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Global Governance and International Policy-Making


"Globalization" has become a pervasive buzzword in both popular and scholarly discussions of contemporary international relations. A broad consensus agrees that individual states are ceding primacy to a variety of non-state actors beyond their control. Describing this phenomenon, many scholars emphasize transnational webs of economic agents such as multinational corporations and global capital flows among financial markets, as well as professional networks of scientists and experts that have developed a common body of knowledge and technology-influencing policy. Margaret Keck, Associate Professor of Political Science at Johns Hopkins University, and Kathryn Sikkink, Associate Professor of Political Science at the University of Minnesota, argue that this approach, which focuses primarily on economic interest and shared knowledge, is incomplete. They contend that any globalization theory must also examine networks of activist organizations, motivated by principled ideas or values. These advocacy networks, the authors claim, are increasingly important agents of political change around the world.

Keck and Sikkink have organized their study with introductory and concluding chapters that serve as theoretical bookends framing detailed empirical studies of specific advocacy campaigns. The heart of the book is divided into four sections: precursors of modern activist networks; human rights networks; environmental advocacy networks; and campaigns to stop violence against women.

Describing their theory, the authors define activist networks as voluntary, horizontal associations of like-minded actors that coalesce around specific causes and interact across national boundaries. Nongovernmental organizations (NGOs) often play a leading role in these networks, along with foundations, mass media, trade unions, and even specific branches of international organizations and governments. Network participants wield information as their primary weapon and common currency. They have become uniquely adept at calling upon particular symbols or stories that crystallize the meaning of a situation for diverse audiences and thereby generate politically powerful responses. Where advocacy groups themselves may not have sufficient power to affect a state's behavior directly, they use
information to leverage influence from other powerful actors and hold governments accountable to previously stated policies or principles. The authors call the most common application of network tactics the "boomerang pattern" (p. 13). Using this strategy, domestic activists who lack influence with their own government reach out to international allies who can bring external pressure to bear.

Such international "moral" campaigns are not entirely new, and the authors examine several activist movements as "precursors" to the contemporary phenomenon: the 1833–1865 Anglo-American campaign to end slavery; the 1888–1928 women's suffrage movement; efforts from 1874–1911 to eradicate footbinding in China; and the 1920–1931 campaign to end female circumcision among the Kikuyu of Kenya. While these examples share many features of modern advocacy networks, the authors argue that they lack the size, professionalism, speed, and complexity of activist groups in the last three decades. The modern advocacy network, they assert, is a unique phenomenon deserving special consideration.

The first case study tracks the development of human rights advocacy networks in Latin America from the origins of the human rights movement after World War II. The authors illustrate the changes fostered by advocacy networks vividly using the 1968 massacre of civilian protesters on Tlateloco Plaza in Mexico as a benchmark. For years, an entrenched and unresponsive Mexican government successfully suppressed news of the tragedy because no network of human rights groups existed to publicize the events and exert effective pressure for redress. By 1993, however, after years of steadily growing human rights activity in Mexico and other Latin American countries, a vigil commemorating the massacre drew 100,000 people, symbolizing the now-transcendant mass appeal of the human rights cause. The authors skillfully recount the emergence, in the intervening years, of strong human rights movements in Argentina and Mexico, comparing and contrasting them to other, less successful networks in the region from Guatemala to Brazil.

The second case study examines environmental advocacy networks, with special attention to campaigns against tropical deforestation. Environmental causes pose special challenges for advocacy networks because matters of principle become entangled with issues of economic development, making it more difficult to hold together coalitions of diverse organizations. The deforestation campaigns were chiefly notable for their ability to incorporate sustainable rainforest preservation priorities in the behavior of multilateral lending institutions, particularly the World Bank. By exploiting the banks' influence, advocacy groups achieved highly effective leverage over the development policies of several countries.

The final case study traces the development of advocacy networks fighting violence against women. These campaigns provided the women's movement with a generic issue that could be applied to different phenomena
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in different countries, from domestic abuse to genital mutilation. Such core issues could carry the movement forward without divisive cultural disputes inherent to matters such as "discrimination," where it has been harder to find consensus and specific application across widely varied national traditions.

The authors suggest that "faster, cheaper, and more reliable international information and transportation technologies," coupled with the emergence of a globally-conceived civil society as a "cultural legacy of the 1960s," explain the proliferation and strengthening of advocacy networks seen in these cases (p. 200). They also emphasize the role of modern foundations, particularly the Ford Foundation, both as participants in advocacy networks and as major sources of financing for the recent NGO boom. Unfortunately, they do not develop these arguments, or show concretely how these factors distinguish modern networks qualitatively from "precursor" movements. The sheer number of activist organizations has exploded in recent years and technology indisputably makes the world a smaller place. But does this make modern activist networks substantively different from or more effective than the anti-slavery or women's suffrage campaigns? The case studies mention electronic mail in passing but largely pre-date the "Internet revolution," which might be expected to have further energized advocacy networks under their theory. Close examination of the central role of the Internet in the nascent environmental movement of the former Soviet Union, for example, could speak insightfully to changes in the advocacy model wrought by technology.

When the authors acknowledge that the success of advocacy networks depends heavily on a target state's vulnerability to economic leverage, they cast doubt on the contention that activists have made the world inherently more responsive to moral principle in the wake of 1960s idealism. Perhaps, instead, proliferating advocacy networks are merely a symptom of economic globalization, among many discrete interest groups that have learned to manipulate economic levers to expand their appeal and achieve their goals. In order to influence mainstream theorists who subordinate the role of activist groups to economic agents, the authors must address this question more directly.

Still, the case studies provide excellent, succinct histories of major advocacy campaigns and offer compelling evidence to show that ideas and values promulgated by activist groups can effect change in world politics. While the authors are less convincing in their claims for the historical uniqueness of contemporary advocacy networks and only begin to examine how and why contemporary activist groups proliferate and gain influence, the book poses an interesting agenda for further discussion and research.

In Global Public Policy, Wolfgang Reinicke, a senior economist for the World Bank and fellow of the World Economic Forum, offers a policy prescription for salvaging national sovereignty in an era of globalization. His solution is not substantive, but rather a procedural framework for international public policy-making; he proposes systems of cooperation between governments and between government and non-state actors at the agenda-setting, design, and implementation stages of international policy formation. Reinicke deduces this model from theory, then refines it through detailed case studies (included as separate chapters) of states working together to claim domestic control over inherently international problems and opportunities.

Globalization, according to Reinicke, threatens internal sovereignty—a government’s ability to pursue “formulation, implementation and maintenance of a legal, economic, political and social order” (p. 56). Rather than infringements on external borders, it is restraints on domestic policy-making that most threaten state autonomy in the contemporary world. Accordingly, Reinicke argues that given states’ limited means for regulating the corporations, information, pollution, and capital that flow across borders, states must “pool, and thus share, internal sovereignty in those sectors in which globalization has undermined the effectiveness and efficiency of internal sovereignty at the national level” (p. 71). This cooperation can, however, have the negative effect of increasing the distance between policy decisions and the citizens affected by them, thus accentuating the “democratic deficit” (p. 221).

Reinicke suggests three policy responses for governments wishing to reassert domestic control. The first two are interventionist strategies, and he effectively dismisses them both. In this regard, he deems protectionism “defensive intervention,” as it involves constructing higher barriers to transnational influences. The converse is “offensive intervention,” a cheerleading approach through which the government tries to out-compete other countries through the use of subsidies, bribes, and foreign aid. While he dismisses these tactics on the traditional grounds that they increase consumer costs and international tensions, Reinicke’s central attack is that both focus on an anachronistic concern over territorial sovereignty. The state’s ability to operate will continue to decline, asserts Reinicke, as long as it considers other states to be threats, rather than cooperative competitors sharing an interest in reasserting policy control to mediate private and public interests for their citizens. Reinicke’s insightful focus on internal autonomy makes the rebuttal of interventionist tactics quite effective, thus opening the door for a new alternative.
Reinicke advocates a third method of global public policy-making, one that “alters the political geography in a way that can accommodate economic globalization and at the same time allow countries to continue to exercise internal sovereignty” (p. 85). His proposal recasts the players and power dynamics involved in policy development in terms of the interactions between states, and between state and non-state actors. These new cooperative relationships fall into two categories: vertical and horizontal subsidiarity. The former is a pattern of government deference to those agents “in the best position to support the operationalization of internal sovereignty” (p. 89). The objective is to maximize the decision-maker’s exposure to, and experience with, those impacted by policy decisions. Reinicke underscores that officials must rely on cooperation with comparable agents in other nations. Countries reclaim internal sovereignty, he argues, as they recognize other nations not as threats but as competitive allies who share similar goals in terms of controlling transnational forces within their populace.

The second, and more controversial, set of relationships that Reinicke proposes for the policy-making process is the horizontal dialogue between state and non-state actors. Such an “outsourcing” model would give corporations and nongovernmental organizations (NGOs) a substantive role in global public policy-making. This is important, Reinicke argues, as these entities have the “most direct stake in the outcome of public policy” and their access to “better information, knowledge and understanding of increasingly complex . . . and fast-changing public policy issues” makes them able to “[encourage] mutual learning among national public policy systems” (p. 89–90). Indeed, participation of non-state actors is essential to the process Reinicke proposes; it is premised on the idea that a more flexible and self-monitored regulatory structure will be appealing enough to corporations that they will agree to release the information necessary for increased transparency. Reinicke asserts that these latter concessions are the key to strengthening global corporate accountability and thus the key to advancing the public interest. In sum, subsidiarity between globalized stakeholders fosters internal sovereignty.

