Recent Publications

Power and Justice


The intellectual disciplines of international relations and international law have long occupied distinct niches in scholarly examinations of the international system. International law theorists have focused primarily on the nature and scope of legal regimes, with particular emphasis on the hierarchy of legal norms. Thinkers in international relations have traditionally centered their analysis on the international distribution of power, and have privileged a distinctly political sphere. More recently, writers have initiated a dialogue between the two methodologies and fields of inquiry in an attempt to create a useful synthetic framework. *The Role of Law in International Politics*, edited by Michael Byers, represents a recent and comprehensive effort to that end. The book is a collection of fifteen essays written by international relations scholars, international legal theorists, and practitioners in both fields. These essays grew out of papers presented at a conference of the British Branch of the International Law Association in the autumn of 1998 and revised in light of conference debates and discussions.

While each of the articles presents a self-contained analysis of various issues at the intersection of international law and politics, the editor has attempted to blend them together to address a few major thematic questions. First, what is the character of international law, particularly with reference to a globalized, post-Cold-War international system? Second, in what ways and to what extent do international legal frameworks affect international politics, and vice versa? Third, what are the most effective mechanisms for expanding and modifying the international legal “system,” and which actors should control the process of norm generation and implementation? Related to each of the questions is a broader inquiry into the impact of globalization: How have the effects associated with this evolving process transformed the international legal order? The organization of the essays does not allow for a seamless narrative analysis of these questions, but Andrew Hurrell’s conclusion ties these themes together and weaves a relatively coherent fabric from the diverse set of articles.

Arthur Watts lays the groundwork for these lines of inquiry in the book’s first essay, “The Importance of International Law.” His piece reveals two of the basic ideological commonalities of the contributors: 1) a belief in the concept of an “international society,” where community norms and common affiliation help to shape the character of state interaction; and 2) a sense that the rule of law plays *some* role in international politics, and a consequent commitment to building common platforms to facilitate dialogue between the two disciplines. This perspective rejects largely power-based
accounts of law's role in international politics; however, the editor does not include opposing voices, nor does he outline in substantial detail the operating logic of the "Realist" school—a still-powerful force in international relations theory. In his essay "How Do Norms Matter?," Friedrich Kratochwil decries the "anaemic conception of politics as 'power politics,'" and posits that the divide between politics and law has "increasingly impoverished inquiries in both fields" (p. 35). Kratochwil goes on to discuss constructivist approaches to international law, arguing that political and social order in the international sphere are derived not only from the self-interested actions of rational actors, but also from an evolving set of constitutive norms. Philip Allott's article, "The Concept of International Law," follows on the heels of Kratochwil's analysis, offering a perspective on what elements comprise international law to better understand how that law influences international relations. He contends that international law represents a human construct designed to promote systematically a set of objective moral goals. The social function of law, according to Allott, is ultimately to identify and promote the international "public interest." In contrast, Martti Koskenniemi defends the approach of legal formalism and asserts the superiority of individual states as guardians of the international legal order. Unlike Allott, Koskenniemi believes that the world's legal framework requires a set of strict, bright-line rules from which no derogation is permitted in order to survive the challenge posed by the "hegemony" of Western liberalism. Ultimately, however, despite differences in perspective and approach among these authors, all agree on the need to promote greater accountability of international actors through the legal process.

Stephen Toope's article, "Emerging Patterns of Governance and International Law," analyzes policy-oriented approaches to the questions of compliance and implementation. Although he agrees with his colleagues that politics and law do not occupy entirely separate spheres, he observes that "[l]aw and power, and law and politics are not opposites, but neither are they coextensive" (p. 102). Vaughan Lowe's essay, "The Politics of Law-Making: Are the Method and Character of Norm Creation Changing?," generally heeds Toope's admonition regarding the "relative autonomy of [international] law" (p. 107) in its examination of the process by which new international legal norms are likely to emerge over the next few decades. Lowe starts with the premise that most of the fundamental rules, principles, and institutions of public, state-referential international law are currently in place. However, he goes on to observe that "the norms and the processes of international law are being adopted outside the classical inter-State domain" (p. 224). This sensitivity to the effects of globalization on the nature and scope of interaction between international law and politics permeates the analysis offered in the remaining pieces, which focus on the impact of law on specific spheres of political activity.

In their respective essays, Eyal Benvenisti and Anne-Marie Slaughter stress the disaggregation of the state and the increasing interpenetration of domestic and international legal processes. Edward Kwakwa and Brigitte Stern each approach the question of globalization and the international
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The book's chief strength, a diverse array of views on the intersection of law and politics in the international sphere, also generates its chief weakness, the occasionally haphazard organization of the articles and main themes. But Hurrell's conclusion effectively ties together the disparate strands of analysis presented in these wide-ranging and diverse essays. It coherently explores the authors' conclusions regarding the relationship between international law and politics, and the impact of globalization on the international legal order. As Hurrell notes at the outset of his conclusion, "no definitive answers can be given within the compass of one brief chapter" (p. 327). Ultimately, the main objective of the book is to ask new questions, and to frame old questions in a fashion more relevant to the current international system, rather than to divine conclusive answers. To put together a single volume on a topic as vast and conceptually difficult as the role of law in international politics is a daunting task. But Michael Byers and his contributors have succeeded in clarifying and framing the main points of debate and discussion, and in providing a useful set of methodologies for future inquiry.


In legal education and practice throughout the United States, law and economics has emerged as the most popular hybridization of legal scholarship with another academic discipline. Economic methods of analysis underlie contemporary legal debates not only in their obvious applications to anti-trust, taxation, and liability, but also in arenas as diverse as criminal justice, procedure, and family law. Arguably, no other analytical framework in the social sciences has been used as pervasively to guide legal reasoning, either in the academy or in the practice of law.
In The Network Inside Out, Annelise Riles, an associate professor at the Northwestern School of Law, suggests that legal studies should make room for another, and perhaps more persuasive, influence from the social sciences to help explain how law is produced and how, in turn, it shapes human behavior. Riles identifies anthropology as a compelling lens through which to examine the law. In particular, Riles suggests that anthropology can expose the mechanisms by which international law is created in the information age. By employing the devices of ethnography and close cultural reading, her book provides a fascinating glimpse into the minute and human processes that economics, anthropology’s more quantitative cousin, would likely overlook.

The Network Inside Out is the product of fifteen months of fieldwork conducted by Riles in Fiji and the South Pacific region, as she worked with women activists and bureaucrats in preparation for the United Nations Fourth World Conference held in Beijing in 1995. The limiting and outmoded notion of the anthropologist translating the exotic (or “Other”) into the familiar (Western knowledge) is quickly discarded by Riles, who insists that her “subjects” have already done the analytical work for us. She adapts her ethnography to a reality in which her informants (expert grant-writers, veteran conference participants, and internet-savvy activists) have already analyzed and documented their own work in meticulous detail. The common thread in her analysis is neither the geographic location of her subjects, nor the boundaries of a self-identified “community”; rather, it is the “set of informational practices” shared by the persons and institutions she describes (p. xvi). She labels these informational practices the “Network,” defining themes as “a set of institutions, knowledge practices, and artifacts thereof that internally generate the effects of their own reality by reflecting on themselves” (p. 3).

The hyper-reflective nature of the Network described by Riles raises some interesting questions about the efficacy of human rights conferences and institutions. In Chapter 2, “Sociality Seen Twice,” Riles challenges the characterization of the Network as a means of reaching out to ever-widening circles of women’s rights activists. She demonstrates that the rhetoric of the Network, “one of the great innovations of the 1995 United Nations Women’s Conference and indeed of the global women’s movement of the 1980s and 1990s” (pp. 47-48), was rendered meaningless by the insularity of Network members and the intentional patrolling of information flows by participants. Although the ostensible purpose of networking was information-sharing, the “precise purpose of information exchange rarely was articulated” (p. 50). “Networking” became an end in itself and was rarely attached to a greater purpose or substantive goal. Riles explains how, in this scheme, “the subject of Women, the Environment, or Population is almost a sideline of the real goal of engineering a new web of personal relations” (p. 68). Relying heavily on anecdotes, flow charts, and elaborate tables, Riles describes a world in which Network participants gain authenticity by membership in increasingly overlapping institutions, and the Network itself functions to preempt, rather than to inspire, collective action.
In a chapter comparing international human rights documents to handwoven Fijian mats, Riles demonstrates her skill in making the familiar exotic through ethnographic devices. In this chapter, she highlights some of the limitations of an international legal regime governed by strict obedience to an “aesthetic of form” by deconstructing a pre-conference document. Riles exposes how form supersedes content in international human rights documentation: “Like mats, intergovernmental agreements . . . partake in a simple nonrepresentational patterning that is replicated again and again within the document, from one document to the next, and in the mechanics of the conference at which documents are negotiated” (p. 78). As in the mats, the value of these documents is measured by their adherence to form, or by the “success of the replication of a given pattern from one artifact to the next,” rather than their innovative details or accurate representation of reality (p. 79).

Riles discusses how these documents, like the mats, become aestheticized “items of collection,” which are not read, but instead, endlessly sorted, referenced, and displayed (p. 74). She also explores the contradictions involved in the convention of “bracketing” language that lacks consensus among signatories to intergovernmental agreements. These brackets simultaneously create endless opportunities for modification and render the document “unreadable” to many participants. Throughout the chapter, Riles evokes such tensions by referencing parallels to Fijian mats, employing this comparison more as a narrative device than an empirical relationship.

Riles concludes her book with a discussion of some of the implications of the network form for international law and politics. Drawing from the ethnographic analysis in previous chapters, she confronts the popular view of networks within international law and international relations theory as “more flexible, more progressive, more sophisticated forms of international action, which hold out the hope of success where the state system has failed” (p. 172). She argues that in the absence of a coercive enforcement body or universal commitment to shared legal principles, “persuasion” has replaced “compulsion” as the model of international governance (p. 180). Under this system of persuasion, information, such as that generated and circulated by international networks, takes on a deeper significance. While recognizing the value of networks as “carriers of human rights ideas” and as an extra-governmental adaptation to disaggregating state action, Riles challenges the network form as “a good in itself” (p. 173). Without offering alternatives, she criticizes the network form as it is currently manifested in transnational human rights institutions for being caught in an “endless feedback loop” (p. 174) of causes and effect, means and ends.

