Recent Publications


Obijiofor Aginam, a renowned Nigerian lawyer and scholar, explores the role of international law in protecting the right to health in *Global Health Governance*. In this highly insightful but imperfect work, Aginam coins the term "communitarian globalism" to argue for an inclusive multilateral health framework of international institutions, state actors, NGOs, and civil society, which would redistribute the burden of dealing with disease from underdeveloped to developed nations at a time when globalization is turning the world into a single germ pool. Mutual vulnerability, the author asserts, will engage all nations' self-interest and help combat global diseases more effectively.

*Global Health Governance* provides a comprehensive review of the relevant scholarship in the field and offers a holistic approach to global health policy. The book’s constructive critique of the existing tools of global health governance reflects a deep understanding of the infrastructure and functioning of multilateral institutions, as well as awareness of the complexities involved in global health management. If market-driven global civilization, as Richard Falk argues, is a "dystopian result of globalism-from-above," then the author says the solution is to adopt a bottom-up approach—"globalization-from-below" involving "an effective integration of sustainable indigenous practices in the development process" (p. 43).

The crux of Aginam's communitarian globalism is a proposal for collaboration between the World Bank and a variety of United Nations programs, culminating in a Global Health Fund. He takes the existing network of partnerships between the World Health Organization (WHO) and various United Nations organizations, initiatives and programs, and aims to combine their expertise in addressing global health issues with the World Bank’s financial resources, legal know-how, and enormous influence in developing countries. This joint project, the author claims, would redistribute the stakes among various private and public actors and achieve “transparency and accountability of these partnerships to the constituencies they serve” (p. 111).

Aginam’s proposal for a global health fund—a multilateral “disease non-proliferation facility”—combines realist, neo-liberal, and radical/critical perspectives on global health governance (p. 70). However, the analysis dominating the rest of the book is less well-balanced. By employing some rigid categories from the radical/critical school, the author ignores major inconsistencies in the school’s theoretical underpinnings. His approach, in turn, results in the neglect and oversimplification of problems warranting more straightforward and detailed analysis. Aginam turns a blind eye to statistical discrepancies in studies linking underdevelopment with disease,
fails to address relevant factors that do affect development, and offers no support for his proposals for alternative medicinal practices.

Aginam’s analysis of world health problems is based on the rigid separation of countries into “North” and “South.” He connects the past and present underdevelopment of the countries of the global South to their colonial past, and ties the prevalence of diseases such as HIV, tuberculosis (TB), and malaria to this underdevelopment. Unfortunately, this classification ignores significant regions of the world that do not fit into the North/South colonizer/colonized schema of disease prevalence. For example, the Russian Federation, which according to Aginam’s classification belongs to the global North based on its colonial history, is plagued by HIV and TB at rates many times higher than those of nearly all of the Eastern European and Central Asian countries it colonized. In addition, the per capita GNP of almost all of the former Russian and Soviet colonies is comparatively low, well below that of the Russian Federation. This large statistical incongruity highlights the fact that lack of development and colonial history does not necessarily correlate with disease.

At best, the colonial heritage of the global South seems to be a partial explanation for the failure of global health governance in many underdeveloped countries. Aginam should have examined other factors affecting the prevalence of HIV, TB, and other diseases. For example, Global Health Governance does not even mention other relevant aspects of failed international health initiatives such as poor management, high inflation, pervasive corruption, crumbling infrastructure, ethnic/civil conflicts, population displacement, excessive military spending, inequitable distribution of resources, and chronic youth unemployment—major problems in many underdeveloped countries. Perhaps the idea of “globalization-from-below” should also include the idea of bottom-up eradication of corruption.

Throughout Global Health Governance, Aginam claims that the integration of traditional medical and ethnopharmacological practices is a key tool in the new approach to health governance. Yet he also finds that globalization undermines this integration in underdeveloped countries. Aginam acknowledges that the operation of a new Global Health Fund should function on the principles of, inter alia, proven scientific and medical effectiveness. Yet he provides no statistical evidence of medical effectiveness of indigenous medical and ethnopharmacological practices. Instead, he recommends “scientification” of indigenous healing practices, without clarifying what such a process may entail but rejects “Western” scientific methods. Such a dichotomous stance makes the proposal for integration of local medical practices into the new global health governance difficult to evaluate.

Aginam sees international law as a means of inducing states to act both in recognition of their self-interest and for the benefit of the international community. If developed countries recognize that the global epidemics “threaten populations irrespective of national boundaries”, the argument goes, they would act to combat diseases outside of their territory, thereby alleviating the onerous disease burden on underdeveloped countries (p. 88).
Aginam fails, however, to address the most pertinent question facing his proposal: given that nation-states have been aware of the danger of global epidemics for decades (if not centuries), why would countries choose to change their behavior now? A relevant discussion in this context would be the threat of bio-terrorism and how it might affect the behavior of nation-states. Anthrax attacks in the United States have demonstrated that developed countries are not immune to health-related national security emergencies. Though the threat of bio-terrorism could arguably lead to further isolationism of nation-states, reactions to the terrorist attacks in Madrid, London, and other European cities indicate that the threat of terrorism has been generally conducive to multilateral cooperation in spheres such as intelligence-gathering and operational know-how. Perhaps under that rubric, the urgency of fighting global health problems would sound more strongly.

Obijiofor Aginam offers a timely, sensible, and attainable global health policy project in the form of a Global Health Fund. He shows a deep understanding of the actors and factors relevant to the success of such a project but stops short of exploring all aspects contributing to its dysfunction. However, his unwillingness to address difficult political questions, and his inclusion of unsubstantiated proposals for changes in global health policy distract him from real problems. If implemented, these proposals might only exacerbate those problems by diverting resources and energy. Global Health Governance is a worthwhile but flawed effort.


