Recent Publications


Francis Fukuyama, a self-described neoconservative, assigns himself a tough task in *America at the Crossroads: Democracy, Power, and the Neoconservative Legacy.* In this work, Fukuyama describes the main principles of neoconservative thought while telling a history of neoconservative thinking and its influence on American foreign policy. Perhaps of most interest, Fukuyama explains where he believes the Bush Administration failed in its application of neoconservative thought, and, as a replacement to neoconservatism, announces a new approach to foreign policy he terms “realistic Wilsonianism” (p. 9). Fukuyama succeeds in each of the tasks he undertakes in *America at the Crossroads*; however, a reader might want concrete answers to global problems rather than the broad sketch of realistic Wilsonianism that Fukuyama presents. Realistic Wilsonianism, like neo-conservatism, assumes that the internal character of a regime is reflected in external relations and that American power should be used for moral purposes abroad. Both assertions seem problematic in view of the history of American foreign relations in the twentieth century.

According to Fukuyama, the history of the neoconservative movement explains both the sources of the movement’s main principles and the later failure of the Bush Administration’s attempted application of those principles. Fukuyama describes four main principles of neoconservative thinking: that the internal character of a regime affects how it acts internationally; that the United States can use its power for moral purposes abroad; that large-scale social engineering should be viewed skeptically; and that international law and institutions are unable to provide national security (p. 48). Each of these elements has its rationale in the movement’s origins in World War II and the early Cold War. Neoconservative thinkers became especially prominent during the Reagan years and supported the administration’s policy of confrontation with the Soviet Union, which they viewed as a profoundly immoral regime. Critics of neoconservativism opposed the strategy of directly confronting the Soviet Union in order to encourage its dissolution. When, in fact, the USSR did break apart and its Eastern European satellites became democracies, Fukuyama suggests that many neoconservatives started to think that regime change could be accomplished with relative ease (p. 56).

According to Fukuyama, this hubris influenced the Bush Administration’s preemptive war doctrine and the invasion of Iraq. These actions both undermined its anti-terrorism efforts and tarnished the neoconservative school, perhaps irredeemably. Belief that regime change was easy to achieve allowed the Administration to think it safe to ignore outside estimates of the resources and time it would take to reconstruct Iraq.
Neoconservative principles arguably supported the Administration’s idea of democracy promotion; the policy of spreading democracy accepts the importance of the internal character of regimes and is a moral use of American power. Fukuyama, however, suggests that the arguments of bin Laden and his allies primarily appeal to a subset of Muslims trying to find identity in a modern world—such as marginalized Muslim immigrants in Western Europe. Therefore, promoting democracy in the Middle East may not substantially diminish the threat to the United States because the most likely terrorists are already in democratic nations such as Germany and the United Kingdom (p. 74). Fukuyama also argues that the Bush Administration took the neoconservative skepticism of international law and institutions to a new and dangerous level when it ignored not just the United Nations but global opinion. In so doing, it not only further undermined various international organizations, it also damaged its own war effort. The Administration also associated the neoconservative school with unilateralism. Fukuyama essentially renounces the term neoconservative because of its association with unilateralism, the ill-fated preemptive war doctrine, and the invasion of Iraq.

Fukuyama calls for realistic Wilsonianism as a replacement to the neoconservative approach to foreign policy. This approach would follow neoconservative thought in its view that the internal character of regimes is important in international affairs, that American power can be used for moral purposes abroad, and that social engineering should be approached with care. But realistic Wilsonianism differs from neoconservatism in taking international institutions and law seriously (p. 9). Fukuyama is not arguing for a full-blown abandonment of domestic sovereignty. Rather, he suggests that in a globalized world, international institutions of all sorts are often the only way to effectively address problems that cannot be addressed by any one nation, even the United States.

A new approach to foreign policy might be more welcome if it provided specific proposals as to how to solve the issues of the war in Iraq and the nuclear ambitions of North Korea and Iran. Fukuyama’s sketch of the realistic Wilsonian approach provides some clues, but does not give concrete answers.

For Iraq, the theory seems to suggest that greater realism is needed in understanding the limits of American power to effect lasting change. If the idea that a society and its governmental structures are interconnected (an important part of the concept of regime) is taken seriously, Americans will understand that it might be foolish to expect a secular western-style democracy to flourish simply because an authoritarian government falls. But Fukuyama’s approach does not provide the answers to today’s policy problems: if the United States acknowledges that it cannot engage in social engineering in Iraq, what should it do? Should it withdraw its troops? Should it encourage a partition of the country—or would that be an even more problematic act of social engineering?

As a realistic Wilsonian view might suggest, the Bush administration has made Iran and North Korea the subjects of intense diplomacy in order to secure U.N. Security Council sanctions against them. However, realistic Wilsonianism does not address the reality that the structure of the Security
Council almost guarantees a future disagreement about how to deal with rogue nations. Diplomatic compromises may lead to weak sanctions that do not deter either country's nuclear ambitions. Fukuyama suggests that the United States should listen more closely to its allies in NATO. But this is not overly helpful—what happens if NATO itself is divided? The realistic Wilsonian approach does not appear to have a concrete test for deciding when international institutions have failed to deal with security threats and when military action should be considered.