From the outset of her book, Riles explains that she is concerned with how she “might make the ending points of legal knowledge—the puzzles, frustrations, facts, and commitments the theory and practice of law entail[s]—beginning points for anthropological reflection and vice versa” (p. xiii). Ultimately, however, she has a tendency to dwell on the tensions and issues particular to ethnographic writing, and her reliance on fairly obscure concepts and sub-debates within anthropology can be disorienting to readers not well-versed in cultural theory. She fails to provide much in the way of explanation
for the murkier concepts she employs, and the potent legal issues raised by her research are not developed until her concluding chapter. Nonetheless, Riles makes a significant contribution to international law by tracing the cultural underpinnings of international human rights networks, and by forcing us to rethink familiar practices. While *The Network Inside Out* is a testament to the importance of ethnography and fieldwork in bringing into view "a series of artifacts that are ubiquitous but untheorized elements of international legal practice" (p. xiii), Riles leaves it up to her readers to conclude for themselves what fruitful legal strategies could emerge from her creative ethnography.


At the beginning of the twenty-first century, there is a profound confusion in western democracies concerning the relationship between law and politics. Our means of governing ourselves—indeed, the very urge to self-govern—has evolved along with our understanding of this dichotomy. Unfortunately, in the midst of our own *fin de siècle*, we find ourselves without a lucid understanding of the origins and implications of the deeply entrenched marriage of law and politics: "Although it is an issue on which people often hold strong opinions, their convictions generally manifest themselves either as implicit assumptions or explicit assertions, only rarely as reasoned explanations" (p. ix). The legal community in particular has difficulty articulating its role in this union. In part, this may stem from our persistence in clinging to the illusion that law and politics are still two separate spheres.

To understand the current milieu (as Dostoyevsky has told us in another context), we must go back. This the British scholar Martin Loughlin does, to the dawn of western political and legal philosophy in Greece. His goal is not simply to give a history lesson, but to show that our habitual understanding of the relationship between law and politics—that laws provide a check on the potential for tyranny—is one-sided. We quickly see that law can also be a mask for tyranny, as Plato's Adeimantus suggests (p. 14). Yet Loughlin wants us to discard both of these simplistic characterizations for the more telling insight that where "power and justice appear almost as flip sides of the same coin," law and politics in fact work together (if not always in concert) in the fundamental human activity of normative world-making (p. 17).

This premise lays the foundation for an exegesis of the central role our laws and politics play—not just in creating our world, but as symbols in our societies. In an observation familiar to the scholar of American constitutionalism, Loughlin points out that the actions and symbols of the courts must both describe our values and inspire our faith and confidence. The "politico-legal order," the result of normative world-making, "constitutes an array of abstract symbols—equality, democracy, sovereignty, the rule of law—each of which are [sic] designed to evoke an attitude" (p. 26). These words function as icons for a manipulable civic conscience. When these icons begin to move according to the rules of the political game, this conscience
may become disoriented. The modern reality of blended law and politics is thus at the root of civic malaise.

To unpack the origins of that malaise, Loughlin discusses the components of the dichotomy between "justice" and "the state." In his chapter on "Justice," Loughlin discusses the iconography of justice, in particular the image of the Roman goddess Justitia (of the sword and scales). Together with the chapter on "The State," his discussion generates a mental image of twin figures, Justice and Government, half dancing, half wrestling to best express the will of the polity. The legal community and the government have competing and complementary conceptions of their role in governance and law. These chapters show how each has gradually taken on the hallmarks of the other. The government makes law, but judges are forced to make political decisions, such as which cases to hear and which mode of interpretation to apply. By describing how the roles of judges and governments in the west have become intermingled through the growth of the administrative state, Loughlin lays the ground for a discussion of modern constitutionalism.

The trend of constitutionalism in the west began with the unwritten constitution of England and continued with the written constitution of the United States. The observations of Tocqueville on America offer a counterpoint to Montesquieu's picture of English government. In modern constitutionalism, Loughlin finds a crucial shift in western thought from corporatism to the ascendancy of the rights of the individual: "[W]ithin this new revolutionary discourse, rights are recognized as existing prior to the power of the sovereign. Rights do not derive from the political constitution, but are the antecedent to constitutional order and provide the foundation on which all constitutions are constructed" (p. 198). According to Loughlin, this change in the focus of politics and justice resulted in the transfer of responsibility for the individual from the people, who once had to fight for their rights, to the government, now obliged to protect those rights. The infusion of "rights" across civic boundaries (people, government, judiciary) produces a role-identity crisis in society. When the constitution incorporates rights, responsibility for preserving those rights may be viewed as belonging to the judiciary; this results in "the legalization of politics" and "the politicization of law" (p. 209).

Loughlin seems ambivalent about the effects of this evolution. When the ascendancy of the individual is built into the foundations of a society motivated by material success, Loughlin feels cynicism is likely to result. The politicization of law has, to his eyes, erased the image of a "dispassionate and venerable law-giver" (p. 234). Perhaps the only weakness of this book is the lack of a prescription. Having been made starkly aware of the problems created by the conflation of law and politics, the reader hopes for an answer to the problem.

Loughlin would likely see this urge for a palliative as typically American. Yet perhaps the most interesting and valuable part of the book, for an American reader, is its English perspective. Loughlin draws lessons from the American experience without making them central to his thesis. Substantively, there is little new offered in his analysis. But that is not
Loughlin's aim. Rather, his intent is to draw our attention to the birth and
development of the crucial dichotomy between law and politics, and through
history to provide a backdrop for viewing their interrelationship.

**Democracy and Constitutionalism**

*The Riddle of All Constitutions: International Law, Democracy, and the
Critique of Ideology.* By Susan Marks. New York: Oxford University
Criddle.

In the wake of revolutionary changes in the political landscape of
Southern Europe, Latin America, and Eastern Europe over the last three
decades, some legal scholars have argued that international law has outgrown
its traditional ideological neutrality. No longer should international law simply
preserve peace through impartial Cold-War-style balancing. Instead, these
scholars argue that international law must lay the foundation for a more secure
and lasting peace by recognizing and fostering the emergence of a universal
"right to democratic governance." In *The Riddle of Constitutions:
International Law, Democracy, and the Critique of Ideology,* Susan Marks
uses a critique of ideology to deconstruct popular formulations of this
"democratic norm' thesis" (p. 2). Marks's critique offers a penetrating
analysis of the ways in which acceptance of a "democratic norm" actually
stabilizes and perpetuates relations of domination, rather than promoting self-
rule and political equality, as its proponents maintain.

According to Marks, acceptance of the "democratic norm" in
international law would have tremendous consequences for national
governments. For example, a democratic norm in international law would
suggest that national governments derive legitimacy from internationally
specified criteria. Only governments founded upon democratic principles
would meet the standard set by these criteria. Marks admits, of course, that
this position is vulnerable to attack on a number of fronts. First of all, the
assessment that a democratic norm of governance is emerging is far from
clear, especially outside of the Western world. Hence, forcing pro-democratic
bias upon international law may represent a threat of neoimperialism. Second,
even if a principle of "democracy" merits transnational application, narrow
application of the "democratic norm thesis" might promote structural change
in ways that would limit rather than expand democratic participation in
decision-making processes.

Marks focuses her critique on the question of how this limitation on
participation would come about. According to Marks, movements toward
democracy often focus on "low-intensity democracy": reforming a limited set
of structures and procedures while leaving deeper power centers
fundamentally intact. Thus, restructuring of certain national political
institutions will not deliver meaningful democratic reform as long as
necessarily related objectives such as human rights, social justice, and civilian
control of the military remain untouched. The institution of free and fair
elections will have little impact on common citizens while social and economic inequalities consolidate political power in the hands of only a few. Nominally democratic political structures will inevitably fail without the tempering influence of a vibrant public sphere where public policy may be molded, evaluated, and challenged.

Extending her analysis, Marks argues that the impact of “low-intensity democracy” upon a single nation can only be understood within a transnational context. As democracy spreads, it expands the boundaries of global markets and provides participants in these markets with greater access to resources as barriers to transnational capital flows dissolve. While newly liberalized economies may benefit from an influx of foreign investment and expanded markets for their own goods, they also fall under the economic and political hegemony of dominant Western states. In this way, fostering “low-intensity democracy” may entrench an uneven distribution of global power and resources. In addition, new access to transnational markets inevitably exacerbates uneven power-distributions within the new democracies themselves. With this socio-economic polarization comes increased social tension, which in turn provokes the political marginalization of subordinate classes. Thus, “low intensity democracy” inevitably self-destructs as the economic and social inequalities it fosters obliterate prospects for meaningful self-rule and political equality.

Marks further deconstructs “low-intensity” approaches to the “democratic norm thesis” by analyzing its uses as ideology. For the purposes of her critique, Marks defines ideology as “ways in which meaning serves to establish and sustain relations of domination” (p. 10). Like other ideologies, “low-intensity democracy” employs a number of legitimization and dissimulation strategies to establish its authority. For instance, supporters of “low-intensity democracy” resort to rationalization, suggesting that since “low-intensity” democratization is the only measurable, attainable goal, it must likewise be the best. At the same time, the “democratic norm” masks inequalities of decision-making power through devices such as unification, the “imaginary resolution of social and political antagonisms” (p. 65), and simplification, “presenting social life in reductive terms . . . [to hide] the unevenness and complexity of social processes” (p. 65). Similarly, reification of the term “democracy” and reliance on dichotomous reasoning (democratic vs. non-democratic) reduce the democratic ideal to a set of finite structural characteristics, while masking real political inequality among independent citizens. Such dissimulation strategies draw attention away from the fundamentally undemocratic realities at play in self-proclaimed democratic systems. Marks believes that this ideological conceptualization of democracy encourages policy-makers to approach democratization as a linear process in which the attainment of civil and political rights necessarily precedes and frustrates efforts to secure economic and social rights. Furthermore, this ideological screen masks the extent to which globalization reduces the power of national decision-makers over their citizenry by fostering dependence upon extra-national forces.
How might the “democratic norm” thesis be reformulated to overcome these ideological roadblocks and achieve more meaningful results? Marks believes that an important starting-place is the recognition that democracy is not merely an “institutional arrangement,” but rather “an ongoing process of enhancing the possibilities for self-rule and the prospects for political equality, against a background of changing historical circumstances” (p. 59). In this conception, human rights, civil liberties, the rule of law, and free elections are simply first steps towards democracy, not reliable indicators that democracy has been achieved. What is needed, Marks asserts, is not the recognition in international law of a democratic entitlement, but rather a “principle of democratic inclusion” (p. 109) that would “guide the elaboration, application, and invocation of international law” (p. 111).

Marks concludes her critique by sketching out the possible impact of this proposed principle of democratic inclusion. Democratic inclusion, she suggests, would strive to transcend the arbitrary self-limitations of the democratic norm thesis. In other words, it would encourage policymakers to address the complex interrelationship between social and economic forces and political decision-making power. It would take into account the political implications of contemporary globalization by addressing the effect of transnational political forces on national political agendas. Attention to the political and economic hegemony of dominant groups in the international arena would prompt broader forms of international regulation and accountability. The principle of democratic inclusion would ground efforts towards democratization of global politics.