Paul D. Carrington offers a timely history lesson in Spreading America's Word: Stories of Its Lawyer-Missionaries. The book responds to President Bush’s 2002 National Security Strategy of the United States of America, which declared (“as if for the first time,” the author dryly remarks) that “the United States will use this moment of opportunity to extend the benefits of freedom across the globe. We will actively work to bring hope of democracy, development, free markets and free trade to every corner of the world” (p. 6). Carrington, professor and former dean at Duke University School of Law, sees this rhetoric as a case of history repeating itself. He warns that the current, largely neoconservative generation of legal evangelists should not expect much success in its endeavor, given the mixed “record of those who have tried to propagate the American ideology” throughout the nation’s history (p. 6). Carrington presents that record in an admirable attempt to identify the methods of conversion that have proven most effective. In the end, however, his enterprise meets with the same uneven results as the lawyer-missionaries he writes about. Carrington’s book suffers from an overabundance of historical accounts with varying degrees of relevance to the book’s central analogy between past and present attempts to spread American democracy. In the end, what could have been an engaging argument is lost in a thicket of extraneous material.
Carrington delivers a promising opening analysis, suggesting reasons why proselytizing on behalf of democracy is harder than it looks. First, he explains, such efforts have suffered from ambiguity stemming from two contradictory ideas enshrined in the Declaration of Independence: popular self-government and individual rights, especially property rights (p. 8). Carrington suggests that many legal missionaries either do not know which brand of American idealism they are preaching or alternatively try to export the two together, failing to resolve their inherent tension. “This tension,” Carrington observes, “is perhaps especially discomforting to evangelists seeking to impart the notion that democracy and market capitalism are merely two faces of a single truth about politics and economics” (p. 9). Carrington also criticizes lawyer-missionaries for having often failed to overcome a “chronic oversight . . . of the dependence of law on its cultural roots,” leading them to underestimate the difficulties of self-government in nations divided by class or ethnic identity (p. 10). Carrington notes that American legal missionaries frequently forget that other peoples may regard them as imperialists or braggarts rather than saviors bearing the enlightened gospel of democracy. These propositions seem reasonable enough at the outset.

When the ride through history begins, however, Carrington fails to deliver on his provocative exposition. The book moves at breakneck speed, only rarely pausing to tender token analyses of the recounted events or link them with the overall thesis of the book. In Chapters Two and Three, Carrington rushes through American reactions to the French Revolution, the War of 1812, political strife in mid-nineteenth century Europe, the Native American experience after Independence, the establishment of Liberia, slavery in America, and the Reconstruction of the South. The reader must discern what she can from the blur of history passing by, as Carrington fails to connect these episodes effectively to insights discussed at the book’s opening.

More analysis is sorely needed, as several of the historical accounts Carrington relates throughout the book bear little resemblance to the current events which he initially cites as his inspiration. One wonders why he included them at all. The title of the book indicates that it will discuss “lawyer-missionaries,” so it remains unclear why, for example, the author includes episodes in which America, in response to the French Revolution, recoiled from foreign entanglements and chose not to evangelize, or the period between the World Wars at the beginning of the twentieth century. No doubt Carrington saw lessons for today’s America in all the events he recounts, but he does not effectively share them with readers.

Carrington’s account is most convincing when he examines events that more closely mirror the Bush Administration’s attempts “to extend the benefits of freedom across the globe.” For example, past endeavors in Cuba, the Philippines, and Mexico were, like the current conflict in Iraq, official campaigns of the American government involving military operations under the banner of freedom. In Chapter Five, Carrington demonstrates how, “in the effort to govern Cuba, America modified itself,” just as it has in the struggle to democratize Iraq (p. 85). He also highlights attitudes in the first Roosevelt administration that portend those of today’s war hawks, quoting an
anonymous contemporary observer: "[The Roosevelt cabinet's] interpretation of the national honor required that they should permit no nation to prevent their doing what they wanted to do. Naturally, the corollary of militarism could not be avoided" (p. 82). Chapter Six relates the divine revelations that purportedly prompted President McKinley to intervene in the Philippines, a conflict that included torture and abuse by American soldiers that are all too familiar to the contemporary reader (pp. 92-93). Meanwhile, in Chapter Nine, Carrington reports President Wilson as exclaiming, "I am going to teach the South American republics to elect good men!" while sending Marines into Mexico (p. 148). In these passages, the reader clearly sees today's legal evangelical ventures acted out again and again, like a long-running play that only changes its actors.

Perhaps the most trenchant analysis of the book appears in Chapter Sixteen, when Carrington examines democracy-building in Japan and Germany after World War II, proposing six reasons why these projects in democratization succeeded where others fell short (p. 261). The rest of Carrington's book would have benefited from such lucid and concise commentary. One wonders if concentrating on a few choice examples from history would have enabled Carrington to provide that analysis.

Nevertheless, Carrington deserves credit for perceiving the follies of yesteryear in current American foreign policy. While the public often catches references to the past in the media, it rarely meets with the stories behind them. Spreading America's Word helps bridge the gap between modern problems and historical experience. It is a great disappointment that many of its lessons are lost in the narrative.


In Ethnic Politics in Europe, Judith Kelley addresses a crucial issue in international affairs: why, when, and how countries internalize and comply with international norms. Kelley, an assistant professor of Public Policy Studies and Political Science at Duke University, investigates this vital question by focusing on four Eastern European countries: Latvia, Estonia, Slovakia, and Romania. As representatives of the post-communist nations reintegrating into Europe, these nations negotiated for membership in three prominent multi- and transnational European institutions in the 1990s: the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe (CE), and the European Union (EU). This intriguing comparative framework is at the center of Kelly's generally successful book. Her choice of precisely these four countries as the exemplary cases, however, remains largely unexplained, as does her selection of other factors for analysis.

Kelley conducts her investigation through the prism of "ethnic politics." As she puts it, "Ethnic issues subject institutions to a stringent test, because ethnic reforms are generally more difficult for international actors to influence than technical or economic reforms" (p. 4). She posits that ethnic issues pose
unique challenges by implicating the "core identity" of these states, especially since in this period all four overthrew communist rule (p. 4). For all its problems, the ideology of socialist solidarity had mitigated or suppressed nationalist yearnings. In contrast, with few exceptions, post-communist instability made ethnic minorities natural targets of majoritarian nationalist politics of resentment across Eastern Europe.

Given this sensitive ethnic situation, the history Kelley ably recounts is remarkably positive. In all four countries, despite domestic pressures, the engagement of the European institutions Kelley examines contributed to the deflation of ethnic strife and liberalization of the political culture. In Chapters One and Two, she argues that when these institutions used normative pressure alone, governments rarely acted to ameliorate the conditions of minorities in the face of domestic opposition to liberal ethnic policies. Only by adding membership conditionality to normative pressure did the institutions convince the countries in question to legislate, and to a lesser extent, implement policies that at least constituted compromises between the aggressive nationalistic drift of the domestic scene and the ideals of full minority rights. It is noteworthy that the benefits of conditionality became apparent and norms were internalized over time even when there were strong signs at first that domestic politicians did not agree with the proposals of their international interlocutors. The success of conditionality, then, rests on a "rationalist set of assumptions that defines actors as cost-benefit-calculating, utility-maximizing creatures" (p. 8).

