BOOK REVIEWS

The Multinational Challenge to Corporation Law: The Search for a New Corporate Personality

Phillip I. Blumberg

(Oxford, Oxford University Press, 1993), 250 pages.

This is the sixth volume of an impressive series of works on the law of corporate groups, the previous five having explored United States law to show that it has increasingly found answers to corporation law questions in an enterprise theory rather than in separate corporate entity analysis. This work has been massively erudite, to the point where a leading German corporate scholar, Marcus Lutter (1990, p. 949), has found it an "unbelievable work". In this volume, Phillip I. Blumberg sets out to do two things—to broaden the scope of his study to encompass the foreign and international scene and to outline a general jurisprudential theory of the corporate entity and the corporate enterprise.

Inevitably, the attempt to pack all of this into 250 pages means that the coverage is less exhaustive than, for example, his prior volume on corporate entities in bankruptcy. Basically, there is only one chapter on European law and another on the transnational corporation (TNC). There is simply too much European law, for example, to deal with all of its materials on enterprise liability in 15 pages. For example, there is almost no treatment of the project of the *societas europaea*, a proposed corporate entity to be formed under European rather than national law. It would contain its own rules about the responsibility of such a *societas* for the liabilities of its subsidiaries. Blumberg treats the European Community Directive on group accounts and the proposed directive on groups of corporations—which try to deal with complex problems—tersely in a footnote.

The chapter on TNCs has to be evaluated in terms of the focus Blumberg has chosen. He deals basically with questions of imposing liability on the corporate parent and with situations that arise when either the home country or a host country of a TNC seeks to use its connection with the one part of the system to extend its jurisdiction "extraterritorially" over the rest of the system. On its face, the most puzzling omission to one who has worked in the field of TNCs is the failure to refer to the large corpus of non-legal literature starting with the pioneering work of Charles Kindleberger (1970) and Raymond Vernon (1970) and continuing through the work of the Group of Eminent Persons and the United Nations Centre on Transnational Corporations. It was this literature that generated attempts at international legislation such as the Code of Conduct on Transnational

Corporations. It included some legal studies by a variety of scholars such as Itzak Hadari (1973) and myself (1970). On further reflection, one sees that the substantive thrust of that literature was aimed at subjects outside of Blumberg's objective. It was basically concerned with the massed power of TNCs that was seen to threaten to undo the policies of nation states. Its goals included neutralizing the political power that TNCs could exert within the systems of host countries, the control of abusive intra-enterprise pricing tactics and the equalization of the power arising from the possession of technological information. In retrospect, one sees this body of thought as arising from the same sources as generated the ideas of a New International Economic Order and the Charter of Economic Rights and Duties of States. It was a time that began with the revelations of United States TNCs' political interference in Chile, gathered momentum with the heady sense of a transfer of economic power to the third world that attended the international oil crisis of 1973 and then dwindled away in the diminishing world of bilateral investment treaties, the debt crisis and the shift of focus of donor States to Eastern Europe. It is thus understandable why Blumberg bypasses this area of concern and the associated literature.

What is perhaps a little more troubling is the fact that several subjects relating to the TNC are opened up but not pursued with the rigor which we know that Blumberg can deploy. For example, there is his treatment of the "unitary" concept of taxation. This is a very important subject for inclusion in any attempt to get a picture of ways in which legal systems handle groups of corporations. It is perhaps the most ambitious attempt by a legal system to wipe out the separateness of affiliated corporations and treat them as one. Blumberg lists the major United States Supreme Court cases approving of attempts of States to apply this formulaic approach to calculate their appropriate share of out-of-state operations of United States-based enterprises. He does not return to the topic in the international sphere, although as of 1993 there is intense legal and political interest in California's attempt to impose such liability on Barclays Bank, which is based abroad. One notes that the application of the California formula to a nation-wide enterprise may not produce excessively overlapping taxation because the other States involved use basically similar formulae. Applied to an international enterprise, such a technique may produce problems because the approach is entirely different from the tax-allocation schemes used in other countries. Developing this theme would require a considerable amount of space, including an explanation of the elements (sales, payroll and property) that go into the California formula. It would also involve comparison of the unitary method of allocation with the arm's-length approach which is its chief rival. All of this would eat up a chapter, and a rather long one, that would tend to burst the bounds of the format

Blumberg has set himself. A rather similar set of points might be made about the book's treatment of the way in which the accounting profession confronts the enterprise. Consolidated accounts make brief appearances in connection with British law and the requirements of the European Community directive on the topic. But there is no space for a careful comparison of the standards accountants in different countries use to decide when it is necessary to consolidate. That would lead one to the question whether those standards should be applied differently when corporations to be included in the group are incorporated in different countries and are subject to different legal regimes—including tax and exchange control rules—that may make consolidation less appropriate.

