets out to do. It brings together various approaches to the current European developments, ranging from the history of law (B.S. Jackson) and the history of international confederations (I. Campbell), to the law of human rights (e.g. A. Garapon, N. Harris, S. Millns, P. Rowe), the Conference on Security and Cooperation (D. McGoldrick), the regulation or non-regulation of trade in the EC (D. Chalmers, G. Howells, M. Jones), the new challenges for legal education (R. Bakker) and the international politics of European integration (J. Verhoeven). These studies, authored by past and present members of the University of Liverpool and by continental academics with links with it, focus both on distinct areas and on wider perspectives. The result is a collection of essays that, when read together, provide a fruitful beginning for a