Of course, Marks’s deconstruction of the “norm of democratic governance” begs the question of whether her own reconceptualization of democracy might not also serve as ideology. Marks concedes that her “principle of democratic inclusion” is no less susceptible to being used for ideological purposes. She affirms, however, that the system of ideological critique employed in her book provides a lens through which to discern and thereby eliminate any ideology to which her own “principle of democratic inclusion” might be subjected in the future. Even granting the obvious validity of this observation, troubling questions persist about Marks’s own work. If both the “democratic norm theory” and the “principle of democratic inclusion” may be made to serve ideology, why is one principle inherently superior to another? To what ideological end is Marks’s thesis likely to be applied? Why would her ideology be preferable to ideology associated with the “democratic norm” thesis?

Even more puzzling than Marks’s refusal to engage such questions about future ideological application of her own proposal, however, is her inability to confront in a meaningful way the ideology that controls her own basic assumptions about democracy itself. Why, for example, is democracy desirable at all? Why is it desirable on an international or transnational scale? How does the movement for acceptance of democracy on an international level transcend neoimperialist ideology, particularly Marks’s own book? Marks remains silent on these and many other troubling issues. Fortunately,
The Riddle of all Constitutions provides skeptics with an excellent critical paradigm for further interrogation of Marks's own unanswered questions.


A conception of democracy as an entitlement emerged at the end of the Cold War. This universalized right to democracy is no mere platitude: it has become the banner for new excursions of power into the old understanding of sovereignty, leaving a wake of conceptual haziness for scholars trying to make legal and normative sense of the change.

Democratic Governance and International Law compiles writings from seventeen authors, representing a breadth of the leading thought in this area hollowed by the collision of politics and law. The twenty articles and excerpts are aimed at answering the core question of "whether there can meaningfully be said to be, in Thomas Franck's pioneering words, a 'democratic entitlement' in international law" (p. 4), write editors Gregory Fox, Assistant Professor of Law at Chapman University Law School, and Brad Roth, Assistant Professor of Legal Studies and Political Science at Wayne State University.

This book represents a first step towards constructing a legitimate legal framework for influencing other nations' regime types—a superpower luxury much contested in recent decades for its lack of a clearly rooted, legitimizing standard of authorization. The articles in the book also attempt to answer an important underlying question: Should intervention under the banner of democracy go farther and become bolder, or should it be tempered despite recent apparent successes such as bloodless electoral revolutions?

The editors begin by recounting the historical context of this question. The Cold-War-era diversity of states made the promotion of democracy as a standard with any force impossible until democracy became ascendant by the 1990s, at the peak of a wave of democratization. The movement has culminated in the norms of today, where international organizations explicitly and actively promote democracy, shattered states are reconstructed along democratic lines and intervention may even be considered an option when the electoral mandate is adjudged usurped. The profound change in political perception is evidenced by the 1999 passing of a resolution entitled "Promotion of the Right to Democracy" by the United Nations Commission on Human Rights by a vote of 51-0, with China and Cuba abstaining.

The book is divided into five parts that assess the foundations and implications of the "right to democracy." The first part examines the systemic foundations of the idea, beginning with discussions by two of the earliest contributors to the "Democratic Entitlement School," Thomas Franck and Gregory Fox. The third contributor in the section, James Crawford, examines the potential inconsistencies of a right to democracy with the current body of international law, and the direction that the development of international law must take to accommodate the right.
The second part of the book examines the effects of recent developments in democratization on inter-state relations. Sean Murphy discusses the impact of democratic considerations on criteria for recognition of both states and governments, comparing past and contemporary practices. He argues that recognition must turn on the current regime's effective control rather than regime type.

Stephen Schnably discusses the experiences of the Organization of American States as it navigated the tension between its stated commitment to preventing military interruption of government and the principle of non-intervention. Anne-Marie Slaughter concludes the section with a discussion of the thickening linkages of regulatory agencies across borders. She explains how this "transgovernmental order" is increasingly the arbitrator of transboundary problems, offering solutions to the loss of regulatory power by individual governments and the need for rapid decision-making presented by economic globalization.

The third section of the book addresses the use of force in the name of democracy. W. Michael Reisman opens the section by arguing that the traditional view that would shield non-democratic states from intervention is anachronistic and should fall to the emerging conception that governments imposed in opposition to popular will have no legitimate shield to foreign intervention, whether collective or unilateral. His elegant reconception of legitimate sovereignty as posited upon a nation's responsiveness to its citizens' popular will and needs raises practical implications that are both compelling and troubling. For example, if the United States were to adopt this progressive vision of sovereignty in its foreign affairs, should domestic conceptions of state sovereignty and their expression in law also be modified?

Reisman's argument for intervention provokes dissent by Michael Byers and Simon Chesterman, who uphold the traditional conception of sovereignty as more protective of citizens' interests and highlight the dangers and intrusiveness of unilateral intervention as evidenced, for example, by U.S. intervention in Grenada and Panama.

David Wippman examines an alternative arrangement to legitimate intervention whereby legal governments of a state consent in advance to outside intervention in the event of a coup. Brad Roth argues provocatively against the legality of such pacts, noting that they are often little more than "a sleight of hand that allows adherents of the democratic entitlement to avoid facing up to the implications of a liberal-democratic jihad," and do not reflect the present will of the people (p. 341).

Concluding the section, John Owen discusses the democratic peace thesis, arguing from empirical observations that "[l]iberal peace is real" (p. 385), and that international organizations would benefit from promoting peace—but not by force of arms, which would be a self-defeating exercise.

The fourth section addresses normative questions surrounding the conflicting imperatives of democratization. The first three chapters consider the argument that democratic values do not call for toleration of political forces destructive of the democratic system. Steven Ratner concludes the section with a discussion of reconciling the conflicting concerns of facilitating
smooth transitions toward democracy and prosecuting the human rights violations of outgoing regimes.

The fifth section presents critical approaches. The writers caution that democracy in form does not necessarily indicate democracy in substance, and that to enshrine notions of democratic entitlement based on criteria of form rather than substance in the present euphoria or “liberal millenarianism” (p. 534) now prevailing would be a hollow exercise at best.

The book takes a strong step towards its goal of uncovering a legal core of democracy from the tangled lines of political dialogue wrapped thick around it. The danger is, of course, that when the political thicket is cleared, there may be nothing beneath at all, or only a corroded hope that, once separated from its wrappings of support, disintegrates.

War


No one disputes that ideological differences loom large in international politics, particularly as we leave a century that saw both hot and cold confrontations—wars of philosophic passion in which enemies excoriated each other for impeding what each perceived to be knowable and inevitable progress. Yet, in seeking to understand how nations have built the body of international rules that now regulate such conflicts, scholars often focus not on grand ideology but on the immediate, pragmatic concerns that guided the lawmaking states at any given bargaining table.

Karma Nabulsi—former Palestinian negotiator and current research fellow at Oxford—explicitly rejects this anti-ideological approach in her new book, *Traditions of War.* She contends that it was “philosophical principles rather than narrowly conceived and particularistic state interests” (p. 77) that constrained the nations who met to write the laws of war at Brussels, the Hague, and Geneva between 1874 and 1949. Specifically, Nabulsi argues that irreconcilable normative traditions of war prevented the parties from drafting laws that adequately distinguished combatants from noncombatants.

Nabulsi’s work relies on five essential (though largely unspoken) arguments: (1) that nations possessed three normative traditions of war between 1874 and 1899; (2) that each of these traditions perpetuated themselves as part of a feedback loop; that is, not only that the traditions “informed concrete practices” at the conferences, but also that “practices on the ground helped to shape the theories themselves” (p. 78); (3) that these traditions actually guided the parties at Brussels, the Hague, and Geneva; (4) that the parties could not resolve the distinction between combatants and noncombatants because their traditions were irreconcilable in each specific case; and (5) that other factors, such as utilitarian concerns, did not primarily cause this failure.
Nabulsi is particularly persuasive in characterizing the different traditions, a task that encompasses most of the book. Studying patterns of occupation and resistance in Europe, she concludes that there were three main traditions, which she calls the martialist, the Grotian, and the republican.

Martialism, Nabulsi writes, is the philosophy of the “expanding nation” (p. 82), the doctrine that “war is both the supreme instrument and the ultimate realization of all human endeavour” (p. 81). Assuming that man is by nature evil—“a Promethean being, delighting in his own strength and cruelty” (p. 89)—the martialist tradition affirmatively obligates the state to harness this evil in a program of “conquest and foreign rule” (p. 81). Indeed, martialism presupposes that “the only manner in which an individual’s true liberty [can] be expressed [is] through the burning crucible of the nation” (p. 102). Nabulsi points to the nineteenth-century British imperial army as a chilling example of how martialism represents the tradition of an occupying invader bent on protecting its rule by pillage, hostage-taking, and reprisals.

By contrast, Nabulsi’s republicanism is the defensive philosophy of an occupied people. Unlike martialism, the republican tradition holds that man is good, “naturally filled with both love and pity” (p. 189). To republicans, this very “capacity for love” (p. 189) serves as the emotional underpinning for a state whose principal goals are not only “dedication to the common good” but also “political equality” and “liberty understood as independence” (p. 224). Thus, the republican tradition embraces war only as the means to protect popular sovereignty; for an occupied people, techniques of partisan warfare and popular uprising stand as the heroic response to a martialist occupier. Specifically, Nabulsi points to the Polish and Corsican insurrections of the late 1700s as evidence of this tradition. Given Nabulsi’s former role as deputy to the PLO chief in London, it is unsurprising that the republican tradition draws her most passionate (if at times uneven) rhetoric.

Between martialism and republicanism, finally, we find what Nabulsi calls the Grotian “middle way” (p. 128). Where the martialist and republican traditions hold opposing, essentialist views of the good or evil in man, the Grotian tradition is a non-essentialist doctrine of “ideological relativism” (p. 147). In a sense, this Grotian tradition is a non-ideological ideology, for it seeks order and “peace at any price—be it collaboration or even slavery” (p. 240); the tradition is one of “precedent” rather than “principle” (p. 148). Since the Grotian tradition exalts stability, and since Grotians presume that authoritative power best preserves stability, the “central ambition” of the Grotian tradition of war is to “limit the rights of belligerency to a particular class of participant (the soldier), and to exclude all others from the right to become actively involved in political violence in times of war” (p. 77). As the tradition of Lieber and de Martens, the Grotian tradition underlies much of today’s humanitarian law. But while it is theoretically neutral as between occupiers and the occupied, Nabulsi points out quite insightfully that in practice the Grotians almost always favor occupying armies—because armies, rather than insurgents, by definition represent a more likely force of authority and order.
Although Nabulsi expertly defines and describes these three normative traditions—and thus quite masterfully convinces the reader of the first of her five arguments—she is far less successful in addressing any of the other four; that is, in showing that these traditions had any actual application. Nabulsi does provide substantial evidence for how practices on the ground shaped the development of the traditions. For example, she illustrates eloquently the impact of the Corsican insurrection on the republican writings of both Rousseau and Paoli. But she does not show effectively how these writings shaped international practice—neither in the specific case of the humanitarian law conferences, nor even generally. Moreover, her placement of these descriptions in the second half of the book is unfortunate, since it provides a necessary backdrop to the arguments contained in the first part.