Though he does not fully address the substantive dimensions involved, Reinicke recognizes three weaknesses inherent to this process. First, Reinicke assumes at the outset that national governments will remain the primary unit of government simply because “no viable alternative institutional form [to the state] . . . has yet been put forward” (p. 52). Assuming that international government is impossible, international governance, as he outlines it, is the only way to address internal sovereignty. Secondly, horizontal subsidiarity depends on corporations agreeing to assume regulatory responsibilities in the absence of an enforcement system. As Reinicke admits, however, “some may question the wisdom of an arrangement that puts the pursuit of both public and private
interests under the care of the same institution” (p. 98). This danger is accentuated when the participation of business is voluntary. Finally, for the enhanced role of non-state actors to advance the public interest, NGOs, which “are becoming the principal actors in the definition of global interests” (p. 101), must have influence proportional to that of multinationals. While Reinicke offers much evidence regarding businesses’ power to command resources, he nonetheless provides very little about NGOs’ corresponding capacity and potential. Yet, according to Reinicke, the public interest is only served by a substantive dialectic between non-state actors; it cannot be largely one-sided.

Rather than offer a theoretical response, Reinicke addresses these and other applicability issues in his detailed treatment of three case studies: the regulation of international financial markets; the policing of international money laundering operations; and marketing regulation for “dual-use” goods (those that have both a civilian and military use). These three cases are demonstrative given that, in each, US officials have recognized the need to foster creative cooperation with extraterritorial officials in order to accomplish a domestic policy goal.

Reinicke concludes with some proactive suggestions. He notes that policy-makers are focusing “too much on how much power [non-state actors] should have, and not enough on their accountability” (p. 226). Information and transparency offer the state more tenable control than direct regulation. He also recognizes that a shift to global public policy would require bold political leadership and enthusiastic participation from business and organization leaders, “both of which are in short supply” (p. 227). In the interim, Reinicke proposes that states cooperate in an initial audit and evaluation of current models of horizontal and vertical subsidiarity as they begin to build transgovernmental networks of communication. Although he fails to supply a mechanism for engaging businesses voluntarily without an international enforcement mechanism, Reinicke reiterates the need to involve the interests of non-state actors in policy-making on issues that do not respect borders.

Despite his incomplete answers to concerns such as the viability of business participation in the absence of enforceability, Reinicke’s analysis is a useful framework for thinking about global public policy-making. His arguments are strengthened by his substantive consideration of the empirical trends and practical lessons gleaned from the detailed analyses of the three case studies. By providing a flexible set of policy ideas, rather than a rigid intellectual framework, his policy prescriptions can function in diverse national and political settings as governments struggle to maintain domestic control in an era of globalization.
Environment and Economic Integration


In preparation for the November 1997 annual meeting of the Asia Pacific Economic Cooperation forum (APEC), held in Vancouver, Canada, André Dua and Daniel Esty, scholars at the Yale Center for Environmental Law and Policy, wrote *Sustaining the Asia Pacific Miracle*, a sweeping look at economic growth and environmental degradation in APEC economies. While acknowledging recent economic advances in many East Asian nations, the authors stress that “APEC’s members cannot simply maximize material gains but must attend to social welfare broadly” (p. 4), and that to do so they must “improve their environmental performance” (p. 145). After tracing economic and environmental trends in APEC, Dua and Esty analyze the “underlying causes” of environmental harms there (market and government failures) and offer a “menu of ideas” for improving environmental policy in the forum.

In the opening chapters the authors describe recent economic achievements of APEC. They note that, at present, the group includes the three largest economies in the world (United States, Japan, and China) and nine of the world’s ten fastest-growing economies. They add that, combined, APEC accounts for half of global output and trade. The authors also note that between 1977 and 1995, the GDP of APEC countries increased 360 percent (compared to 290 percent for the world at large). Finally, they explain that, not only has APEC grown, but it has reduced income inequality among its citizens. The authors conclude that “[r]apid economic growth, together with rising per capita incomes and declining income inequality, has meant that over the last three decades, hundreds of millions of Asians have been lifted from poverty” (p. 16).

Such gains, while impressive, have been won at significant environmental expense. Dua and Esty marshal a wide variety of facts to illustrate this point. They cite one estimate that environmental pollution in China causes annual economic losses equivalent to between 5.5 and 9.8 percent of GNP. In addition, the quality of water, air, and land throughout Asia has been degraded, as have living natural resources. In Bangkok, 10,000 metric tons of raw sewage enter local rivers every day. And, say the authors, “[h]undreds of millions of Asians and tens of millions of North Americans . . . . breathe highly polluted air” (p. 39). Pacific fisheries, according to one source, are nearly all overfished and at risk of depletion. Then there is climate change and biodiversity loss.
Faced with such environmental deterioration, Dua and Esty assess the market and government failures behind it, then highlight tensions that might unfold between industrialized and developing nations. Market failures, say Dua and Esty, are of four principal types: "externalities or pollution spillovers; overexploitation of open access or common resources; intertemporal misallocation of resources reflecting the inability of future citizens to participate in decisions . . . that will affect the world they inherit; and failures arising both from the absence of perfect information . . . and from the uncertainty and complexity that are dominant features of environmental decision making" (p. 58). The authors believe that poorly defined property rights underlie many of these failures. They concede, however, that given the "diffuse" and "incorporeal" nature of air, water, and other natural resources, defining property rights over them is difficult, as is privatizing them, "because of the difficulty of excluding nonowners from use" (p. 64). Government failures are also addressed. Dua and Esty note that not only do government attempts at environmental policy often fall short, but government policy in other realms (e.g., use of subsidies for energy, agriculture, and transportation) create unintended negative consequences, while "public choice" failures arise when government decisions inadequately reflect public wishes. The authors then describe differences between industrialized and developing countries and tensions that can arise from such differences. For instance, Dua and Esty fear that disguised protectionism by industrialized nations and overly lax environmental standards in developing countries can spill over into potentially damaging trade disputes.

The final chapters contain the authors' policy recommendations of "why APEC must act" (p. 95). In essence, they argue, because current national and international efforts at environmental policy are so weak, APEC offers a "second-best" option for improving outcomes not achieved in other fora. In addition, for those environmental harms that are truly regional, the authors believe that APEC, as a regional body, is ideally suited to solving such problems. The authors' substantive proposals to APEC include: adopt a joint implementation initiative in which developed countries can invest in developing countries to reduce greenhouse gas emissions; eliminate or reduce agricultural and energy subsidies; develop a Pacific tradable fishing permits program; and encourage convergence of environmental product and process standards. The authors also make several procedural suggestions: create an APEC Environment Committee to provide ongoing support to APEC's environmental efforts; establish an APEC Advisory Group of nongovernmental representatives; and develop a nonbinding dispute mediation service.

A weakness in the authors' approach may, however, be their tendency to lay too much emphasis on an institutional perspective. For instance, while it is true, as the authors say, that combining environmental regulatory
Recent publications activities in a regional body introduces "economies of scale" in the formation of policy, it is also true that what is far more expensive than policy formation—and much more urgently needed—is policy implementation (e.g., redesigning manufacturing, deploying new technologies, altering historic patterns of living and working). Likewise, while the authors hope that APEC, given its limited size, can serve as a "laboratory" for global environmental cooperation, it is unlikely that the problems plaguing today's international environmental institutions will suddenly disappear in APEC. That is, current environmental problems derive less from the weakness of international institutions than from individual nations' unwillingness to commit resources to their own—and to the world's—natural resource challenges.

That said, Dua and Esty make a compelling case for better integrating environmental concerns into APEC. By combining thorough economic and environmental analysis with creative policy thinking, the authors give us, as John Jackson notes on the book's cover, "policy analysis at its best."

International Trade Policy


As the long-awaited realization of the international trade community's collective dream for an economic counterpart to the United Nations, the World Trade Organization (WTO) has a lot to live up to. Taking the reins of the global trading system, however, won't be easy. While 130 countries participated in the WTO in 1997, the price of securing such wide membership was the assurance that the organization's coercive power would be strictly circumscribed. Given trading nations' reluctance to cede sovereignty to a supranational trade authority, the WTO's toolkit is limited to conversation, moral suasion, and peer pressure.

The little-known WTO activity called the Trade Policy Review Mechanism (TPRM), which Donald Keesing reviews in *Improving Trade Policy Reviews in the World Trade Organization*, is paradigmatic of the WTO's approach to multilateral trade. An institutional flyweight with just seventeen economists and less than ten percent of the WTO's financial resources, the TPRM can neither impose new obligations on WTO members nor enforce their compliance with particular trade rules. Instead, the TPRM relies on objective third party review and nonconfrontational debate between a country and its trading partners to promote transparency of national trade
regimes. It uses information as an instrument to advance trade liberalization through “sweet reason” (p. 6) rather than authoritative will.

Keesing, an economics professor who has been with the World Bank since 1975, conducted his review under the auspices of the nonprofit, nonpartisan Institute for International Economics. The Institute, in turn, was encouraged by the Deputy Director General of the WTO to assess the TPRM both to suggest improvements and to publicize its existence. Accordingly, Keesing’s book is more a “10,000 mile check-up” than an expression of the author’s own views about the future of international trade and the role the TPRM might play in the emerging global economy. While this enables the author to approach his subject dispassionately, it also tempers the ambitiousness of the enterprise.

Keesing does a fine job of placing the TPRM in historical and political context. The diplomacy of trade, according to Keesing, is overlaid atop an international consensus that uniformly-adopted free trade will, in theory, best serve the national interests of all members of the trading community. Well-organized interest groups within each nation, however, are differentially affected by trade policy, and their resultant efforts to influence that policy turn international trade negotiations into an adversarial give-and-take of concessions. Trade relations hence become a poker game in which accurate information about others’ trade policies is critical. As it is costly for each nation—especially smaller ones—to create and maintain a file on every nation with which it trades, the tasks of information collection and dissemination naturally fall to an independent body like the WTO.