In Kelley's framework, it comes as no surprise that the EU, with its concrete and certain benefits of membership, has been the most effective institution in influencing these countries. By moving the candidacy of a country along step-by-conditional-step, the EU helped shape domestic policies and even provided cover for domestic political actors as they implemented relatively liberal policies. What is surprising is that the deeper involvement of institutions either lacking or foregoing conditionality measures has also resulted in progress, albeit uneven, in different countries and with regard to different issues within the same country. Both the OSCE and the CE accepted these countries as members relatively quickly (the CE admitted Estonia, Romania and Slovakia in 1993, a mere four years after the fall of the Berlin Wall, followed by Latvia in 1995) and only then attempted to influence domestic policies. However, as Kelley is quick to acknowledge, these models of engagement have been mutually reinforcing. For example, Max van der Stoel, the OSCE High Commissioner on National Minorities, functioned as the de facto EU expert on minority rights. Notwithstanding the Commissioner's skill and energy in engaging with these countries, the EU's support lent his negotiations the power of an implicit conditionality.

To investigate this complex process, Kelley constructs an impressive empirical model. She bases her conclusions on data from sixty-four distinct cases from these four countries, all related to issues that together comprise "ethnic politics." These include citizenship criteria, language requirements (including use of minority-language names), and education and voting rights. In every case study, Kelley attempts a "thick" synchronic and diachronic
depiction by considering the level and form of international engagement, as well as domestic factors such as the strength of opposition to minority rights, the involvement of minority parties in governing coalitions, and the influence of leadership figures. Then, in a series of regression analyses, she tests her premise of the significance of conditionality. This theoretical and empirical framework is clearly the most impressive part of this work and sets a high standard for delineating the elements and influence of international engagement. By emphasizing the complexity and dynamism of politics, Kelley succeeds in going well beyond the typical reductive monochromatic studies that focus on the interaction of a single institution with a single country around a single issue.

With the theoretical framework in place, Kelley explores each state's approach to ethnic problems. The two Baltic states, for example, faced nearly identical challenges posed by the presence of a large Russian minority. In Latvia, while international pressure and norm internalization worked well generally, an unanticipated consequence was that nationalists put up a strong fight for language laws that discriminated against Russian-speakers in order to salvage a victory of some kind after concessions in other areas. Similarly, greater confidence about eventual EU membership left Estonia less concerned about criticism of its language policies. Diminished expectations also influenced the process. The ambivalence of the Meciar regime in Slovakia about integration into Europe and Romania's pessimism about eventual EU membership rendered both countries less responsive to institutional pressure, even when conditionality should have clarified the benefits of harmonization. These cases exemplify the complexities and wealth of detail in Kelley's account.

However, Kelley's success in simultaneously considering a multitude of factors also amounts to a weakness: the more Kelley delves into the nuances of her narrative, the clearer it becomes that even more factors could have been included. Many other institutions could figure in this study, particularly the North Atlantic Treaty Organization. Similarly, the more Kelley delves into the details of domestic politics, the harder it becomes to systematize the findings: with so many contingent factors and actors, it is difficult to be confident about any lessons drawn here beyond the unsurprising conclusion that conditionality has more impact than normative pressures alone. Kelley's final chapter is an indirect and incomplete acknowledgement of this difficulty as she evaluates alternative factors and explanations for the outcomes mapped out in her work such as the significance of nearby "motherlands" for the various minority populations. The book suffers from these weaknesses despite its wealth of data and admirable attempt at a nuanced model of international engagement. Despite at times losing sight of the forest for the trees, Kelley provides a rich panorama of European integration that should serve students and scholars in political science well, and point the way, especially in its quantitative sophistication, for other studies that will fill in the gaps.

Dangerous Sanctuaries presents a cogent and well-supported challenge to the prevailing wisdom about refugees and the spread of violence. Tackling the important task of explaining the factors that determine whether the movement of refugees will cause violence to occur, Sarah Kenyon Lischer debunks what she terms “socioeconomic” explanations, prevalent among aid workers, for the spread of refugee-related violence. The socioeconomic explanations predict that four factors will cause bloodshed to accompany refugee movement: location of refugee camps near the border of the refugees’ home state, large refugee camps, the presence of a high percentage of young men in the refugee population, and poor living conditions. However, through well-chosen case studies of Afghan, Rwandan, and Bosnian Muslim refugees, Lischer demonstrates that the socioeconomic explanations, singly or in combination, do not accurately predict when violence will spread.

Instead, the author argues that “political context” is the determining factor, within which she identifies three relevant components. First, she discusses “the origin of the refugee crisis” (p. 10). Lischer argues that refugee groups that are fleeing general chaos and destruction are the least prone to violence, while those escaping from group-based persecution are more prone to violence. Groups fleeing defeat in civil war and aiming to establish a state in exile, such as the Rwandan Hutu refugees in the Congo, have an extreme proclivity for violence. Second, Lischer argues that “the policy of the receiving state” determines whether violence will spread because, if the receiving state is able and willing to demilitarize refugees, secure its borders, and maintain the civilian nature of refugee camps, then refugees will be unable to spread violence (p. 10). Lischer offers contrasting examples in the Afghan case. She argues that violence occurred among refugees in Pakistan due to Pakistani sympathy with the refugee cause, but violence did not spread in Iran, because the refugees there were strictly controlled by state authorities, who were generally unsympathetic to their desire to attack the reigning Afghan government. A similar situation resulted with Rwandan refugees. Violence spread among refugees in the Congo due to the Congolese government’s unwillingness and inability to stop militarization and cross-border flows, but did not conflagrate among Rwandan refugees in Zaire because that state’s government made a concerted effort to demilitarize arriving refugees and police the refugee camps.

Dangerous Sanctuaries’s most controversial argument is Lischer’s third political context factor: “the influence of external state and non-state actors” (p. 10). She argues that international aid, despite good intentions, can facilitate the spread of violence by feeding militants, supporting their dependents, and legitimizing the status of militant groups as refugees. The author’s policy prescriptions primarily call on the international community to take better account of the political context and become cognizant of which refugee
groups are more likely to become violent. However, she also suggests that international organizations should be aware of the implications of their "humanitarian" actions and work harder to differentiate between militants and civilians, while also reserving the option of withdrawing all humanitarian aid if the human costs of doing so would be less than the costs caused by maintaining aid in a situation where aid facilitates greater violence (p. 143).