Nabulsi also presents very little primary source material from the conventions themselves as proof of her argument that ideological traditions actually mattered there. Without this evidence, it is difficult for the reader to assess whether Nabulsi’s eloquent articulation of the three traditions have any empirical value. As a theoretical argument alone, Nabulsi’s identification of these traditions is not particularly rousing; surely it is a truism to state that occupying powers and occupied peoples, may have irreconcilable values in any negotiation about the legitimate scope of war.

Nabulsi’s most effective passages—those that reveal the relative exclusion of occupied peoples in an international system of states—are secondary to her stated mission, which she defines and redefines frequently throughout the book. But a more comprehensive examination of the place for occupied peoples in a system of ideological relativism would be a welcome contribution to this compelling, and under-studied, area of international law.


In July 1996, the International Court of Justice (ICJ) issued an advisory opinion addressing the legality of nuclear weapons. Though the Cold War has ended, the continued presence of conflict and terrorism makes the question of the legitimacy of nuclear weapons as pertinent as ever. In his contribution to the nuclear weapons debate, Charles J. Moxley focuses on the perspective of the U.S. government, ultimately arguing that “the United States [should] recognize the unlawfulness of nuclear weapons and . . . strive to lead the world into a non-nuclear weapons future” (p. 781).

Moxley, a litigator based in New York, and a former law school faculty member, organizes his book into five parts. Part I summarizes both the position of the United States regarding the legality of nuclear weapons and the advisory opinion of the ICJ. Moxley “develop[s his] analysis . . . from the United States’ own mouth” (p. 15). Relying on U.S. military manuals and the arguments made by the United States before the ICJ, Moxley outlines the United States’ view of the law on this subject; namely, that nuclear weapons are not prohibited *per se*, and that the legality of the use of nuclear weapons
must be determined on a case-by-case basis. Moxley goes on to provide a lengthy discussion of the ICJ’s advisory opinion. The ICJ found that most uses of nuclear weapons would be illegal; however, the ICJ did not have enough information to decide the legality of the use of nuclear weapons by a state as a last resort means of self-defense. Moxley interprets the ICJ opinion as containing a “grand and historic invitation: Show us the facts” (p. 250). He responds to the invitation by providing the facts in the form of the risks of nuclear weapons in Part IV, and by suggesting how those facts apply to the law in Part V.

Part II contains principles of law that, according to Moxley, apply to the issue of the legality of nuclear weapons. In this section, Moxley adds to the nuclear weapons debate by arguing that these principles are “so broadly recognized across the world’s legal systems” that they are binding on these systems, including the United States, as “general principles of law” (p. 253). These principles include a *per se* rule for the illegality of nuclear weapons. Moxley prepares the foundation for his disagreement with the United States over the question of whether nuclear weapons are *per se* illegal by outlining the elements necessary to trigger the rule.

Part III discusses two legal issues tangentially related to the topic of nuclear weapons: the law regarding landmines and the principle of double effect (which Moxley argues is inconsistent with other generally accepted principles of law). Part IV includes a comprehensive analysis and discussion of the practical effects of nuclear weapons, emphasizing the risks associated with the use of such weapons. Relating this discussion to the Part III of the book, Moxley asserts “that the ultimate conclusion as to lawfulness or unlawfulness turns largely upon probabilities as to the effects of the use of nuclear weapons” (p. 395).

Part V concludes the book by applying the facts from Part IV to the law discussed in Part I. Because the United States defended its position before the ICJ only with respect to a “limited use of a small number of low-yield nuclear weapons in non-urban areas” (p. 653 n.1), Moxley restricts his analysis to this “more challenging question” (p. 654) rather than addressing the use of nuclear weapons in general. Moxley argues that, contrary to the United States’ view, the effects of nuclear weapons cannot be controlled, the risks outweigh the benefits, and conventional weapons are sufficient to meet military objectives. Moxley’s theories derive in part from his vision of the high risk of an initial use of low-yield nuclear weapons leading to either full-scale nuclear war or the use of chemical or biological weapons. Furthermore, because nearly every possible use of nuclear weapons is unlawful based on “impermissible effects” (p. 762), including radiation, nuclear weapons are *per se* illegal. Ultimately, Moxley recognizes that even if the United States refused to agree that the “*per se* rule” was absolute, adoption of such a rule would be “a powerful first step” (p. 766) in post-Cold War nuclear policy-making.

Moxley’s attention to detail ensures that the reader will find this book an informative and comprehensive guide to the United States’ and the ICJ’s positions on the legality of nuclear weapons. Such detail and volume of information does, however, result in a fairly long book. Moxley assists the
reader in sorting through the information by providing succinct headings and sub-headings for each chapter. He also begins each section and chapter with a summary that is concise and easy to understand. As an encyclopedic reference on the topic of nuclear weapons law, *Nuclear Weapons and International Law in the Post Cold War World* serves its purpose well.

Post-Conflict Societies

*Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary.*

In August of 1979, as the Khmer Rouge was retreating to the jungles along the Cambodian-Thai border, the Vietnamese-backed People’s Republic of Kampuchea (PRK) held a five-day proceeding trying in absentia Pol Pot, the prime minister of the Khmer Rouge’s Democratic Kampuchea (DK), and Ieng Sary, Deputy Prime Minister for Foreign Affairs. The trial, more akin to a stage-managed spectacle than a search for justice, raised serious questions of due process as it found Pol Pot and Ieng Sary guilty of genocide and condemned them to death. Accordingly, the trial has been all but forgotten by scholars and practitioners as they search for post-Nuremberg precedent to flesh out the law of genocide.

In spite of these flaws, the trial of Pol Pot and Ieng Sary warrants revisitation. Current efforts to establish a tribunal for surviving Khmer Rouge elites raise similar questions as those encountered during the 1979 venture. Moreover, the 1979 trial was the first to use the Genocide Convention as substantive law, an important fact in light of recent issues arising in the International Criminal Tribunals for Rwanda and Yugoslavia. With this in mind, *Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary* is a particularly timely scholarly contribution. An extensive compilation of documents used by prosecutors as well as witness statements and arguments made by the prosecution and the defense, the volume offers a comprehensive introduction to the tragic history of Cambodia under the Khmer Rouge, to the 1979 proceeding, and to the legal issues implicated by the Khmer Rouge’s crimes.

Three introductory essays begin the volume—Helen Jarvis’s account of the process of discovering and assembling many of the documents, John Quigley’s discussion of the trial’s place in international law, and Howard J. De Nike’s anthropological analysis of the legitimacy of the tribunal. The documents themselves come next, organized into three parts. Part I includes those relating to the establishment of the tribunal, such as the tribunal’s charter as well as statements made by public figures at the outset of the proceedings. Of particular interest is the speech delivered by Keo Chanda, Minister of Information, Press, and Culture, in July of 1979. Keo Chanda denounces methodically “the crime of genocide committed by the Pol Pot-Ieng Sary” clique (p. 49). Several pages later it is discovered that Keo Chanda
is to be the president of the tribunal, immediately bringing into question the impartiality of the proceedings. Part II is composed of documents produced during the trial’s investigation into the alleged offenses, including witness statements, government-led field investigations, and reports written by “experts” on various aspects of life under the Khmer Rouge. The volume’s value lies primarily in this part’s comprehensiveness. Attention is paid to everything from the Khmer Rouge’s destruction of ethnic minorities to its warfare on religion to its decimation of public health, giving a detailed illustration of a society turned upside down and suggesting a prosecutor determined to bring all of the Khmer Rouge’s crimes to the fore. Part III concludes the volume with the indictment, closing statements of the prosecution and the defense—including several arguments made by foreign counsel invited by the PRK to lend the trials an air of international legitimacy—and the judgment articulating Pol Pot’s and Ieng Sary’s guilt and condemning them to death.

Three questions, explicitly referred to in the introductory essays, are implicitly raised by many of the documents. First, it is unclear if the crime of genocide, as defined in international law, applies to the mass butchery perpetrated by the Khmer Rouge. Article II of the Genocide Convention defines genocide as “...acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group...” DK officials intentionally annihilated the Cham, an Islamic minority living in predominantly Buddhist Cambodia, as well as other ethnic minorities, but it is questionable whether or not the greater number of the victims, destroyed because they were intellectuals, members of the former regime’s bureaucracy, or other suspected “counterrevolutionaries,” count in the genocidal tally. Quigley, an American lawyer who was asked by the PRK in 1979 to address this question, argues convincingly that “the Genocide Convention does not exclude targeting members of one’s own national, ethnic, racial, or religious group” (p. 6). More importantly, because the Convention considers “that genocide is present when there is an intent to destroy only a designated group either in whole or in part,” “since [intellectuals and urban residents, among the focii of the Khmer Rouge’s murderous designs] were ‘part’ of the Khmer people, the targeting of them might constitute genocide” (p. 6). The documents in Part II, and the arguments advanced by the prosecution’s closing address and the tribunal’s judgment, emphasize the intentional murders of religious leaders, intellectuals, and other groups as if to lay to rest doubts about the reach of the Genocide Convention in this setting.

More importantly, Quigley does not address whether or not the tribunal established Pol Pot’s and Ieng Sary’s individual intent to commit genocide, and none of the documents attest to their individual responsibility. Perhaps in 1979 the question of whether or not Pol Pot and Ieng Sary meant to perpetrate mass destruction was almost insultingly academic; however, in making a case under contemporary standards of individual responsibility, it might prove difficult to establish conclusively that Pol Pot and Ieng Sary specifically intended the catastrophe they wrought. It is interesting and disconcerting that
nowhere in the proceedings, with the exception of a conclusory discussion in the indictment, is this question raised.

Second, it is unclear what the PRK authorities wished the trial to accomplish. The Decree Law No. 1 establishing the tribunal pays lip service to the “people’s wish that . . . all reactionary ringleaders, who stubbornly oppose the people and owe a heavy blood debt to them, should be sternly punished . . .” (p. 45). However, it is clear that equally important to PRK authorities was the validation of the Vietnamese occupation of the country, the establishment of the PRK (Hanoi’s puppet regime) as the sole legitimate government of Cambodia, and the shaming of the Chinese for their support of the Khmer Rouge. Many of the witness statements, for example, end formulaically with a paean to the new government. Similarly, the Chinese are denounced throughout the documents as “Chinese hegemonists and expansionists” (p. 334) and are labeled as the puppeteers pulling the strings of Pol Pot and Ieng Sary. Many of the witnesses couch their statements in identical terms, bringing into doubt the independence of their origin. It appears that the PRK, a tool of Soviet-backed Vietnam, used the trial as a setting for scoring political points in the Soviet-Chinese pas de deux.