The variety of mechanisms that the General Agreement on Tariffs and Trade (GATT) (the predecessor to the WTO) has implemented over the years to achieve the requisite “mutual surveillance” is the subject of the second of Keesing’s five chapters. In 1989, at the beginning of the Uruguay Round of trade negotiations, GATT members agreed to make their trade policies subject to review by the TPRM, with the frequency of review linked to the nation’s trade volume. While the TPRM’s mandate was strictly limited in deference to the sovereignty of member nations, Keesing claims that the mechanism nonetheless has been a valuable tool for a variety of constituencies. These include not only the nation under review—which is forced to critically reexamine and re-justify its own trade policies—but also exporting nations seeking removal of import restrictions, and trade liberalization advocates worldwide.

Chapter Three outlines the process by which the modern day TPRM functions. An absorbing play-by-play of the year-long review process, with interesting (but brief) behind-the-scenes glimpses of the probing questions WTO members ask of the nation under review, is offset by an excessively thorough comparison of several finalized country reviews assessed in terms of page lengths and accessibility of chapter organization. The reader takes away from this discussion a portrait of a well-intentioned but hobbled
diplomatic tool. The TPRM’s unparalleled breadth of coverage, provisions for frequent review at regular intervals, and respect for the views of smaller nations are counterbalanced by political considerations that mute the intensity of substantive policy debate.

At the heart of Keesing’s book are Chapter Four’s recommendations for improving the effectiveness and utility of the TPRM. These he groups into three general categories: subject matter, resources, and dissemination. With respect to subject matter, Keesing suggests that the reviews adopt a longer-term perspective; examine more extensively indirect forms of trade interventionism (e.g., antidumping laws) and global issues affecting a nation’s trade profile; tone down a “bias toward optimism;” and attempt to quantify the cumulative impact of a nation’s policies on the cost of trade with that nation. In order to accomplish these objectives while simultaneously ramping up the annual production of reviews, Keesing argues (with a disappointing lack of quantitative support) for a fifty percent budget increase by the year 2000. To improve dissemination, Keesing advocates a proactive approach that targets key journalists in business, trade, and politics, as well as leaders of pertinent trade associations and political organizations. He further notes the potential interest of the academic and business communities in a slightly altered version of the reviews. Finally, Keesing recommends the creation of a formal advisory committee of roughly ten outside economists to counsel the TPRM on an ongoing basis.

It is difficult to argue with the desirability of Keesing’s specific recommendations. But in spite of—or perhaps because of—the absence of contentiousness, the reader is left with the sense that there is little novel in Keesing’s analysis. Specifically, it feels as though Keesing has examined the TPRM in a vacuum. By evaluating the review process only against its own mandate from the WTO, he fails to address critical questions about whether the TPRM pulls its own weight in the quest for freer international trade. Instead, he fills in a report card, asking how the TPRM can do better in each category, but never reflects on whether the list of categories is correct or exhaustive. When Keesing asserts that WTO members “should recognize the value of the TPRM” and fund it accordingly, or when he tacitly assumes that wider dissemination of TPRM reports will lead to more heated policy debate, he risks becoming a spokesperson for the instrument he is evaluating. At times a glimmer of the larger critique emerges. On two occasions, for example, Keesing alludes to the “glass houses” effect that restrains nations from throwing stones, and the reluctance of several countries to criticize trading partners from whom they receive privileged treatment. But whereas the book treats these observations as mere realities of multilateral diplomacy, they seem rather to point to a systemic flaw in the TPRM itself: if member nations consistently subordinate honest assessments of a trading partner’s behavior to their interest in an exemption from that
nation’s tariff on a particular product, we may reasonably wonder about the
efficacy of “sweet reason” as a catalyst of change.

To be sure, Keesing provides an effective critique of the TPRM as it
functions today, and outlines an actionable agenda for TPRM officials
looking to fine-tune a familiar machine. Where this book seems to come up
short is its reluctance to tackle the bigger question of whether the TPRM as
presently constituted can and does contribute in practice to the long-term
goal of freer international trade.

Law of the Sea

The Regime of Straits in International Law. By Bing Bing Jia. Oxford:
by Natalie S. Klein.

The competing interests of coastal states’ sovereignty over the waters
closest to their shores and freedom of the high seas for navigation have long
been a source of conflict between states. This tension is especially evident in
regard to international straits. The Regime of Straits in International Law
provides a detailed analysis of the legal regime created to deal with this
sensitive topic. The book largely divides into two parts. In the first, the
author examines in detail the characterization of bodies of water as
international straits through an analysis of the geographic criteria of straits,
the use of straits for international navigation, and, finally, comparable
characteristics of bays and straits. The second part shifts to an analysis of
the evolving regime of passage through straits set in the context of the
development of the law of the sea over the last seventy years. The
Introduction to the treatise is very brief and does not do justice to the detail
that follows. A better indication of the breadth and specificity of the volume
is found in the table of contents, which clearly sets out the structure of the
argument and the division of issues chosen by the author.

With respect to the definitional half of the volume (Chapters Two,
Three, and Four), the first chapter focuses on two geographical criteria:
narrowness and the connection of separate areas of the sea. The latter
criterion involves a somewhat technical consideration of straits between
internal waters and the high seas, between territorial waters and the high
seas, and between two parts of the high seas. To assist readers unfamiliar
with the law of the sea, an explanation of the different rights and duties
ascribed to coastal states in these maritime zones and the concomitant
significance for the rights of passage would have been helpful. Some
assistance in this regard is derived by reference to specific straits as
illustrations of such geographic considerations. In the third chapter, Dr. Jia
analyzes the use of a body of water for international navigation as a defining
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characteristic of straits. The primary focus for this issue is the Corfu Channel case, decided by the International Court of Justice in 1949, in which reparations were sought for damage caused by underwater mines to British warships as they navigated through Albanian waters. The author provides a detailed analysis of the parties' arguments and the reasoning of the Court and then proceeds to consider the practice and literature since this decision. A highlight of these two chapters is that the author incorporates the progressive codification of the straits regime into the discussion on definitional issues rather than simply recount the chronological development of the law. Finally, in Chapter Four, Dr. Jia examines the relationship between straits and bays and the potential for overlap between these geographic features.

The second half of the treatise addresses the rights of passage through international straits. Dr. Jia first provides a temporal study of the innocent passage regime prior to the adoption of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Through a careful examination of codification conferences, the writings of jurists, and state practice prior to UNCLOS, the author elucidates the tendency to assimilate the right of innocent passage through the territorial sea with passage through international straits. The Corfu Channel case is again emphasized for its influential role in the development of the right of passage, and particularly the passage of foreign warships, through straits. The terms of the special treaty regimes of the Montreux Convention, the Danish Belts and the Sound, and the Strait of Magellan are then contrasted with the general regime governing straits.

From this background, the author moves on to address the creation of transit passage through straits in UNCLOS and to provide a thorough interpretation of the international straits provisions included in the Convention. The policy behind this new system is attributed to the need of the powerful maritime states to preserve the freedom of navigation. Yet, while the examination of transit passage in UNCLOS is placed within the context of the evolution of the rights of passage through the territorial sea and straits, there is no consideration of the wider setting of the debates on the law of the sea that led to the adoption of UNCLOS. Some commentary on the tension between the increasing appropriation of maritime spaces by coastal states and the interests of states with large maritime fleets, as well as the compromises necessary for the overall package deal of UNCLOS to be accepted, would have provided additional explanations for the formulation of this new regime and the exposition of the treaty articles.

The final chapter examines the issue of whether the regime of transit passage is customary international law. To answer this question, Dr. Jia studies the right of transit passage in thirty-six states, particularly as formulated in domestic legislation, and then considers whether the traditional requirements for the formation of a customary rule are met. Despite the
views of some of the most powerful maritime states and their dominant role in the constitutive process, Dr. Jia concludes that no customary right of transit passage exists. He surmises that, at most, such a right may be an emergent customary norm.

In his Conclusion, the author provides a brief overview of the development of the regime of international straits and restates a number of propositions deduced throughout the course of the treatise. There is, however, no final analysis of the policy implications of such conclusions. It is unfortunate that the political and economic aspects of this legal system are rarely considered as possible influences in the evolution and formulation of the current straits regime. Nonetheless, one of the significant features of *The Regime of Straits in International Law* is the utilization of state practice as illustrative of the legal principles governing straits and also as representative of the possible future direction of the law. Accordingly, this compilation and examination of state practice and the detailed analysis of the UNCLOS provisions will no doubt prove extremely useful for both international law scholars and practitioners.

### Immigration and Citizenship


“Social conditions and a changed legal consciousness have begun to undermine the foundations of classical immigration law... Immigration is gradually rejoining the mainstream of our public law” (p. 81). So wrote Peter Schuck almost fifteen years ago in his first article on immigration, “The Transformation of Immigration Law.” In that essay, Schuck described a shift in American immigration law from a restrictive “classical” regime, which conferred plenary authority upon the federal government to regulate immigration free of most constitutional limits, into a modern “communitarian” order, in which immigrants possess many of the same substantive and procedural rights against government as do citizens.

Now, in *Citizens, Strangers, and In-Betweens*, Schuck notes that his assessment may have been premature, with recent developments suggesting that classical premises may be resurgent. Through a series of essays written since 1984, the book carries the story forward to the present day. Readers familiar with Schuck’s writings will recognize much in this collection, as most of these essays have been published previously. The collection nevertheless remains highly relevant to current debates over immigration policy. Half of the included essays were written within the past three years,
and most of the others were published only a few years earlier. With immigration and citizenship policy in considerable flux throughout the 1980s and 1990s, nearly all of these writings highlight issues that remain salient and unresolved.