Aside from its failure to provide concrete solutions, realistic Wilsonianism is structurally flawed in its emphasis on the U.S. ability to act as a moral force abroad. While it is uncontroversial that American foreign policy has acted morally at times, it has also been an amoral actor by, for example, supporting coups in developing nations. One could dismiss these instances merely as times when the United States did not live up to potential to be a moral force. But that dismissal would miss the point of the connection, made by both realistic Wilsonianism and neoconservativism, between the internal character of a regime and its actions on the international stage. According to this theory, if the United States is internally moral, then it should act morally in its foreign relations. Unfortunately, both schools lack a systematic and rigorous explanation for the amoral or immoral actions of internally moral and democratic regimes. Without such an explanation, it is problematic for both realistic Wilsonianism and neoconservatism to depend on American morality as an important element of its foreign policy. While Fukuyama acknowledges that other nations are skeptical of American power and that American leaders are not always wiser than the leaders of other nations, he does not fully address the problem of justifying a belief in American morality on the international stage when there are examples to the contrary. To be taken seriously, exceptionalists must not only assert that America is a democracy of moral people but also explain why a regime's internally democratic nature does not always lead to democratic actions abroad.

America at the Crossroads is a sweeping work that touches on many subjects. Fukuyama's assessment of the threats the United States faces is refreshing in its willingness to critically examine and diverge from government assessments. The realistic Wilsonianism it advocates is a welcome new approach to international relations, particularly in view of the taint that neoconservatism now faces due to its connection to the war in Iraq. However, if realistic Wilsonianism is to win over the domestic and international critics of neoconservatism, a better explanation of when and why the external behavior of a regime deviates from its internal character is needed. Such an account would provide greater predictive rigor to realistic Wilsonianism. Furthermore, as the 2006 midterm elections demonstrated, the American public is deeply concerned about foreign policy, especially the war in Iraq. Realistic Wilsonianism might be more useful if it could provide concrete suggestions for today's big foreign policy questions.
The End of Iraq: How American Incompetence Created a War Without End.
Price: $26.00 (Hardcover). Reviewed by Jonathan Finer.

In The End of Iraq, Peter W. Galbraith fills a notable void in the crowded canon recounting the Bush administration’s foreign policy missteps by offering what few of his fellow critics have: a way out. The longtime diplomat and congressional staffer argues convincingly, and in far greater detail than his predecessors, that the United States should withdraw its troops and that Iraq should be divided into three semi-autonomous federal states.

The crux of his case for partition, long considered by the White House an unthinkable precursor to the dissolution of Iraq, is that the nation is itself a historical blunder—an illogical and arbitrary concoction of careless colonial rulers, as were Yugoslavia and Czechoslovakia. And just as those unwieldy, multi-ethnic states disintegrated with the fall of their authoritarian rulers, he argues, Iraq’s main religious and ethnic communities must be permitted to govern themselves for order to prevail. As he describes it, Iraqis are already dividing themselves on their own. Sunni Muslims, Shiite Muslims and ethnic Kurds (most of whom are Sunni) have largely fled mixed neighborhoods and sought refuge in homogeneous regions that would form the basis for future states. Partition, therefore, would only “reflect the reality that Iraq has broken up in all but name” (p. 12).

The strength and, ultimately the only real weakness, of Galbraith’s account is that he does not pretend to be an impartial raconteur, content to allow readers to draw their own conclusions from the facts he presents. His experience as U.S. Ambassador to the former Yugoslav Republic of Croatia in the 1990s informs his belief that warring ethnic and sectarian groups are better off divided. And his close ties to Iraq’s Kurdish minority, forged when he first traveled to Iraq two decades ago for the Senate Foreign Relations Committee, leads him to embrace their push for further autonomy. Unlike most authors who have written about Iraq, he is an impassioned advocate, not a detached journalist, and his goal is influencing policy, not telling a story.

He has told a memorable story all the same, beginning with the destruction in February 2006 of a revered Shiite shrine, which touched off the conflict’s grimmest sectarian bloodletting and marked an undeniable shift from insurgency to sectarian war. Throughout, Galbraith, who first visited Iraq in 1984 as a Senate staffer and returned dozens more times, weaves a vivid historical narrative of Iraq’s unraveling along ethnic and sectarian lines, replete with anecdotes that exhibit a reporter’s eye for telling detail. Some of the most indelible images are drawn from the aftermath of the First Gulf War: nooses draped over the guns of Iraqi tanks to hang Shiite rebels in the South (p. 48) and an elderly Kurdish woman beating and biting the corpse of a dead Iraqi officer (p. 49).

Equally unsettling is Galbraith’s catalogue of the stupefying miscalculations and misperceptions by American officials dealing with Iraq that help explain why they underestimated the deep divisions that mark the country. In the weeks before Hussein was toppled, he writes, President George
W. Bush met with three influential Iraqi Americans. For more than an hour, according to two of the participants, they struggled to explain to the president that there are two sects of Islam, Sunni and Shiite. "He could not have anticipated U.S. troops being caught in a civil war between two religious sects he did not know existed," Galbraith writes (p. 83).

The details in the book are so rich because Galbraith was either a participant or observer in most seminal moments in modern Iraqi history. During a congressional fact-finding visit in the late 1980s, he stumbled, without realizing it until much later, upon what amounted to concentration camps in Kurdistan that the Iraqi government had established as part of its genocidal Anfal campaign. He gathered thousands of pages of documents seized by the Kurds on atrocities perpetrated by Saddam Hussein to help the U.S. build a war-crimes file in the early 1990s. He watched Baghdad descend into chaos after the American-led invasion in 2003 as part of an ABC News team. And as Iraqi leaders drafted the country's new constitution last year, he served as an advisor to the Kurdish delegation.

While he excoriates how the war was handled, Galbraith, frustratingly, leaves the reader guessing at whether he thinks the U.S. should have invaded in the first place. Two pages after writing that he "was convinced that the use of force to remove Saddam Hussein was morally justifiable," he argues that the "containment policy" of sanctions and weapons inspections pursued during the 1990s "accomplished [American] goals at a relatively low cost" (p. 69). Perhaps, like many human rights advocates, he has mixed feelings about the removal one of recent history's most murderous tyrants because of the carnage left in its wake. He never explains his thinking, though.

