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Power and Diplomacy


Deterrence theory typically focuses on direct efforts by one state to discourage another from attacking it. In Pivotal Deterrence, by contrast, Timothy Crawford seeks to explain why states succeed or fail in preventing third parties from waging war against each other. According to Crawford, Assistant Professor of Political Science at Boston College, a state’s ability to be an effective “pivot” and ward off conflict will depend primarily on the alignment options of the potential adversaries (p. 5). States with many allies from which to choose will feel less constrained by the risk of abandonment or opposition, whereas those that depend on the pivot’s support will be more susceptible to deterrence tactics. In essence, pivotal deterrence works by blurring the balance of power between states, creating what Crawford terms an “uncertainty effect” (p. 20). Without knowing where the pivot state’s allegiance lies, adversaries will proceed cautiously or compete in efforts to ingratiate themselves with the pivot to secure its support or neutrality. Because a pivot state’s leverage is derived from its influence on the balance of power and its likelihood to intervene in a conflict, Crawford hypothesizes that pivotal deterrence will most likely succeed when pivot states are strong and have significant interests at stake. This may be an intuitive and unobjectionable conclusion, but the devil is in the details when Crawford tries to create a generalizable theory of pivotal deterrence. The messy facts of real world events confound his attempt to systematize the facts and make policy recommendations.

Crawford uses four main case studies to demonstrate how incredibly complex strategic calculations can be, particularly on a multilateral level. The Eastern Crisis of 1875-78, when Germany prevented Russia and Austria-Hungary from fighting over the Balkans, is contrasted with the events of July 1914, when Great Britain tried in vain to deter France, Russia, Germany, and Austria from battle. Two Cold War studies show the United States using its leverage to try to keep peace among its allies and strategic partners: the Cyprus Crises of 1963-67, where NATO partners Greece and Turkey nearly came to blows over the disputed island; and the Kashmir Conflict of 1962-65, which raised the specter of war between India and Pakistan. Not surprisingly, the pivot’s effectiveness varied widely across these studies. Some leaders had it easy, such as Otto von Bismarck during the Eastern Crisis. Germany at the time enjoyed preponderant strength that would undoubtedly have made it a “kingmaker” in any conflict. Bismarck could thus restrain his bellicose
neighbors by declaring that Germany would oppose any side that initiated aggression. Conversely, Britain's foreign minister Sir Edward Grey had a nearly impossible task in restraining the continental powers from surging headlong into World War I in July of 1914. Crawford argues that the war was "overdetermined." The alliances between Germany and Austria on one side, and France and Russia on the other, made Britain's influence as a pivot negligible (p. 77).

Comprising the vast majority of the book, Crawford's four cases are interesting mini-histories based on impeccable research. Their exhaustive attention to detail, however, also highlights their shortcomings. In the sections on Cyprus and Kashmir in particular, Crawford seems more intent on chronicling every twist and turn of the negotiations than on connecting the story to an overarching theory of pivotal deterrence.

Equally troubling is the relative lack of attention given to post–Cold War cases. The penultimate chapter deals with Kosovo and Taiwan in a fairly sparse and perfunctory manner, which seems surprising given the vastly different strategic implications of the ongoing tensions surrounding those areas. The current international dynamic based on U.S. unipolarity is entirely different from the multipolar and bipolar systemic structure of the major case studies. Yet while one might expect U.S. military predominance to enhance Washington's leverage as a pivot, the gradual consolidation of a common European foreign policy and the increasing assertiveness of Chinese diplomacy will likely distort any traditional triadic pivotal deterrence situations. In addition, the multilateral context of the nonproliferation negotiations with both North Korea and Iran demonstrate that U.S. interests are not as unitary nor U.S. influence as all-encompassing as during the Cold War.

The major weakness of Crawford's theory is that there is little to distinguish it from a traditional balance-of-power analysis. Crawford examines the military balance from a broader perspective than most scholars, placing greater emphasis on the possible input of third-party interveners, but the basic strategic calculations remain the same. In essence, pivotal deterrence operates only on the margins, since states will make decisions about war based primarily on a direct comparison of military capabilities. Moreover, a third party's leverage will depend on the strength of its interests and the likelihood that it will use force to back up its preferences. Crawford occasionally acknowledges the impact of direct deterrence based on military superiority—Turkey, for instance, had a dominant advantage in the Cyprus conflict—but relegates this perhaps determinative factor to the status of an alternative hypothesis and does not incorporate it directly into his model.

When looking at a contemporary case such as Taiwan, it is difficult to draw inferences for American foreign policy from Crawford's theory. Based on the alignment options, the U.S. policy of "strategic ambiguity" should have a powerful restraining effect on both the People's Republic of China and Taiwan. Only the United States could punish China for attempting a cross-channel assault, and Taiwan is heavily reliant on American arms (p. 187). Crawford admits, however, that China was likely deterred in the 1995-96
Taiwan Strait crisis primarily by Taiwan’s air superiority and the difficulty of mounting an amphibious attack—not by pressure from Washington. Likewise, according to Crawford, Taiwan was probably “deterred from declaring independence by the fearsome consequences of a Chinese missile barrage on Taipei,” not by any threat to the future supply of U.S. arms to the island (p. 196). What do these facts imply regarding the capacity of the U.S. to effect pivotal deterrence? Crawford seems undecided over whether strategic ambiguity is a sensible approach or whether—counter to his theory—strategic clarity may be more appropriate. The defensive advantages Taiwan enjoys make the prospect of its declaring independence a genuine danger, especially given the recent electoral successes of the more confrontational Democratic Progressive Party and the ambitious program of President Chen Shui-bian. Taiwanese leaders may see the blurred lines of American support more as an invitation to adventurism and risk-taking than a robust deterrent. The United States could still act as a decisive pivot, but at some point remaining aloof may signal nonintervention, in which case the local military balance of power will predominate.

In sum, Pivotal Deterrence is a well-written and thoughtful book on a topic which has struggled to free itself from a Cold War mindset. It features impressively detailed case studies that are a riveting read and a useful primer for those unfamiliar with the historical events. Crawford’s intuition that third parties can be decisive in determining the outcome of crises is accurate, but he overreaches in attempting to develop an overarching theory to explain how states ought to practice pivotal deterrence. The ability and desire of pivot states to intervene is all part of the balance of power, and to focus exclusively on one party in this balance is to miss the forest for the trees.


Ever since the terrorist attacks of September 11, 2001, President George W. Bush has argued that America is a nation at war. “Our war on terror ... is only begun,” he declared in the 2002 State of the Union address. “History has called America and our allies to action, and it is both our responsibility and our privilege to fight freedom’s fight.” As the 2004 presidential campaign commenced, Bush labeled himself a “war president” in a closely watched Meet the Press interview. Meanwhile, Vice President Dick Cheney attacked the Democratic Party nominee, Senator John Kerry, for “embrac[ing] the strategy of the 1990s” and “treat[ing] attacks on our nation primarily as matters of law enforcement and intelligence.”

3. Vice President Dick Cheney, Remarks at a Reception for Senator Jim Bunning (March 2004)
Harvard Law School Professor Philip Heymann thinks the Bush administration has it wrong. In his new book, *Terrorism, Freedom, and Security: Winning Without War*, Heymann argues that “war” is a misleading and inaccurate metaphor for the United States’ struggle against terrorism. This terminology, according to Heymann, obscures the many U.S. policy options short of military force, encourages the government to sacrifice civil liberties in the name of enhanced security, and damages U.S. relations with other countries. Coming at a point when the Bush administration’s handling of the terrorist threat is perhaps the pivotal issue in American public life, Heymann’s critique of Bush’s foreign policy is exceptionally timely—and makes an excellent outline for Democrats to follow as the 2004 campaign progresses. Unfortunately, Heymann’s prescriptions for the array of steps that the United States should take to combat terrorism are weaker than his critical assessment of the actions that it is taking. Policy-makers will find little guidance in this book about how better to make the agonizing choices between freedom and safety, or between amicable foreign relations and the unilateral pursuit of American interests.

Heymann most explicitly criticizes the bellicose terminology of Bush’s “war on terror” in the first part of his book. “‘War,’” he writes, “is neither a persuasive description of the situation we face nor an adequate statement of our objectives” (p. 19). The many differences between what Heymann considers “real” wars and the contemporary struggle against terrorism include: the massive commitment of attention, energy, and resources demanded by real wars, far outweighing the more manageable burden of combating terrorism; the primacy enjoyed by the military in real wars, as opposed to the centrality of the intelligence agencies in antiterrorist efforts; and the temporary nature of real wars, compared to the indefinite terrorist threat (p. 1). The language of war is also unhelpful, according to Heymann, because it simplifies the multifaceted danger of terrorism—which includes not only the threat of spectacular September 11-style attacks but also smaller-scale bombings, cyberterrorism, and other menaces. Inaccurate rhetoric thus puts Washington policymakers in a myopic haze, and they become “less likely to develop different remedies for different dangers” (p. 26). Furthermore, casting the fight against terrorism in warlike terms implies greater knowledge of the enemy than the United States in fact possesses. It also grants adversaries “the dignity of parity” with the United States (p. 27).

In this section, and indeed throughout the book, Heymann adopts an overly formalistic view of the term “war.” Just as the war on poverty was fought without sending tanks into inner-city ghettos and rural Appalachia, so too the war on terror need not resemble the Battle of the Bulge. Even though the term can sometimes refer to all-encompassing struggles for survival, it can also identify a wide range of lesser conflicts with varying degrees of conventionality; it is, fundamentally, a flexible concept amenable to metaphor. Still, Heymann’s terminological critique has real force. In addition to highlighting the many problematic assumptions conveyed by a simple
linguistic choice, it arms critics of the administration with a much-needed rejoinder to the argument that September 11 "changed everything."

In the final part of the book, Heymann explores the potential negative consequences of the Bush administration's foreign policy for civil liberties at home and U.S. relations with its allies abroad. In the chapter on civil liberties, Heymann locates possible antiterrorism actions in three intersecting categories: steps that reduce the probability and harm of terrorism, steps dangerous to democratic liberties or national unity, and steps that mitigate public fear and anger. The most difficult policies to appraise are those that simultaneously combat terrorism and undermine civil liberties. For such actions, writes Heymann, Americans can do little but rely on the wisdom and courage of their elected leaders. Unfortunately, the choices the Bush administration has made—authorizing the indefinite detention of persons suspected of terrorist involvement, creating military tribunals outside the criminal justice system, and shunning legislative involvement and judicial review—indicate a desire "to go as far as legally possible in protecting even limited amounts of security without consideration of the long-term costs in democratic freedoms" (p. 90).