The book is divided into five parts. Part One provides an overview of American immigration law, describing current policies and their historical evolution. Part Two explores the role of courts in the development of immigration policy, with Schuck’s 1984 essay comprising the bulk of this discussion. Part Three focuses on the politics of immigration since 1980, with special emphasis on the Immigration Reform and Control Act of 1986, the Immigration Act of 1990, Proposition 187 (approved by California voters in 1994), and various immigration-related statutes enacted by Congress in 1996. Part Four explores the significance of citizenship status, tracing its decline in importance during the 1970s and 1980s and the current reevaluation of the extent to which access to rights and entitlements should turn on formal citizenship status. Finally, Part Five discusses several specific policy issues, including the costs and benefits of immigration to American society and the international arrangements for managing refugee flows.

Two of these essays have not previously appeared elsewhere. The first, “Reform Continues: 1990–1998” (Chapter Five), updates Schuck’s discussion of the politics of immigration during the 1980s to the present day, detailing recent challenges to the communitarian immigration order described by Schuck in his 1984 essay. After the Republicans regained control in 1994, Congress embarked upon a flurry of legislative activity, culminating in 1996 with three major pieces of immigration-related legislation: the Anti-Terrorism and Effective Death Penalty Act (AEDPA); the welfare reform statute (including provisions making legal aliens ineligible for many public benefits); and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).

While many immigrant rights advocates fear that these initiatives may usher in a new era of nativism, Schuck rejects this interpretation as a “false picture” (p. 139). To be sure, Schuck is troubled by the “recklessness and unfairness” (p. 145) of IIRIRA—especially its attempts to deny fundamental, constitutionally-guaranteed procedural protections from aliens in removal proceedings. But he notes that restrictionists have only succeeded in attacking “easy targets: undocumented aliens, visa violators, and criminals” (p. 139). By contrast, more fundamental aspects of contemporary immigration policy—namely, higher and more diverse levels of legal immigration—have not been curtailed, despite many efforts to roll these levels back. Conceding that the public is ambivalent about immigration, Schuck argues that it is too simplistic to read these developments as unequivocally anti-immigrant, cautioning immigration advocates against “crying wolf about nativism” (p. 148). Instead, advocates should heed the
"legitimate concerns" behind these initiatives—concerns over undocumented aliens, welfare abuse, naturalization fraud, bilingual education, criminal activity by aliens, and economic competition with native workers.

The second new essay, "Plural Citizenships" (Chapter Ten), assesses arguments for and against dual citizenship. Schuck suggests that as structural changes—including globalization of the economy and easier, less expensive travel and communications across borders—make dual citizenship more realistic and prevalent than ever before, it is "only a matter of time" (p. 220) before dual citizenship becomes a live political issue. By and large, courts and policy-makers have accepted this trend. Formally, U.S. law requires immigrants who are naturalizing, in their oath of allegiance, to "renounce and abjure absolutely and entirely all allegiance and fidelity" to any other state, a requirement dating back to 1795. In practice, however, many naturalized citizens do retain citizenship in their countries of origin, since the law does not require this renunciation to be legally effective in the country of origin. Indeed, many countries have made it easier in recent years for their nationals to retain or re-acquire citizenship after naturalizing in the United States.

Schuck largely affirms the trend in U.S. law toward greater acceptance of dual citizenship, finding that potential costs—including fiscal burdens on government, competing loyalties, and barriers to assimilation and national unity—are either not established empirically, overstated, or outweighed by the benefits of dual citizenship. While critics worry, for example, that dual citizens might vote in opposition to U.S. interests, Schuck notes that American voters' preferences frequently are aligned with the interests of other countries—regardless of their citizenship status in another country. Rather than policing against this possibility, Schuck argues that in most instances such preferences should be embraced. Democratic theory requires no less. He concludes by proposing reforms that may appear to be technical refinements—such as the replacement of the current naturalization oath with an oath that more specifically sets forth what must be renounced—but that may help clarify the place of naturalization and dual citizenship within the current legal regime.

The book's most significant weakness may stem from the very attributes that make it a welcome publication: its format and wide-ranging coverage. With essays written at different points in time, and often concerning very different issues, the book does seem a bit disjointed at points. For example, while the essays in Part Four cohere and complement each other quite well in developing a clear and integrated understanding of citizenship, Part Five's chapters jump around from racial politics in the United States to the global dynamics of labor migration and refugee movements. These chapters could perhaps have been more closely connected to the issues discussed in the earlier essays. Moreover, some readers may wish that Schuck had not simply republished his essays as originally
written—particularly the older ones—but instead had revised and reworked
them into a more unified, contemporary argument. The clearest presentation
of such an argument, "Alien Ruminations" (Chapter Fourteen), does not
appear until the very end of the book.

Still, it is a challenge to bring simplicity and coherence to an area of
law as complicated and in flux as immigration and citizenship. Schuck's
work on immigration law is comprehensive and clearly demonstrates how
contested and unresolved many of these issues are. Readers will appreciate
the convenience of having Schuck’s extensive and widely-noted work in this
area compiled into one volume and, for people interested in a wide-angle
overview of immigration law and policy, this book will serve as a
particularly useful starting point.

Refugees and Displaced Persons

The Status of Palestinian Refugees in International Law. By Lex
(Hardcover). Reviewed by Dinusha Panditaratne.

In writing this volume, Lex Takkenberg aspires to a dual purpose. For
persons dealing with Palestinian refugees and their legal problems, he seeks
to provide "a concise overview of the relevant law" (p. 7), including a
critical examination of the relevant norms on refugees, stateless persons,
humanitarian law, and self-determination. Takkenberg’s work, however,
ventures beyond a purely normative analysis to incorporate a practical and
human-oriented focus on the plight and protection of Palestinian refugees.
Expanded from a doctoral dissertation, the book rigorously interprets a
number of international laws, including provisions that pertain to the
definition of "refugee," and the extent to which these laws specifically
protect the special needs of Palestinian refugees. Yet, in examining
the political and pragmatic dimensions of Palestinian refugee status, Takkenberg
also draws extensively from his experience as a senior officer of the United
Nations Relief and Works Agency for Palestine Refugees in the Near East
(UNRWA). Accordingly, the situation of Palestinian refugees is examined
contextually in light of the history and processes of multilateral negotiations
in the United Nations, political events in the Arab world (including the Gulf
War), and the various, turbulent stages of the Middle East peace process.

The Introduction to the volume begins by providing an excellent survey
of the historical context of Palestinian refugees, U.N. attempts to address
their problems, and the development of Arab-Israeli relations on the
Palestine question. With this foundation, the author proceeds to organize the
book in three parts, the first two of which are normative analyses. Part I
(Chapters Two, Three, and Four) deals with refugee law—both at the
international level and as it is applied in the Arab states. Part II (Chapters Five, Six, and Seven) examines other areas of international law relevant to Palestinian refugees, including the law relating to stateless persons. Under this framework, Takkenberg illuminates the unusually harsh predicament of most Palestinian refugees who are at once refugees and stateless. Unlike most refugees, they are not persecuted by their State; yet neither do they have a State to which they may direct claims of protection. This is particularly problematic given the state-centered focus of international law. Finally, Part III (Chapters Eight and Nine) moves beyond the formal law to assess the practical implementation of international norms and to consider a durable political solution to the Palestinian refugee problem.

Parts I and II usefully consolidate several international norms relevant to the status of Palestinian refugees. These include the 1951 Convention Relating to the Status of Refugees (1951 Convention), the 1961 Convention on the Reduction of Statelessness (1961 Convention), the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention), and the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). By frequent reference to background memos, reports, handbooks, and preliminary drafts of international laws, however, the author goes further to effectively outline the development of the relevant legal provisions. The inclusion of such drafting history permits a useful insight into the respective roles played by different actors—be they countries, individuals, or international agencies—on the question of Palestine and Palestinian refugees. Given the vastly different agendas pursued by these actors, however, this background also conveys a corresponding sense of the extreme difficulty involved in resolving the Palestinian refugee problem. As the author points out, “a comprehensive solution to the Palestinian refugee problem will require the effective cooperation amongst the many different actors involved in the Middle East peace process” (p. 344).

Part I also includes an appraisal of the actual treatment of Palestinian refugees in the (Arab) countries where they are most populous—demonstrating the gap between the international legal regime of protection and the limitations of that regime in practice. This gap between the normative regime and its actual application is attributed to several factors: non-accession to relevant treaties by Arab and other states; non-adherence once accession has occurred; and substantive limitations in the international agreements themselves. An example of the latter would be the absence of provisions to deal with the widespread hostility of neighboring Arab populations towards influxes of Palestinian refugees.

Throughout Parts I and II, the author directs several practical recommendations for change to the agencies, countries, and courts that apply the relevant resolutions, mandates, and conventions. For example, Takkenberg calls for a change in the stance of the United Nations High Commissioner for Refugees (UNHCR) in several respects. He argues that
the UNHCR has often misinterpreted the scope of Article 1D of the 1951 Convention. While the UNHCR has considered any person who is in fact receiving assistance from the UNRWA to be ineligible for UNHCR aid and protection, Takkenberg argues that a proper interpretation of Article 1D would preclude all those who are under the mandate of UNRWA assistance, whether or not they actually receive it. This preclusion would hold unless the possibility of receiving support from the UNRWA ceased—for example, if the UNRWA itself ceased to function. The author further chides the UNHCR for its failure to proclaim the de jure statelessness of persons (including Palestinians) seeking the protection of the 1961 Convention and its predecessor, the 1954 Convention—thereby frustrating the objective of Article 11 of the 1961 Convention. Takkenberg also advocates a greater use of international humanitarian law, including the Fourth Geneva Convention, in securing the safety and protection of refugees. This is particularly important as many refugees now live in conflict-ridden areas, such as the Occupied Territories. Takkenberg does not, however, discuss the political limits to applying international law to the situation of the Palestinian refugees. In the context of conflict and delicate peace processes, these limits can be especially constritive on participating parties and thus warrant consideration.