Dangerous Sanctuaries convincingly debunks the socioeconomic explanations that have been the prevailing wisdom. Yet while the political context explanation that the author suggests clarifies the problem, it is not a solution. For example, in the name of "reducing the spread of civil war" (p. 151), Lischer suggests that humanitarian organizations should partner with entities, such as the police or army of the receiving state or United Nations or regional peacekeeping forces, which can demilitarize refugees. While such humanitarian coordination with security entities would be useful, the greater difficulty is not the lack of cooperation but rather the absence of security forces or their unwillingness to disarm the refugees as they arrive. Lischer also suggests that humanitarian organizations should support non-militant refugee leaders. Alternatives to militant leaders are objectively beneficial in reducing the likelihood of violence, but there may be a fine line for humanitarian organizations between supporting existing non-militant leaders and trying to create alternatives to the militant leaders, which would be a direct intervention into the political affairs of the refugees. In either case, the humanitarian organizations would risk endangering the non-militant leaders and their followers if the militant leaders felt threatened and took action against their non-militant challengers. These political interventions by humanitarian organizations have significant costs.

Lischer's study of refugees is lacking in one salient respect—namely, her failure to produce or include evidence from refugees themselves about their perception of the conflicts in which they are involved. In addition to academic sources, the author relies primarily on interviews with officials of the U.N. High Commissioner for Refugees. Ironically, it is these very officials that the author argues misunderstand the causes of refugee-related violence. Some of the interviews with U.N. officials were conducted in areas the author profiled, including Tanzania and Croatia, but Dangerous Sanctuaries presents no evidence that the author interviewed refugees in these areas during her visits. The book's argument would have been strengthened if the author could have included the voices of refugees, whether concurring in the author's conclusions or at least rejecting the socioeconomic explanations, such as poor living conditions in the refugee camps. Refugee interviews would also humanize the book and temper its academic tone. An additional complication with the author's explanation for refugee-related violence is that in rejecting the socioeconomic explanations in favor of political context explanations, she moves from easily quantifiable factors, such as percentage of young men in refugee camps, to more nebulous factors, such as the origin of the refugee crisis. Her political context explanations, though theoretically persuasive, are more difficult to prove convincingly than the socioeconomic explanations are to refute.
Dangerous Sanctuaries also fails to offer a full treatment of the Palestinian refugee predicament. Though the author refers to the Palestinian refugee issue as "[o]ne of the most enduring and violent situations," she mentions it only in passing (p. 3). The Palestinian situation does not fit neatly into the author's model because it has endured for so many decades. In general, the case studies in Dangerous Sanctuaries focus on fairly short-term refugee crises lasting only a few years or on short-term acute crises within long-term refugee experiences. For example, in the Afghan case study, the author focuses on refugees during the Soviet occupation and largely ignores the continuance of the refugee population throughout the 1990s after the Taliban came to power. Analysis of the Palestinian refugee experience, though extremely complicated, would have provided Lischer an opportunity to apply her explanations to a longer-term refugee problem.

Dangerous Sanctuaries is an important contribution to the literature on refugees, and its arguments should be heeded especially by humanitarian organizations and the United Nations in their preparations for future refugee crises. Though Lischer does not—and no one could—solve the problem of refugees and the spread of violence, she successfully debunks contemporary wisdom and offers an alternative explanation that may be useful in avoiding the spread of violence in the future.


What does the dark side of globalization look like? In Illicit: How Smugglers, Traffickers, and Copycats Are Hijacking the Global Economy, Moisés Naim argues that the rise of transnational illicit trafficking networks is not only a detrimental off-shoot of globalization, but an increasingly potent threat to international security. While Naim's account of illicit networks provides an excellent overview of the problems they pose, and is an interesting departure from the typical analysis of globalization's benefits, the book ultimately disappoints because of its failure to provide actionable recommendations for combating the traffickers.

Naim, the editor of Foreign Policy magazine, proffers a conceptual framework for understanding how the same phenomena that gave us globalization also spawned the growth of illicit trafficking networks in the 1990s. Indeed, the operations of today's illicit networks have come to resemble those of legitimate multinational enterprises. The root causes that Naim cites to explain the rise of illicit networks—the fall of the Berlin Wall, the economic liberalization of the 1990s, the growth in global trade, and new technologies that lowered the cost of international capital market transactions and communications—are well-documented in other scholarship on globalization. Naim also concedes that smuggling is not new to the global economy, but is a perennial feature of trade among nations. He insists, however, that contemporary illicit traffickers are more potent and threatening
than their forbears; today’s smugglers have been pumped up by the steroids of globalization.

In an attempt to operationalize his conceptual framework, Naim explains how illicit “entrepreneurs” have leveraged positive aspects of globalization—lower barriers to trade, privatization and business deregulation, lower communication costs, new technologies, and the opening of new markets and trade routes—as well as a more worrisome development—the proliferation of failed states—to create more dynamic trafficking networks that thrive in an increasingly interconnected world. Illicit traffickers no longer operate in the shadows or in a vacuum; rather, they form symbiotic relationships with legitimate traders in states in which they operate or with whom they conduct business. As illicit traffickers amass wealth through smuggling in a variety of commodities, they entrench their networks in local power structures by purchasing political influence from corrupt government officials and law enforcement officers. This infiltration of politics further shields traffickers from any potential response by governments, who already find themselves at a structural disadvantage relative to the networks they are trying to bring down. Naim posits that international terrorism is just one of the most glaring effects of the empowerment of illicit networks. Other pressing global economic and security problems—including the spread of weapons of mass destruction, the persistence of rogue regimes, the rise of regional wars and ethnic violence, the stability of the international financial system, and environmental degradation—have their outlet, manifestation, and often their sustenance in illicit trade as well.

Naim proceeds to overlay his broad conceptual framework onto several “markets” in an attempt to distill the common characteristics of all transnational illicit networks. Naim’s discussions of the illegal trafficking of small arms, drugs, human beings, counterfeit goods, money laundering, and other more exotic goods (like human organs and toxic waste) rely primarily on anecdotal and other evidence that he has compiled from newspaper articles, magazines, and personal interviews with law enforcement and other government officials. Accordingly, while Naim compiles fascinating (and often frightening) statistics about global illicit trade in these areas, most of his stories have been reported elsewhere. Furthermore, the many chapters that Naim devotes to analyzing these markets are more expository than explanatory. Nevertheless, Naim capably extracts several themes that are relevant to understanding illicit networks: illicit networks are economic enterprises motivated by the search for profits, which are driven in large part by demand; illicit enterprises closely interact with legitimate business concerns, which helps maintain anonymity and makes illicit operations more difficult to detect; illicit networks are often shielded, if not supported, by corrupt state actors; traffickers have traded product expertise for functional specialty; and illicit networks have been “flattened,” thereby increasing their robustness, agility, and ability to exploit the benefits of globalization.