With regard to U.S. foreign relations, similarly, Heymann argues that "the Bush administration has . . . been consuming—not building—that intangible capital" that accrues from the respect and admiration of other countries (p. 122). Though one would never know it from the administration's bravado, this intangible capital is invaluable. International cooperation is required to accomplish many of America's most important goals, and American "soft power" rests largely on the values the United States has historically represented on the world stage.

Like the earlier section on the inappropriate "war" rhetoric, these policy chapters mount a persuasive critique of the Bush administration's handling of the struggle against terrorism. Heymann is weaker, though, when he turns to considering how to strike a more appropriate balance between individual liberties, cordial diplomacy, and national security. The critical question of what to do "when there is a true conflict between greater security and preserving historical democratic freedoms" produces only the answer that "we must do our best to choose wisely" (p. 90). Heymann also outlines various proposals that give rise to constitutional concerns—increasing the government's surveillance powers over aliens, creating a criminal incitement offense, and making membership in certain groups a crime—but fails to reach conclusions about the relative merit of any of these steps. And although he presents the many advantages of cooperative multilateralism, he never discusses what weight they should be given when the interests of the United States and its allies diverge.

In between the initial chapters on the Bush administration's faulty rhetoric and the final chapters on its faulty policies, Heymann attempts to make his own policy prescriptions in order "to develop as complete a menu as possible of ways to recreate safety and reduce fear" (p. 37). By this measure, he clearly succeeds. He offers an extremely comprehensive list of actions that Washington can take to combat terrorism: reduce enthusiasm abroad for
attacks; deter attacks through law enforcement and military force; deny terrorists access to potential targets, gather intelligence on suspicious individuals and groups; disrupt plots through criminal prosecution and detention; and so on. The trouble, though, is that a thorough menu of counterterrorist options is not especially useful. Many of the steps outlined have already been taken. Others are described at such a high level of generality (e.g. “showing concern for the well-being—the nutrition, health, education, governance, and human rights—of Muslim populations around the world”) as to be effectively useless (p. 44). Most important, Heymann neglects in these chapters to consider the implications of his different proposals for civil liberties and foreign relations. As a result, the reader is unable to decide whether some or all of Heymann’s policies should be implemented—because, as he later explains, the potential to reduce terrorism must always be weighed against possible corrosive consequences for freedom and international cooperation.

_Terrorism, Freedom, and Security_ therefore meets the first of the two requirements for any robust alternative to the Bush administration’s counterterrorism approach. That is, it adeptly points out the many deficiencies of the “war on terror” as understood and executed by President Bush: the unhelpful terminology of warfare; the excessive focus on short-term danger reduction; the erosion of civil liberties; and the damage to U.S. diplomacy and its perception abroad. Heymann, however, does not meet the second crucial requirement for any new counterterrorism strategy: a precise description of what steps it would entail; what values it would secure; and how it would differ from the status quo. Although readers will have to look elsewhere for a coherent and persuasive alternative to Bush’s war on terror, this book offers a successful critique of the current administration’s policy, and contains many ideas that will inevitably become part of any rival approach.


Are Islam and democracy compatible? Even if so, can a democratic system survive if Islamist parties are allowed to participate? The answer to both questions is yes, according to Noah Feldman, Assistant Professor of Law at New York University Law School who served as Senior Advisor for Constitutional Law to the U.S.-led Coalition Provisional Authority’s Office of Reconstruction and Humanitarian Assistance in Iraq. In _After Jihad_, Feldman gives a whirlwind overview of politics in the contemporary Muslim world in order to convince his reader, and wider policy circles, to accept his optimistic prognosis.

If Feldman is right, the stakes in Muslim countries today are higher than at any time in the past twenty-five years. He believes political Islam has moved from an era of espousing violent revolutionary rhetoric—leading in the most extreme case to the 1979 Iranian revolution—into a “post-Jihad” era
where Islamists seek political ends through peaceful methods (p. 232). But even if this argument is true a crucial question remains: what happens “after jihad?”

The answer to this question, argues Feldman, will depend on how both Muslim and Western governments react to the changes that are sweeping the region. In his view, Islamic democracy is possible, but not inevitable. To support this argument he offers a theoretical discussion of the compatibility of Islam and democracy, then a look at politics in the contemporary Muslim world, and finally a discussion of how the United States and other Western governments can facilitate the growth of democracy in Muslim lands.

In Part One, the “Idea of Islamic Democracy,” Feldman proposes that Islam and democracy are compatible because they are both “mobile ideas” (p. 32). Democracy is based on theoretical notions such as sovereignty and equality that have, in practice, yielded systems as varied as the U.S. constitutional democracy, the British parliamentary system, and Germany’s Weimar Republic. Thus in the Muslim world, Feldman would prefer to see the implementation of democracy in the form of a range of basic rights and freedoms, rather than merely a replica of American-style government. “The institutions of Islamic democracy will not look precisely the same as American democratic institutions, nor should they,” he asserts, pointing to the example of India’s unique liberal democracy (p. 208). He also reminds the reader continually that even Western democracies struggle over how to guarantee rights and personal liberties, and have been “riddled with inequalities along the axes of race, sex, and citizenship” (p. 78).

Similarly, Islam “comprises a complex set of contested ideas, values, and beliefs” (p. 21). Feldman supports this argument with a passionate discussion of Islam’s historic diversity of thought and tolerance. Here he self-consciously seeks to distance himself from Orientalist writings, which reduce Muslim actors into passive, irrational agents, and he offers refreshing perspectives on the vitality, malleability, and diversity of Islamic law in particular. Essentially, Feldman wants both Muslims and Western governments to break out of their belief in the false dichotomy between Islam and democracy. This myth labels Muslims who advocate democracy and modernization as illegitimate and inauthentic to their religious tradition, since “the ideas associated with Islam are unchangeable or unchanging” (p. 230). By contrast, Feldman argues that contemporary Muslims have been able to use their own religious, intellectual, and legal traditions to construct Islamic defenses of democratic values.

If democracy and Islam are both “mobile ideas” capable of transformation and translation into many different contexts, they are also susceptible to combination. Social Democracy, for example, melds socialism and democracy. National Socialism, for its part, married ethnic nationalism and “scientific” socialism. Feldman sees far more positive consequences from the marriage of Islam and democracy: “[c]ommitted to equality, and blessed by flexibility, these two universal ideas may potentially be good partners in the search for a provisional synthesis” (p. 78).
This hopefulness leads Feldman to insist that Muslims should be given the space and opportunity to create a democracy with Islamic content. Islamic law should not necessarily govern exclusively; the system instead may draw “on Islam’s values and ideals while simultaneously incorporating democratic principles, legal protections, and institutions” (p. 25). Feldman argues that an Islamist democracy is better than autocracy, since accountability and representation should provide for more consistent enforcement of the rule of law. Infusing Islamic language, notions, and principles into provisional constitutions does not necessarily doom emerging nations to an anti-liberal, anti-democratic future.

But how do the facts on the ground support Feldman’s theory? The second section of the book, on the “Variety of Islamic Democracy,” looks at how democracy and Islam are interacting in the contemporary Muslim world. Feldman attempts to summarize the pre- and post-colonial history and contemporary politics of every Muslim-majority country in the world, in less than ten pages per country. If that sounds like a tall order, it is. Moreover, Feldman’s real interest seems to be the fate of democracy in the Arab world, despite the fact that Arabs constitute less than 20 percent of the world’s Muslim population.

Additionally, each country Feldman examines has a different history of engagement with its religious organizations—whether violent repression, political inclusion, or political exclusion—and a different response by those organizations, who if included may integrate quite well into electoral politics (as in Jordan) or if excluded from politics may turn to social organizing (as in Egypt with the Muslim Brotherhood) or violent tactics (as in Algeria). Ultimately, Feldman cannot prove that Islam and democracy will unite in a harmonious way. Nevertheless, he insists that, regardless of the differences among states, democratization should be encouraged, not stifled, throughout the Muslim world.

The book’s final section is devoted to explaining the role the United States should play. Here, again, Feldman has a heavy Arab focus that largely excludes Turkey and Iran, key states in any discussion of Islamic politics. And again, his thesis is not surprising: long-term American interest lies in supporting democratization in the Arab world, even a democratization that is Islamic in flavor and content. Failing to promote democratization, he warns, incurs the risk of generating revolution, as occurred in Iran in 1979. In his calculation, it is “less costly to manage known risk than it is to confront unknowable risk” (p. 197). The “known risk” of increased self-expression and political participation, in Feldman’s view, is short-term instability. In the long run, democracy will breed stability and predictability in Muslim politics, in turn leading to more harmonious interactions with the United States (and even potentially with Israel), particularly as shared democratic values emerge.

But are the risks of Muslim democratization, in fact, “known”? And are they necessarily worth the benefits? Herein lies the greatest weakness of Feldman’s argument, since he cannot prove that a gradual transition to democracy will be more predictable and stable than maintaining the status quo. Rather than even attempt to prove the case, he resorts to a high-minded
Wilsonian tone, urging America to "do the morally right thing" and be a superpower based on principle (p. 204).

Feldman adopts a quite strident tone with his unabashed interventionist leanings. But he has a refreshing determination not to predict or propose specific outcomes. Encouraging democratization will not automatically lead to the Islamization of politics, he reminds the reader, since "Muslims . . . are not pre-programmed to embrace Islamist politics, as indeed most of the history of the twentieth century proves" (p. 215). Turkey, for example, is a Muslim state that moved towards greater democracy due to a combination of American and European strategic alliance and economic leverage. And although Islamists reclaimed power in 1995, their electoral success has not led to any assertion of civilizational incompatibility with Western democracy. Quite on the contrary, the Islamist Justice and Development Party has accelerated efforts to bring Turkey into the European Union.

Muslims deserve the chance to at least have a choice of whether they want a democracy or not, according to Feldman. They might very well opt for a different form of government, but Feldman wants to allow the people the choices that they are being denied today, a denial that the United States supports both implicitly and explicitly to the extent that it supports authoritarian governments throughout the region. Readers may disagree with his tone, which is almost that of an evangelical liberal: he self-consciously tries to distance himself from Orientalist academics, who see the Muslim world as irrational and uncivilized, yet he also promotes aggressive U.S. interventions in Muslim states, from political and economic cooperation to sanctions to the use of force if need be. Feldman has waded into a highly contentious political debate, and the coming years may well put many of his ideas to the test.