Chapter Eight in Part III of the volume contains rare insights into the internal workings of agencies assisting refugees and Palestinian refugees in particular. Drawing on his considerable practical experience working for the UNRWA, Takkenberg offers a detailed examination of the legal and non-legal roles of the Refugee Affairs Officers (RAOs) under the UNRWA from 1987 until 1994. The examination of the RAO program—developed to address the difficulties faced by Palestinian refugees during the outbreak of the intifada—conveys the importance of implementing practical and timely responses to refugees in conflict situations that transcend both the normative limitations of international legal provisions and the political obstacles to their implementation.

Despite his positive assessment of such programs, however, Takkenberg leaves little doubt that the only durable measure of protection for Palestinian refugees is the creation and recognition of an independent Palestinian state (albeit with due recognition of the state of Israel as recognized in the 1993 Declaration of Principles resulting from the Oslo negotiations). Throughout the volume, Takkenberg outlines a number of current problems that render this the ultimate objective in addressing the dual status of Palestinian refugees as both refugees and stateless persons. Jordan, for example, is the only Arab State to have granted citizenship to Palestinian refugees living in its territory—although even those refugees cannot claim a country of origin to which they may want to return. Even in States that have granted residency to Palestinian refugees the right to remain is precarious, as demonstrated by the tacit expulsion of Palestinians from
Kuwait during and after the Gulf War as a result of PLO support of Saddam Hussein.

Takkenberg is convincing in his assertion that only the creation of a Palestinian state will permanently address the predicament of Palestinian refugees. Nevertheless, he defends this position on instrumentalist grounds—that it will address the refugees' practical needs and wants. Yet the right to self-determination in international law is based on historical and cultural factors. Perhaps Takkenberg could have presented a clearer perspective on the historical and political issues involved in the Palestinian refugee crisis, such that the "durable solution" of an independent Palestinian state could have been more readily justified on the basis of recognized, inherent grounds to self-determination rather than on those of political pragmatism.

Overall, however, The Status of Palestinian Refugees in International Law is an impressive contribution to the existing literature on international refugee law, as well as on the larger question of Palestine. It fills lacunae in both bodies of literature by considering the specific circumstances of Palestinian refugees and achieves this with reference to a multiplicity of legal sources and non-legal factors. Aside from the consolidation of documents referred to in the three Parts of the volume, the annexes contain a number of important documents not previously published, including the English translation of the 1965 Casablanca Protocol on the Treatment of Palestinians in the Arab States. The volume will undoubtedly prove useful to those working for the protection of Palestinian refugees and other refugees fleeing from or living in conflict situations. It will also feed the interest of a broader audience of students and scholars in the fields of public international law and international relations.


The present global crisis of internal displacement is one of alarming magnitude. While in 1982 there were an estimated 1.2 million displaced persons in eleven different countries, by 1986 that number had risen to an estimated 11.5 to 14 million in some twenty countries. Today there are between 20 and 25 million internally displaced persons in thirty-five to forty countries. In 1993 and 1994 alone, internal conflicts worldwide forced 10,000 persons a day to flee their homes and either cross borders or become displaced in their own countries. While refugees are protected to a large extent by international law, internally displaced persons do not normally enjoy such protections and, as a result, suffer serious humanitarian and human rights abuses. In this very well written and thorough account,
Roberta Cohen and Francis M. Deng address the specific needs of the internally displaced, explain the laws, institutions, and organizations that have sought to address those needs, and make a number of recommendations for how those efforts can be improved in order to combat the crisis.

The book is largely the result of a project commissioned by former Secretary-General Boutros Boutros-Ghali to study the problem of internal displacement and "develop a comprehensive global strategy for providing effective protection, assistance, and reintegration and development support for the internally displaced" (p. ix). The former secretary-general appointed co-author Francis M. Deng, senior fellow in the Foreign Policy Studies program of the Brookings Institution and former Sudanese diplomat, as special representative of the United Nations on internally displaced persons (IDPs). Co-author Roberta Cohen is a senior adviser to the Refugee Policy Group and guest scholar at the Brookings Institution. She has played a major role in placing the subject of internal displacement on the agenda of the United Nations Commission on Human Rights. Current U.N. Secretary-General Kofi Annan expresses his support for this project in his preface to this book.

Two characteristics are fundamental to any definition of internal displacement: the movement must be coerced or involuntary, and the populations affected must remain within national borders. The authors point out, however, that the working definition currently used by the United Nations is over-exclusive. It identifies IDPs as "persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters, and who are within the territory of their own country" (p. 16, emphases added). The time, number, and nature restrictions of this definition are highly problematic and leave many displaced persons out of the number count. In Colombia, for example, displaced persons fled their homes in small numbers in order to make themselves less conspicuous. The displacement of Kurds in Iraq, moreover, was neither sudden nor unexpected, but occurred gradually over a period between the late 1970s and early 1990s. Indeed, displaced persons do not always flee; neither are they always forced to leave their homes. Given these day-to-day realities, the authors suggest a new, more inclusive and responsive definition. They identify IDPs as those "who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular, as a result of, or in order to avoid the effects of, armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border" (p. 18).

The authors explain that although IDPs may not always suffer differently than persons in a particular crisis situation who have not been displaced, all IDPs have certain things in common, and it therefore makes
sense to provide a generalized framework for their protection and assistance. The legal aspect of such a framework is crucial. It must incorporate both adequate legal prescription and effective implementation of existing law.

In addressing the deficiencies of the existing law protecting IDPs, the authors identify what they term “normative gaps,” “applicability gaps,” “consensus gaps,” and “ratification gaps.” *Normative gaps* exist where international law does not provide sufficient protection for the legitimate needs of IDPs. No provision of international law, for example, provides for the restitution of, or compensation for, property lost as a result of internal displacement. Since human rights law is only binding on state actors, *applicability gaps* arise where, for example, persons are internally displaced at the hands of insurgent groups or other non-state actors. At the same time, human rights law is often derogable in situations of serious civil war, so basic protections of the internally displaced are often dispensed with at the moment they are most required. *Consensus gaps* occur where provisions regarding IDPs are not explicit. For example, with regard to the return of displaced persons to situations of imminent danger, the case law refers only to interstate return. Many countries have also not yet ratified the major human rights treaties and/or Additional Protocols of the Geneva Conventions, thereby creating *ratification gaps*. It is thus clear that while better implementation of existing law will solve part of the problem, more legal prescription is essential to an effective global strategy for dealing with the growing numbers of internally displaced.

To this end, the authors recommend the formulation of a body of principles that both address the gaps in existing international law and provide authoritative guidance to humanitarian relief organizations working with the internally displaced. The authors prioritize the following changes in international law: prohibition on the use of land mines; protections for internally displaced women against gender-specific violence; guarantee against forced return to dangerous places; and creation of a state duty to accept humanitarian relief for IDPs and to protect representatives of relief organizations. The “Guiding Principles on Internal Displacement,” included in the Appendix, are arguably the most important part of the project, and of the book. The incorporation of these principles into international law is a key element of the authors’ proposal for a comprehensive and effective global strategy for protecting IDPs.

There is currently no single international institution with direct responsibility for IDPs. Rather, many different institutions address the problems of internal displacement in a piecemeal, disorganized, and inadequate fashion. The authors’ policy proposal thus calls for the enlargement of the institutional mandate of a U.N. agency, such as the United Nations High Commissioner for Human Rights, to include IDPs as its primary responsibility. That agency would then be able to coordinate the activities of other institutions and fill any remaining gaps.
Perhaps the book’s greatest strength lies in the authors’ concrete and practical suggestions for how the crisis of internal displacement can be effectively addressed. In this regard, the authors propose a number of strategies aimed at preventing internal displacement. One proposed preventative strategy is to improve early warning systems. Indeed, Rapporteurs of the Commission on Human Rights often receive information very early about potential threats of displacement. The authors suggest empowering the High Commissioner for Human Rights to bring such information directly to the attention of the Security Council with recommendations for international response. Another proposed prevention strategy is for governments to improve their capacity in conflict management, particularly between ethnic groups. Such management should include conciliation and mediation procedures as well as calibrated action when dialogue does not achieve its intended results. Effective national institutions such as an independent and effective judicial system and an independent media are also crucial in any strategy aimed at preventing displacement. A functioning civil society with strong nongovernmental organizations, the authors stress, is also essential for preventing displacement.

Shifting the focus of the international community from response to prevention will not be easy. As a starting point, however, the authors recommend establishing the right not to be arbitrarily displaced as a fundamental human right, explicitly provided for in human rights law and enforced. This, the authors contend, will help push the focus away from human rights abuses that occur after displacement. The book also emphasizes the importance of integrating the protection of IDPs with assistance and relief. As the authors note, it is useless to provide food to IDPs without simultaneously providing protection against attack by hostile forces.

Roberta Cohen and Francis M. Deng are two of the foremost authorities on the crisis of internal displacement. This book is the culmination of their thought and research on this topic over the last several years. As such it is an excellent study of the crisis and, more importantly, offers a comprehensive set of strategies and proposals to address the crisis.