Finally, the documents and the introductory essays beg the question of what significance the 1979 trial has and whether or not it should be included in the small body of international criminal law precedent. De Nike, an anthropologist, argues in his troubling essay that “show trial” is a “well-worn shibboleth” that does not do the 1979 proceeding justice (p. 20). He claims that the trial did a good job at publicizing to the world the crimes of the Khmer Rouge, and he excuses procedural irregularities as necessary sacrifices given the unstable political situation. Quigley’s essay complements De Nike’s, arguing that the 1979 trial, the first proceeding to use the Genocide Convention as substantive law, should be revisited as viable legal precedent. However, neither essay tackles the more pertinent faults of the tribunal as revealed by the documents themselves—namely that the trial, even though it included no real defense of Ieng Sary and Pol Pot, did not establish their individual culpability. Notably, the defense was granted only one afternoon to make its case, and none of the arguments made by defense counsel address the question of the personal guilt of the defendants. In spite of the introductory essays’ desires to the contrary, the documents included in this volume do little to belie the common assumption that the 1979 trial was little more than a political show.

These unanswered questions aside, Genocide in Cambodia should prove a valuable and provocative tool for academics and possibly practitioners. Quigley’s essay is particularly good, and the documents are at times stunningly personal and poignant. As legal precedent, the 1979 trial leaves much to be desired, but as an historical episode, the trial is of primary importance, and it is done a great service by this volume.

Only six years ago, the Rwandan genocide shocked the world with its brutality and intensity. In the space of 100 days, more than 800,000 Tutsis and moderate Hutus were killed by machete-wielding fellow citizens. The international community, for the most part, stood by in embarrassment, unable to muster the political will to intervene. Instead, it acted only once the conflict was contained, by establishing an international criminal tribunal to judge the individuals responsible for the egregious human rights violations committed in Rwanda.

Paul Magnarella’s book offers a crisp review of the origins, the escalation, the resolution, and the adjudication of the Rwandan genocide. In light of recent efforts to create international tribunals for Sierra Leone, East Timor and Cambodia, Magnarella’s work is a timely response to a continuing endeavor to confront humanity’s violent side. Justice in Africa is accordingly aimed at a wide audience. As the author himself declares, it is directed to readers who are not necessarily lawyers or anthropologists, but who want to comprehend why and how the Rwandan tragedy occurred and what has been done in the aftermath to remedy its gross injustices.

Magnarella begins his work with an inquiry into the causes of the Rwandan genocide, utilizing a “human materialist” paradigm. Human materialism attempts to break the agency/structure dichotomy in social science by blending “infrastructural causality with humanistic teleology,” (p. 1) and by employing a flexible hierarchy of causes to explain social events. Working within this complex theoretical framework, the author reviews the history of Rwandan society from pre-colonial times until 1995. He focuses on key figures and events, while remaining deeply attentive to material factors shaping the course of Rwandan history, such as the geography and the biological environment in the Great Lakes region. The conclusion Magnarella draws from this historical overview is that Rwanda’s critical food-people-land imbalance was an essential condition for the genocide, but that it was ultimately the near-sighted policies and divisive strategies of the Rwandan elites, supported by a traditional culture of obedience, that precipitated the vicious conflict. The author briefly notes and then brushes aside the contention that decisions by the U.N. Secretariat and the Security Council had a significant impact on the unfolding of genocide. Nor are the historical policies of the colonial powers, Germany and Belgium, or the contemporary actions of the international community seen as key contributory factors to the escalation of the interethnic conflict.

In Chapter 2, the author focuses his attention on the role of the international community in the Rwandan debacle. The review is largely expositive, marking the chronology, the nature and the scope of foreign economic, political, and military intervention in Rwanda. Magnarella mentions some critiques of this intervention, such as the 1999 United Nations Inquiry into the actions of the United Nations during the Rwandan genocide.
The inquiry placed the responsibility for failing to prevent or end the genocide on the U.N. Secretariat, U.N. Security Council, Belgium and to a lesser extent the United States. The author himself steers away from these controversies, preferring instead to preserve his self-designated role of detached observer.

In the third chapter, Magnarella focuses on the post-conflict response of the international community to the Rwandan genocide, describing the creation, structure and operations of the United Nations International Criminal Tribunal for Rwanda (ICTR). The author describes some of the jurisprudential innovations of the Tribunal's statute, such as the application to an internal armed conflict of the law of crimes against humanity, Common Article 3 and Additional Protocol II to the 1949 Geneva Conventions.

The discussion of the ICTR's work is not purely legal or theoretical, however. In Chapters 3 and 4, Magnarella considers many of the practical aspects of the Tribunal's operations, such as the material limitations on the Tribunal's functions, the scandals related to alleged mismanagement of the institution and the continuing tension between ensuring both efficiency and fairness of the judicial process. In light of recent strikes by ICTR detainees to protest the Tribunal's allegedly unfair procedures and in view of renewed critiques of the Tribunal's efficiency coming from within the United Nations, this chapter is particularly timely and relevant.

As the author proceeds to discuss the post-conflict work of Rwanda's own judiciary in the next chapter, the dilemmas of the ICTR soon appear trifling. It faces a slew of cases and overcrowded detention facilities. In this environment, the severely understaffed and under-funded Rwandan courts have little time for legal niceties, or for fine calculations of the tradeoffs between efficiency and fairness. As Magnarella observes, expediency reigns supreme.

In Chapters 6 and 7, the author breaks the narrative sequence and shifts the focus back to the ICTR, by examining Kambanda and Akayesu, two of the Tribunal's most prominent cases. Magnarella locates the importance of the trial of Rwandan ex-premier Jean Kambanda primarily in the defendant's extensive admissions of guilt. In the author's view, these confessions, having become part of the public record, should forever dispel doubts about the occurrence of a premeditated genocide in Rwanda and should provide historians with extensive information about the conflict. The trial of former Taba mayor Jean-Paul Akayesu, in turn, is deemed significant in that it was the first genocide trial before an international criminal tribunal. It gave rise to numerous jurisprudential developments, such as the functional interpretation of what constitutes an "ethnic group" protected by the Genocide Convention, the deduction of genocidal intent from a series of factual presumptions, and the conceptualization of sexual violence as genocide.

The conclusion of Justice in Africa is as free of evaluative remarks as the main body of the work, positing primarily, and almost in passing, that the ICTR is an institution that has contributed greatly both to the Rwandan reconciliation and to the development of international humanitarian law. Here, as in the rest of the book, the author simply describes events and controversies instead of analyzing them or digesting them for the reader. While this may
appeal to readers looking for a quick guide through the mire of Rwanda's unfortunate recent history, it is also the book's chief imperfection. The author's reluctance to engage in commentary leaves unanswered some of the most intriguing questions underlying his narrative, much to the dissatisfaction of the polemically disposed reader.


Few events in international law have attracted as much attention as the attempted extradition of Chile's former dictator Augusto Pinochet Ugarte from the United Kingdom to Spain. The affair raised and illuminated some fundamental issues of international law and their relation to the British legal system. _The Pinochet Case: A Legal and Constitutional Analysis_ is an attempt to analyze some of these fundamental issues.

The book is a collection of essays resulting from a workshop organized by the Centre for Legal Research and Policy Studies, at Oxford-Brookes University, in March of 1999. The book is divided into two parts, each composed of three essays. The first part addresses the consequences of _Pinochet_ for British and European law, while the second part addresses issues of international law. The essays are accompanied by the three decisions of the House of Lords on _Pinochet_.

The essays are preceded by an introduction to the facts of the case provided by the book's editor, Diana Woodhouse. She reports on the affair from the arrest of Senator Pinochet in October of 1998, which resulted from a request for extradition issued by a Spanish court. Woodhouse describes the first hearing of the case by the House of Lords in November of 1998, and the reasons why this hearing was subsequently set aside under suspicions of bias. Woodhouse then explains the second hearing of the case in March of 1999, in which the House of Lords found that Senator Pinochet could be legally extradited to Spain for crimes committed after 1988. Unfortunately, although the book was published after Senator Pinochet's release in March of 2000, all of the essays were prepared pre-release and thus the work fails to address the case's final chapter in the annals of English law.

An essay by David Robertson follows the introductory chapter and uses _Pinochet_ as a background to assess the aptness of the House of Lords as a political and constitutional court. In Robertson’s view, _Pinochet_ shows that the House of Lords is not prepared to exercise its assigned adjudicatory function properly. Robertson believes that the court is still attached to a mechanical conception of constitutional adjudication and pays little attention to its role in the political process. Robertson criticizes the _Pinochet_ House of Lords because it failed to "give leadership to a nation, to make its legal system more than a technical solution mechanism" (p. 24). He suggests that the court should change its political culture and working methods in order to perform its tasks in the political arena, but Robertson fails to explain thoroughly and defend his contestable assertion.
In the second essay of the book, Evadne Grant provides a thoughtful, clear, and well-organized analysis of the decision of the House of Lords to set aside its first judgment under suspicions of bias. She concludes that, although correct, the court's decision may have a narrow application to other cases. In addition, she suggests that the court failed to provide clear and accessible guidance for judges in the future. She finishes by regretting the fact that the court's opinions on the issue of bias did not refer to the law of the European Union.

Paul Catley and Lisa Claydon also advance this last point in the third essay, which approaches the question of bias in light of the European Convention on Human Rights. Catley and Claydon begin by comparing the House of Lords’ decision with the jurisprudence of the European Court of Human Rights. They suggest that although the result would have been the same, the Lords’ reasoning might have been different had their decision been based on the precedents of the Strasbourg Court. The essay’s authors stumble here, as their explanation of Strasbourg Court precedent is unstructured and confusing. Catley and Claydon go on to conclude their essay by urging British courts to take account of European Convention on the question of bias, since this treaty will become law in the United Kingdom in the near future.

Chapter 5, by Judith Hendrik, approaches Pinochet from a moral perspective. Convinced that a strong belief in justice is pervasive in the case, Hendrik examines the relation of justice to prominent traditional theories of punishment. She concludes that retributivism is the theory which best explains Pinochet and international laws relating to human rights crimes. After examining the concept of responsibility as applied to the case, Hendrik concludes that the moral arguments that support the conviction of Pinochet are sound and that the assertion of his innocence is untenable.