Galbraith's case for what should be done next is far more clear-headed. With politicians of all political stripes clamoring for an alternative to the trite non-policies of "cut-and-run" and "stay the course," the prescription comes none too soon.

His plan unfolds in three steps. First, coalition forces should withdraw from Southern Iraq, which he says is already irretrievably under the control of Shiite militias aligned with Iran, and from the Sunni Arab heartland, where Sunni leaders should be forced to put their own house in order. But while other opponents of the war have treated withdrawal as the endgame, Galbraith rightly recognizes the moral inadequacy of stopping there without regard for what will and should happen to Iraq afterwards.

In the second phase of Galbraith's plan, troops would be transferred to Kurdistan, where, he says, the pro-American population will welcome them, and where they can serve as a rapid-reaction force should the security situation demand it. This sounds promising in theory, but Galbraith never explains how troops stationed at one end of the country could ever respond in a timely fashion to an emergency hundreds of miles away in a hotspot like Ramadi. (Would they drive by convoy across the treacherous highways of the Sunni Triangle?)

Third comes partition, under which each region-state is left responsible for raising an army and maintaining its own security. This would forever change the political geography of a country which, in Galbraith's view, has
“brought virtually nonstop misery” to most of its people since its unfortunate creation after the First World War (p. 206).

Galbraith’s proposal will neither gin up some semblance of American victory nor solve Iraq’s main problems, and he does not pretend that it will. He candidly acknowledges that he has no plan for Baghdad, Iraq’s most violent city and home to a quarter of its people. What is sure to fail, he writes, is any solution involving coalition forces—an argument bolstered by the utter impotence of at least a half-dozen “new security plans” the American military has rolled out for the Iraqi capital in the past year and the increasing concentration of U.S. troops there. Arguing only for what he seems to consider the least bad option, he acknowledges that “[t]here is no good solution to the mess in Iraq” (p. 209).

Still, Galbraith could have dealt more directly with some obvious critiques of his plan. Iraq’s “Civil War,” a controversial term that he rightly embraces, is not simply being fought among the Sunnis, Shiites and Kurds, but within these groups as well. Shiite militias are openly warring with each other across southern Iraq. Sunni tribal leaders both collaborate and clash with Sunni jihadists deployed to Iraq from across the Muslim world. The Kurds remain deeply divided between their co-dominant political parties, the Patriotic Union of Kurdistan (PUK) and the Kurdistan Democratic Party (KDP). Just a decade ago, they battled behind the U.S.-enforced no-fly-zone in Iraq’s north, an event Galbraith touches on in a single page (p. 156).

Indeed, Galbraith’s treatment of the Kurds is another significant shortcoming. He is right to call them America’s most important strategic partners in Iraq, and to describe them as the only one of Iraq’s main communities that shares Western notions of women’s rights and secular rule. But the Kurds, Iraq’s savviest international operators, are no angels. Their security forces jailed a pair of critical journalists last year, and in the lead-up to the first Iraqi elections, a mob of KDP hooligans torched at least a half-dozen offices of a minor political party, killing at least four people and wounding dozens more.1 The Kurdish parties have also abducted Arabs living near the oil-rich city of Kirkuk, which the Kurds covet but do not yet control, and systematically spirited them away to secret prisons, as a State Department report confirmed last year.2 Acknowledging some of this would have made for a less distorted picture.

In this otherwise exemplary work, these are relatively minor criticisms. Will his proposal be followed? He says some momentum is building. Certainly the Kurds favor partition, as do key Shiite leaders of Iraq’s government. Oddly, unlike ethnic minorities in most other post-conflict societies, Iraq’s Sunnis—representing just 20 percent of the population—oppose federalism, but according to Galbraith, there is reason to believe they might come around. Meanwhile, as Galbraith points out, the U.S. opposes partition, though less vociferously than before, and regional heavyweights

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Iran and Turkey fear their own Kurdish communities would be energized by the prospect of an independent Kurdish state.

Forty years ago, at a time with many parallels to the present, Galbraith’s father, the late statesman and economist John Kenneth Galbraith, wrote a book called *How to Get Out of Vietnam*. That short but prescient 1967 work did little to sway policy and the war lasted eight more years. *The End of Iraq* is a worthy successor. The masters of this particular war would be wise not to let it languish on the shelf.


Jürgen Habermas’s latest work in English translation, *The Divided West*, gathers together his recent polemics on the war in Iraq. It focuses on the increasing split between Europe and the United States over what Habermas calls “the constitutionalization of international law.”

For Habermas, the “divide” in the West refers foremost to an event: the American decision to go to war in Iraq, which split the Security Council and solidified most of Europe in opposition. Although Habermas clearly condemns the decision by the United States, he notes that, ironically, the United Nations seems to have emerged with its “international authority enhanced” (p. 148). Habermas also takes pains to distinguish the war in Iraq from another controversial intervention that he did support, the bombing of Kosovo and Serbia in April 1999. Although it also was not authorized by the United Nations, the NATO intervention in Kosovo could be legitimated “after the fact”: first, because it was certain that ethnic cleansing was taking place; second, because a provision in international law “mandates intervention to provide emergency aid in such cases”; and finally, because of “the undisputed democratic and constitutional character of all the states participating in the vicarious military coalition.” By contrast, Habermas concludes, “the normative disagreement [over Iraq] is dividing the West itself” (p. 29).