The Global Expansion of Judicial Review


In Board of Trustees of the University of Alabama v. Garrett, the U.S. Supreme Court struck down those provisions of Title I of the Americans with Disabilities Act that rendered states liable for monetary damages. The Court questioned the Act’s factual predicate and ruled that its passage exceeded the limited power granted Congress by the Fourteenth Amendment. Around the world, such blunt assertions of judicial authority, and the strong judiciaries that make them, are proliferating. Even questions of national identity—such as whether Quebec is entitled to secede from Canada—are being litigated. In Towards Juristocracy, Ran Hirschl, Associate Professor of Political Science at the University of Toronto, attempts to "place the dramatic manifestations of the expansion of judicial review [in the United States] . . . within a broader context" (p. 223). Hirschl’s analysis of the origins of what he calls the “new
"constitutionalism" is both fascinating and compelling. But his conception of the consequences of this phenomenon is thin and his empirics are questionable.

Hirschl begins by debunking the three classical explanations for constitutional transformation: evolutionist, functionalist, and institutional-economic. Evolutionists see judicial review as the inevitable by-product of the human rights movement. Proponents of the functionalist and economic rubrics, on the other hand, see the creation of a stable, extra-political legal regime as a necessary prerequisite to political development and economic advance, respectively. But as Hirschl astutely points out, none of these paradigms offers an adequate explanation for scenarios where "no apparent transition" is taking place (p. 8). Why, for instance, did "members of the Canadian polity ... [choose] to take steps against their own imperfections [by promulgating the Charter of Rights and Freedoms] in the year they did and not earlier or later" (p. 36)?

In opposition to these traditional theories, Hirschl advances a controversial but plausible hypothesis: the judicialization of rights and national efforts to boost the salience of judicial review are "means by which preexisting and ongoing sociopolitical struggles are carried out" (p. 99). In other words, the new constitutionalism is a "form of self-interested hegemonic preservation" whereby "threatened political elites ... preserve or enhance their political hegemony by insulating ... their policy preferences ... from the vicissitudes of democratic politics" (pp. 11-12).

To support his thesis, Hirschl analyzes major constitutional developments in Canada, New Zealand, Israel, and South Africa. He starts his investigation with little more than a hunch that absent political pressure, and unless faced with potential electoral loss, rational politicians are unlikely to expose their policies to the vagaries of an independent judiciary. Research confirms his intuition. Hirschl painstakingly points out the growth of anti-establishment forces in each nation he studies just prior to its adoption of a bill of rights or proto-constitution. In Israel, he explains that the governing secular and anti-statist "bloc lost more than one-third of its relative combined electoral power between 1981 and 1999" (p. 57). In response, Israeli leaders entrenched protection for fundamental rights and liberties in two new basic laws—Basic Law: Human Dignity and Liberty, and Basic Law: Freedom of Occupation. Likewise, in Canada, Hirschl urges that the popular Quebec separatist movement "changed the political incentive structure" such that elites "found majoritarian politics not to their advantage" (pp. 76-77). It was for this reason, he maintains, that Canada passed the Charter of Rights and Freedoms in 1982. Both Canada's Charter and Israel's new basic laws gave the national courts new grounds upon which to strike down legislation. Hirschl's argument about the cause of constitutional transformation is persuasive at least in part because he offers an alternative to the platitudes often heard that "stress the deep commitment of political leaders ... to the protection of fundamental civil liberties" (p. 76). His account squares with a realist understanding of politics.
Nevertheless, for all he tries to paper it over, Hirschl’s logic rests on a syllogism of uncertain stability: the major premise is that embattled political elites are likely to look for alternative means of securing influence; the minor premise is that judges appointed by these conservative elites will safeguard the policies of their patrons; the conclusion is that the more things change, the more they stay the same. In other words, elites will use constitutionalization as a way of “avoid[ing] or delay[ing] unwanted political outcomes” (p. 15). Yet appointing cronies to the bench can never be more than a stop-gap solution. If the old guard’s fear of electoral defeat is well founded, someone else will be picking the next set of judges. As national politics shift, an appointed court’s stance on the issues of the day cannot but evolve. Hirschl fails, moreover, to discuss other, structural ways in which political elites may use the judiciary to try to put off policy reversal for as long as possible. The Canadian Court is, for instance, explicitly factionalized (by province) while the Israeli Court is not; when political threats emanate from one particular geographical area, the Canadian design may cabin dissent. Likewise, if elites know they only have one shot at judicial selection, they may want to endow judges with life tenure, hoping to entrench their policies in custom and make subsequent reversal more difficult. Finally, if, as in Israel, an elite faces challenge in the legislature but not a battle for executive control, that elite may want to reserve to the executive branch the power to initiate the appointment process.

After concluding that new constitutionalism is politics by other means, Hirschl analyzes the phenomenon’s consequences. After empirical study, he concludes that judicial organs have protected negative rights (classic civil liberties that constrain the state) but not positive rights (those that require state action). Indeed, while freedom of speech, for instance, has enjoyed extensive protection, a substantive welfare right has not. This work seems to be one of the first attempts at comparative constitutional empirics; that said, however, Hirschl’s taxonomy is somewhat vulnerable. As he acknowledges, rights do not lend themselves to easy classification. For example, clauses that guarantee racial equality may entail both a negative right (the state may not distinguish on the basis of race) and a positive right (the state must take active steps to eradicate the traces of caste).

Hirschl concludes on something of a defeatist note: even if courts were to provide “a more generous judicial interpretation of these [positive] rights,” it is unlikely that the lot of the impoverished “would significantly improve” (p. 220). He notes that when courts have handed down decisions out of synch with a nation’s political climate, backlash has forced reconsideration. He points to the swift reversal of the Shah Bano decision in India; within a year of a Supreme Court decision that affirmed the pre-eminence of a national alimony statute over Muslim law, the Indian Parliament “bowed to massive political pressure . . . by passing the Muslims Women’s . . . Act” (p. 203).

Because Hirschl’s theory is “actor-oriented,” it does not lend itself to making predictions or policy recommendations (p. 49). Moreover, whether a polity chooses to entrench rights in a constitution seems to depend on the development of adversary politics—a pure contingency. Hirschl also leaves the reader with many unanswered questions. As he notes, for instance, he has
studied nations where the courts were respected; would his conclusion obtain were this not the case? Despite its flaws, *Towards Juristocracy* makes two important contributions to the scholarship on judicial review: as an empirical and truly comparative work in a field where few are, and as an alternative to the almost uncontroverted praise for constitutionalization.


Where does the line between law and politics fall? In 2004, the U.S. Supreme Court is considering the legality of the detention of “enemy combatants” at Guantánamo Bay and reviewing the President’s exercise of his authority as commander-in-chief in the process. The German Federal Constitutional Court has protected the right to privacy by ordering the government to limit the scope of electronic surveillance. In France, the banning of headscarves in schools due to an alleged violation of the separation between church and state has engaged the attention of both the government and the courts. Judicial scrutiny and political action are clearly occupying the same field.

Tim Koopmans, in *Courts and Political Institutions: A Comparative View*, offers a careful examination of the legal relations between political institutions and the courts in four countries—the United States, Great Britain, France, and Germany (with some references to Italy, the Benelux countries, and Canada)—in an effort to document and explain the shifting boundaries between judicial and political activities. As a former Professor of Constitutional Law at the University of Leiden and Judge on the European Court of Justice, Koopmans brings the perspectives of both the academic and the practitioner to these issues.

In his four case studies, Koopmans finds that subjects that are highly political in one country are treated as legal issues in another. For example, in the United States, the introduction of the death penalty is a *political* issue to be decided by each state government, but in Western Europe it is treated as a *legal* issue because the European Convention on Human Rights prohibits capital punishment. However, this legal/political distinction is not stable. The U.S. Supreme Court is hearing two cases on the legality of capital punishment in different situations (the execution of juveniles and the failure of the government to provide consular notice). Such instability is to be expected, since Koopmans’s study of the case law in the four jurisdictions leads him to argue that the relationship between courts and political institutions is in flux and the line between law and politics is being blurred in many areas.

Koopmans identifies three trends that are altering the boundary between law and politics. First, Koopmans discusses increasing judicialization. The courts in many countries are having a growing influence on “matters which were once considered purely political” (p. 268). This influence arises from the extension of the jurisdiction of the courts and the declining deference given to
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assessments made by public authorities. While judicialization has no single cause—it can be the result either of legislative reform or the action of the courts themselves—there is some evidence that jurisdictions are influencing each other. For instance, when the experience of dictatorships and world wars shook Europe’s faith in the reliability of political institutions, the American model of judicial review established by Marbury v. Madison set the tone for constitutional debate in many European countries. European courts are now also reviewing administrative actions, a trend which began in France. The number of cases that are non-justiciable appears to be shrinking, as illustrated by the demise of the “political question doctrine” in the United States (p. 101). Nonetheless, the realm where courts will not tread has not completely disappeared. Courts in France and Germany have respectively found the President’s decision to proclaim a state of emergency and the licensing system for the construction and operation of nuclear reactors to be beyond the scope of judicial review.

Second, Koopmans argues that at least two forces are undermining the stability of constitutional law. The first, more specific, force is the influence of the European Court of Justice and the European Court of Human Rights. European national courts are paying attention to the supranational courts’ interpretation of individual provisions of European Community Law and the European Convention on Human Rights, are placing less emphasis on national codes and statutes as primary sources of law, and are adopting a more purpose-oriented, creative judicial approach. The second, more general, force affecting constitutional law is globalization. “some problems are being internationalized to such a degree that the State is no longer able to provide solutions” (p. 263). For example, European Union institutions are increasingly influential in many legal, political, and social matters such as environmental regulations, labor laws, and access to social services that used to be decided solely by national entities. Unfortunately, Koopmans does not explore the influence of international bodies like the International Court of Justice or the World Trade Organization’s Appellate Body.

Third, the growing significance and complexity of international human rights law over the past fifty years has also shifted the line between law and politics. Koopmans persuasively argues that human rights protections have increased the power of the judiciary. The growth of human rights law has enabled courts to intervene in matters previously left to political institutions, changed the perception of the judiciary’s task to that of the protector of citizens, and added a new dimension to judicial review. The starkest illustration of the impact of human rights law on courts is in the Netherlands. Dutch courts do not possess the power to review legislation, but they can strike down statutes for being incompatible with rights enshrined in the European Convention on Human Rights. This system of “semi-review” has resulted in a line of case law in which Dutch judges have used their autonomous view of the meaning of certain human rights to scrutinize the provisions of the Civil Code (p. 44).

Courts and Political Institutions makes a valuable and rare comparative contribution to constitutional scholarship. Koopmans’s examination of the
constitutional jurisprudence and practice of four countries allows for sometimes surprising comparisons and contrasts that cut across the civil/common law dichotomy. For example, there is a strong similarity in the authority of the president in French and American constitutional law because they both possess independent executive powers.