But one should not complain that an author has not written a book other than the one he set out to produce. This is a work of great learning and breadth—both in space and in time—and one learns from the philosophical breadth of the approach fundamental things that would be buried in the enormous detail that would be required to exhaust the law of the TNC.

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International Economic Integration
Miroslav N. Jovanovic
(London, Routledge, 1992), 302 pages.

An obvious outgrowth of a dissertation, this uneven book provides a detailed study of the phenomenon of economic integration. The author seems to be torn between two desires: the first is to confront and illustrate the complexities of reality, which, for the most part, he does and documents very well; the second is to show how well he has mastered orthodox trade theory, an exercise that adds little if anything of value for the reader's understanding of integration. Of course, this weakness is largely due to the inadequacy of even Vinerian trade theory, locked as it is into allocative efficiency, to confront the dynamics and other subtleties of integration.

Drawing on his orthodox training, the author is heavily in favour of integration, especially for small- and medium-sized countries on the grounds of greater overall efficiency and economies of scale. His criterion is a simple one of economic welfare. The discussion of sovereignty is brief and superficial: "economic sovereignty is pooled rather than given" (p. 12). Orthodox theory has never satisfactorily modeled a world in which technologies differ between countries, goods are differentiated rather than standardized and departures from perfect competition are the rule rather than the exception. The attempts to tie the phenomenon of real-world integrational issues to the orthodox theory result in passages that contribute nothing to the analysis of reality and which are often suspect in their own context.

The strength of the book lies in the chapter entitled "Economic union". This chapter comprises more than half of the book and surveys the problems that an economic union will encounter: monetary cooperation or unification; fiscal coordination; industrial policy; regional policy; and social policy. Much of the material derives from the European Community, and the wealth of case histories and institutional details is very valuable. One might wish that the author had given his views on whether economic unions need to enhance the degree of integration and/or to admit new members (to spread out) as a means of avoiding backsliding. Certainly, the European Free Trade Area retrogressed when it had achieved its limits—but this may have been due to its lack of success relative to the European Community. The European Community, on the other hand, has gone from strength to strength by using pauses in economic growth to broaden its membership and to continue to increase the degree of integration well beyond that conceived originally in the Treaty of Rome. Since the book went to press, the European Community has generated the Maastricht Agreement and has suffered setbacks in the Danish referendum and in the exchange rate crisis of the fall of 1992. The optimistic communiqué that followed the Edinburgh summit (December 1992) has still to be validated in the face of recalcitrance and recession. In the same way, the Canada/United States Free Trade Agreement has sought to expand to include Mexico.

Because it is not possible to give an in-depth report on all of the issues covered in this book, this reviewer will exercise his license and examine the author's treatment of two issues: transnational corporations (TNCs) and industrial policy.

Coverage of TNCs begins from ground zero. This approach is probably justified for many readers because the existence of TNCs and foreign direct investment (FDI) have not been incorporated into the orthodox body of trade theory, whether formal or informal. (This does not mean that some theoretical deviants have not addressed the issue.) Jovanovic devotes ten pages to a general discussion of the *raison d'être* of TNCs and draws heavily on John H. Dunning's eclectic paradigm (Dunning, 1988). Institutional depth is provided by a description of Canada's Foreign Investment Review Agency to survey inward FDI into that country between 1973 and 1983 and the criteria that it employed and of the O.E.C.D.'s *Declaration of International Investment and Multinational Enterprise.* Unfortunately, the book neither confronts nor models the potential role of TNCs in the integration process until assessing the historical pattern of FDI in the European Community and, in this way, omits the question of how FDI might aid in the process of convergence that becomes necessary when a new member joins a union. The process of integration did stimulate inflows of FDI from outside the Community but has not generated much intra-Community direct investment. Outward FDI from the European Community of 12 (better than three quarters of which derives from Germany, the Netherlands and the United Kingdom) is twice as great as intra-European Community FDI (table 3.2).