One might find Habermas’s reasons for distinguishing Iraq and Kosovo less than convincing. For example, how does one decide whether an intervention can be legitimated “after the fact” or not? However, Habermas is certainly correct that Iraq has divided the West in a way Kosovo did not. One might read Habermas’s anger at the United States’s decision to go to war in Iraq as a reflection of his disappointment at what Kosovo might have been: a one time—and one time only—instance of a military intervention necessary to bridge the transition from a Westphalian world of independent states to one governed by international law. Instead, with the war in Iraq, the United States showed that it is not interested in helping to usher in a cosmopolitan order but rather in “playing the role of hegemonic guarantor of global order” (p. 87). Habermas notes that, “[w]hat from one angle appear[ed] to be progress on the path to the constitutionalization of international law, from another appears to be the successful imposition of imperial law” (p. 180).
We should be careful not to mistake the contrast Habermas means to draw “between a progressive constitutionalization of international law and its substitution by the liberal ethics of a superpower” (p. 149). Habermas is not saying that the United States looks at international politics solely as matter of power. Nor is Habermas simply saying, as Robert Kagan memorably put it, that “Americans are from Mars and Europeans are from Venus,” i.e., that Europe is peace-loving whereas the United States makes war. Rather, Habermas (to his credit) sees the Bush administration as possessed of its own normative vision, a conception positing that the United States should bring its own liberal ethos of democracy and human rights to the world. Although one might also call this a vision of “imperial law,” as Habermas does repeatedly, he is also keen to differentiate it from the morally empty worldview of Carl Schmitt, which interprets any talk of ‘human rights’ as mere rhetoric and sees states only as interested in consolidating their own power. Habermas, in fact, reserves his harshest words for Schmitt’s position that “states cannot do anything wrong in a moral sense” (p. 188). The United States, at its best, aspires not to be merely a hegemon, but a “good hegemon” (p. 95). Indeed, there are times when Habermas seems to construe the division between the United States and Europe as more of a disagreement over means than over ends.

Moreover, in a fascinating rebuttal to Robert Kagan—who sketched his own picture of a divided West in his book, Of Paradise and Power—Habermas points out that the “division” between Europe and the United States is also a division within the history of the United States itself. Habermas reminds us of the important American role in the founding of the League of Nations; the drafting of the Kellogg-Briand Pact, which renounced the use of war as an instrument of national policy; and, most of all, in the creation of the United Nations (p. 94). It would be a serious mistake, Habermas concludes, if we confused the “definite repudiation of internationalism” which has been “the privilege of the current Bush administration” with an expression of the “dominant orientation of American foreign policy” (p. 95). In fact, says Habermas, it was an “abrupt reversal in policy” (p. 182).

Suppose we adopt, as Habermas does, the idealistic view of the United States and its decision to go to war in Iraq, namely, that of a “well-intentioned hegemon” (p. 184) who guarantees human rights worldwide. What is the risk of the United States going it alone? Habermas’s first answer is practical. Given the nature of global problems, such as international terrorism, “[o]nly the effective coordination of intelligence services, police forces, and criminal justice procedures will strike at the logistics of the adversary; and only the combination of social modernization with self-critical dialogue between cultures will reach the roots of terrorism” (p. 184).

Habermas’s second answer is theoretical and draws on his larger philosophical project of discourse ethics. According to that project, only those norms that we can justify in dialogue with others are legitimate. A similar testing of opinions must occur between nations on the international level.

Without it, a nation "in the unavoidable process of weighing goods . . . can never be sure whether it is really distinguishing its own national interests from the universalizable interests that all the other nations could share" (p. 184). International organizations are necessary because they make this kind of conversation possible by "compel[ling] the participants to adopt each other's perspectives" (pp. 184-85). In the absence of such a procedure, the "unilateral appeal" to the "presumptively universal values of one's own political culture," Habermas writes, "must remain fundamentally biased" (p. 185).

But Habermas's previous approval of the humanitarian intervention in Kosovo seems to provide a counterexample to this proposition. Wasn't the intervention in Kosovo presumptively justified even in the absence of an international agreement? Further, even if such "procedures of opinion- and will-formation" (p. 185) are preconditions of legitimacy in the abstract, it still remains an open question whether any of the existing international institutions, including the United Nations, even come close to being fora for unbiased debate. To be sure, this may constitute an argument for creating those institutions, or for improving the institutions we already have—but we should not confuse the real with the ideal.

A different, but related, observation might be made about Habermas's criticism of the Bush administration's "moralization" of foreign policy. The Bush administration, Habermas writes, "has laid the 220-year-old Kantian project of juridifying international relations ad acta with moralistic phrases" (p. 103). Since the U.N. Charter was signed, according to Habermas, "we no longer have just and unjust wars, only legal or illegal ones, depending on whether they are justified or unjustified under international law" (p. 102; see also p. 189). But in the absence of a clearly defined and agreed upon international law, can we really do without "moralistic phrases" and the vocabulary of "just" and "unjust"? More pointedly, does anyone deny that the Rwandan genocide was not merely illegal but unjust and evil?

Habermas's book runs the risk of being perceived as irrelevant because of current events. The war in Iraq is going poorly, which suggests the failure of not merely the Bush Administration's war planning, but also its normative vision. It may seem unnecessary to refute by theory that which has been refuted by the facts. But to dismiss Habermas's book for this reason would be doubly mistaken. It would be misguided because, no matter what the course of the war in Iraq, the neoconservatives in the Bush administration articulated a worldview that demands to be taken seriously in spite of the ugly facts on the ground.