However, some readers may be frustrated by Koopmans’s neutral approach to his subject matter. In his view, “[c]omparative studies help us to understand things, but they are a poor guide to determining what is ‘good’ or ‘bad’” because the wisdom of choices that different countries have made depends on multiple background factors, many of which are non-legal (p. 282). While Koopmans’s straightforward justification of his neutrality is admirable, his refusal to make value judgments makes the study feel somewhat incomplete. The project of understanding a legal system, or even a single constitutional doctrine, is bound up with value judgments. Koopmans artificially separates the description of the differences among the four legal systems from an evaluation of the positive and negative consequences of those differences. Academics, legislators, and judges regularly search for solutions to shared problems through comparative law techniques. Even though constitutional law is inevitable closely bound to a country’s history and culture—even more closely than in more technical areas of the law such as contract—there is still room to learn from others.

Judicial Review in New Democracies: Constitutional Courts in Asian Cases.

Judicial review has been expanding around the world over the past several decades. Unfortunately, academics have not kept up with the trend. Tom Ginsburg, Professor of Law and Political Science at the University of Illinois, is an exception. As he recognizes, the recent spread of judicial power calls for a reexamination of the development of judicial review. Why do countries adopt judicial review, which is often characterized as an undemocratic practice, during periods of democratization and constitutional design? What conditions in the early stages of democratic liberalization support the exercise of judicial power? Moreover, new constitutional courts vary in their design and the powers with which they are endowed. What allows some constitutional courts to exercise the power of judicial review more aggressively than others?

Ginsburg’s Judicial Review in New Democracies: Constitutional Courts in Asian Cases takes up precisely these questions. In the first half of his book, he lays out a theory about the origins of judicial review that departs sharply from conventional explanations. Most scholars look at the broad cultural or societal factors that could favor the establishment of some form of judicial review. They often attribute the creation of judicial review to a demand for judicial protection from people newly conscious of their rights. Ginsburg challenges this argument. He suggests that political interests may actually
seek to supply institutions of judicial review absent popular demand. Having laid out this theoretical framework, he then puts his arguments to the test with a comparative analysis of recently established constitutional courts in the new democracies of Taiwan, Mongolia, and Korea. He also helpfully grounds these Asian case studies by drawing on material from Eastern European states and other new democracies, as well as the history of several well-known constitutional courts.

Ginsburg looks at the establishment and development of judicial power under two distinct theories. The "insurance theory" explains the establishment of the constitutional court; and the "diffusion theory" accounts for constitutional court design and performance (pp. 25, 90). "Insurance" is important because Ginsburg sees electoral uncertainty as the key factor motivating democratic countries to set up an independent judiciary. When constitutional designers are confident that they will retain political dominance under the new system, they set up institutions that favor parliamentary sovereignty—they will not provide built-in institutional constraints on their expected power. On the other hand, in situations of political transition and uncertainty, constitutional designers worry about retaining control of political institutions. As a result, Ginsburg argues, leaders in these situations are likely to set up a constitutional court with the power to protect the ultimate constitutional bargain from encroachment by their successors. South Korea's 1987 constitutional reforms, for instance, occurred at a time when several parties of roughly equal force were vying for future political power. The parties therefore demanded a strong system of judicial review as a form of political "insurance" against electoral loss.

Although political actors may seek to insure a new democracy through judicial review, the degree of power that they are willing to hand over to the court can vary. According to Ginsburg, the extent of political diffusion explains both differences in constitutional design (i.e. the size of the constitutional court and the length of the justices' terms) and the varying degrees of the courts' power. In other words, where one political party dominates, judicial review is more constrained. Where political power is dispersed, courts have more space and freedom in which to operate and to expand judicial power over time, both because elected officials have less leverage to overrule or counterattack courts and because more disputes are created for the judiciary to resolve. The dispersion of political power in South Korea and Mongolia, for instance, led to court appointment processes where three separate institutions each nominate one-third of the members of the judiciary. Moreover, with South Korea's notoriously weak and underdeveloped political parties, the Constitutional Court in that country has correspondingly been very active, frequently striking down legislative action and demonstrating its independence in politically charged areas such as labor law disputes. On the other hand, because Taiwan's democratization occurred under one dominant party (the Kuomintang Party) with a strong leader, its Council of Grand Justices has, for the most part, been tightly controlled. The president has exclusive appointment power, and the Council has only limited
access to the public and can engage only in abstract review, with no power to strike down legislation for unconstitutionality.

Ginsburg's thesis—that political interests primarily determine how judicial power is established and developed—is lucidly argued and well supported. Yet his argument loses credibility when he neglects to consider the possibility that alternative explanations may in fact substantially complement his own. For instance, some scholars have argued that constitutional designers provide for an independent judiciary in order to protect property and trade rights and contribute to economic growth. Other theorists suggest that cultural dynamics greatly influence the development of judicial authority and dictate its ability to expand. Still others believe that new democracies that rely heavily on foreign ties are influenced by pressure from Western democracies and supranational governing bodies to emulate Western constitutional principles and institutions. Ginsburg acknowledges these alternative viewpoints and concedes that they can affect the development of judicial review. However, he subordinates their influence to the domestic political interests that he highlights. This intransigence is surprising, given that he undertook his project in order to rebut the view that cultural and historical influences operate together in a single, uniform process of judicial empowerment. Moreover, his comparative study actually lends credence to the importance of the alternative explanations that he rejects. In his chapter on South Korea, for instance, Ginsburg describes the constitutional court's critical role in contributing to that country's economic liberalization by undermining the legacy of state economic controls.

Ginsburg can be criticized not only for his overly narrow theory but also for his attempt to generalize about the development of judicial review from the three new democracies that he chose to study. He is correct that Taiwan, Mongolia, and South Korea represent different political environments. Taiwan has experienced a gradual transition to democracy and constitutionalism over the past two decades. Mongolia, by contrast, created a constitutional court after a clear "constitutional moment" in 1992, when a new constitution was ratified (p. 158). South Korea, for its part, has undergone partial democratization from a military dictatorship that ended in 1987. However, the three countries also have crucial similarities, in that they are all heavily influenced by imperial Chinese legal institutions and Confucian ideology. To his credit, Ginsburg concedes that he is unable to offer definitive proof of his theory based on these case studies, and he does briefly consider some anecdotal cases such as post-communist Russia. He devotes very few pages to examples drawn from the more than two centuries of judicial review in the United States and thus fails to supplement his Asian case studies in a way that would generate a solid basis for his theory.

In spite of its limitations, Ginsburg's approach makes a refreshing and extraordinarily useful addition to a body of literature that has been dominated by studies of Western (particularly American) constitutionalism and apolitical understandings of judicial power. As a study with the self-pronounced goal of broadening the empirical and theoretical bases of comparative constitutional law, Ginsburg's book is highly successful. By focusing on judicial review in
non-Western countries, and by refusing to explain the development of judicial power in terms of the conventional cultural and social theories, Ginsburg shifts the dialogue on constitutionalism away from culturally deterministic accounts of judicial power and opens up a conversation that has long waited to begin.

**Law and Democracy**


Feminist scholars have long identified a link between patriarchal family structures and autocratic political regimes, and have advanced a number of explanations for this connection. Some highlight authoritarian governments’ efforts to promote an idealized version of the male-dominated family in order to legitimize the conception of the leader as strong father-figure. Others have proposed that military regimes reinforce patriarchal norms by militarizing society. Still another school of thought argues that causality runs in the opposite direction, with citizens accustomed to autocratic government in the family more inclined to accept it at the national level. These bodies of feminist scholarship often assume that democratization—with its greater emphasis on the intrinsic worth of persons, personal liberty, and the equality of citizens—will undermine patriarchy and pave the way for feminist reforms.

Mala Htun, Assistant Professor of Political Science at New School University, puts this assumption to the test in *Sex and the State: Abortion, Divorce, and the Family Under Latin American Dictatorships and Democracies.* Through an analysis of efforts to reform the laws regarding spousal equality, divorce, and abortion in Argentina, Chile, and Brazil, Htun develops nine distinct case studies from which to develop generalized findings. Surprisingly, she discovers that some military governments were more effective in achieving feminist reforms than were the democratic governments that succeeded them. Ultimately, she concludes that simplistic variables such as democratic or authoritarian governance are of little use in predicting the success of legal reforms aimed at helping improve the status and rights of women. Instead, she explains that a reform’s likelihood of success depends on a more complex range of variables, including the politics of the particular issue, the power of elite advocates for reform, and the strength of opposition from the Catholic Church.

The first wave of gender reforms that Htun examines addressed women’s legal capacities within marriage. In Latin America married women traditionally had no property rights, while men exercised sole authority over their children as well as over their spouses. Between the 1960s and 1990s, however, Argentina, Brazil, and Chile all adopted spousal equality reforms that recognized the full civil capacity of married women and granted mothers
equal parental rights. These moves occurred first under military governments in Argentina and Brazil—and not in response to feminist activism, but as incidents to comprehensive legal modernization efforts. In Htun's words, "[m]ilitary governments created technical commissions charged with modernizing the civil law, opening a privileged window of influence for lawyers to bring cosmopolitan legal theories to bear on domestic policy. The closed nature of these governments insulated technical decisions from societal input, thus expediting change" (p. 5). Indeed, the commissions' recommendations were rubber-stamped in both countries. In Chile, however, conservative military-political elites vetoed the feminist reforms suggested by a similar commission; women did not achieve equal status within marriage under the law until after the 1990 transition to democratic rule.

In enacting familial equality reforms, these three Latin American governments were following—rather than leading—the Church. As Htun points out, Catholic doctrine had by the 1960s already endorsed the ideal of "equal rights and duties for man and woman" within marriage (p. 32). By contrast, in areas where the Church opposed a government's proposed reform—such as the liberalization of divorce and abortion laws—Htun finds that successful change depends crucially on the character of the Church-state relationship at the particular point in time: "[d]uring periods of Church-state cooperation, state leaders realized benefits from the Church's political support and were unwilling to make moves that would incur episcopal wrath. When the Church turned against the state, opportunities emerged for opposing coalitions to step in and produce shifts in gender rights legislation" (p. 24).

The laws regarding divorce most clearly demonstrate this dynamic. Military-governed Brazil was the first to legalize divorce, in 1977. Although the Church vigorously opposed the move, the government, which had been the target of harsh criticism by the clergy for its human rights abuses, was in no mood to bend to the Church's will. In fact, Htun argues, the divorce initiative was a deliberate attempt to undermine the Church's legitimacy by forcing it to oppose a widely popular reform. By contrast, in Argentina, where the military government enjoyed the support of conservative Church officials, the state dutifully bowed to the Catholic desire to keep divorce illegal, even forbidding the word divorcio to be spoken on television. After the restoration of democracy in 1983, however, the Argentine Church's political influence and legitimacy were undermined due to its collaboration with the earlier military regime, and it was unable to prevent the legalization of divorce in 1987.