Legal Issues in Foreign Countries


In *The Law under the Swastika* Michael Stolleis examines the evolution of legal history, theory, and practice in Nazi Germany and the impact of that
legacy on the post-war German legal system and legal profession. The book, originally published in German in 1994, is a compilation of essays that the author, now director of the Max-Planck-Institute for European Legal History and a professor of public law and early modern legal history at the Johan Wolfgang Goethe-Universitat, Frankfurt am Main, produced in the course of the preceding twenty years. Stolleis’s central objective, as outlined in the Introduction, is not only to examine the interaction between law, Nazi ideology, and Nazi politics across a variety of theoretical and practical legal fields, but, more ambitiously, to stimulate an impartial and attentive study of Nazi law and its legacy by present-day German legal historians.

The first of the book’s three sections concentrates on National Socialist legal history. In Stolleis’s view, the post-war German legal scholarship of this subject was frequently distorted by the prominent presence in its ranks of many former jurists and academics from the Nazi era and the resulting emotional and political discomfort with the subject. Stolleis urges the adoption of a more impartial and nondogmatic historical approach, calling for “a legal history emancipated from the claims of current law and politics” (p. 38). An example of this approach is Stolleis’s own analysis of the field of legal history scholarship during the Nazi period. Exploring whether the confrontation with National Socialist ideology stimulated any “genuine ‘advances’ in scholarship” (p. 46), Stolleis shows that, paradoxically, Nazi antipathy toward Roman law catalyzed a thorough reexamination of the Roman law’s core notions, while Nazi support for Germanic law led, on the contrary, to that field’s stagnation. This emphasis on the continuing legacy of Nazi legal history reverberates through Stolleis’s examination of the prominence of the notions of “community” and “national community” in National Socialist jurisprudence. In Stolleis’s opinion, a “legal-historical analysis” of the incompatibility of this terminology with the traditional legal system premised on the legally enforceable rights of the individual and on the concept of the state as a legal person “is indispensable for the self-conception of [German] jurisprudence today, which uses these or similar terms every day without being aware of their historical use and semantic associations” (p. 64).

In the second section, Stolleis explores the evolution of both legal theory and practice during the Nazi era in more detail, focusing on the areas of constitutional and administrative law. Both of these fields, he concludes, were gradually subverted by Nazi ideology until, by the end of the Third Reich, “[a] theory of constitutional and administrative law that would have deserved the name of a scholarly field no longer existed” (p. 99). The dynamics of this process were most pronounced in the evolution of administrative law, which the Nazis perceived as the embodiment of constitutional liberalism. Stolleis shows how Nazi attempts to re-formulate administrative law as directly subservient to the higher communal purposes of the German nation resulted in a retreat from legal form and protection and, eventually, a demise of administrative law as a means of checking government activity. Although the
administrative courts managed to maintain a limited measure of autonomy, thereby serving as a symbolic link with the pre-Nazi judicial tradition of the civic Rechtsstaat, they accomplished it only at the expense of gradual accommodation with the regime and abandonment of their traditional function of providing legal protection for individual rights and for the rule of law.

The last two chapters in the second section focus on two episodes, both of which were the subject of an extensive academic and public debate in post-war Germany. The first was a highly controversial study of Nazi military justice in the late 1970s that portrayed military courts as unaffected by Nazi influence and whose judgments were appropriate in war-time circumstances. The second was an equally contentious 1982 documentary film that criticized as scandalous the continuing validity of criminal sentences passed by Nazi courts against opponents of the regime. These two incidents raised one of the fundamental problems in any assessment of Nazi law and its legacy: the need to distinguish between “valid” law from the Nazi period and the law that should be considered “non-law” because it violated elementary notions of justice and human rights. Stolleis repeatedly calls for “a more thorough historical examination of Nazi law” in order both to provide a nuanced and objective answer to this question and to ensure “the creation of a certain minimum standard of political awareness and political ethics in the culture at large” (p. 164). He hopes that the “change of generations and outlook” (p. 154) that has taken place amongst German jurists will enable them to transcend the psychological “collective desire for repression” (p. 163) of this past. Stolleis fails, however, to give a fully compelling explanation of how this new generation of legal historians (in whose ranks Stolleis counts himself) will succeed in liberating itself from the pervasive heritage of the Nazi period to an extent that their scholarship will be unaffected by these deeply rooted political and psychological biases.

This tension between the continuing influence of Nazi law on post-war Germany and Stolleis’s desire for a historically objective legal history of Nazi law is brought into sharp relief in the concluding section of the book. Focusing on the development of the legal system and judicial policy in post-war Germany, Stolleis reveals the inadequacy of the attempt of the occupying powers to “de-Nazify” the German legal system in the immediate aftermath of the war—an attempt hampered both by their desire to retain the necessary continuity in the administration of justice and by opposition from the German legal profession. The legacy posed by the inadequacy of this process is exemplified, in Stolleis’s view, by the life of a prominent legal academic and, subsequently, politician, Theodor Maunz. Having been tainted by ideological collaboration with the Nazi regime, Maunz reestablished his reputation as a preeminent authority on German constitutional law in the war’s aftermath, only to have it tarnished posthumously by revelations that he secretly advised one of the country’s neo-Nazi groups. Using this example, Stolleis highlights the ethical issues involved in the continuing reluctance of present-day German
jurists to confront, through an honest scholarly investigation and a candid public discussion, the legacy that the Nazi state left for the country's legal profession. In Stolleis's opinion, the failure to investigate issues of political and professional ethics raised by the continuity between the Nazi and post-war German legal systems threatens the liberal consensus that has sustained the legal system of the Federal Republic.

The Law under the Swastika combines in a masterful fashion a detailed yet accessible overview of the legal system under National Socialism with an exploration of how the numerous concerns raised by the co-existence (and, often, cooperation) of law and dictatorship continue to reverberate in today's Germany. The book should therefore appeal not only to those interested in the legal history of Nazi Germany but, more broadly, to those intrigued by the role of law in a totalitarian society, the interaction between law and state-mandated ideology, and the ethical problems that a transition from a totalitarian to a liberal state raise for the legal profession. The book's extensive footnotes (all referring to works in German, although indicating English translations when they are available) and a well-compiled index will be helpful to anyone wishing to investigate these issues in more detail.


People without some special personal or professional connection to Afghanistan are unlikely to know more about it than they have seen in the news. In this volume the authors, both long-time experts on Afghanistan and Central Asia, attempt to correct that problem. The book guides the reader through the complexities of Afghanistan's war-torn and instability-plagued history over the last twenty-five years and assesses Afghanistan's current situation. This compels the authors to discuss the area's less recent history, explaining the various ethnic, religious, ideological, and geopolitical forces that have played a role (and will continue to play a role) in shaping Afghanistan. Although the attempt to show the interrelationships between all of these factors sometimes obfuscates the narrative thread of the book, in general the volume presents a clear picture of a country that is the site of many tensions, some resulting from collisions of powers originating far beyond it, but whose people have nevertheless fought to maintain their own identity and lifestyle in the midst of these tensions.

The authors begin with an introduction geared to orient even the most unknowledgeable reader—briefly describing the mountainous and somewhat arid geography, the village- and tribe-based agricultural lifestyle of most Afghans, and the increasingly uneasy coexistence of the dominant ethnic group (the Pushtuns) with Dari-speaking Tajiks, Farsiwan, Qizilbash, and...
Hazara, and with Turkic-speaking groups such as Uzbeks, Turkmens, and Kazaks. The authors supplement this overview of the physical and demographic layout of Afghanistan with two much needed maps. The reader, however, is likely to be left wanting (and probably needing) quite a few more maps and figures to help make sense of the book's frequent reference to specific cities and regions.

The volume goes on to describe Afghanistan's history and key geopolitical position. In the Middle Ages, the area that would become Afghanistan was an important part of the Silk Road, the main trade route between Europe and the Orient. At its peak, the Afghan empire extended from parts of present-day Iran to Kashmir and Punjab in India. Russian and English imperial expansion, however, quickly dissolved the empire, which was already troubled by internal rivalries. The authors show how Afghanistan has been poised at the edge of rival empires for almost two centuries—first between Russia and England, and later between the Soviet Union and the United States. Afghan rulers were forced to play these giants off one another so as to maximize their own autonomy while minimizing concessions to either party. This balance was complicated by different rulers' varying attitudes toward modernization; those who wished to modernize Afghanistan had little choice but to rely on these giants' aid.

The authors give a fairly dry account of the traditional Islam of the Afghans; it is centered around the local mosque and its religious officiator, the mullah. The book discusses the religious differences and ethnic tensions between the various ethnic groups in Afghanistan, as well as the essential role of Islam in providing stabilizing forces like education and local leadership.

The heart of the volume, however, focuses on the Soviet efforts, both direct and indirect, to control Afghanistan, and on the ultimately successful resistance of the mujahidin—"holy warriors" who fought to preserve their religion and way of life against the onslaught of Marxism. The authors portray the Afghan Marxists as a group heavily influenced by the Soviet Union from the outset. As the republican government showed signs of becoming stable and independent of Soviet aid, the U.S.S.R. backed a Marxist coup in 1978. Two factions in the new Marxist regime, however, quickly turned to infighting, while simultaneously trying to "eliminate the old rural social structures" (p. 126). The authors view this development as a disaster, since it alienated traditional elements of society, disrupted the local hierarchies that might have promoted stability, and created a power vacuum in which resistance leaders could easily gain followers. In blow-by-blow detail, the book depicts the Afghan Marxist parties as squabbling puppets of the Soviets who were so inept that the U.S.S.R. was ultimately obliged to occupy the country itself.