The subsequent essay, by Jonathan Black-Branch, deals with the issue of sovereign immunity. Black-Branch assesses the legitimacy of Pinochet’s claim to immunity by examining the main sources of international law—treaties, custom, principles, judicial decisions, and the work of jurists. The conclusion he draws from this analysis is that the House of Lords erred in interpreting the immunity principle in Pinochet. In Black-Branch's opinion, the court should have respected this established principle of international law by refusing to accept jurisdiction over any acts committed by Pinochet. It should not be left to individual states, he believes, to become the police of the world. However, Black-Branch reaches his conclusion after a catalogue of arguments in favor of the immunity principle, which fails to address any of the strong arguments postulated by the Law Lords in their well-reasoned opinions.

In the final essay, Ben Chigara examines the doctrine of universal jurisdiction in the administration of international justice. He argues that Senator Pinochet violated norms of jus cogens and, therefore, could have been legally extradited to Spain. He nonetheless believes that, from a political standpoint, international crimes should always be tried by international tribunals. Chigara asserts that states that decide to grant amnesty to perpetrators of international crimes should notify the United Nations in order
to ensure the acceptance of a national decision by the world community at large. Chigara's essay is necessarily cursory as it attempts to explicate and justify the issues raised by *jus cogens* laws, international crimes, universal jurisdiction, and political commitments to Latin America in the short space of thirteen pages.

*The Pinochet Case: A Legal and Constitutional Analysis* succeeds in providing an acceptable introduction to the facts and legal issues of *Pinochet*. Its first chapter is a clear and precise description of the case. Additionally, the House of Lords' opinions at the end of the book are quite useful. But the book is no more than an introduction with most of the essays providing a superficial gloss to complex, conflicting and vexatious issues of international law. The book operates on the level of a primer which may inform the student of international law and provoke interest in the many areas within the purview of the text, but which may not satisfy the expectations of the more savvy scholar.


Inspired by the wave of liberalization at the end of the twentieth century, *Transitional Justice* explores two principal questions: (1) "What legal approaches do societies in transition adopt in responding to their legacies of repression?" and (2) "What is the significance of these legal responses for these societies' liberalizing prospects?" (p. 213). The answers posed by both realist and idealist accounts of justice in transition are unsatisfying both for their failure to explain the significance of law's rule in periods of radical political change and the relation between normative responses to past injustice and a state's prospects for liberal transformation. Teitel eschews both of these standard approaches and employs a constructivist approach that breaks from traditional scholarship, which defines transitions solely in terms of democratic procedures, and instead focuses on the nature and the rule of legal phenomena in political transformation. The central thesis of *Transitional Justice* "is that the conception of justice in periods of political change is extraordinary and constructivist: It is alternately constituted by, and constitutive of, the transition" (p. 6). Teitel stops short of giving a prescriptive answer to transitional justice, appropriately leaving room for historical and cultural contingencies uniquely present in each transition.

In developing the author's thesis, *Transitional Justice* starts by rejecting the idea that the move toward a more liberal democratic political system implies a universal or ideal norm. Each transition is different and constrained by unique historical and political factors so there is no convergence upon an idealized liberal democratic outcome. Recognizing the brute reality that transitional societies are unable wholly to transcend historical and political limitations, an alternative way of thinking about the relationship between law and political transformation results. Teitel draws deftly upon historical transitions, including the liberal revolutions of the Enlightenment and the twentieth century's postwar liberalizations, but places primary emphasis on
the recent transitions from Communist rule in Eastern and Central Europe and the former Soviet Union, as well as the transitions from military rule in Latin America and Africa. The rule of law in these periods of political change is further explored by looking at its various forms: punishment, historical inquiry, reparation, purges, and constitution making. While Teitel argues against the prevailing view of transitional justice which favors punishment, she acknowledges that what rule-of-law values take precedence is a function of the particular historical and political legacies of the society. The challenge and rule of transitional jurisprudence remains "to somehow bridge conventional legality and the normative shift entailed by liberalizing transformation" (p. 215). Understanding what constitutes the normative shift to a liberal society predicated on the rule of law becomes a central concern in the work.

_Transitional Justice_ looks at the rule of law in transition. During times of radical transition, the rule of law can be understood as a normative value scheme that is both historically and politically contingent and elaborated in response to past political repression. Therefore, the transitional rule of law embodies distinctive values particular to each transitional period—"there is no single correct response to a state's repressive past" (p. 219).

Successor trials are popularly thought to be foundational in transformations to liberal order. They are thought to delineate clearly the shift from illegitimate to legitimate rule; however, in transitional contexts, the exercise of a state's power to punish raises serious concerns. As Teitel notes, trials in contemporary transitional periods are rare because of political constraints and the systematic and pervasive nature of the prior wrongdoing. As conventional legal norms of individual responsibility are inapplicable, new legal norms develop. Partial sanctions emerge to play a role in the construction of a liberal society aimed less at penalizing perpetrators than at advancing the political transformation's normative shift.

_Transitional Justice_ analyzes in depth the course of justice during the period after repressive rule when transitional societies commonly create historical accountings. Historical inquiry helps to bridge the past to the present and to define the relationship between truth and politics. Historical justice both redefines a past and reconstructs a state's political identity, helping to ensure that the past is never repeated. Reparatory justice, administrative justice, and transitional constitutionalism are also cogently developed and explored by Teitel.

The work's conclusion synthesizes the various themes developed and analyzes how new democracies respond to past legacies of injustice. What emerges is a sober optimism, a pragmatic balancing of ideal justice with political realism. Teitel's analysis helps to form a new paradigm of "transitional jurisprudence." This paradigm defines periods of political passage in which transitional jurisprudence arises within a bounded period. Contrary, perhaps, to conventional jurisprudence, justice is partial, contextual, and situated between at least two legal and political orders in transitional justice. Legal norms vary and justice is often a compromise. Whether trials, constitutions, or historical inquiries are used, normative change results in a
new political order. Law’s role is transitional, not foundational. In transitions, law is caught between the past and the future, between looking backward and looking forward, and between the individual and the collective.

_Transitional Justice_ explains that the study of law’s role in political change goes beyond political criteria. Teitel recognizes that the emphasis of transitional jurisprudence on the rule of law is firmly entrenched in, and interrelated with, politics. Transitional law’s distinctive contribution to transitional justice is that it is both constrained by, and transcendent of, politics. In transitions, a balance of ideal theories of law and the political circumstances of transition result in an imperfect and partial justice. This new model of transitional jurisprudence, and its resulting vocabulary, is salient in contemporary transitions, and informs our understanding of the function and nature of law more generally. Against the backdrop of recent transitions in East Europe and Latin America, Teitel provides another vision of the rule of law in transitional contexts that results in non-ideal, “compromised” justice.

_Transitional Justice_ presents a compelling balance between the historical and the contemporary and the theory and the reality of transitional justice, drawing upon sources as far-ranging as the Bible, H.L.A. Hart, Kant, and Kuhn. Teitel’s writing is lucid and approachable, with useful chapter demarcations and focused summaries. _Transitional Justice_ also provides extensive notes and a useful index for the researcher. This timely and impressive book is an excellent resource for policymakers and scholars of democracy as well as for those who are curious about how the new paradigm of transitional jurisprudence can further knowledge in more conventional areas of law.

**Authority and Representation**


From the 1990s through the present, world media attention has been trained on conflicts over questions of ethnicity or communal identity. Too often, however, broader perspectives are lost in the horrific details of a particular crisis. Ted Robert Gurr attempts to redress this imbalance in his recent work _People versus States: Minorities at Risk in the New Century._ Drawing on data from the Minorities at Risk project based at the University of Maryland—a broad-ranging comparative study into ethnopolitical groups and conflicts worldwide—the author makes statistical assertions regarding global trends in ethnic conflict and related phenomena, and as to potential outcomes to particular situations of ethnic or communal unrest.

The Minorities at Risk project involves the compilation of a detailed data set relating to the situations of ethnopolitical groups numbering over 100,000, or at least one percent of a country’s population, which fulfill one or both of the following criteria: (a) the group collectively suffers or benefits
from systematic differential treatment or persistent disadvantage, and (b) the
group's identity is the basis for political mobilization in promotion of its self-
deﬁned interests. Presently 275 groups are included in the project, with others
slated for inclusion.

People versus States is a successor to Gurr's 1993 book Minorities at
Risk, which presented results and analyses for the period 1945-89. Gurr's new
book presents analysis of this same data set, supplemented by new data from
the period 1990-98. Gurr and his co-authors assume three tasks that utilize the
unique strength of their data set, which is its long-term extensive coverage of
groups in all regions of the world, making large-scale comparisons possible.

The ﬁrst task is to identify regional and global trends in political action
by ethnic and other communal groups, which, according to the author,
increased in number and intensity from the end of World War II to a peak in
1990-91, followed by a gradual decline since 1994. Gurr's ﬁndings conﬁrm
the common sense view that rebellion of ethnic groups most often follows a
long period of conventional political activity and organized protest, thus
drawing attention to many lost opportunities for peaceful conﬂict management
prior to the outbreak of hostilities.

The second task that Gurr undertakes is to sketch a theory of the
conditions associated with political assertion by ethnic and communal identity
groups. Gurr identiﬁes four factors giving rise to circumstances in which
groups that identify themselves using ethnic or national criteria mobilize to
defend or promote their interests in the political arena. These four factors are:
(1) the salience of communal identity—how much difference such identity
makes to people's lives, for example in terms of comparative disadvantage;
(2) the group's incentives to act—for example, the experience of repression or
discrimination; (3) the group's capacities to act—such as territorial
concentration, or pre-existing organization; and (4) the group's opportunities
for ethnopolitical action— both domestic and international. Gurr then
analyzes the presence of discrimination and state repression against all of the
groups studied, as well as its apparent consequences for (or at least correlation
with) the rise or fall of ethnopolitical conﬂict. Unsurprisingly, Gurr's analysis
suggests that severe state repression is more likely to prolong and intensify a
conﬂict than end it. More surprising is the assertion that the evidence indicates
a relative, though not universal, decline in discrimination suffered by such
groups worldwide.

In this second part of his argument, Gurr summarizes evidence of efforts
to resolve conﬂicts, and argues that there has been a shift in public policies
regarding ethnic groups in the mid-1990s away from policies of assimilation
and control and towards policies of pluralism and accommodation. Interestingly, the author ﬁnds evidence of this shift not only in democracies
but also in some autocracies. This part of the book makes highly pertinent
reading for scholars interested in the effects of democratic transitions, as well
as policymakers who set the agenda for democratization. Not all of Gurr's
ﬁndings regarding the relationship between democratization and ethnopolitical conﬂict are congruent with conventional wisdom: for example,
he ﬁnds that while transitions to democracy in the developing world have
often been associated with a decline in rebellion, the opposite was true in postcommunist countries.