Abortion, the last issue that Htun considers, has a dynamic of its own in Latin America. Significant liberalization of the laws against abortion has not occurred under either military or democratic government in any of the three countries. Despite laws prohibiting abortion in all but a few circumstances, however, the practice is widespread. According to data cited by Htun, about a third of pregnancies in Chile and Brazil end in abortion, an average of greater than one per woman. Yet if the government lacks the political will to enforce the legal prohibitions on abortion, why has public opinion not been mobilized to decriminalize the practice? As Htun explains, "since middle-class women generally have access to safe abortions in private clinics, many see little
reason to press for the liberalization of abortion laws. It is primarily poor women who suffer the consequences of clandestine abortions" (p. 6). After examining failed attempts by military-appointed technical experts and civic activists to decriminalize abortion, Htun concludes that apparently similar gender-oriented issues such as abortion and divorce cannot be grouped together into one gender policy category. "Differences among gender issues are politically consequential. Rather than treating 'women's rights' or 'feminist policies' as a single issue area, we should disaggregate gender issues" (pp. 1-2). Hence, she cautions that just because the path of feminist reform led to the legalization of elective abortion in North America and Western Europe, it may not do the same in Latin America.

While the rich and exhaustively detailed case studies will appeal to students of Latin American political history, Sex and the State reads largely like the dry political science treatise that it is, despite its sexy subject matter. In the work's closing pages, however, Htun provide a brief but powerful description of a political strategy to achieve feminist legal agendas: focus on discrete demands for which diverse ideological coalitions can be assembled, and be open to compromise on issues with high symbolic importance to conservative forces. While Htun's conclusions and suggestions are helpful and solidly supported by the evidence detailed in the preceding six chapters, she does not attempt to integrate these findings into a more structured model that could be applied to a broader geographic range of cases.

Htun concludes by suggesting that her findings may be relevant to understanding the dynamics of feminist legal reform in Catholic countries beyond Latin America, such as Poland, Spain, and Ireland. An even more interesting possibility, however, would be to apply her framework to Islamic states. In the Muslim world today, as in Latin America in the 1960s through 1980s, one sees patterns of autocratic statism and familial patriarchy. Htun's work cautions against believing that Islamic democracy will inevitably bring with it a greater concern for women's rights. To the contrary, she notes, "democracies may be more conservative than authoritarian regimes. By enabling citizen groups and institutions to mobilize and express their views, democracy opens the door to both liberal and illiberal influences on gender policy" (p. 173). Moreover, Htun warns that the power of religious institutions is particularly great in countries without a strong civil society tradition. Thus Htun's historical lessons and suggestions for achieving legal reform on gender issues in Latin America may in fact be a profitable roadmap for groups seeking similar goals in the Islamic world.


Has civil society become the talisman of twenty-first century democracy? Harvard political scientist Robert Putnam claims U.S. democracy
began sputtering fifty years ago when Americans joined fewer teams, clubs, and church groups, and instead began “bowling alone.” Soon after the U.S. government stopped dropping bombs in Kabul, it began dropping dollars to start up the women’s groups and youth leagues that the Taliban had forbidden in its efforts to smother any spark of democracy. In Baghdad, America’s new viceroy has called upon the leaders of Iraq’s unofficial civic groups not just to help draft the post-Saddam constitution, but to help build the foundations of what they hope will become the largest democracy in the Middle East. In short, civil society is now a key ingredient in the West’s democracy promotion recipe. Indeed, some observers estimate that NGO development work is a $7 billion annual industry worldwide, with $2 million pouring in from U.S. foundations alone. Around the world, Washington spends more of its democracy assistance dollars on civil society than on anything else.

The problem is that policymakers and scholars know very little about how well civic promotion actually works. Sarah L. Henderson, Assistant Professor of Political Science at Oregon State University, offers a much needed answer. She looks at Russia, the scene of America’s most ambitious effort to build democracy over the past decade. Whereas critics savaged Western aid for supposedly supporting the rise of corruption and crony capitalism in the 1990s, analysts of all ideological stripes consider the explosion of some 65,000 active nongovernmental organizations (NGOs) in Russia a bright spot of Western aid. Indeed, one of the few things that policymakers and scholars now agree on is that even more money should go to helping grow Russia’s grassroots organizations. In fact, by the late 1990s, Washington had placed promoting civil society at the core of its assistance strategy toward Russia.

Henderson reverses the familiar gaze with a provocative question: imagine that the Russian government bankrolled Human Rights Watch, the American Medical Association, the Sierra Club, and many of America’s richest civic organizations. “How would this change the face of civic activism? How would it alter the dynamics of how civil society works?” (p. 1). In several respects, this scenario represents an analogy to what is happening in Russia today.

In search of an answer to her question, Henderson traversed Russia’s ten time zones as a consultant and researcher working with scores of the country’s new NGOs. She was “interested in everything from the Russian chapter of Greenpeace to the Stamp Collector’s Society,” and looked at both those who did and did not receive Western dollars (p. ix). This research design moves her narrative beyond mere anecdotes. For that alone, Henderson’s book is a fine example of social science research.

Henderson does not break new theoretical ground. Yet she adds color and depth to the useful emerging literature on foreign assistance to civil society. She finds that Western funds have provided a critical financial lifeline to several NGOs. As one Russian NGO activist who did not receive foreign assistance told Henderson, “It is hard to think about civil society when you are poor and have no job” (p. 152).
Yet Henderson’s analysis is most penetrating in identifying how foreign aid exacerbates the pathologies of the Russian civic sector. As one civic leader explains, foreign “grants are like winning the lottery out here” (p. 164). Unfortunately, too few groups pick a winning number. The resulting competition for funds fosters unintended and unhealthy consequences: a supply-driven civic sector that often caters to Western funding priorities; a growing “civic oligarchy” of an English-speaking, professional Russian NGO elite; and a Western-funded “virtual civil society, portrayed as much more significant and productive than it really is” (p. 166).

To be sure, working in a country of 145 million people, Western donors must make tough choices about who gets grants. Russia’s bigger and more established groups are understandably better bets. But Henderson argues that contrary to Western aims, much of the assistance to the largest and most professional NGOs has not, in fact, trickled down to the groups that worked most directly with ordinary Russians every day. “Although in many ways foreign aid has advanced NGO development in Russia, NGO development is not synonymous with civil society development” (p. 11).

Why has Western assistance to civil society disappointed expectations? The answer, Henderson argues, lies not in corrupt individuals or the weight of Russia’s supposedly “undemocratic” cultural legacy. Rather, it is a question of incentives and interests. When Western aid providers reward glitzy funding proposals, Western-style projects, and high-tech techniques, Russian civic leaders will rationally cater to that system. But this incentive structure does not have to be permanent: changing Western policy is easier than changing centuries of Russian history.

Even so, figuring out how to promote democracy abroad today is, as Winston Churchill famously described Russia itself, “a riddle enshrined in a mystery and wrapped in an enigma.” Unfortunately, Henderson misses an important chance to solve even more of this riddle. Namely, she treats Western support for Russian civil society as a question of assistance, when it would be better understood as a question of politics and diplomacy. That is, Western governments and foundations are not merely trying to offer objective “technical assistance” to civic groups. Part of the strategy of funding grassroots organizations is to strengthen democracy by challenging the status quo.

Besieged former communist governments certainly view Western funding in this way. In the fall of 2001, for example, the Russian-language press in Ukraine was filled with stories about how U.S.-funded NGOs had toppled Serbia’s Slobodan Milosevic. The Ukrainian government responded by harassing NGO leaders, denying official registration to prominent groups, and shutting down several NGO activities. Suspicious governments are all too eager to crack down on what smacks of U.S.-sponsored NGO subversion.

The same can happen in Russia, as the book’s opening anecdote reveals. Henderson takes the reader to the outskirts of Moscow, where in 1998 she attended a U.S.-funded seminar to train thirty Russian environmental and human rights activists. Some four years later, she read on Lexis-Nexis that one of the groups from that very conference had helped spearhead a voter
referendum to require the government to seek public approval for its plans to store and process foreign radioactive waste. "Did the indirect coaching of Mario Cuomo and Jerry Brown, the training provided by [that US-funded NGO], and the monetary support provided by countless Western foundations, governments, and nonprofit organizations facilitate the emergence of this campaign?" (p. ix).

Yet even if U.S. coaching and dollars could inspire such a campaign, it turns out they could not protect the Russian NGO from its own government. The group collected almost 3 million voter signatures for the referendum, but the Central Election Commission disqualified just enough names at the last minute to end the vote. Unfortunately, Henderson never follows up on this disturbing story. Did the NGO ever have an impact on the policy it criticized? Have Western governments done anything to help NGOs resist such pressure from their government? Was this incident part of a larger pattern where civic groups climb to the edge of political influence, only to be quickly knocked aside by a dominating government? The reader never finds out.

Henderson's analysis mostly ignores this larger context. American and European governments have been deeply involved in Russian domestic politics for the past decade, but foreign aid remains among the weakest instruments in their foreign policy toolkit. Take sheer dollars. Although the $7 billion annually used to promote civil society worldwide appears impressive in absolute numbers, the funding is still a pittance relative to the funds flowing to developing countries in trade, foreign direct investment, and military assistance. Just in Russia, from 1992 to 1998, the U.S. Agency for International Development spent $92 million on civic groups. In that same period, Washington encouraged the IMF to extend loans to Moscow totaling over $15 billion.

What would have happened if civil society promotion had the budget of the IMF or World Bank in Russia? Which funds had a greater impact on Russian democracy and political life? Did the West's prescriptions for rapid market reform affect the environment for Russian NGOs? Did widely unpopular foreign policy initiatives, such as NATO expansion and the war in Kosovo, engender a backlash against groups receiving American aid just as they did against the American government? Diplomacy creates the context within which assistance operates. Yet Henderson does not indicate what, beyond foreign aid, Western donors and governments could be doing to help remove obstacles to the development of Russian civil society. That said, she goes a long way in explaining how Western assistance for civil society worked, what could have been done better, and why. As the West's drive to promote democracy spreads beyond the former communist world, so should the wisdom from Henderson's book.