More importantly, Habermas's book is not merely a critique; it also sketches a compelling picture of an emerging international order, a "global domestic politics without a world government" (p. 135). He shows that the alternative to the failure of the neoconservative program is not withdrawal or isolation from geopolitics. Habermas's book is not only a polemic against the current administration, but also, and more enduringly, a continuation of the philosophical conversation about the possibilities of international law that stretches at least as far back as Immanuel Kant.
True to its title, *Sovereignty, the WTO, and Changing Fundamentals of International Law* by John H. Jackson, one of the most eminent scholars of international trade law, uses the experience of the World Trade Organization (WTO) in its first decade to illustrate the challenges globalization poses to the traditional underpinnings of international law. Starting from the premise that international institutions must be strengthened if they are to address those issues that now lie beyond the control of nation-states, Jackson uses the experience of the WTO to show how outdated conceptions of national sovereignty hamstring the effectiveness of such organizations. Such disappointments lead Jackson to call for a dramatic rethinking of sovereignty without abandoning the concept altogether.

The work opens with the familiar notion that technology and globalization have rendered the old Westphalian concept of sovereignty obsolete. The Westphalian concept is based on three elements: (1) states are granted unlimited power within their borders; (2) they are bound by international law only through consent; and (3) all states are formally equal. The first of these three elements, the “monopoly on power,” is obsolete as an empirical matter. Technological change has transformed non-state actors (including corporations, non-governmental organizations, and illicit networks) into important players in the international system. For the other two elements of Westphalian sovereignty, however, the idea of obsolescence reflects Jackson’s judgment that these notions no longer make sense in the modern world.

This is especially true of the notion that new international law can be created and legitimized only through the consent of states. The problem with customary international law has always been one of indeterminacy: Which state practices do we take to indicate consent, and whose consent do you need to create new customary international law that binds everyone? This critique of consent as the basis for international law is clear enough, although Jackson readily admits that it would be difficult to legitimize international law absent the consent requirement. Less obvious, however, is Jackson’s argument that treaties can, should, and do evolve in ways that are not anticipated at the time of their ratification. A prominent case in point is the experience of the General Agreement on Tariffs and Trade (GATT), the predecessor to today’s WTO. Starting from humble origins in 1948 as a simple tariff-cutting agreement with a tiny administrative secretariat, GATT eventually grew into a full-fledged international organization in a way that few signatory states could have anticipated. Based on this experience, Jackson argues that the interpretation of treaties establishing international organizations should not be held to the textualist approach dictated by the Vienna Convention on the Law of Treaties (p. 187). Instead, he advocates treating institutional charters as constitutions that can evolve to serve changing international conditions, suggesting that “governments that consent to become members of institutions must do so with
the realization that institutional structures will not be frozen in time, and that the consent will certainly bring some surprises” (p. 82).

Jackson also uses the WTO experience to illustrate the obsolescence of formal equality of nations. In Jackson’s view, the “unreal recognition of power” created by this legal fiction has vastly complicated decision-making at international organizations, because powerful nations will not tolerate being bound by decisions made by “the majority of mini-states,” a practice that exists in most international organizations (pp. 24, 50). Such considerations led the WTO to reject one-nation, one-vote decision making in favor of a “consensus” rule where decisions are accepted if no party objects (p. 113). This may avoid the tyranny of the majority of mini-states, but this decision rule is vulnerable to strategic behavior (such as “holding out”) that has made it all but impossible to amend the WTO Charter. Jackson does discuss weighted voting systems such as the one used by the IMF as an alternative to one-nation, one-vote, but rightly recognizes that this is a “non-starter” in the WTO context, where such a voting system is “attractive to hardly any of [its] members” (p. 116). The examination of the challenges created by voting schemes derived from the Westphalian conception of sovereignty is interesting but, sadly, Jackson does not provide any viable alternatives to international decision-making based on the formal equality of states.

Other scholars who have previously recognized the inapplicability of sovereignty in an era of globalization have advocated completely discarding the concept as outdated. Jackson takes a different approach, arguing that the centrality of sovereignty to international law as we know it means that we risk undermining international law if we simply discard sovereignty. In other words, eliminating sovereignty without creating “adequate replacements” risks creating a situation of pure power tantamount to the chaos of a Hobbesian world (p. 264).

As an alternative, Jackson advocates adopting a proposal he calls “sovereignty modern,” which involves disaggregating or “slicing” the traditional concept of sovereignty and preserving those parts of it that are still useful for maintaining peace and prosperity (p. 215). According to Jackson, the relevance of traditional sovereignty today is mainly as a means of allocating decision-making power, either at the national or at the international level. As he puts it, “most . . . of the time when ‘sovereignty’ is used in current policy debates it really refers to questions about the allocation of power . . . That is, . . . [the belief that certain] decisions should, as a matter of good government policy, be made at the nation-state . . . level and not at the international level” (p. 72). “Sovereignty modern,” on the other hand, entails recognizing “the pragmatic functionalism of allocation of power as between different levels of governance entities in the world” (p. 265). Jackson tries to illustrate his idea by saying that “the discussion over sovereignty should focus on the level at which a decision should be made (Geneva, Washington D.C., Sacramento or Berkeley)” without tilting “in favor or against” the international arena (pp. 72, 265). This, however, seems like little more than the principle of subsidiarity with a new name, rather than a bold alternative to the old Westphalian sovereignty.
Jackson turns to the experience of the WTO Dispute Settlement Body (DSB) to illustrate what he denotes as a remaining positive value of sovereignty: the tension between the claims of international organizations like the WTO and those of individual nation-states, to possess independent authority over a given issue-area in world politics. He presents the DSB as a powerful and highly successful institution due largely to its evolution from a system relying on diplomatic negotiations during the GATT era, to a binding, legalized, and mandatory system today. Even so, the tension between the formal power of the DSB and the real power of its member-states is demonstrated by the struggle over what standard of review it should use, what deference it should afford national interpretations of WTO rules, and what precedential value its prior decisions should have. Jackson points to the reasonably good record of compliance with WTO decisions as evidence of the power of the organization, but he fails to address the recent failures of some states to comply with DSB rulings, and the reassertion by others of their sovereign right to use domestic means to remedy breaches of international obligations.