Gurr also considers a familiar issue of importance in situations such as Kosovo or Israel: the resolution of conflicts that involve national peoples seeking independent statehood or autonomy. The author's findings—if true—are encouraging. He finds that more of these "ethnonational" wars have been settled or contained through international engagement and negotiations since the early 1990s than in any decade of the Cold War. Additionally, Gurr's analysis suggests that a majority of ethnonational wars since 1960 have led to increased autonomy—a finding of interest to both ethnonational groups and challenged governments.

The third part of Gurr's argument seeks to apply his findings to identify groups where there is potential for future conflict. Using the factors already identified, the author seeks to respond to oft-repeated calls for better "early warning" and preventative measures to forestall serious ethnic conflict, by providing a framework for systematic risk assessment that identifies the background conditions where such a risk exists, and the groups affected. Using a five-factor analysis, Gurr's model claims to predict presence or absence of protest with seventy-two percent accuracy, and his six-factor analysis is claimed to predict rebellion with eighty-eight percent accuracy. When the model is applied, the picture is sobering: at the beginning of 1999, ninety-four groups were at medium or high risk of ethnopolitical conflict, including forty-one groups already in open rebellion. Yet the final note of Gurr's study is not unremittingly negative: rather, Gurr contends that despite obvious challenges like Kosovo there is a set of principles and practices for managing heterogeneity in society, as well as common international policies on how best to respond to ethnopolitical crises and conflicts.

The strength of People versus States lies in the broad comparative perspective it brings to an area usually dominated by case studies. While the book is a political science analysis, not a legal one, it is useful to international lawyers engaged in this area, because it provides a broader perspective, and both challenges to, and confirmations of, conventional wisdom. However, Gurr's study is not without limitations. Given the often volatile nature of the circumstances of ethnopolitical groups, the time lag between the data which is current to the end of 1998 and the publication date detracts somewhat from predictions regarding particular groups, though perhaps not from the book's overall framework and model. It is also possible to quibble with aspects of Gurr's identification and grading of variables. In addition, the exigencies of producing a summary analysis from a large data set entail some loss of transparency in the process of reaching conclusions. Helpfully, for the more technically skilled reader, the analytical and statistical methods used by the author are described in an appendix. Ultimately, Gurr's study provides a useful addition to Minorities at Risk, and a valuable and timely broader perspective to an area of study that dominates world attention and the discipline of international law.

Eric Stein’s Thoughts from a Bridge is a collection of writings on European law and politics dating from 1971 to 1997. Their main (but not exclusive) focus is on the legal and political process of European integration.

Part I, entitled “Constitutionalizing, Harmonizing,” deals with the emergence of European Community law as a new and independent legal order. In “Lawyers, Judges, and the Making of a Transnational Constitution,” the author observes that the European Community Treaty has gradually—by means of interpretation—been attributed qualities that are generally regarded as characteristic of a constitution rather than an international treaty. The author then examines how the European Court of Justice, the Advocates General before the Court, the European Commission (the main administrative organ of the European Community), and the governments of member states have contributed to this development. Analyzing a variety of legal proceedings before the European Court of Justice, he demonstrates that while the governments of the member states tend to oppose the “constitutionalization” of the European Community Treaty, the other actors mentioned above are largely united in their efforts to promote this development. Another essay, “The Making of the First Coordination Directive: A Case Study,” concentrates on the process of harmonizing statutory law within the member states of the European Community. Tracing the legislative history of the first directive in the field of company law, the essay depicts the difficulties of reaching a political consensus in view of differing legal traditions as well as differing interests.

Part II of the book, “European Integration and the American Federal Experience,” compares the European path to integration with the American concept of federalism. To this end, the author starts with an essay on “Uses, Misuses—and Nonuses of Comparative Law.” He first explores in general terms the conditions that have to be met in order for a legal norm to be successfully “transplanted” from one system into another. Based on a comparison between the United States and Europe, the author proceeds to argue that the United States should attribute a greater role to the method of comparative law in lawmaking, legal research, and legal education. In a reprinted excerpt from Courts and Free Markets—Perspectives from the United States and Europe, the author compares the role of courts in the United States with that in Europe with regard to courts’ role in dividing governmental power between central and local governments. Another essay, “Towards a European Foreign Policy? The European Foreign Affairs System from the Perspective of the United States Constitution,” compares and analyzes the institutional arrangements for the conduct of foreign affairs in the United States and in the European Community. From this starting point, the author develops several requirements that Europe has to meet in order to develop a common foreign policy, such as an adherence to the principle of majority voting in the Community Council, a more assertive role of the Commission in
foreign affairs, and a strengthening of the voice of the European Parliament. In his Panel Statement on “Democracy without ‘a People,’” the author addresses the question of the so-called “democratic deficit” in the European Union and especially within its most important pillar, the European Community. (The arrangements set out in the European Community Treaty, the European Atomic Energy Community Treaty, and the European Coal and Steel Community Treaty form the “community dimension” of the European Union, which is complemented by the common foreign and security policy under Title V of the European Union Treaty, and by the police and judicial cooperation in criminal matters under Title VI of the European Union Treaty).

It is widely agreed that the accountability of both the European Commission and the Council is not altogether satisfactory. Both organs derive their democratic legitimacy mostly from the governments of the member states. While in principle the governments of the member states are accountable to the national parliaments, the national governments’ policy with regard to Europe falls into the domain of foreign affairs, in which the control exerted by national parliaments is traditionally limited. The question of how to address this lack of democratic accountability is highly controversial, with proposals ranging from an enhancement of the role of national parliaments in the field of European policy to the transformation of the European Union into a federal state. The author argues in favor of a middle road: While considering measures on the level of the member states to be insufficient, he rejects the transformation of the European Community into a federal state and instead suggests incremental reforms on the European level, such as a gradual strengthening of the role of the European Parliament.

In Part III, “Europe’s Burden of History,” the author leaves the realm of European integration and focuses instead on problems specific to particular European countries. The essay “History Against Free Speech: German Law in European and American Perspective” deals with the struggle of postwar Germany to find a balance between the protection of free speech and the protection of individuals from anti-Semitic hate speech. In particular, the author focuses on the controversy surrounding the introduction in 1985 of a law designed to modify the German Criminal Code. This law eliminated the private petition requirement for the prosecution of insult, if (among other things) the insulted party is a member of a group that was persecuted “under the National Socialist or another violent and arbitrary dominance” (p. 373). While some members of the legislature thought that the existing provisions of the criminal code provided sufficient protection against hate speech, others criticized the fact that the law seemed to consider the Holocaust and instances of violent and arbitrary dominance as being comparable. The author concludes that there may no longer be a national consensus in Germany as to whether the Holocaust has to be regarded as a singular crime without any parallel in history. Part III of the book also contains excerpts from Czecho/Slovakia: Ethnic Conflict, Constitutional Fissure, Negotiated Breakup, in which the author provides a detailed analysis of the break-up of the former Czechoslovakia into two independent countries. In so doing, the author addresses a variety of underlying questions, such as: What is the source of
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What are the prospects for democratic multiethnic policies in an ethnically divided grouping? What institutional form offers the most promise to contain a specific ethnic conflict? It would, of course, be too much to expect (and the author does not claim) to give definite and final answers to questions of such fundamental importance and scope in one essay. However, he convincingly points out some of the elements most likely to play an important role answering these questions, for example, by stressing the negative effects of ignorance about an ethnic minority’s culture on the part of the majority of the population.

Thoughts from a Bridge is a remarkable book in that most of the fundamental issues raised in the different essays have lost none of their importance in the time since the essays were written. For example, the harmonization of statutes in the member states of the European Community is no simpler today than it was in the 1980s. While easily accessible to the reader, Thoughts from a Bridge offers valuable insight into the complexity of the legal and political issues that have to be faced on the road to European integration.


Empire begins with the premise that globalization is effectively transforming such basic traditional political concepts as sovereignty, the nation, and the people. These concepts are being replaced by a new concept of universal “Empire.” This Empire does not represent a return to earlier forms of European imperialism, and is not a metaphor that is meant to compare the current international order to previous forms of empire. Rather, the authors’ new concept of Empire is one that knows no spatial boundaries. Their Empire, like previous Marxist constructs, seeks not only to regulate human interactions, but also to rule directly over human nature as “the object of its rule is social life in its entirety. . . . Finally, although the practice of Empire is continually bathed in blood, the concept of Empire is always dedicated to peace—a perpetual and universal peace outside of history” (p. xv).

Hardt and Negri locate much of the impetus for the shift to Empire in the ongoing shift to postmodern cultural and economic conditions. The authors highlight new forms of identity, economic organization, and networks of communication and control which have emerged in the postmodern era, and they attempt to demonstrate that these new forms are undermining the notions of the nation and sovereignty that are central to the current international order. According to the authors, these changes are currently most noticeable in the United States, but the new Empire which is emerging is not centered in America. Empire, according to Hardt and Negri, is not a spatial entity but a single power that bases its authority on a new imperial notion of right.

While the new Empire may not have a political or juridical center in the United States, Hardt and Negri do contend that their concept of Empire is loosely founded on certain American principles of constitutionalism. The
authors argue that the American Revolution represents a break with the traditional concept of sovereignty, which had developed primarily in Europe, and represents the emergence of a prehistory of post-national imperial sovereignty. This new sovereignty arises from the Founders’ “constitutional formation of limits and equilibria, checks and balances, which both constitutes a central power and maintains power in the hands of the multitude” (p. 161). This type of sovereignty is precursor to the imperial sovereignty of today that the authors believe is based on networks of power.

Hardt and Negri describe the development of imperial sovereignty through a discussion of four phases of American constitutional history. The authors believe that each phase of U.S. constitutional history “marks a step toward the realization of imperial sovereignty” (p. 168). All four phases demonstrate that the U.S. constitutional project is distinct from imperialist projects of the past, which had constantly sought to invade, conquer, and subsume other countries within the imperialist’s sovereignty. America’s constitutional history is instead filled not only with periods of territorial expansion, but also internal reform, and “is constructed on the model of rearticulating an open space and reinventing incessantly diverse and singular relations in networks across and unbounded terrain.” (p. 182). The authors’ Empire consists of “the global expansion of the internal U.S. constitutional project” (p. 182). Hardt and Negri hope that within the matrix of their stipulated ongoing imperial project the proletarian multitude will emerge as a political force. They conclude that their new form of Empire creates a unique potential for revolution that was previously impossible in modern states, and they hope that the masses will successfully usher in a new constitution of the multitude that is more egalitarian and democratic than currently existing political systems.