Randall Peerenboom, Professor of Law at the UCLA School of Law, enjoys the cautious optimism of a legal scholar who has seen the law virtually eviscerated in China and who now embraces any signs of its return. Since the nadir of the Cultural Revolution, China has experienced an economic and legal explosion that continues to this day. Many naysayers point out that law cannot acquire meaningful force so long as China remains under one-party rule with limited opportunities for political dissent. Peerenboom, on the other hand, argues that the rule of law has acquired a new normative force in China. A long march remains ahead, however, to enact the institutional reforms that can inscribe the law as a true check on political and administrative power.

The sources of Peerenboom's optimism are clear. In Maoist China, the People's Republic lacked basic laws such as a comprehensive criminal code, civil law, or contract law. The Chinese Communist Party ruled almost by fiat alone. Only one law was passed during the entire Cultural Revolution, from 1967 to 1976. By contrast, from 1976 to 1998, the National People's Congress (NPC) and its Standing Committee passed 337 laws; local people's congresses and governments issued over 6,000 regulations (some of which later became laws) that for the first time provided citizens with a means of challenging administrative actions. The Ministry of Justice reopened in 1979, twenty years after its dismantlement. Law schools were founded and the number of lawyers soared from 5,500 in 1981 to over 100,000 in 1998. In 1979, litigation was virtually non-existent. By 1996, the total number of cases of first instance tried before China's courts reached five million.

In addition to these institutional developments, legal consciousness is increasing. Legal broadcasts including live trials now appear daily on radio and television. Peerenboom is especially struck by the apparent ideological shift from rule by law toward a rule of law that limits both government official and citizen. He sees this shift exemplified in Jiang Zemin's 1996 announcement of an official policy—which was incorporated into the constitution in 1999—of "ruling the country in accordance with the law and establishing a socialist rule-of-law state" (yifa zhiguo, jianshe shuhui zhuyi fazhiguo) (p. 6).

Peerenboom strikes a starkly different tone from the dominant views on Chinese legal reform, which range from "extreme cynicism and skepticism to cautious pessimism" (p. 559). Chinese legal scholar Stanley Lubman, for example, claimed in his highly praised 2001 book, Bird in a Cage: Legal Reforms in China After Mao, that China does not even have a legal system. For Lubman, socialist ideology and rule of law are all but incompatible. Indeed, as China scholar Li Shuguang has noted, there is an irony in relying on the government to advance a rule-of-law movement, the ambition of which is to limit the government's freedoms.

Peerenboom acknowledges this clash, but does not see it as a reason to dismiss all signs of progress. Instead, he relaxes the standards for defining a legal system by persuasively distinguishing between "thin" and "thick" notions of rule of law. "Thin" conceptions emphasize the minimal conditions that must exist in order for a legal system to function regardless of the ideological context of the society. Laws must be made in accordance with
legislative rules and must be generally applicable, public, prospective, relatively clear and consistent, stable, and impartially applied and enforced. By contrast, a “thick” conception of rule of law adds elements of political morality, such as the economic arrangement and form of government.

The strength of Peerenboom’s reform agenda, focused on strengthening the features of a thin conception of law, lies in its ability to transcend the ideological conflict between socialism and liberal democracy and to identify concrete, pragmatic goals for developing rule of law in countries with diverse political and economic conditions. Looking beyond the competing ideologies, Peerenboom argues that institutional deficiencies pose the greatest challenges to China’s transition towards the rule of law: the judiciary is weak and poorly trained; corruption is rampant; the legislative system is in disarray; laws are vague and often inconsistent between levels of regulation and legislation; regional power struggles impede the impartial implementation of the law and so on.

Peerenboom’s institutional approach is one of the great successes of China’s Long March. Ultimately, however, even the most thorough institutional reforms will not address the political or moral concerns that have been raised about China’s legal system. As Peerenboom concedes, a thin rule of law is only a partial success; although a “procedurally fair trial” may be a significant achievement, it is a “hollow victory to those sent to jail under repressive laws” (p. 135). Even once a thin rule of law is established, many questions will remain unresolved. Indeed, few would be satisfied for long with a standard for rule of law “that is compatible with morally reprehensible evil empires like Nazi Germany . . .” (p. 69).

China’s Long March also succeeds in another sphere by appealing to diverse models for the rule of law. Indeed, China’s civil system was to an extent modeled on Bismarck Germany’s legal institutions, transported to the mainland via Japan’s Meiji-era reforms. Peerenboom’s reform proposals therefore rely not only on American solutions but also on those born out of civil law traditions. For example, the laws restricting Falungong, a banned religious sect, are contrasted with counterexamples such as a corresponding, though certainly not as severe, French law that uses criminal sanctions to limit sects and proselytizing. Peerenboom also considers how other Asian states have integrated a wide variety of political arrangements—liberal and non-liberal, democratic and non-democratic, rights-centered and communitarian—into their modern legal systems. By invoking the experiences of Taiwan and South Korea, Peerenboom points out that it is possible, at least for a period, for a nation to develop the rule of law in some areas, such as commercial activity, while not meeting the same standards in other politically sensitive domains. Here the Taiwanese and South Korean examples are perhaps promising for another reason—as the judiciaries in both countries gained independence and authority, they became “increasingly aggressive as reforms progressed in interpreting and applying constitutional provisions that initially were empty promises” (p. 62). Similar “empty promises” can be seen in China’s 1982 constitution—which has been amended four times to allow for freer markets and most recently to profess a commitment to human rights—
which provides for a government of laws and not men, the supremacy of the law, and the equality of all before the law. These provisions sound promising, but Jiang Zemin endorsed them as a tool for strengthening Communist Party rule by reining in local governments and ensuring the supremacy of government policies. To this day, no organ exists that has the authority to challenge the Party's constitutional interpretation. Perhaps if the Chinese judiciary begins to develop the strength of its counterparts in South Korea and Taiwan, judges could begin to give meaningful force to the constitutional words.

*China's Long March* has its failures. Some propositions are unsatisfactorily supported, such as Peerenboom's startling claim that the "[Communist] Party only rarely intervenes in specific [court] cases" (p. 307). The nearly 700-page book is also unnecessarily repetitive, given the rich subject matter.

Nonetheless, Peerenboom's great successes overshadow any minor irritations. His book establishes a comprehensive vision of the Chinese legal system. It also makes a hopeful analogy between the current legal reform movement and Deng Xiaoping's economic program of the 1990s, when China stood between a centrally planned economy and a market-based one. At that time, moves toward a more active market were incremental and context-specific. Peerenboom's institutional approach provides a comparable prescription. Beijing continues to deny rights guaranteed by laws, it continues to suppress civil society and political dissent, and Communist Party policies continue to trump legislative edict. China's current system admittedly falls short of even Peerenboom's thin rule of law. Yet China has made remarkable progress since the Mao days and should perhaps, as Peerenboom argues, be viewed as a system in transition toward the rule of law, albeit not a liberal democratic one. Despite its minor flaws, *China's Long March* provides a novel map for navigating the very long path ahead.

**Institutions and Individuals in the Global Economy**


It seems that no one has an unbiased view of the International Monetary Fund and the World Bank. Academics, development experts, and policymakers agree that international financial institutions (IFIs) are major players in the field of international development and finance, yet that is where the consensus ends. To the anti-globalization forces that regularly demonstrate their wrath in Washington and beyond, the IFIs symbolize many of the inequities of global development. But rarely do the protestors articulate their grievances as clearly and succinctly as Mac Darrow does in *Between Light and Shadow*. Darrow, of the U.N. Office of the High Commissioner for
Human Rights, serves as Coordinator of the High Commissioner's "Human Rights Strengthening" Joint Programme with the U.N. Development Programme. Although Darrow is at ease with the technical jargon of the policy wonks within the IFIs, it is evident that his allegiance lies with a different camp.

Between Light and Shadow attempts to demonstrate how the IFIs neglect human rights considerations in crafting policy. This neglect, according to Darrow, has created a system of international development that essentially furthers the international economic policy of the Group of Seven (G-7) most economically developed states and does little to alleviate poverty in developing nations. Darrow's most compelling argument, however, is his critique of the IFIs' institutional setup. By deconstructing these massive, largely opaque organizations, he demonstrates basic systemic flaws that lead directly to their policy failures. While this section speaks to both the protestors and the policymakers, it makes his discussion on international human rights law seem like an afterthought. Even his proposed policy reforms, which are aimed at incorporating international human rights law into the work of the IFIs, look back to the underlying, structural flaws that created these problematic institutional policies. In essence, the IFIs' failure in the human rights arena is simply one manifestation of a much larger problem.

According to Darrow, "the chief and seemingly most intractable weakness" of both the IMF and the World Bank "relates to the significant under-representation of developing country interests at [the] Executive Board level" (p. 226). G-7 nations account for a majority of the voting shares in both institutions. For example, the United States holds 17.5 percent of the voting shares in the IMF. Yet Fund voting rules require an eighty-five percent majority vote to approve any program, giving Washington "an effective veto" over IMF programs (p. 27). Moreover, as Gerald O'Discroll of the Heritage Foundation told the U.S. Senate Committee on Banking, Housing, and Urban Affairs in 1999, "[t]he US Treasury Department exercises influence over IMF policy far in excess of the explicit percentage vote possessed by the United States. IMF policy does not and will not deviate in any important or fundamental way from the policy of the US Treasury" (p. 79).

As Darrow sees it, this voting regime makes IFI policy simply the imposition of G-7 foreign economic policy on other states. It leaves the needs of developing nations inadequately understood and addressed in both the Bank and the Fund. One result is that developing states are reluctant to approach the IMF for financial assistance until they reach an absolutely desperate financial situation. When they do come for help, it is often because the Fund is the lender of last resort—allowing it to impose what Darrow sees as unduly harsh conditions on its loans. Like many other observers, he cites the vaunted IMF "shock therapy" programs in Russia and East Asia after the 1997 financial crisis as examples of unwise, overly doctrinaire Fund policies. Indeed, the IMF has now admitted that it worsened the crisis in East Asia by unnecessarily imposing austerity measures that created a cycle of recession and bankruptcy and undermined the ultimate economic recovery.
In addition, the IFIs turn what Darrow sees as a nearly blind eye to the political and social consequences of economic reform. The institutions claim they can legitimately focus only on the economic policy of client states; to delve into political or social matters would unacceptably infringe on state sovereignty. However, as Darrow notes, human rights scholar Anne Orford has argued that globalization has created a "culture in which political decisions that would once have been at least theoretically within the realm of parliamentary decision-making, popular sovereignty, or democratic government, are now made by experts in economics" (p. 82 n. 116). Economic policies can and do significantly impact domestic politics, affecting not just human rights but "health; education; the right to food and adequate standard of living; women's human rights; environmental protection; employment and labour rights; social security; and (through conditions promoting 'good governance' and the rule of law) the framework within which civil and political rights are exercised" (p. 112).