Discussion of *industrial policy* occupies some 15 per cent of the book. Industrial policy is not a subject for which a generally-accepted definition exists, and Jovanovic embraces a wide range of activities as falling under this heading. Industrial policy is taken to include treatment of sunset (senile) and sunrise (infant) industries;[1] investment incentives offered to foreign firms; and the management of industries with substantial spillover effects or potential for generating quasi-rents. This reviewer favours restricting the concept of industrial policy in

[1] Orthodox theory is ineffectual in confronting problems of adjustment to changes in competitive conditions: much of the costs of adjustment depend upon the rate and dimensions of change imposed, i.e., size and breadth of the shock and on the rate of growth of expanding industries as well as on the similarity between the factors which they need and those released by contracting industries (Gray, 1987).

industrialized nations to spillover-generating or advanced industries in which the rate of investment in research and development, speed to market of new products and the need for continuous reductions in costs are crucial in determining international competitiveness (Whalley, 1987, p. 84).

One interesting shortcoming of the treatment of industrial policy—prompted, one suspects by expositional rather than analytic considerations—is the tendency to view a country's position as absolute rather than relative. If the goal is to allow national industries and firms with spillover effects to increase their share of global markets, what matters is *relative* intrinsic comparative advantage and the *relative* degree of government support. Failure to emphasize this feature of industrial policy permeates both the economic literature and policy utterances. Of course, with the recent United States philosophy of utter reliance on decentralized markets as the norm, this is understandable in countries competing primarily with United States industries; but it is not acceptable either theoretically or in policy-oriented statements by United States office-holders.

Six reviews of national experience are provided. These are good summaries of national economic and industrial policies. In the report on Japan, the author states that "[M]ost Japanese firms are so successful that they do not need support from the government". This suggests that successful industrial policies can give rise to positive feedbacks. This point should have been confronted and developed in the preceding analysis. Surprisingly no mention is made of the relationship between the very high Japanese average propensity to save (nurtured by the tax structure) nor of the very successful role of the Japanese economy (MITI and the industries concerned) in targeting the vulnerable industries in North America.

The book's unevenness derives in part from the failure of the publisher and the author to identify the readership, but it provides a great deal of information and an extensive bibliography. The discussion is often not as focused as one would wish but it will provide a good introduction to integration for graduate students and it is a useful reference work for international economists—particularly those concerned with institutional developments in Europe and North America.

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Technological Innovation and Third World Multinationals
Paz Estrella E. Tolentino
(New York: Routledge, 1993), 458 pages.

In the early 1980s, I was asked by a funding organization to review a major proposal to fund a study on third world transnational corporations (TNCs). At that time, there had been a spate of articles on the subject, and the books by Louis Wells (1983), Sanjaya Lall *et al.* (1983) and Wen Lee Ting (1985) were being written. Somewhat facetiously, in my comments I wrote that there was a danger that the opportunity cost of researchers' time plus the expenses of funding all the research currently being undertaken on third world TNCs was exceeding their combined sales.

Ironically, since that time, little research has been done on the subject. Yet over the past decade, outward foreign direct investment (FDI) by firms in developing countries has risen exponentially, to approximately $62 billion in 1989. Paz Estrella Tolentino's book is then doubly welcome, welcome because it is a fine book and welcome because it fills a virtual void in our knowledge concerning the operations of third world multinationals over the past decade.

There is a danger, however, that, despite its considerable merits, this book will not receive the attention that it deserves. Researchers in four areas would all benefit from reading it: those with an interest in the broad field of international business and the TNC; those with an interest in technology transfer; those with an interest in economic development and international economics; and, of course, those with an interest in third world TNCs. There is a danger that only those researchers at the *intersection* of these four groups will read this book rather than at their *union*, as should be the case. In particular, economists whose interest is development economics would greatly benefit from reading it, since it has direct and important bearing on their field. As gauged by a scan of the table of contents of textbooks on international economics and economic development, the phenomena of TNCs in general and those based in developing countries in particular have largely escaped economists' attention. This situation is truly unfortunate given the size, scope and importance of TNCs in the global economy of the 1990s and their impact on the economies of developing countries through trade, investment, technology transfer and job creation. Tolentino's book would make a fine companion piece to John Dunning's (1993) recent book to redress this imbalance in economics courses at universities in both high- and low-income countries alike.

Tolentino's book is based on her prize-winning Ph.D. thesis at the University of Reading.[1] The book represents a considerable update, expansion and enhancement of that thesis. The fundamental themes (hypotheses) of both the book and the thesis are:

> "The first theme pertains to the gradual process of expanding technological capabilities of selected Third World firms associated with the cumulative growth in the international direct investment. The existence and accumulation of technological capabilities is an important determinant as well as an effect of the pattern and growth of their international production activities and is therefore a mutually reinforcing process. . . . The second theme proposes that the emerging technological competence and growth of Third World firms is related to the pattern of their domestic industrial development and the cumulative process in which firms build upon their unique technological experience." (p. 7).