Having distilled these common elements of illicit networks, Naim turns his attention to arguing why the rise of illicit networks threatens international security and how governments are failing to address the threat effectively. In
Naim's opinion, illicit trade not only occupies an increasing share of global economic output, thereby undercutting legitimate trade, but it underpins what Naim views as today's greatest threats to international security. Naim argues that governments are currently failing, and will continue to fail, in their pursuit of illicit networks primarily because of a structural defect—that the law enforcement agencies charged with combating illicit networks are disparate, insulated, hierarchical bureaucracies that have failed to adapt to the nimble networks of global traffickers. This is essentially the same critique that other observers, like Richard Clarke and the 9/11 Commission, have provided to explain the failure of the United States to anticipate the attacks of September 11 or respond effectively thereto. Naim also neglects to look beyond the U.S. government's efforts to combat illicit networks, assuming that the U.S. experience can be extrapolated to foreign governments. This simplifying assumption, however, may neglect important nuances in foreign governments' capabilities and strategies for combating illicit networks, from which lessons could be learned to improve the U.S. response.

An additional handicap that governments must confront is their desire to maintain sovereignty, which hinders effective international cooperation and renders national borders a strategic advantage for global traffickers. Naim claims that national frontiers pose "asymmetric" challenges because traffickers factor in the cost and risk of piercing a country's borders, thereby increasing their profits, while governments' pursuit of traffickers becomes exponentially more difficult outside their jurisdictions. Regrettably, however, Naim does not provide evidence of how traffickers "cost out" their operations, nor does he provide specific recommendations for how the international legal framework could be modified to facilitate international cooperation and extraterritorial operations against illicit networks. Further, Naim's cursory overview of the Bush administration's policy responses to illicit networks since September 11 is limited to a critique of what he views as the administration's general neglect of non-state-based threats.

Although Naim's explanation of the complex dynamics of the relationship between illicit networks and governments seems facially plausible, his failure to support his argument with little more than general assertions leaves the reader without an in-depth understanding of how illicit networks actually operate. While Naim stresses throughout the book that profits are the ultimate motivating impulse of traffickers, he does not actually provide an empirical analysis of the economics underlying illicit trafficking. Indeed, his economic analysis amounts to little more than an assertion that as long as global demand for illicit commodities continues to grow, illicit traffickers will continue to find ways to meet it. Nor does Naim provide an explanatory model for how illicit networks develop counter-strategies to address government efforts to combat trafficking. Such analyses of the dynamics of network interactions exist in scholarship on international terrorism, and Illicit would have benefited from a discussion of how these models might apply to illicit trafficking.

Given the stylized nature of Naim's discussion of the interaction between governments and illicit networks and his reliance on "common sense
and daily observation” for evidence, it is not surprising that the policy recommendations in Illicit are neither novel nor imminently actionable (p. 222). Naim argues that the burden of dismantling illicit networks must ultimately fall on governments, not private actors or non-governmental organizations that possess a moral interest in stopping trafficking. Naim boils down his recommendations for improving the response capabilities of governments to a six-step process: deploy new technologies for authenticating and tracking commodities; bring government agencies together to produce better-coordinated efforts; implement demand-side policies to reduce the value of and harm caused by illicit trafficking; improve international cooperation; stop thinking about illicit trafficking in moral terms; and empower civil society to fight illicit networks alongside government. While most of these recommendations seem obvious, Naim’s call for a departure from the “source-based” strategies that the U.S. government has traditionally pursued in combating illicit networks—particularly in the war on drugs—is controversial, yet worthy of a more in-depth examination.

Ultimately, Naim’s broad generalizations about the nature of illicit networks and his failure to provide an exacting analysis of the real “state of play,” leave the reader without a deep understanding of the threat posed by illicit networks or what concrete steps should be taken to combat them. Thus, it is not surprising when, near the end of the book, Naim admits: “We need more clarity about who the main players are, what drives them, the political and social consequences, and what it means that governments have failed to contain them despite all their massive efforts and expense in doing so” (p. 266). Despite its shortcomings, Illicit serves as an important reminder that the forces behind globalization create not only opportunities for global development and prosperity, but also foster an environment in which transnational illicit trade can thrive. Illicit accomplishes its limited goal of demonstrating that the consequences of the rise of illicit networks are not fully understood and that governments must adapt if they are to confront this threat to international security effectively. After reading Illicit, it is clear that our understanding of illicit networks would benefit from additional theoretical and empirical work in this area.


In his new book, Law Without Nations?: Why Constitutional Government Requires Sovereign States, Professor Jeremy Rabkin offers a pointed analysis of the reasons why the United States is often reluctant to comply with international law and organizations as compared to many states in Europe. Rabkin first critiques international law and the organizations arising from it as being fundamentally flawed. Rabkin then argues that the United States’s unwillingness to embrace fully international law and all of its trappings is not only understandable but also justified. International law, in his view, is becoming increasingly detached from reality and unable to form the
basis of an enforceable legal system (p. 246). While Rabkin’s argument is both original and intriguing, the book suffers from a number of flaws. Most notably, the work fails to address fully why the United States has a difficult time embracing “schemes of global governance” (p. 16). Instead, the author reverts to trite anecdotes to explain significant intellectual divides between the United States and much of Europe. Further, the intentionally narrow tailoring of the book’s subject matter and its polemic tone diminish the overall strength of the book, leaving the reader feeling well-exposed to the opinions on one side of a very contentious debate, yet less enlightened about international law more generally.

If nothing else, Rabkin deserves credit for authoring a study on international relations that is “not a study on international relations” (p. 16). As the author himself states, Law Without Nations “is primarily about American ideas of constitutional governance” and is an attempt to explain why the history and legal traditions of the United States make it difficult for this country to adopt theories of “global governance”—i.e., world government—that are in vogue in much of western Europe (p. 16). While the United States is receptive to some developments of international law (e.g. the World Trade Organization), the United States and Europe do have drastically different viewpoints towards key parts of international law. This includes questions over what powers international organizations have over member states and “[h]ow much independence a nation can reasonably be expected to sacrifice” (p. 21).