Finally, Jackson uses the experience of the WTO to illustrate some well-known challenges facing international organizations, such as their lack of transparency and democratic legitimacy, and their inability to include non-governmental actors into their decision-making processes. Jackson elaborates on the WTO dispute settlement procedures which are not only closed to the public, but to other members of the WTO not parties to the dispute. The book ends with the usual exhortation to international organizations to embrace good governance and broaden participation to better meet the challenges posed by the end of Westphalian sovereignty.

Jackson's attempt to draw on international economic law (as represented by the practice of the GATT/WTO) to propose new ways of thinking about problems in international relations is admirable in its conception, but flawed in its execution. The analysis of the obsolescence of Westphalian sovereignty is useful and interesting, but Jackson's proposed solution of granting responsibility over realms previously occupied by nation-states to international organizations he regards as not being up to the task is not particularly useful. Jackson's reluctance to discard Westphalian sovereignty altogether in enunciating "sovereignty modern" is also unsatisfying, for this seems like little more than the allocation of decision-making power based on principles of subsidiarity.

Although the two chapters discussing the WTO and its dispute settlement system are well-written and would be helpful to those new to the study of international trade law, the rest of the book does little more than present well-known challenges in international relations without providing any new solutions. While one cannot expect Jackson to provide the blueprints of a new world order for an era of globalization in one book, one would have hoped for more insight from such an astute observer of the international scene.
Recent Publications


In recent years, calls for United Nations reform have sounded from around the globe and across the political spectrum. However, consensus on how best to update and improve the world organization has remained out of reach. In *The Parliament of Man*, distinguished historian and political commentator Paul Kennedy presents a timely and refreshingly nuanced perspective on the origins, development, and future outlook of the United Nations. He concludes that the world body remains vital, though moderate improvements are urgently needed in order to enable it to respond more effectively to challenges facing the global community. Kennedy argues for an incremental approach to United Nations reform: “When the U.N. changes, if it changes at all, the transformations will . . . have to be partial and gradual” (p. 244).

The core of the book is a detailed overview of the United Nations’s evolution over the past sixty years. Kennedy organizes this history thematically, according to key facets and functions of the world body, including the Security Council, peacekeeping efforts, global economic relations, social and environmental matters, and the advancement of human rights. Within each of these areas, Kennedy assesses the effectiveness of the United Nations, concluding that it has a mixed record of achievement in terms of fulfilling the missions laid out in its Charter and responding to emerging needs. For example, in his discussion of the United Nations’s role in mediation, peacekeeping, and peace enforcement, Kennedy points to full and partial successes, including rescuing El Salvador from internal discord, monitoring the withdrawal of Soviet troops from Afghanistan, and supervising Namibia’s move to independence. At the same time, he does not mince words in discussing the failures of the United Nations’s peacekeeping efforts of the early 1990s in Somalia, the former Yugoslavia, and Rwanda. In his account of the world organization’s activities, certain recurring barriers to success emerge, including a lack of clear mandates and a dearth of military and financial resources. But despite the United Nations’s shortcomings, Kennedy argues that humankind is surely better off with the “clumsy but worthy” world organization than without it (p. 278). He echoes President Dwight Eisenhower’s statement: “With all the defects, with all the failures that we can check up against it, the U.N. still represents man’s best-organized hope to substitute the conference table for the battlefield” (quoted on p. 47).

Kennedy’s discussion of U.N. history is a tour de force. From his thematic mini-histories emerges a holistic picture of the world body. Kennedy’s insightful analysis reflects a deep understanding of the intricacies of the bafflingly complex U.N. system, informed by his experience drafting official reports for the world body’s fiftieth anniversary. Rather than treating the United Nations as a monolithic, isolated institution, Kennedy weaves in the historical and political circumstances that have shaped its evolution. He describes both the inherent challenges facing the United Nations (such as the
difficulty of translating its Charter's lofty principles into practice and the inevitable tension between internationalism and state sovereignty), as well as emerging challenges (such as how to deal with failed states, international terrorism, and increasing global economic disparities). As he leads the reader through the history of the United Nations, Kennedy’s exposition is clear, yet rich with contextual detail, rendering the book both comprehensible and worthwhile for readers of varying levels of familiarity with the U.N. system. Throughout the book, Kennedy’s tone is objective and well-balanced. While he emphasizes the importance of the United Nations, he is frank about its limitations.

Though Kennedy’s discussion of the various functions performed by the United Nations is quite thorough, a few key areas are surprisingly absent. For example, he does not discuss in any depth the United Nations’s role in promoting health (through the World Health Organization, UNAIDS, and other bodies and programs), despite the gravity of pressing public health crises such as HIV/AIDS and avian influenza, which highlight the integral link between human health and global security. In addition, though he discusses some U.N. activities in the area of economic development, Kennedy makes almost no mention of the Millennium Development Goals, the eight objectives related to reducing extreme poverty, deprivation, and disease, which U.N. Member States unanimously agreed to in 2002. While Kennedy does not claim that his account of the myriad of U.N. activities is exhaustive, global health challenges and the Millennium Development Goals are significant enough that their absence from the book is puzzling, particularly in light of Kennedy’s substantial treatment of other facets of “the softer face of the U.N.’s mission,” including environmental matters and cultural and intellectual affairs (p. 143).