As one extreme example, Darrow cites the IMF's structural adjustment programs in the former Yugoslavia in the late 1980s, which he argues instigated country's descent into chaos and destruction in the early 1990s. The IMF's programs "contributed to a sense of insecurity and resulting social instability" by forcing the government to cut back spending, including food subsidies and import subsidies, leading to rising gas and commodity prices. Many of these reforms had a disproportionate impact on ethnic minorities, who had been heavily dependent on government-provided social services. The Yugoslav government lost legitimacy when it imposed the IMF reforms, says Darrow, and citizens began to look to religious and ethnic identity for support. Obviously, "shock therapy and structural adjustment programs have been implemented elsewhere without leading to genocide" (p. 110). Unfortunately, in Yugoslavia, the combination of the economic shocks and the rising ethno-nationalist tide proved to be lethal.

As the Yugoslav example demonstrates, IFIs lack direct accountability to the populations of their client states. Accountability in theory comes at the national level, as democratic governments must sell IFI policy to their domestic constituencies. But democracy is either illusory or non-existent in many of the neediest states. Moreover, the history of the 1990s, from Latin America to Russia, shows that elected government provides no guarantee that local elites will not be allowed to co-opt all the benefits of IFI-imposed policies such as privatization or trade liberalization. Nor is it certain that bringing political leaders to account after the fact can reverse the damage from rapidly or poorly implemented policies.

Finally, irresponsible international lending creates unsustainable debt burdens, especially when autocratic leaders use the funds to bolster their illegitimate regimes. When these bad debts are called in, if the debt burdens greatly exceed the income generated through exports and foreign aid, the recipient government may have to choose between repaying its creditors and using the money on domestic programs to help protect its citizens' basic rights, including human rights. For example, the Indonesian parliament has argued that it should not have to pay back IMF loans made to the previous
Suharto regime because the country’s indebtedness “was principally due to the obsequious support of the IMF to an extremely corrupt and incompetent economic regime which made the regime viable and powerful” (p. 96 n.171). Unfortunately, IFIs have what Darrow considers a habit of such irresponsible lending. Although not included within the chapter on the IFI derogation of international human rights law, this point is actually Darrow’s strongest argument against IFIs in that regard.

Darrow is not the first to call for greater inclusion of human rights considerations in IFI policy, and the institutions have come up with responses to their critics in this regard. Both the Bank and the Fund argue that although human rights lie beyond their mandates per se, they do indirectly enhance human rights protections to the extent that their policies help develop economic, social, and cultural rights (the Bank) and a stable macroeconomic foundation for social stability (the Fund). Furthermore, both institutions would lose credibility and the support of the industrialized states if they entered “the business of human rights promotion” directly (p. 171). This argument, however, fails to acknowledge that the Bank, and the Fund to a lesser extent, already have projects that focus on human rights, including HIV/AIDS prevention projects and anti-corruption/good governance projects. But these endeavors seem to be exceptions, not the norm.

Darrow ultimately hopes IFIs will actively incorporate human rights protections into their mandates, but “in ways that minimize the risk of dominant powers’ disengagement from multilateral cooperation” (p. 211). In this regard, he is far ahead of the anti-globalization protestors. He candidly recognizes that the current structure of international finance and development will not be radically restructured anytime soon. Furthermore, “[h]uman rights are not ‘trumps’ in all situations, and should not be expected of themselves to resolve policy trade-offs and identify optimal policy choices for development goals” (p. 271). Once the serious flaws in the existing structure of IFIs are addressed, human rights will be fully integrated into their policies. Unfortunately that day remains far off.


Who are the most powerful players in the global political economy? Ask any economist, political scientist, or average citizen, and the answers they give would probably be quite similar: Coca-Cola, Microsoft, IBM. This is but a sampling of the names that might come up. Yet it illustrates that private actors, not governments or intergovernmental institutions, are increasingly driving (and profiting from) global exchange. Does this shift imply that the rules governing such transactions, which derive from the traditional interstate system, are also changing?
Yes, claims A. Claire Cutler, Associate Professor of International Relations and Law at the University of Victoria in British Columbia, Canada. In her view, “new sources of law are emerging which do not emanate from public, state authority, but rather from privatized, nonstate authority” (p. 22). Moreover, “soft law” in the form of voluntary codes of conduct and private agreements has allegedly become the dominant mode of regulation. The task of adjudication, for example, is increasingly conferred on private arbitration bodies.

This transformation in legal ordering shatters the traditional distinction between public and private international law. This traditional view defines public international law as the law that deals with the relationship between states, while private international law merely operates as a conflict of laws system; it derives its ultimate authority from the domestic legal order. Consequently, individuals and transnational corporations are “invisible” under international law: they are “objects” and not “subjects” of the law (p. 37).

As Private Power and Global Authority reveals, the predominant theories of international law and relations are incapable of departing from this basic assumption. Thus, they fail to capture the increasing influence of private power in the global political economy. “Conventional” schools of thought such as legal positivism and political realism, for example, continue to regard states as the essential actors in the global realm. And even “unconventional” theories such as critical legal studies mostly reproduce the distinction between state and non-state, public and private, politics and economics.

However, Cutler argues, it is “simply unhistoric to posit the distinction as a natural division, for it has not always figured as part of the natural world” (p. 58). The transnational law created by merchants—also referred to as lex mercatoria—serves as an example to support her claim. Historically it has evolved in three phases.

In the Middle Ages, the lex mercatoria indeed operated as an autonomous private legal order. Since feudal society was based on vertical and disaggregated sovereignty, no authority able or willing to regulate long-distance trade existed. Furthermore, foreign merchants were appreciated for providing revenues and supplies of foreign goods. They enjoyed exemption from local discipline, such as just price requirements, and could follow their own customs. The lex mercatoria could easily adapt to evolving commercial practices and was essentially self-disciplinary. Disputes were settled by private arbitration praised for its speed, informality, and efficiency. Enforcement mechanisms included sanctions such as market exclusion, bankruptcy, or loss of reputation.

Only with the rise of the Westphalian nation-state in the seventeenth century was the law merchant localized and nationalized. Sovereign national governments replaced the overlapping authority structures of the medieval period. Law creation, dispute settlement, and legal enforcement became functions of the public sphere.

Yet the most recent phase in this legal evolution, which according to Cutler dates from the beginning of the twentieth century but probably reached its peak after the end of the Cold War, seems to be bringing about a “re-
medievalization of the world" (p. 51). Cutler describes how a "global mercatocracy"—a transnational commercial elite committed to neo-liberalism and capitalism—is globalizing merchant law (p. 180). On the one hand, nongovernmental organizations strive to unify and harmonize trade law. The terms of trade (Incoterms) elaborated by the International Chamber of Commerce, for instance, reflect such an effort. On the other hand, transnational corporations create global law through the routine repetition of standardized contractual relationships. For dispute settlement they rely on private arbitration established by mutual agreement.

Thus, "while transnational corporations and private business associations may be objects at law (de jure), they are, in fact, operating as subjects (de facto)" (p. 249). As Cutler emphasizes, transnational business arrangements have political and distributional repercussions well beyond the parties involved. Not only do they enable transnational corporations to evade the application of mandatory national consumer protection, taxation, or antitrust legislation, but they also "reinscribe asymmetrical power relations" (p. 243). To the extent that the commercial customs and practices of the global economy represent those of the dominant U.S.-based corporations, the interests of less-developed states, smaller businesses, and domestic consumer groups remain underrepresented.

Cutler discusses a wide range of literature from the political, legal, and social sciences to make her point. But her highly theoretical account would have benefited from some concrete examples. The lack of specific support for her arguments also gives rise to doubt: are states not still indispensable for transforming unification proposals into binding law and enforcing private arbitral awards? Cutler replies that soft law can "acquire binding force through the voluntary adoption by parties in their contracts" (p. 205). Moreover, she argues, public policy exceptions to the enforcement of foreign arbitral awards are "significant only in theory and not in practice" (p. 230). But these assertions can hardly conceal that states keep the final say in the global legal arena. States are also able to intervene in the international economy well before the enforcement of private arbitration awards becomes a question; as even multinational corporations have to incorporate in a specific jurisdiction, the states could restrict their activity if national interests were threatened.

If Cutler's analysis is correct, the reconfiguration of authority in the global political economy portends a "crisis of legitimacy" for international law. At some point, the "disjunction or asymmetry between theory and practice . . . [will become] so great that it strains the foundations of the order" (p. 241). Cutler, therefore, makes the case for an alternative "theory of international law as praxis" which should be "capable of theorizing law as both a material and an ideological force operating with a public and a private face" (pp. 261, 99).

Yet this theory leaves the reader unsatisfied in two regards. First, its contours remain rather vague. Second and more importantly, it does not offer a solution to the normative problems caused by expanded private governance: "Private authority over law-creation and dispute settlement . . . raises
important concerns about public participation and democratic accountability and legitimacy" (p. 28). If Cutler's scenario of the eclipse of the nation-state were true, the ultimate challenge for legal theory would be to develop strategies to subjugate the global law-making process to democratic values and maintain the rule of law.

Critical Perspectives on Economic Development


In *International Law from Below,* Balakrishnan Rajagopal, Professor of Law and Development and Director of the Program on Human Rights and Justice at MIT, argues that scholarship on international law exhibits a Western and elitist bias, as exemplified by its complete failure to acknowledge the crucial role that Third World social movements played in the transformation of international law over the last century. Rajagopal aims to fill this gap. By applying a "social movement perspective" to international law, Rajagopal tells the reader at the outset that he hopes to resolve some of the field's current weaknesses—in its blindness to the significant informal interaction between various Third World actors, its exclusive focus on states and individuals as recipients of rights, and its persistent view of development as beneficial, rather than harmful, to the Third World (p. 3). Yet while these introductory statements and the book's title suggest that his narrative will be about legal transformation with a focus on social movements, subsequent chapters read more like individual essays of varying relevance to Rajagopal's stated objectives.