To explain the roots of the divergence between the United States and Europe, Rabkin claims that the United States has a unique view of sovereignty. Since the creation of the European Coal and Steel Community, which eventually evolved into the European Union (EU), European states have accepted a kind of dual sovereignty, where both the state’s own laws and the regulations of the EU must be faithfully followed. For Americans, “the Constitution in itself is the sovereign authority” whose laws are supreme and exceptional (p. 67). But international law requires that extra-constitutional delegations and statutes, with no boundaries on their authority, must also be obeyed. As a result, Rabkin claims the United States is unwilling to throw itself headfirst into international law and its corollary organizations (pp. 67-70). While European states now accept a governance system where their own laws and constitutions are no longer paramount, the United States continues to assert that its Constitution and laws are the final arbiter of governance. Echoing the work of other scholars, Rabkin also suggests that this concern for maintaining full sovereignty naturally bred American isolationism, a sentiment first expressed in George Washington’s Farewell Address’s warning of “passionate attachment” to certain foreign countries (p. 103). Furthermore, the sheer age of the U.S. Constitution and the emphasis placed on originalist viewpoints within the American legal system are unique compared to the rest of the world, resulting in greater concern about damaging the Constitution through adherence to foreign authorities.

Considering that the United States has, despite these reservations, joined several international organizations and thus accepted a degree of dual
sovereignty, the story is much more complex. According to Rabkin, the times where the United States has deigned to embrace international law are not only few and far between, but have always been a brief deviation, were supported only by a portion of the government, and/or were done with the expectation that the United States would have substantial control over the organization. In the case of the United Nations, for example, while the U.N. Charter initially passed with little debate, the Senate effectively gutted the International Court of Justice that had been crafted by the State Department, stating that the United States “would always have the last word on the Court’s jurisdiction” (p. 123).

Of course, in Rabkin’s opinion, American aversion to international law is entirely beneficial, as much of international law does not appear to be effective. Rabkin finds fault with nearly every major innovation and action related to international law over the last two hundred years. For example, attempts to protect and improve the environment through the Kyoto Protocol proved ineffective (p. 147). Also, the EU played a destabilizing role during the last decade in the Middle East both by endorsing “the Palestinian struggle ‘by all means of armed struggle’” and by refusing to support fully the Anglo-American invasion of Iraq (pp. 155-56). Finally, the creation of human rights law, which “is not ‘real law,’” has had dangerous effects around the world, “igniting or exacerbating very serious conflicts” by making people believe consensus exists where it in fact does not (p. 164). For Rabkin, international law holds no benefits and only makes the world less safe. It requires, at heart, a belief in the impossible and in magic (p. 237).

Despite the breadth of Rabkin’s discussion, however, his book never truly addresses the roots of the United States’s distaste for international law. Rabkin simply creates a new question: why is the United States so much more concerned about giving up sovereignty? Rabkin even takes time specifically to point out other differences between the United States and Europe, such as the prevalence of guns in American households, our higher level of religiosity, our lack of a socialist party, and the American polity’s support for the “old-fashioned belief that the most terrible crimes require the sternest punishment” (pp. 248-49). By the end of the book, it seems that the United States embraces sovereignty just because the United States is inherently different from Europe, leaving the reader feeling that Rabkin has failed even to scratch the surface of the true question.

Yet, the book also has a more insidious answer. Hidden within the book’s passages are also suggestions that the differences derive from inherent U.S. superiority. Rabkin claims that the United States’ ability to maintain a constitution for over two hundred years means “Americans are likely to prove less malleable than the docile peoples of Europe” towards replacing the Constitution with global governance (p. 249). “What preserves the Constitution is American independence. They cannot be reconciled with boundless schemes of global governance” (p. 270). And while the author portrays U.S. citizens as rugged individualists who believe in personal accountability, he claims that the European followers of international law are effete and hypocritical. Rabkin criticizes Europeans for not being bold enough
to intervene against Saddam Hussein's Iraq and for "agree[ing] that terror attacks on Israeli cities should be lauded, for example, while also agreeing that the actual condition of human rights in China should not even be studied by the Commission" (p. 34). Such words, along with throwaway lines such as "[t]he United States and Britain certainly overthrew a murderous tyranny in their war against Saddam Hussein in 2003" and "[t]he United States implemented relatively mild detentions in the wake of the September 11 attack," the vast majority of which are not borne out by the author's citations, suggest that the author is approaching this topic from a highly partisan point of view, giving the work the flavor of a screed rather than a scholarly work (pp. 33-34). Altogether, the author's strident tone makes it difficult to take much of his analysis at face value, especially when it reverts to old chestnuts like the notion that the United States is simply more rugged than Western Europe.

The greatest problem with Rabkin's work is one that exists by design. Rabkin admits that "the book offers no advice about how to make peace or how to deal with other global challenges" (p. 16). If international law is a failure like Rabkin suggests, and he claims that there are only a handful of benefits to global governance, then it is essential that an alternative be found. Rabkin, however, refuses to offer even a hint of a viable alternative. Having thoroughly discredited a world organized around international organizations, Rabkin has also implicitly undermined a world where state sovereignty is supreme through his approval of proxy wars during the Cold War and the Iraq War as attempts to ensure American supremacy. In the end, international law may require optimistic beliefs about the ability of humans to coexist and treat each other kindly and could require a revision of views towards national sovereignty. However, international law still offers the possibility of peace. Rabkin, however, gives no solution to the problems of international relations at all, rendering his work little more than a collection of anecdotes, attacks, and talking points.


More than a decade after its adoption, the North American Free Trade Agreement (NAFTA) remains as controversial as ever in the United States. At least until the specter of Indo-Chinese outsourcing was raised during the 2004 presidential campaign, NAFTA was the scapegoat of choice across the political spectrum for everything that ailed the U.S. economy. Car factories leaving Michigan for Michoacan? Blame NAFTA. Illegal immigrants risking life and limb to cross the Rio Grande? Blame NAFTA. Falling wages for low-skilled workers? Surely competition from Mexico under NAFTA must have something to do with it.

Given the impoverished state of the American debate on international trade—long dominated by hysterical figures pontificating without the benefit
Recent Publications

of either facts or figures—NAFTA Revisited: Achievements and Challenges is a timely and useful corrective. It sets the record straight on the first decade of the trade agreement that almost everyone loves to hate. The latest in a series of monographs co-authored by trade experts Gary Hufbauer and Jeffrey Schott of the Institute for International Economics, a Washington, D.C. think tank, NAFTA Revisited's carefully researched and heavily footnoted pages are destined to become a standard reference for anyone with a serious interest in understanding NAFTA rather than fearing it.