On the other hand, the mujahidin receive a fairly good billing. According to the authors, the common people's political preference was for
the mujahidin over the Marxists almost from the beginning. Moreover, the authors claim that the mujahidin's courageous jihad in defense of their homeland wore down the Red Army, embarrassed the U.S.S.R., and thus contributed more than Westerners may realize to the fall of the Soviet Union. Notwithstanding, the authors concede that, once these “warriors” took power, they quickly lost the unity they enjoyed in the face of a common enemy, turning to warlordism and ethnic fighting. It was in this context that the Taliban, a group originating in madrasas (Islamic schools) near the Pakistani border, entered the picture; they strove to end the abuses of both the warlords and communists alike. The Taliban, for these authors, “combine traditionally trained madrassa students with many young mujahidin commanders” (p. 195), and so benefit somewhat from the general positive light in which the book portrays these forces.

The volume ends with an assessment of Afghanistan’s current position and prospects for legitimate government and general stability. The authors see Afghanistan’s opportunities for long-term stability primarily in its favorable position for facilitating trade. If the Taliban (or another government) can stabilize Afghanistan long enough to create safe, reliable trade routes and pipelines (particularly between Pakistan and the landlocked states of Central Asia), the country could recapture some of the importance (and prosperity) it had in the days of the Silk Road. Governmental success also hinges, they believe, on incorporating ethnic minorities into the government.

This book presents a good overview of the recent history of modern Afghanistan. Part of its overall clarity and force lies in its separate presentation of the various forces present in Afghan life—notably, traditional Islam, Marxism, and the Islamic resistance fighters. By treating each of these interrelated groups separately, however, the book sometimes confuses the reader by giving only one side of the full history at a time. Fortunately, it includes appendices that provide chronologies of rulers and events in modern Afghanistan, as well as a glossary, an index, and a bibliographic essay; these partially ameliorate the difficulty in following the narrative thread of the main text.

In general, the book’s clear bias in favor of traditional elements of Afghan society makes one wonder if the authors have represented the issues as somewhat more clear than they are in reality. For the uninitiated, an understanding of which historical interpretations in the book are controversial and which are well-established would be helpful. The book, moreover, does not help the reader understand what the Afghans’ experience has been. It barely touches on humanitarian concerns such as the poverty of the common people, their educational status, the minefields, and now, under the Taliban, the treatment of women. One might have expected more of this kind of understanding from a book dedicated, very eloquently, to “the Afghans who were and will be maimed and killed by the ten million land
mines strewn across their land.” Nevertheless, for someone who wants to understand the intricacies of Afghanistan’s political situation, this book is a good place to start.

Regional Human Rights Systems


Even in the field of international human rights, there is often a tendency for practitioners to concentrate narrowly upon the challenges in their own particular region while ignoring lessons that could be learned from comparable developments elsewhere. David Harris and Stephen Livingstone, both human rights legal scholars at the University of Nottingham in the United Kingdom, aim to combat this unfortunate tendency in their edited volume The Inter-American System of Human Rights. By collecting detailed and cogent analyses from some of the most expert lawyers and practitioners working within the Inter-American system, the editors offer an inside view into, and critical perspective of, the precedents, procedures, developments, and novel features of the Inter-American human rights system.

Conceptually, the work’s fourteen chapters are divided into three parts: institutions; substantive rights; and obstacles and recommendations. Of particular interest is Tom Farer’s essay on the development of the Inter-American Commission on Human Rights. Farer, a past President of the Commission, offers a compelling view of how Cold War politics stymied the effectiveness of the Commission in dealing with the massive human rights abuses occurring in Latin America during the 1960s and 1970s. Political considerations, for example, meant that, “Brazil’s descent into the abyss of systemic torture barely registered on the Commission’s radar screen” (p. 45). Yet while Farer highlights the limits of the Commission’s capacity to effect widespread change, he also emphasizes the important role played by its “country reports.” These reports have allowed it to publicize human rights abuses by particular regional regimes, without taking specific action itself, in the hopes of triggering international public pressure.

Farer’s essay works well with Veronica Gomez’s contribution (Chapter Seven), which focuses on the role of the OAS General Assembly in limiting the potential effectiveness of the Commission and Court. As the OAS controls both the composition and budget of the two institutions, it has used its political muscle at varying times to either weaken or strengthen their quasi-judicial powers. Gomez notes, however, that as many OAS states are consolidating their young democracies, new opportunities for the increased role and effectiveness of both the Commission and Court should materialize.
Amnesties, which is the subject of Ellen Lutz’ contribution (Chapter Eleven), represent one controversial issue raised in the context of regional democratic transition. Following transition from a brutal authoritarian past, how far should societies go in prosecuting those responsible for systematic atrocities? The Commission’s rhetorical response has clearly been in favor of punishment for perpetrators of human rights abuses. Yet it has also been reluctant to declare that the amnesty bargains that have been struck in the region are illegal. In particular, Lutz highlights the Commission’s reticence in condemning the 1993 Haitian amnesty, suggesting that “the Commission must certainly have been influenced by the widespread international support for the amnesty bargain” (p. 367). Lutz brilliantly sketches out the manifold dilemmas faced by the Commission in considering amnesties that are the result of international bargaining, as well as those that are conditions for the transfer of power from dictatorship to democracy. Interestingly, the essay does not address the question of whether or not the Commission ought to advocate prosecution in a nascent democracy where a societal consensus of “forgetting” has taken hold.

Antonio Augusto Cancado Trindade, a member of the Inter-American Court, looks prospectively at the Commission and Court in the next century. He recommends that these institutions “focus on violations in the context of the so-called democratic ‘transition’ or ‘consolidation’” (p. 418). Foremost among these concerns, he suggests, is the shift from state-sponsored violations to non-state, individual violations. The inevitable tensions found in democratic societies between majority and minority rights must also be addressed.

In Latin America, this tension arises most forcefully in the context of indigenous rights, the topic Hurst Hannum tackles in his essay. Hannum argues that scant attention has been given to the idea of group rights in the Inter-American system and that, historically, indigenous peoples’ rights have been considered only insofar as they implicate the universal standards in the American Declaration. He does concede, however, that the Commission has taken tentative steps since the 1980s—by, for example, informally mediating disputes between governments and indigenous peoples—to influence member states to take such claims more seriously.

As a whole, this book is an excellent collection of probing analyses. A potential weakness, however, might be in its nearly exclusive focus on institutions—in particular, the Court and the Commission—in explaining the Inter-American system of human rights. This emphasis leaves one with the impression that the Inter-American system of human rights is defined solely by the Court and the Commission. A broader definition or conception of “system” might have allowed for other perspectives, such as those of non-governmental organizations and religious groups, to find their way into the volume.
The Inter-American System of Human Rights is a significant contribution to our understanding of the structure and the functioning of the Inter-American human rights regime. In addition to the well-written chapters, the volume also includes nine useful appendices, including the controlling substantive documents of the system, the rules of procedure, and a complete list of all the published reports and decisions of the Commission and Court. This volume reminds all those interested in human rights that keeping aware of lessons drawn from other regions is an important step in improving all regional systems of human rights.


Ever since the Universal Declaration of Human Rights was adopted by the United Nations in 1948, the universality of human rights has been as much an issue of international politics and international law as it has been a purely philosophical matter. American Presidents have made human rights expansion a foreign policy goal (in rhetoric if not always in fact), while a number of non-Western leaders, most notably former Singaporean Prime Minister Lee Kuan Yew, have aggressively rejected claims of universal rights and values. Into this contested terrain comes Lone Lindholt, a Danish legal academic, who makes her own contribution to the discourse on universality in her new book Questioning the Universality of Human Rights: The African Charter on Human and Peoples' Rights in Botswana, Malawi and Mozambique.

Unfortunately, Lindholt's book never quite delivers what her title promises—a serious and sustained questioning of the universality of human rights. The book does, however, introduce readers to human rights issues in a corner of the globe about which most people outside of southern Africa know little to nothing.

The first part of the book deals with the theoretical and practical problems associated with analyzing universal human rights in the context of Africa. To begin with, what does it mean to talk of the universality of human rights? Does it mean that certain rights are accorded to people everywhere and at all times, an assuredly false empirical claim, or that certain rights ought to be respected everywhere always, an absolute ideological position? Lindholt admits that human rights talk inevitably implicates its advocates in a universalist ideological position, a position that becomes increasingly uncomfortable the more seriously claims of diversity in values are taken. Lindholt, however, believes that she can reconcile the absolute universalist and radical cultural relativist positions by positing a
distinction between the essence and the detailed formulation of human rights. “While we uphold that human rights must in their essence conform to the [universalist] framework already defined and established,” she writes, “we must accept, and even appreciate, cultural diversity which serves to adopt human rights effectively to the circumstances under which they operate” (p. 53). This distinction allows Lindholt to see the African Charter as both an instantiation of universalist values and a uniquely regional document, and she suggests that we look at all regional human rights instruments, including the European and American Conventions on Human Rights, with a similar dual lens.

In Part II, Lindholt gives a concise history of the African Charter and three national constitutions. The narrative is interesting and fresh for anyone unfamiliar with recent southeast African history. Her most important conclusion is that these documents are legitimate expressions of African understandings of human rights and are not, as some have suggested, mere Western impositions. Three “generations” of African constitutions are analyzed: a first generation drafted by departing European colonial powers; a second generation of indigenously-drafted documents that differ very little in content from the first generation instruments; and a third generation of post-Cold War indigenously created documents that creatively expand on the notion of human rights by including corresponding duties and group rights. Botswana’s Constitution, adopted in 1966, is a classic second-generation instrument, while Mozambique and Malawi are now governed by third-generation documents adopted in the early 1990s. The African Charter itself, ratified in 1981, represents the beginning of the third generation.