In the book’s final chapter, Kennedy turns to the present and future of the United Nations, assessing various proposals for reform. He concludes that a piecemeal approach represents the best—and indeed, the only feasible—way forward. His blend of realism and idealism yields a conclusion that is both sobering and reassuring:

> When all its aspects are considered, the United Nations has brought great benefits to our generation and, with civic resolution and generosity by all of us who can contribute further to its work, will bring benefits to our children’s and grandchildren’s generations as well. But the boulder is only halfway up the mountain, and much effort is needed if it is to be moved further (p. 290).

Kennedy proposes some concrete policy reforms, such as abandoning the Trusteeship Council and the Military Staff Committee and shortening the General Assembly’s agendas and making its committees smaller and more focused. With respect to the Security Council, Kennedy proposes modest changes to make the body more representative, such as increasing the number of rotating members from ten to eighteen or nineteen, and amending the requirement that nonpermanent members retire after two years. Kennedy argues that these “middle ground suggestions” for Security Council reform are
“attempts to crack the ice” that seem to have a greater prospect of gaining support than proposals to amend the “sacred, encrusted veto” (pp. 252-53). In addition, Kennedy mentions potential structural reforms of the bureaucracy, such as “further reduction of overlapping agencies” and “a greater insistence upon the quality of incoming U.N. officials” (p. 271).

While Kennedy gives detailed recommendations for improving the Security Council and U.N. peacekeeping efforts, he seems to give up too easily when it comes to reforming U.N. work in “softer” areas such as human rights, cultural understanding, and environmental protection. He states that in these areas, “[I]t is much less certain that institutional alterations would make much difference . . . . [T]he real improvements will come in the hearts and consciences of humankind” (pp. 272-73). This conclusion begs the question of how to close the gap between aspiration and actual achievement and it also seems to undermine Kennedy’s own argument regarding the indispensability of the United Nations.

Readers hoping for decisive, detailed, or dramatic proposals for United Nations reform will likely be disappointed. In contrast to his thorough 200-page analysis of the United Nations’s past, Kennedy’s chapter-long discussion of the present and future of the United Nations seems underdeveloped. He spends more time presenting and evaluating alternative approaches to reform than supporting and fleshing out his own specific proposals. In the Preface, Kennedy states that his final chapter seeks more to persuade than to describe, but his tone remains more descriptive than compelling. Rather than issuing a powerful call to galvanize support for U.N. reform, his conclusion is tentative: “The question is, can we do it?” (p. 279).

Ultimately, The Parliament of Man, like the United Nations itself, is a human creation, and is thus not without flaws. While some readers may find Kennedy’s discussion of the present and future of the United Nations not wholly satisfying, his discussion of U.N. history is rich, illuminating, and balanced. Overall, the book is quite informative and insightful, and is thus highly recommended to anyone with an interest in international relations.


Among Empires by Harvard historian Charles Maier is a novel answer to an increasingly tiresome question: Is the United States an empire? In the past half-decade a sprawling body of quasi-academic literature has developed on this topic, with public intellectuals as diverse as Sebastian Mallaby, Dinesh D’Souza, Michael Ignatieff, Richard Haass, and Max Boot all flirting with the notion of an imperial role for the United States. On the other side, an equally fervent band of detractors have responded with a counter-volley of publications about the folly, hubris, and evils of empire. Imperialism may not represent the highest stage of capitalism, as Lenin once claimed, but it has proven a consistently reliable path to a book deal. What new is there to say?
Quite a lot, as it happens. For starters, most writers who have agitated either for or against American empire have tended to take its existence for granted. Adopting something akin to Justice Potter Stewart’s “I know it when I see it” test for obscenity, they point to the Pentagon’s disproportionate share of global defense spending, American economic preeminence, and the cultural reach of Hollywood, and conclude that the United States is—or stands on the cusp of being—an empire, more or less because it looks like one. As Niall Ferguson once put it, “If it quacks like an empire, it probably is an empire.”

Among Empires, to its credit, seeks to inject more analytic rigor into this debate. Rather than building an argument on anecdotes, Maier tries to develop a typology of empire, identifying the recurring traits and structures that have distinguished these polities throughout history, from Sargon to Stalin. This meditation on the metaphysics of empire occupies the first half of the book and frames its subsequent discussion of U.S. ascendancy, which, Maier ultimately concludes, possesses many—but not all—of the key imperial markers.

There is much to commend about this approach, in particular the room it creates for nuance and even uncertainty. With a staggering breadth of historical knowledge, Maier appreciates the complexity of his subject of study, and his book revels at complicating established categories and blurring conventional wisdom. Maier challenges, for instance, the notion of drawing a bright line between nation-state and empire, pointing out that “many nations . . . that were finally successful in imposing linguistic uniformity and a sense of encompassing identity” originated as empires (p. 28). “Great Britain evolved as an empire of the English over the Welsh and Scots . . . before and during the era its nation builders went farther overseas. France, so apparently centralized and cohesive, developed through conquest of Auvergne peasants, southern Provençals, Breton Celts, Flemings, and Alsatians who were gradually compelled to learn a standardized language by the force emanating from the north-central heartland” (pp. 28-29).

Maier also draws well-deserved attention to the domestic implications of empire, arguing that its victim “is not necessarily democracy but the control of war and peace by traditional legislatures” (p. 21). Given the overwhelming tendency to think of empire strictly in terms of pith helmets and jodhpurs on the Afghan frontier, Maier’s provocations on the constitutional implications of empire are especially valuable.