Other than its first and last chapters—which present a broad overview of NAFTA's history and general recommendations for its improvement, respectively—each of NAFTA Revisited's chapters examines the agreement's record of achievement, or lack thereof, and corrects one or two widely held misapprehensions about NAFTA. In these chapters seven major and often controversial issue-areas are addressed: labor, environment, dispute settlement, agriculture, energy, automobiles, and Mexico-U.S. migration. In turn, each chapter reinforces the book's general theme: NAFTA has been a modest success when judged against its own goals of increasing trade, employment, and investment in North America, though with the qualifier that changes are needed for NAFTA to fulfill its promise.

Hufbauer and Schott do a particularly good job of dispelling the falsehood that free trade in general, and NAFTA in particular, is to blame for U.S. job losses in manufacturing due to firms fleeing to the low-wage, low-regulation corporate paradise of Mexico. This fear of a "giant sucking sound" turned NAFTA into a major issue in the 1992 presidential election, with the plucky Texas billionaire Ross Perot capitalizing on the worst fears of the Pat Buchanan Right and the Ralph Nader Left to win 19 percent of the popular vote. Hufbauer and Schott's conclusion that NAFTA's impacts on U.S. employment (both positive and negative) are insignificant compared to the enormity of the American economy, and the regular "churning" that characterizes the highly flexible U.S. labor market, is reached only after a careful trawl through reams of labor and trade statistics that unmasks the various errors in past studies that have pinned job losses (but never job gains) on NAFTA. Their careful analysis deserves to be the final word on this tired, old issue, though it is unlikely, given that Hufbauer and Schott's scholarly tome probably will not be read by the protagonists in the false debate pitting jobs against trade.

Another common misconception that Hufbauer and Schott challenge is the notion that NAFTA is somehow responsible for Mexico's lackluster economic performance since 1994, even when compared to its two northern NAFTA amigos. The economic orthodoxy that free trade allows developing countries to grow more quickly and converge on the income levels enjoyed in the developed world was an important rationale for making NAFTA the first-ever regional free trade agreement to straddle the North-South divide, and, indeed, it is the driving force behind the push for liberalization in the current Doha "Development" Round of World Trade Organization (WTO) negotiations.
In the decade since Mexico joined NAFTA, this orthodoxy has come under challenge. NAFTA was blamed for triggering the peso crisis of 1994-1995 that slashed Mexican income levels by 7 percent and for precipitating a crisis in the Mexican countryside as competition from cheap U.S. foodstuffs drove the rural poor off the land and into urban poverty. With volumes of economic evidence backing them, Hufbauer and Schott convincingly show that the peso crisis was really a product of the Mexican government's risky borrowing policies and that Mexico's NAFTA membership allowed it to recover much more quickly from the peso crisis than from similar debt crises during the 1980s.

As for the plight of Mexican agriculturalists, Hufbauer and Schott argue that this is as much a story of low agricultural productivity and rising demand for foodstuffs in Mexico as of subsidized, mechanized U.S. agriculture driving its competition in the developing world out of business. Although painful, a decline in the economic importance of agricultural and farm employment is consistent with industrialization in nearly every other country, but as with the peso crisis, NAFTA has also allowed Mexico to develop an internationally competitive agricultural sector that exports products duty-free to the United States and Canada.

"Import Mexican tomatoes, or import Mexican tomato pickers," former Mexican President Carlos Salinas de Gortari is reputed to have told the first President Bush at the summit where the decision to negotiate NAFTA was made. A decade on, the United States has ended up importing plenty of both, as Mexican goods and citizens surge across the border in record volumes. The political sensitivities over Mexican migration into the United States and the general anxiety in this country over border security and national defense in the post 9/11 era are seen by Hufbauer and Schott as the main impediments to NAFTA fulfilling its promise of dismantling barriers to trade and investment in North America. Already, delays at border crossings are posing challenges for highly integrated sectors requiring just-in-time component delivery and are retarding the development of production chains that span the breadth of the continent.

Given that all three NAFTA amigos are fiercely resistant to devolving their sovereignty to continental governance institutions, Hufbauer and Schott propose a very modest reform agenda. Their goal is to make NAFTA operate more efficiently, not to have it serve as the first step towards deeper North American integration. In other words, they do not see NAFTA as a North American analogue to the former European Coal and Steel Community. Their reform agenda consists of two priorities: (1) rationalizing border security and (2) moving gradually towards a common external tariff for North America. The second proposal is to get around NAFTA's cumbersome rules of origin, which make it difficult to trade products assembled from third-country components within the continent. Other than for some procedural changes, Hufbauer and Schott do not believe there is much of an appetite for modifying or strengthening the weak institutions NAFTA created to monitor the labor and environmental practices of its three members and to settle their disputes, for the political will is simply not there.
The major question left unresolved by the book is precisely what will grab the attention of governments in all three NAFTA countries to make them pay attention to overhauling NAFTA. The challenge is most difficult in the United States, where international economic policy is dominated by the prospect of signing a new Central American Free Trade Agreement and negotiating a new Free Trade Area of the Americas, rather than in tinkering with the edges of NAFTA. In the meantime, those interested in duplicating the successes and avoiding the pathologies of NAFTA's first decade would do well to consult the most authoritative work on the subject to date.


John Yoo is the kind of lawyer we are supposed to hate. It was Yoo, after all, who as a Justice Department attorney co-authored the infamous Bybee Memo that offered legal justifications for torture. One might expect his first foray into popular writing to offer some specific defense of his policy recommendations. Instead, *The Powers of War and Peace* leaves personal travails aside and dispassionately makes the case for re-evaluating how we must think about presidential power in foreign affairs.