Part III, the bulk of the book, constitutes a detailed look at all of the human rights provisions in the African Charter. Unfortunately, Lindholt’s method consists of little more than directly comparing each provision of the Charter to its corresponding articulation in two major international conventions and the national constitutions covered. Her analyses and comparisons are thorough and, on the whole, convincing, but this lengthy section becomes repetitive and monotonous quite early on. One feels as if Lindholt wants to subject all of her readers to the tedium of her research. She might have better directed her critical skills to analyzing the implications of the differences she finds, rather than describing each difference in minute detail. Indeed, the unique aspects of the African Charter are remarkable. The Charter is, for instance, the only regional human rights regime to enumerate peoples’ rights in addition to its list of individual human rights. Yet the Charter never defines the term “people.” Lindholt notes this problem but fails to adequately emphasize its dimensions. What good is a human rights provision, after all, if it is unclear who can claim the right? The “inalienable right to self-determination” that the Charter recognizes as a possession of peoples is nothing but empty rhetoric unless there is some understanding of what a “people” is.
Lindholt also neglects to explain just how controversial the very idea of group rights is. Many theorists believe that rights inhere only in individuals. The idea of group or collective rights is therefore understood as a contradiction in terms. The contours of this debate—or even its very existence—are never directly addressed. "The basis for the emphasis on the peoples' rights can be found," she concludes, "in the traditional importance which in African culture and history has been attributed to the nature of the local close-knit society" (p. 229). While hardly disputable, this neither illuminates the substantive meaning of group rights nor how they may procedurally be claimed and enforced.

Lindholt is at her best when she compares the national constitutions of Botswana, Malawi, and Mozambique to each other and to the Charter. For the most part, Lindholt concludes that these constitutions protect the rights laid out in the African Charter. The failure of Botswana's Constitution to explicitly protect the equal rights of women is a notable exception, and Lindholt explores this issue in depth. As for the Charter itself, Lindholt identifies the prevalence of "clawback" clauses as its biggest drawback. These clauses, which invoke national law as a limit on the various rights granted, are particularly troubling given the very short history—or complete lack thereof—of national government respect for human rights in these African states. Still, on paper, things look pretty good for human rights in Africa.

It is precisely the disjunction between the lofty "paper rights" of the Charter and the actual conditions of the people of Africa, however, that leaves one wondering in the end what human rights talk actually achieves. Eighty five percent of the citizens of Malawi are illiterate (p. 193 footnote) and its life expectancy rate is under 40 years—and this is the country with the most progressive Constitution! Mozambique, we are told, has barely recovered from a decade and a half of brutal civil war. Ironically, it is Botswana, with its old and apparently inadequate Constitution, that manages to provide more decent living standards to more of its citizens than either of the other two countries. Lindholt even admits in isolated sections that legal norms may achieve very little in these countries. "Ill will always finds a way, and if intention is strong enough, even legal safeguards are easily set aside" (p. 148). But if that is the case, why should we care so much about the texts of the Charter and the Constitutions—texts that the majority of citizens in these countries cannot even read?

Lindholt is a legal scholar and need not apologize for her project of analyzing the basic legal documents of these African countries. Nonetheless, one concludes the book sensing that the precise textual formulation of legal rights is altogether beside the point. It will be a very long time before the people of these countries enjoy anything like the world envisioned in their controlling human rights documents. An emphasis on how basic human rights can be enforced by both individuals and groups in southern Africa,
therefore, is the essential missing piece in this otherwise informative legal analysis.

**European Union**

*Europe's Other: European Law Between Modernity and Postmodernity.*

Criticism of the European Union and its legal order has been surprisingly sparse. This void is particularly astonishing since EU law makes rather ambitious claims: to transcend nation; to embody a "certain idea of Europe;" and to manifest economic rationality and progress. Frustrated by the lack of critical voices, the authors of *Europe's Other* aim to engage EU law with a diverse arsenal of theory that shares a critique of modernity and focuses on identity and alterity in the construction of European law and the philosophy that sustains it.

The "Other" that Europe rejects, yet against which it constructs its own identity, takes various forms. Corresponding to the tripartite division of the volume, this collection explores the Other in three areas. Part I presents a highly theoretical postmodern critique of modernist claims that EU law transcends nation and represents a unified and independent European identity. Part II focuses on institutional policy and how the European identity is constructed in EU law through the exclusion of the Other. Finally, Part III travels outside the bounds of EU law to explore similar constructions in national law and the European Convention on Human Rights. Each section's essays generally complement one another, thereby rescuing the volume from potential incoherence due to its innovative, yet somewhat overly broad, project.

The essays in Part I are an outstanding collection of thoughts on the European Union as a postmodern entity. While aimed at an audience familiar with the somewhat arcane terminology and literature of postmodern philosophy, they provide good insights into the philosophic foundations of the European project. In this regard, they are worth reading, even if this is not an area of expertise. James Henry Bergeron's "Europe's Emprise: Symbolic Economy and the Postmodern Condition" (Chapter Four) is a particularly well-argued and accessible essay on the modernist character of the European project.

Part II shifts the focus to explicit attempts to shape European identity through EU policy. Given its concrete orientation, this section is probably the most relevant of the volume to the wider audience of readers. The most compelling essays focus, respectively, on the establishment of a "new
Community cultural competence” (p. 119) in the Maastricht Treaty on the European Union and on the Common Foreign and Security Policy of the EU. The former subject is addressed by Valsamis Mitsilegas in “Culture in the Evolution of European Law: Panacea in the Quest for Identity?” (Chapter Six), which explores the establishment of culture “as a new legal term in the EU edifice” (p. 112) and its role in shaping the European Union. Mitsilegas presents a collection of cases concerning the compatibility of cultural policy provisions with such traditional EU policy heavyweights as free movement of persons, goods, and services and competition law. Indeed, as the Maastricht Treaty allows cultural concerns to enter even into the “traditional economic fortress, that of competition rules” (p. 119), the role of culture is potentially mighty. Mitsilegas suggests that the inclusion of culture in the Treaty on the European Union “is of pivotal significance, to the extent that it has the power to influence the future of this Union, by entitling the [EU] with a distinct identity” (p. 125). This identity is crucial to creating the collective polity needed to legitimate the Union.

Continuing the theme of finding and asserting a European identity through institutional policy, Sionaidh Douglas-Scott’s essay considers the reinforcement of European identity against a threatening external Other by means of a common defense policy. This essay is noteworthy because it explores the Common Foreign and Security Policy (CFSP)—“the least well-known ‘pillar’ of the Union” (p. 132)—in the context of identity and alterity. Douglas-Scott argues that the “European self-image” is too confused to be projected onto an international stage and that the CFSP is an inadequate means of accomplishing this goal. On a normative level, she argues that we should be “suspicious of assertions of a strong, unified European policy and the silencing of plurality of claims that such a policy would bring with it” (p. 132). This essay criticizes the CFSP and cogently describes its flawed institutional and structural foundations. But Douglas-Scott also sounds a rather controversial warning regarding the European historic treatment of the Other: “an emphasis on harmony, unity, coherence and continuity exhibits traits of ‘Euro-nationalism’...tending to repress Europe’s violent past or excluding division and antagonism from the European identity” (p.151).

Although the essay provides a thought-provoking starting point, the contours of this past identity and its possible future manifestations in a common defense policy are not as fully developed as they could be.

Finally, Part III addresses the issues of identity in national law and the European Convention on Human Rights. In “Foucault and the ‘Illegal Alien’: National Identity as Focus for Distinction and Control” (Chapter Nine), Sarah van Walsum presents a vivid account of the nexus between immigration controls and sexuality in the Netherlands. She argues that the perceived essential difference between immigrants deemed legal and illegal—like the perceived distinction between “perverse” and “normal” sexual behavior explored by Foucault—“legitimates the powers that explore...
and maintain it” (p. 186). The controls on illegality have increasingly entered the bedroom, “probing into sexual attachments, family relationships and the site of birth itself” (p. 186) resulting in immigration law that is even more gendered and Other-focused.

Thomas Spijkerboer’s essay “Querelle Asks for Asylum” (Chapter Ten) is the most original in the collection. He uses Fassbinder’s posthumous film Querelle to illuminate his inquiry into “whether refugee law doctrine allows for the possibility to advocate cases of gay and lesbian asylum seekers while at the same time undermining the straight/non-straight distinction” (p. 191). In Querelle, Fassbinder challenges the dichotomous construction of sexual orientation—a stark line drawn between heterosexuality and homosexuality, with heterosexuality as the blatant norm. Spijkerboer also challenges this dichotomy when he argues for gay and lesbian asylum to be granted in refugee law, not on the traditional grounds that persecuted homosexuals are a social group, but rather on the grounds of persecution based on political opinion. He reasons that persecution of homosexuals arises from a “political reaction to same-sex acts” (p. 212). As victims of political persecution, they should be granted asylum. By arguing on “political opinion” and not on “social group” grounds, Spijkerboer hopes to permit recognition of persecuted gays and lesbians while denying the importance and binary nature of sexual orientation.

The direction of this collection toward a more inclusive and heterogeneous Europe leads it to oppose “the claims to encompassing unity, transcendence and progress which have for so long characterized the modernist discourse of European integration and European law” (p. xx). As these claims have been overwhelmingly accepted in EU scholarship, Europe’s Other is valuable because it introduces a philosophical and practical critique into a field that has been remarkably homogenous. While the first section of the book may be less useful for readers unversed in postmodern theory, the socio-legal questions examined in Parts II and III are essential reading for those concerned with the construction and impact of a Europe that is more than an economic entity.