Tolentino's primary hypothesis on how firms in developing countries have acquired and developed the distinctive technological competencies that have enabled them to invest abroad is presented in the first chapter (p. 9):

> "The distinctive activities of firms based in Third World countries provide evidence that these firms have followed a technological course that is to some extent independent and a function of their own unique learning experiences. However, the unique technological course of Third World firms is not limited to descaling and increasing the labour intensity of sophisticated technologies or in specialization in the production of lower-skill and lower technologically intensive sectors, but rather in innovations that are based on lower levels of research, size, technological experience and skills which achieve improvements by modernizing an older technique, including outdated foreign technology . . . a greater part of their innovatory capacity has been given to production engineering, learning by doing and using, and organizational capabilities and access to more advanced but complementary foreign technology."

The focus of the book and its value then centre around the elaboration and documentation of these two issues: the factors that have enabled firms in developing countries to acquire and develop innovative technologies and the two-way relationships between these technologies and their outward FDI.

The remainder of this review is comprised of a chapter by chapter description and, in some cases, a critique of the book. This approach was chosen to assist

[1] The thesis won the "Best Dissertation Award" of the Academy of International Business in 1988.

potential users of this book in their choice of what chapters on which to focus. Chapter 1 contains a quite long, yet quite general overview of the book as a whole. Chapter 2, trends in FDI, presents data through 1989 on FDI on a worldwide basis, disaggregated by home and host country and by sector. This overview of FDI stocks would be useful for those who lack a basic knowledge of these data.[2] Chapter 3, theories of international production, presents a good, comprehensive review of the evolution of the theories of TNCs, FDI and international production. Again, this chapter would be most useful to those who are new to the subject, such as (most) economists and international business students.

Chapter 4, theories of third world TNCs, presents the basic theoretical underpinnings of the subject of the book. The material in this chapter would probably be new, and of interest, to all readers who are not specialists on third world TNCs and technological development. In particular, the sections on localized technological change and technological accumulation are highly informative and interesting. However, while Tolentino draws a strong distinction between the "competing" theories of the product life cycle (as developed by Wells, 1983) and technological accumulation (as proposed by Lall, 1983), to my mind these theories are complementary, not competing.[3] As Tolentino concludes further on in the book, their relative explanatory power is conditional on the different environments in which firms in developing countries operate, i.e., each is a partial explanation depending on circumstances and neither is (or was held to be by its developer) a comprehensive explanation.

Chapter 5, the concept of an investment-development cycle, contains econometric tests of Dunning's hypothesis that net outward investment is a function of a country's level of GNP per capita. Tolentino finds that this relationship, although holding through the mid-1970s (when it was proposed), has fallen apart since that time. Tolentino asserts that this structural change has occurred because countries have opened up and become increasingly connected to the world economy through trade, technology transfer and FDI since the mid-1970s. This is an interesting chapter in and of itself. It could serve as the basis for an article on the subject, particularly if the data were updated (from 1985) and inward and outward flows of FDI were treated separately.

Chapter 6, the role of foreign technology in the development of third world TNCs, presents a review of the theory and evidence on this important subject, as

[2]These are available from other sources, most notably United Nations, 1993, which presents data through 1991.

[3] "Competing" is Tolentino's word and her viewpoint on these theories.

well as on the broader issues of technology transfer via TNCs and the development of technological competence in developing countries. The chapter also has a section which presents the history for selected countries of their inward and outward investment and attempts to show the causal links, if any, between the two. Given space and data limitations, the country sections deal mostly with data at the industry level and hence links between inward FDI, the development of technological competencies, and outward investment are mostly inferential, although a few examples of outward investment by specific firms are given. While I found this section interesting, the analysis could have gone deeper. In linking inward and outward flows of FDI at the industry level (with a few firm specific examples), Tolentino asserts that domestic firms must somehow have acquired some form of technology, possibly by TNCs, that gave them a firm specific advantage and enabled them to invest abroad. But the crucial questions of *how* they gained whatever technology and how they developed it remain unanswered.