Only the final two chapters focus on social movements, and the arguments Rajagopal makes in them fail to support his larger goals. It is not until the penultimate chapter that Rajagopal even offers a definition of a social movement: an informal network, organized around a common identity and belief system, which engages with cultural or political conflicts (pp. 238-39). Yet at the same time, he admits that the phrase has multiple meanings, and he never explains his chosen definition. Moreover, Rajagopal argues vaguely that analyzing international law in terms of social movements is "more rewarding" than focusing on either states or individuals (p. 236). He then describes how his so-called social movement perspective, by looking beyond states and individuals as international actors, raises several alternatives to the prevailing theories about legal rights and duties. For example, collective, community-based property rights differ from existing views of sharply defined private and state-owned property. Yet Rajagopal simply describes these different legal theories as potential alternatives to current ideas, without providing either a method or a rationale for making changes to the existing international legal system in which states and institutions continue to predominate.
In his final chapter, Rajagopal focuses on a particular social movement, the Working Women’s Forum of India, which helps poor Indian women organize themselves into local groups in order to obtain bank loans. The Working Women’s Forum eludes easy categorization. A grassroots organization, it is registered as a nongovernmental organization (NGO) with the Indian government and is viewed as a women’s movement within the human rights sphere, yet it challenges all three designations. The group works locally and largely informally, responding to the particular needs of some of India’s least advantaged women, and it remains disconnected from international law at the institutional or NGO level. Yet it is more meaningful to the people who really need it than any of the more established institutions or NGOs.

Rajagopal focuses on social movements because he believes they offer a way to rethink and reshape international law. Yet this final case study illustrates the limits of his subject: groups such as the Working Women’s Forum by their nature will not serve as the basis for a new international order to displace the state-centered paradigm. The Forum’s principal success lies in its concrete response to a particular, local problem facing a defined group. Like similar organizations, the group exists below the international and state level and has no aspirations to contest the law handed down from those levels. Thus, even as social movements successfully multiply, state-centered international law will likely persist.

While the final two chapters return to the social movement theme that Rajagopal outlined in the preface and introduction, and which is purportedly the subject of his analysis, there are seven interceding chapters where the author does little to advance his argument. For instance, in one chapter, he challenges the traditional depiction of the League of Nations Mandate system, but does so without employing his own social movement perspective. He argues that the Mandate system represents a link between colonialism and the development discourse that arose in the decades after World War II, with the emergence of newly independent states in the Third World. Thus, traditional narratives that depict the post-World War II development agenda as a clean break with the colonial past overlook the crucial role played by the League of Nations as the colonial model of administration incrementally evolved into the Mandate System and eventually into the U.N. Trusteeship system. Yet Rajagopal’s portrayal of Western elites as the major actors in the transformation process, and the Third World as merely the passive recipient of Western ideas, actually justifies the portrayal of international legal transformation as a Western and elitist phenomenon. How does this portrayal fit with Rajagopal’s argument about international law “from below?” The reader is left to wonder.

In his chapter dealing with the Bretton Woods institutions, Rajagopal introduces social movements as actors, but exaggerates their importance beyond what his evidence supports. He argues that the operations of the World Bank and International Monetary Fund (IMF) today have emerged from a complex interaction between internal, pragmatic concerns and “popular resistance”—a term that Rajagopal uses without specifying whether he refers
to resistance by social movements, or by people in general (p. 97). Yet neither of the two broad policy changes that the author discusses—the institutions’ increased interest in the alleviation of poverty and their growing concern with the environment—supports his argument about the importance of popular resistance. With respect to the alleviation of poverty, Rajagopal argues that although the founding articles of the IMF and the World Bank contained no provisions about supporting poor states, these institutions nevertheless began doing so shortly after World War II. Yet he admits that they looked to development primarily to improve the security of Western nations, not due to any Third World influence, much less interaction with social movements. The World Bank’s concern with environmental protection can at least ostensibly be attributed to outside forces, at least in the two examples of Bank policy changes that Rajagopal provides—the Polonoroeste highway in Brazil and Narmada Dam in India—where the World Bank withdrew its funding for large, potentially environmentally disastrous projects. In the Polonoroeste case, Rajagopal summarizes these outside forces as consisting of the “US media, US Congress and . . . NGOs worldwide” (p. 121). In other words, the shift came about as a result of Western and elite pressure. He makes no mention of social movements. Discussing the Narmada Dam project, Rajagopal does mention “vigorous social movements” that, combined with NGOs, eventually caused the World Bank to withdraw funding (p. 124). However, the actual role or influence of the social movements, as opposed to the NGOs or other actors, is neither described nor evaluated. Thus, by Rajagopal’s own evidence, policy shifts at these massive financial institutions occur through interaction with multiple external forces; social movements are only one explanatory variable among others.

Despite its almost reflexive criticism of the West, this book remains a valuable read. Contrary to the author’s objectives, most of its arguments support rather than challenge the idea that international law is a Western and elitist concept. Yet the final chapters offer a provocative view of social movements and their potential to effect change on the ground, a potential that international institutions and NGOs have often failed to demonstrate.


Many observers look at the glaring economic disparities between rich and poor nations and just despair. It seems impossible for the poorest African countries in particular, states such as Tanzania, Nigeria, and Uganda, to advance to a level of development anywhere close to that of the United States. Yet Daniel Little, Chancellor of the University of Michigan–Dearborn, is an idealist. In The Paradox of Wealth and Poverty: Mapping the Ethical Dilemmas of Global Development, he puts forward an ambitious vision of economic development and concludes that it can be achieved the world over. This optimism seems somewhat excessive, however, if one considers the facts
The experience of several African countries shows that Little has identified real inequities in global development, but it also brings into question the feasibility of his suggestions.

The case for greater global equality, Little argues, is deeply rooted in Western philosophy and ethics. He proposes an Aristotelian model of development that envisages human happiness in terms of people's ability to formulate goals and plans and to bring them to fulfillment. This ethic, Little concludes, provides a powerful and compelling vision of the meaning and fullness of human life. As such, it is complemented by Kant's view that all people have intrinsic moral worth. Based on these two philosophies, Little argues throughout the book that individual well-being should be at the center of the development agenda, and that alleviating poverty should be the core mission of economic development.

But when he turns from theory to facts, Little finds that the world looks far different from the Aristotelian and Kantian ideal. He undertakes a clear, comprehensive, well-informed empirical survey of global development, using World Bank and United Nations Development Program statistics and data. This evidence illustrates what Little sees as the two central paradoxes of global development: first, the emergence of a civil, liberal constitutionalism in many regions of the world at the same time as ethnic violence threatens the lives and dignity of millions; and, second, rapid economic advancement that still leaves billions living in persistent, debilitating poverty. Indeed, in one striking finding, the World Bank estimates that out of a total of 6 billion, some 2.8 billion people live on less than $2 a day.

Having articulated these two paradoxes, Little uses the rest of the book to further dissect the gaps between the haves and the have-nots, and to offer his own perspectives on how best to approach international development. For example, he strongly advocates improving the quality of life of the labor force in the developing world through increased wages and better working conditions. Such a strategy fits with his Kantian belief in individual dignity, which is compromised in those developing states where labor standards are not a major concern.

Interestingly, although Little advocates respect for individual dignity as a core philosophy to guide global development, he does not propose centering the development discourse on a human rights agenda. Human rights theory, in his view, is too limited to serve as the moral basis for economic development. He argues that human rights policies should focus on the "core" civil, personal, and political rights enumerated in the first fourteen clauses of the UN Declaration of Human Rights, which are "most critical to [people's] ability to function as free persons, and . . . most likely to be assaulted by corrupt and powerful governments" (p. 145). By contrast, "the moral domain of economic development" is much broader, including the right to subsistence, to fulfill one's maximum human potential, and the right to effective labor organization—all "moral goods that are independent of human rights" (p. 151). In this, however, Little may be underestimating the usefulness of the human rights dimension. Human rights discourse has progressed far since 1948—it now recognizes and promotes economic, social, and cultural rights.
that could not only enhance the human well-being about which Little feels so strongly but also help support development in the poorest countries. Of particular importance is the need to promote the right to basic health. Just like poverty breeds poor health, poor health breeds poverty. The deaths of millions of people due to HIV/AIDS in sub-Saharan Africa, for example, have had a severe impact on the quality and quantity of the labor force.

Little also devotes a chapter to globalization and the obligations it creates for developed nations, international institutions, consumers, and citizens. The Washington Consensus, the neoliberal economic agenda put forth by the Washington-based international financial institutions after the end of the Cold War, required several developing countries to implement structural adjustment programs that often included such elements as privatization and an end to government price subsidies. But these programs led to worker layoffs in some cases, resulting in higher unemployment levels that in turn increased inequality. Little argues that development assistance cannot fit into the cookie-cutter mold of liberalism and free markets demanded by the Washington Consensus. Instead, policymakers must take into account the particular needs of individual countries. Moreover, sufficiently “generous and effective” foreign aid packages must “flow in volumes that are sufficient to contribute to sustained and measurable progress toward poverty alleviation,” must be targeted toward that end, and must be well administered (p. 186). Loans also have a place in development policy, but Little contends that citizens must scrutinize the “priorities . . . effectiveness and sincerity” of the multilateral lending institutions in order to avoid the problems created by the 1990s liberalization agenda (p. 186).

Little further proposes an ambitious set of policy goals intended to minimize the environmental damage caused by economic growth. He acknowledges that “the most basic threats to environmental quality,” such as population growth and more intensive use of natural resources, are “part and parcel of modernization, economic growth, and the enhancement of global human well-being” (p. 207). Given this inherent tension between environmental protection and economic development, policymakers’ “only credible position” is to pursue sustainable development strategies that would include targeted population policy, investments in more energy-efficient technologies, and state regulation of the environmental impact of economic activity (p. 206). These needs are particularly pressing in the developing world, where economic growth has led to environmental damage as multinational corporations and indigenous companies have taken advantage of lax government regulations or political corruption to operate in a way destructive to the natural environment and the health of the local communities. In Nigeria, for example, the Nigerian National Oil Company and the Shell Petroleum Development Corporation entered a joint venture to exploit oil reserves in the Niger Delta. Yet their project produced toxic wastes that severely contaminated the water, soil, and air of the surrounding region, leading to serious health problems among the local Ogoni people, such as skin infections, gastrointestinal and respiratory ailments, increased cancer rates, and neurological and reproductive complications. Thus, although Little does
not discuss this specific example, he does rightly emphasize the need to protect air and water quality in order to preserve human health—a vital component of the development process.

Little presents an attractive ideal: a world devoid of inequalities, a world in which people achieve their full potential, a world where everyone has a fairly comfortable standard of living, a world of harmony, and a world that most developing countries have had a part in creating. His ideas reflect the socialist slogan of the "common good" as opposed to the capitalist "everyman for himself." But can this ideal in fact become reality? Julius Nyerere tried to create a socialist state in Tanzania in the early 1980s, but his nationalization projects ultimately impoverished the country. Tanzania is now the second poorest nation in Africa. More fundamentally, can Little's proposals become anything more than that when capitalist and individualistic principles dominate the West and drive much of the existing development agenda? Will the elites of the development establishment care about the ethics of their work as long as its legality is not in question? Given the likely negative answers to these questions, while Little's goals are desirable, his proposals for how they can be achieved are unrealistic.