

BOOK REVIEW

ECONOMIC FOUNDATIONS OF INTERNATIONAL LAW

Reviewer : Sammira
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Author : Posner, Eric A.; Sykes, Alan O.
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The ever-increasing exchange of goods and ideas among nations, as well as cross-border pollution, global warming, and international crime, pose formidable questions for International Law. Two respected scholars provide an intellectual framework for assessing these pressing legal problems from a rational choice perspective. The approach assumes that states are rational, forward-looking agents which use international law to address the actions of other states that may have consequences for their own citizens, and to obtain the benefits of international cooperation. It further assumes that in the absence of a central enforcement agency, that is, a world government, international law must be self-enforcing. States must believe that if they violate International agreements, other states will retaliate.

Consequently, Eric Posner, the Kirkland & Ellis Distinguished Service Professor of Law at the University of Chicago School of Law, and Alan Sykes, the Robert A. Kindler Professor of Law at New York University School of Law, devote considerable attention to the challenges of enforcing international law, which begin with the difficulties of determining what it is. In the absence of an International constitu-

tion, the sources for International Law are vague. Lawyers must rely on statements contained in all manner of official documents and on simple observation of states' behavior. This looseness leads International institutions such as the United Nations to deliver conflicting interpretations of the Law's most basic principles. The authors describe the conditions under which International Law succeeds or fails, across a wide range of issues, including war crimes, human rights, international criminal law, principles of state responsibility, Law of the sea, international trade regulation, and international investment Law.

In this book, Posner and Sykes are divided into five parts that proceed from the general to the specific. They provide an overview of both international law and the concepts needed for its economic analysis. Most significantly, it offers a succinct and accessible summary of the building blocks required to understand the substantive chapters that follow. It makes clear the central assumption at the heart of economic analysis of the law, namely that "individuals act in their rational self-interest". Quite appropriately, Posner and Sykes make little effort to defend this methodological choice beyond acknowledging that it is a simplifying assumption.

The book also introduces the concepts of externalities, public goods, and collective-action problems and applies them to international law. There have chapters on sovereignty and statehood, customary international law, treaties international institutions, state responsibility, remedies, and the relationship between international and domestic law. In brief, *Economic Foundations* provides a very valuable starting point for thinking about how the behavioral assumptions of economic analysis explain patterns of international law making.

Posner and Sykes' central insight that international institutions should be analyzed differently depending on the functions that they perform. International institutions vary considerably in terms of their aims and how they function and thus, not surprisingly, in how they are organized. The tools of economic analysis, including new institutional economics, may fruitfully be applied to greatly expand our understanding of the variation in how international institutions are structured, in how their internal governance procedures operate, and in how they relate to each other. Posner and Sykes' are applying economic analysis to

the internal organization and to the rules of international legislature's promises to advance considerably our explanations of modern international law making. The classic "delegation" paradigm that Posner and Sykes use as their overarching model of international organizations does not adequately capture the dynamics at work in international legislatures. In each chapter, the authors identify the core economic rationale for the law or the economic puzzle in the law, and they also critique the law where it does not seem justifiable on economic grounds. Other chapters of the book highlight situations where economic analysis has already made significant inroads into international law and where it holds promise for considerably greater gains. *Economic Foundations* consolidates the gains and insights made in the economic analysis of international law to date and sets the stage moving forward.