Chapter 7, the dynamic interdependence between inward and outward FDI in the Philippines, and chapter 8, a profile of Philippine TNCs, present a micro-country case study to support the more aggregate analyses in the previous chapter. Chapter 7 presents the history of inward and outward FDI in the Philippines. Among other things, it attempts to analyse why there has been relatively little FDI by TNCs in the Philippines and why this investment has not played as significant a role in export promotion as has FDI in other neighbouring countries. Tolentino concludes that the Philippines has lacked "locational advantages for a number of reasons" (p. 202). Tolentino notes that ". . . the Filipino work ethic has placed quality control and pride of workmanship low down in order of importance" (p. 203). However, "in addition to an English-speaking and very easily trained labour force, the Philippines is blessed with a steady stream of entrepreneurs and management executives helped by a well-developed network of business schools that count among the best in the world" (p. 204). Yet, over the 1976-1986 period, the share of manufactured products in exports rose from 22 to 61 per cent. This is strong evidence that firms in the manufacturing sector in the Philippines were able to acquire the product and process technology, quality control and so on, that are required to export. Why TNCs did not participate in this remarkable structural shift is not made clear.

Chapter 8 is based on a survey of all 30 of the firms in the Philippines that were identified as being direct investors—of which 20 firms responded. Interviews were conducted with executives of these 20 firms. What is surprising and disappointing about this chapter is the scarcity of specific examples of the interrelationships between technology acquisition and development and inward and outward investment. One would have hoped that Tolentino would have been able to trace the development of specific technologies—from acquisition/transfer to accumulated competence, to innovation, to outward investment based on the technology. If this had been done, we would have direct evidence on the two crucial questions addressed by the book: how and from where do domestic firms in developing countries acquire technology and how and under what conditions does this technology allow them to invest abroad.

Without this causal chain, Tolentino is left with observing the type of outward investments made by Philippines firms and then asserting that they must have developed some form of technology based on conditions in the Philippines and their experience there in these industries that enabled them to compete against domestic firms and other TNCs in these countries. But exactly what these technologies were, how they were initially acquired or developed, how and why they were modified and enhanced and how they gave these firms a competitive advantage that enabled them to invest abroad *all* must be intuited from the industry composition of the outward investment. For example, Philippine logging companies, based on their experience in the Philippines and the technologies they developed there, invested heavily in logging operations in Indonesia and later Malaysia. Over time, some of these logging operations have been upgraded to encompass further downstream processing. Interesting. But Tolentino is silent about all the questions listed above regarding the path and process of technology acquisition development within these firms. Similarly, the San Miguel Corporation invested abroad in the brewing industry. From the nature of the industry, Tolentino posits the firm specific advantages (in quality control, advertising and product differentiation) which San Miguel *must* have possessed in order to make the investments. But nowhere do we learn where these advantages came from initially and how and why they were enhanced over time. The process of technology acquisition and development is hence unobserved and must get intuited from the data. Yet knowledge of this process is crucial to Tolentino's major themes of the book. Without this information, Tolentino's reasoning is almost circular. For example, since Philippines firms invested abroad in the logging industry, they *must* have acquired and developed some form of proprietary logging technology. Given demand, factor costs and natural resource availability in the Philippines, this technology *must* have been of a particular type. Hence Philippines firms *must* (somehow) have developed this technology that has allowed them to operate abroad.

Chapter 9, the industrial development of third world outward investment, and chapter 10, the geographical development of third world outward investment, are excellent. In chapter 9, Tolentino analyses outward investment by firms in developing countries in a number of industries and sectors. She uses many examples (contained in long tables) to support the main themes of the book. Although, as in previous chapters, the process of technology acquisition and development is not observed directly, as example is linked to example from a wide range of developing countries, her conclusions gain increasing support and conviction. Similarly, in chapter 10, the geographical patterns followed by firms in developing countries as they have invested abroad are analysed. Again an impressive array of country level and firm level data are brought to bear to support Tolentino's conclusions. Although both these chapters are long and filled with detail, they are well worth reading, and reading carefully.

The final chapter, chapter 11, looks at implications for theory and policy, offers a good summation of the book and draws interesting implications for both the theory of the multinational enterprise and for government policy in developing countries towards TNCs and technology transfer. Despite the concerns raised above, by this point the reader is convinced by the sheer weight of data and analysis that Tolentino's basic themes and hypotheses have considerable merit and can indeed be incorporated within the body of information and knowledge which we can accept. Moreover, another hallmark of an interesting and valuable piece of research, the reader wants to explore these issues through further research within Tolentino's framework of analysis using her theoretical constructs.

To end where I began, this is a very valuable book and a substantial addition to the literature on FDI, the TNC and, more broadly, economic development. Hopefully it will receive the wide readership it deserves. After giving this strong endorsement, a word of caution for the potential reader is in order. As illustrated by the quotations above, the writing style in this volume tends towards very long, laborious sentences. And the central themes of the book are repeated again and again from chapter to chapter throughout the text. These two stylistic quirks make the book rather heavy going. But, in this case, the gain is worth the pain.

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