As an interpreter of the Constitution, Yoo is an originalist—but only to a degree. He departs sharply from his cohorts in emphasizing understanding over intent. “It is the original understanding of the document held by its ratifiers that matters, not the original intentions of its drafters” (p. 28). As radical as this idea may seem, its philosophical justifications are compelling. For the nascent Constitution to attain popular legitimacy, it needed something greater than the Framers’ moral authority. The only process capable of elevating parchment and ink to supreme law of the land was popular ratification. “Because the approval of the state ratifying conventions gave the Constitution its life, the understanding of those who participated in the ratification should guide our interpretation of the text” *Id.*

Yoo makes the job of the constitutional scholar infinitely more complicated by expanding the range of source material necessary to illuminate societal understanding in 1789. He delves deep into state ratifying conventions, British constitutional theory, and other foundational texts to reveal “important and long-overlooked insights” (p. 144). His research is so voluminous that most readers will have to take him at his word. While the difference between original intent and original understanding may seem trivial, in that gap Yoo finds justification for almost plenary executive power over foreign affairs. The president, Yoo argues, has constitutional authority to wage war and to negotiate, interpret, and end treaties. The only checks are Congress’s control over the public fisc, its ability to enact domestic legislation, and the ultimate power of impeachment.

Unlike most legal academics, Yoo makes an honest attempt to appreciate the exigencies of wartime decision-making. By granting the commander-in-chief sole authority to initiate hostilities abroad, Yoo asserts, the Constitution
provides for the kind of “swift and decisive presidential action” necessary to wage and win war (p. 160). Much of Yoo’s case depends on deconstructing the Declare War Clause in Article I. In the late eighteenth century, a declaration of war served to formalize hostilities, not initiate them. Our own Declaration of Independence helps make the point. “The Declaration’s importance was not in authorizing combat, but in transforming the legal status of the [already existing] hostilities between Great Britain and her colonies . . . .” (p. 150). Yoo further observes that only five formal war declarations have been issued, even though American forces have engaged in hostilities abroad “at least 125 times” (p. 12).

Even more compelling than Yoo’s historical arguments for preserving executive flexibility are his utilitarian ones. To defend the nation, a president must be allowed to respond to attacks without awaiting congressional approval. Even Yoo’s harshest critics rarely dispute this premise. Yet Yoo points out that “the Constitution itself nowhere describes such a process [for responding to attacks], nor does it explain how the Declare War Clause and the commander-in-chief must interact” (p. 152). Unless we are to accuse the Framers and ratifiers of the grossest oversight, we must assume that such broad war powers were intended and understood to reside with the executive. In practice, this is how the Constitution operates.

Contrary to his popular reputation, Yoo does not advocate an all-powerful executive, even during wartime. He pays great heed to Congress’s unambiguous authority to deny funding for military operations and its ultimate power to impeach the Commander in Chief. Some legal scholars argue that fiduciary control cannot function as a meaningful check against presidential warmaking, because the political cost of withholding war funding is prohibitively high. Yet Yoo makes clear that we must not confuse “a failure of political will” with a failure of the Constitution (p. 159). The same lesson can be applied to the impeachment power. If Congress can muster the will, it can remove even a wartime Commander in Chief.

While Yoo’s analysis of warmaking powers involves novel applications of his originalist arguments, his discussion of executive power vis-à-vis treaties is disappointingly mundane. He invokes original understanding sparingly, then relies almost entirely on textual and structural analyses of the Constitution, peppered with supportive quotes from the Framers. In arguing for presidential authority to abrogate treaties, Yoo points to parallels between the Treaty Clause and the Appointments Clause in Article II, Section 2. With a brief historical exposition, and some help from James Madison, Yoo argues that because presidents have authority to remove “Ambassadors” and “Public Ministers”, they must also have authority to terminate treaties (p. 185). But if parallel textual structure is dispositive, it would also support presidential authority to remove “Judges of the Supreme Court,” who appear in the same paragraph immediately after Ambassadors and Ministers. Clearly, this interpretation needs more work.

Throughout Yoo’s defense of a dominant executive role in treaty-making, he professes a deep respect for separation of powers. This holds true even when it might lead to a diminution of presidential authority. Treaties
cannot be self-executing, Yoo argues, because the negotiating and ratifying process is not sufficiently democratic. While this idea may seem at odds with the Supremacy Clause of Article VI (describing treaties as "supreme Law of the Land"), Yoo resolves the apparent conflict by returning, albeit briefly, to original understanding. The Framers and ratifiers understood Article I to vest sole authority for making domestic law with the legislature. Only explicit legislation passed by both houses can turn treaties into statutes.

It should come as no surprise that Yoo's analysis of presidential treaty power is influenced by a strong utilitarian streak, or what he refers to as "The Lessons of Practice" (p. 11). The U.N. Charter, which the United States ratified as a treaty, serves as a case in point. According to the Charter, military force can only be employed in self-defense or with Security Council authorization. Yet Yoo staunchly defends the use of military force to stop ethnic cleansing in Kosovo, even though the United States was not threatened and there was no Security Council resolution (p. 165). President Clinton's decision to intervene did not violate the Constitution, because absent explicit enacting legislation, international treaties do not bind a president in the same way as domestic law. Any other reading would limit executive authority to an unacceptable degree.

Yoo remains unapologetic in his criticism of one set of treaties in particular—the Geneva Conventions. Given his storied tenure as a government official, it would be reasonable to expect at least some zeal when he addresses the Conventions in his book. But he explains rather too calmly the rationale for not extending certain protections to individuals captured in the War on Terror. In doing so, he misses an important opportunity to ask the larger question: Are the Geneva Conventions relevant at all? In an age of perpetual conflict, in which American forces face enemies with little respect for international legal norms, are the Geneva Conventions mere artifacts of an earlier and more "civilized" form of warfare? Yoo, in failing to tackle this difficult but fundamental question, does not live up to his reputation for controversy.

While *The Powers of War and Peace* is not always an enjoyable read, it is worthwhile. Yoo's emphasis on original understanding will hopefully initiate the kind of debate that advances constitutional scholarship. Unfortunately, his dispassionate treatment of executive power is not likely to be respected by his more emotional colleagues. Professor Jeremy Waldron in the *Columbia Law Review* recently described Yoo's ideas as "a matter of dishonor for our profession." Yoo is famous for his views on torture, but it is entirely conceivable that his influence will extend well beyond the arena of presidential powers. His assertion that constitutional legitimacy derives ultimately from popular understanding, and not from the Framers' moral authority or the wisdom of judges, is a potential bombshell. Yoo stops short of arguing that *present* understanding might infer new constitutional meanings, and he does criticize scholars who suggest that real constitutional change can occur without Article V amendments (pp. 260-62). But if Yoo is correct that *understanding* matters more than *intent*, then why stop the clock in 1789? If enough Americans can be convinced that the Constitution allows torture, do
the opinions of judges and law professors still matter? Perhaps this question, more than anything else, is why so many legal academics hate John Yoo.