While Hardt and Negri offer a powerful description of the way the world is (and could be) organized, they overly discount the current importance of independent nations. While national identities may be irrational, they do still exist and have not yet been completely overcome by globalization. The authors state that in order to control the multitude, Empire must assert command over the multitude’s productive power, thereby increasingly corrupting, and over time destroying, the very processes which create the wealth on which the imperial project depends. Out of this inevitable corruption of Empire, the authors think a constitution of the multitude can emerge to protect the authors’ postulated rights of global citizenship—a social wage, and a re-appropriation of wealth. However, if national identities remain an impediment to notions of imperial right, it is unlikely that this Marxist utopia is possible, especially given communism’s historic inability to address the “national question.” Moreover, the authors assume that states are declining vis-à-vis transnational corporations and non-governmental organizations without first proving this premise. The authors need to more forcefully demonstrate how globalization is transforming a world dominated by states into a global political space where notions of imperial right make sense to everyone.
Hardt and Negri's book, *Empire*, is groundbreaking in that it transcends established Marxist doctrine and provides a new communist manifesto for the twenty first century. Concomitantly, their work represents a return to earlier Marxist notions of progress and a move away from the modern Left's focus on protecting workers from the forces of globalization. Nevertheless, Hardt and Negri do not successfully demonstrate how their communist utopian vision can be achieved or formed out of the processes currently at work in today's Empire.

International Trade


The emerging world economic order manifests the evolving process of global interdependence. Recognizing there can no longer be national economic policies impervious to global pressure, Thomas Fischer develops a comprehensive overview of the "globalization" of world trade. Fischer outlines the debate over the existence of a global trading system and how it should be structured. His realistic, yet guardedly optimistic, comparative approach provides a useful introduction and a solid foundation for study in the field of international economic policy.

The first half of the book acquaints the reader with the terms and phenomena that comprise the "globalization" process. Fischer defines "globalization" as "a substantial melding of interests across national borders so that 'global' solutions are important but national perspectives are not" and involving "the significant shift from public interests and actors to private interests and actors" (p. 4). The author relies on the questionable assumption that the United States has lost its hegemonic position when he argues there is a need for a world trade system that is "neither totally free and capitalistic nor too heavily regulated" (p. 8). He outlines four distinct economic models that he expects to compete for implementation as the global paradigm—free-market capitalism, macro-managed capitalism, micro-managed capitalism, and communism. In presenting the principle issues confronting the global trade community, he discusses market access, balanced trade, monetary stability, foreign direct investment, intellectual property protection, and international crime and terrorism, among other issues.

Fischer spends most of the second half of the book tracing the major state actors, institutions and phenomena that facilitated the emergence of the three dominant and competing trading blocs—the United States, Europe and the Pacific Rim/Asia. He examines the future of the North American Free Trade Agreement and the Free Trade Area of the Americas and he places importance on cross-border alliances. The author's focus, however, is primarily on the European Union, its formation, evolution and potential.
Chapters eight, nine and ten offer a comprehensive discussion of the problems of federalization inherent in the integration and future deepening and widening of the European Community. Fischer recognizes Europe as America’s most obvious ally but is quick to highlight the problems that the EU needs to confront in order to overcome its status as a “poor third to Japan and the U.S. in the field of global trade” (p. 135). Overall however, he is optimistic and even foresees the possibility of Europe’s next generation surpassing expectations through their “imagination and energy” (p. 135).

In his treatment of Japan, China and “Asia’s emerging economies,” (p. 178) including Hong Kong, Singapore, South Korea, Taiwan and Thailand, Fischer is both less optimistic and less thorough. He calls for a drastic escalation in East Asian stability and competitiveness, predicting, “the world economy will not fully stabilize until emerging Asian economies do” (p. 197). China, the author asserts, must commit to reform and to a less-regulated economy, as its mistakes in centralized economic management have negatively impacted the entire world. However, Fischer admits “China has been a very solid player during the Asian crisis and could eventually replace Japan as the economic lynchpin of the region” (p. 177). Japan, on the other hand, needs a radical “jump start” (p. 159) and Fischer doubts it will remain the dominant economy in the region. There will be no recovery in Japan unless there is substantial structural reform, and Fischer believes “it is naïve to think that Japan will adopt a radical recovery plan any time soon” (p. 159).

Fischer also focuses one chapter near the end of the book on the General Agreement on Tariffs and Trade (GATT), the World Trade Organization (WTO) and their role in international trade. He outlines the structure of the WTO and examines the procedures involved in the dispute settlement process, ultimately concluding, “[f]ew international organizations have as much potential to harmonize world trade as the WTO” (p. 219). However, he recognizes there are a number of crucial issues that could challenge its future success, including the questions of leadership succession, institutional reform, and expanding membership.

In the final chapter, Fischer brings together premises and elements from the book’s earlier parts, presents a final analysis of the new era of world trade, and states a number of conclusions. Regarding his economic models, the author theorizes that “some type of managed capitalism is likely to emerge—capitalistic enough to encourage and reward enterprise and innovation, yet socialistic enough to cushion capitalism’s extreme consequences” (p. 224). Fischer’s premise, that the United States’ leadership in world trade is waning, requires the United States to form alliances, which for the author should start with the European Union. These two trading blocs will continue to compete, but the convergence of their economies and the world economy will progressively connect them to a single fate. Trade harmonization is inevitable and the international trading system calls for flexibility, concentrated finance, and leadership—including a WTO with legitimacy.

Fischer states his straightforward thesis as follows: “Trade globalization is a powerful and complicated force in today’s world, beyond the ability of any single nation to control” (p. 223). He admits “the subject is as vast,
complex and intertwined as any,” so he breaks it up and presents it in comprehensive sections, “even at the expense of some oversimplification” (p. xi). The reader is left with a thorough overview (as opposed to a deeper but more limited theoretical analysis) of the economic, institutional, social, environmental, political and legal challenges faced by the emerging global economic order. Fischer’s book presents the basics in a pragmatic and comparative manner, acting as a primer for the student of trade globalization while serving to stimulate new reflections by scholars of the subject.


Nineteenth-century British Prime Minister Benjamin Disraeli once observed, “Free trade is not a principle, it is an expedient.” In his new book, John H. Jackson traces the path of global free trade in the post-war era: from principle to expedient and back, perhaps, towards principle.

A compilation of articles published elsewhere during the prolific career of this international trade lawyer, The Jurisprudence of GATT and the WTO serves two purposes. First, the book describes the fortunes of world trade law from the introduction in 1947 of the General Agreement on Tariffs and Trade (GATT) as a temporary remedial measure, through the GATT’s evolution as the chief arbiter of world trade during the bumpy era of managed trade and, finally, to the development of the more permanent World Trade Organization (WTO). Second, the book traces the development of Jackson’s scholarship, incorporating both detailed legal analyses of specific attributes of the GATT and the WTO and some of Jackson’s more speculative thinking on the prospects for “rule oriented” international trade law.

Concentrating initially on the GATT’s peculiar provenance, its “birth defects,” and its institutional basis, the first set of articles discusses the motivations for an agreement unlikely in its early years to “have qualified as ‘most likely to succeed’ among international organizations” (p. 18). These chapters detail the legal mechanics of the GATT as an international treaty, touching on the vision of mutual prosperity and security via liberalized trade that drove the Bretton Woods process. Progressing to the Tokyo Round and the early 1980s, the articles flag the increasing prominence of non-tariff barriers as an impediment to trade—one ill-regulated by the original GATT—and point to the challenges to the integrity of the GATT posed by piecemeal side agreements. In this last respect, the articles highlight the ambiguity of the Tokyo Round defense of GATT “Most Favored Nation” principles, the resort to “managed” over free trade, and the failure to deal with some of the GATT’s institutional shortcomings.

The subsequent section shifts the book’s focus to several key principles and expediencies of international trade law. First among these is the concept of “Most-Favored Nation” (MFN). Noting the emergence of MFN in pre-GATT international practice, Jackson analyzes the concept’s importance in
the GATT, focusing on economic and political justifications for GATT Article One's MFN pledge and then discussing the exceptions to MFN scattered through the GATT Agreement. In the next chapter, Jackson discusses export-restraint agreements, examining their legal propriety under the GATT. The subsequent article concentrates on subsidies and countervailing duties, highlighting the economic, political and legal context of such measures in the GATT era. The final piece in this section discusses the challenge of regional trade blocs in the late GATT period, considers the consistency of these zones with the GATT, and touches on the implications of regional blocs for the world trade system.

The next collection of chapters discusses the dispute settlement procedures of the GATT and the WTO. Noting the institutional weakness of dispute resolution under the GATT, the first article analyzes in depth the legal significance of GATT panel reports, a question Jackson asks again in a subsequent chapter with reference to WTO dispute settlement reports. Also in this section, Jackson considers the issue of the standard of review under the WTO, contemplating the extent to which WTO dispute settlement bodies should defer to national government determinations. The final piece in the section highlights some of the emerging problems with the WTO's dispute process. Specific concerns include the relative balance of power between the Organization and its members, and the WTO's institutional ability to grapple with the emerging challenges of "globalization."

Collected under the heading "GATT, international treaties, and national laws and constitutions," the next six articles consider the significance for U.S. domestic law of the GATT and now the WTO. Providing a comprehensive evaluation of the GATT's domestic law status, the first chapter constitutes an important resource on the incorporation of international treaty law into the fabric of U.S. law. Indeed, later selections in this section take up this issue at great length, evaluating the United States' partly dualist tradition and touching only incidentally on trade-law treaties. Other articles build on the treaty incorporation discussion, focusing first on the impact of U.S. and European Economic Community (EEC) internal legal constraints on domestic responses to international trade obligations and then on the merits of the highly legalistic U.S. approach to international economic relations. The final chapter is a more reflective inquiry into the contested approval of the WTO by Congress, approached from the perspective of "sovereignty."

The book's final section, "The Uruguay Round and beyond: perspectives and conclusions," is Jackson at his most contemplative. Providing a brief overview of the WTO, Jackson considers how the new body will grapple with emerging issues, particularly the environment. Many of these last selections pose questions, introduce hypotheticals and propose visions of where the WTO must go from here. These articles are directed at how rule-based international economic relations can be bolstered in fashions consistent with the new challenges of globalization.

In some respects, Jurisprudence is a grab-bag—a disparate, sometimes repetitive, collection of writings ranging from detailed technical analyses of measures now largely of historical importance to think-pieces of
real contemporary significance. What emerges from the book, however, are the honest, optimistic reflections of an international lawyer as he considers the haphazard emergence of economic globalization. The vision projected is of a global economic order built with high hopes and strong principles, but poor architecture in the immediate post-war era, subsequently ill-served by its institutional inadequacies in the 1970s and 1980s—when principle gave way to tampering with trade—and now poised to move into a new era of rule-centricity. The cautionary lesson drawn from the book is that even with the codification of the new WTO, efforts must be made to accommodate and reconcile the vision of free trade with the problems sparked by its very success, lest Disraeli’s maxim prove correct once more.