Yet despite its sophistication, Among Empires also suffers from a number of limitations. Perhaps most fundamental is the fact that the story of empire is close to encompassing the story of human civilization. As Maier concedes, “empires have been diverse as nation-states” (p. 139). Consequently, any attempt to identify the common threads that bind together historical experiences as disparate as the British, Ottoman, Nazi, Roman, and Mongol, threatens to become a race to the analytic bottom.

Indeed, Maier identifies empire with such trendy but nebulous criteria such as "violence," "the frontier," and "the arena." But these concepts, given their plasticity, are also readily applicable to non-imperial polities. Maier repeatedly acknowledges this problem throughout the book but never really resolves it in any satisfying way. He notes, for instance, that "many states, not just empires, are built on violence" (p. 19) and that "[a]ll types of states go to war" (p. 129), but then breezily insists that empires are especially "prone to rebellion" (p. 129) and enjoy "an intimate and recurring bond with the recourse to force" (p. 19). That Maier’s methodology raises ambiguities and uncertainties is unquestionably a good thing, but too often, his analysis seems to skate over them.

At one point, he suggests that empire is distinguished by the exercise of athletic games and contests serving as "reenactments" of the "imperial project" within the metropolis: "The arena forges multiple brotherhoods (and sisterhoods today): the fraternity of players or gladiators—the ritual counterparts of soldiers—and the brotherhood of spectators . . . NASCAR Nation supports its troops abroad" (p. 22). And yet, lest Red Sox fans get nervous, Maier hastens to add that, "not all contests of skill and pluck are deformed by empire" (p. 22). Baseball, for instance, "preserves the amateur and artisanal skills of a pre-imperial small-town past, even as it becomes driven by money" (p. 22). Yet why, exactly, are auto-racing imperial and baseball pre-imperial? Maier never bothers to explain, instead wrapping up the entire discussion with a few fortune cookie aphorisms: "The empire is a field of dreams and an arena for combat. On its sands the project of dominance will be continuously reenacted and contested" (p. 23).

Perhaps because of the willowy content of Maier’s typology, the book’s subsequent treatment of America’s post-World War II ascendancy too often feels like an attempt to wallpaper a room without walls. For the United States, Maier claims, empire is about Henry Ford and Iraq and a sense of melancholy and scalar inequalities replicated in shopping malls. It is about everything and thus, ultimately, about nothing.

Once again, much of what Maier typifies as "imperial" can just as easily be explained in non-imperial terms. Indeed, the single deepest impression Among Empires leaves is that there are probably better, more productive ways to think about the present geopolitical moment than empire. Robert Kagan’s newly released Dangerous Nation, John Lewis Gaddis’ Surprise, Security, and the American Experience, and Michael Mandelbaum’s The Case for Goliath all provide compelling analytic frameworks for understanding U.S. international behavior since 1945, and without recourse to the Romans.

In this regard, Maier reinforces the utility of one distinction he mentions and then seeks to discard—that between hegemon and empire. As he notes, "a hegemon exerts a predominant voice over collective policies, but does not possess, or chooses not to exploit, the raw power to compel obedience" (p. 62). An empire, by contrast, "is usually believed, first, to expand its control by conquest or coercion, and, second, to control the political loyalty of the territories it subjugates" (pp. 24-25).
Maier skeptically refers to these criteria as "stringent," but they are in fact clear and useful—especially when measured against such imprecise concepts as "violence" and "the frontier." And indeed, if the criteria hold, all of the empire talk as applied to the contemporary United States suddenly begins to seem more than a bit superfluous, an intellectual fad of diminishing marginal returns. Embracing a "hard" definition of empire—with an emphasis on direct or indirect rule of foreign territory, as befits the original meaning of imperium—might mean fewer book deals for academics looking to break into mainstream publishing. But then, if anyone should be aware of the risks of overstretch, presumably it is the chroniclers of empire.


Developing countries have been accused of pirating intellectual property (IP) for decades—especially by industries whose business model depends on protecting IP rights. The use of value-laden terms like "piracy" and "bootlegging" to describe the unauthorized reproduction of music, movies, and medicines is not an accident, but rather part of a strategy by IP owners to get the public to view such acts as criminal theft rather than civil infringement. In the 1990s, however, developing countries launched their counterattack—and the moral overtones of "piracy" employed so successfully by industry played right into their hands. Multinational companies of the gene-poor "North," they argued, are guilty of biopiracy when they appropriate and patent biological resources and knowledge from the gene-rich "South," without consent or payment.

While academics and activists have explored the "North-South" element of this debate in detail, the legal issues are often painted only in broad strokes. Ikechi Mgbeoji supplements the literature with Global Biopiracy: Patents, Plants and Indigenous Knowledge, which challenges the legitimacy of the global IP regime from a legal perspective. In this thought-provoking volume, Mgbeoji seeks to expose the current intellectual property regime as an "inherently predatory" (p. 8) force that serves "Western notions of capital and property" (p. 6).

Mgbeoji begins by tracing the development of the patent system from its modest origins in medieval Florence to its current expansive scope and global reach. The journey takes place on multiple levels and introduces critical philosophical, cultural, and economic concepts that will inform his analysis in the rest of the book. Placing IP law in a historical context allows the reader to question the inevitability of the current regime. It also allows the reader to see how the regime's cultural, socioeconomic, and legal roots limit its applicability to developing countries, while enabling the misappropriation of their biological resources and knowledge. How, he asks, can the current IP regime be compatible with cultures that view knowledge as a community resource and plant varieties as fundamentally incapable of being owned? For
example, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) requires that all WTO members adhere to Eurocentric conceptions of property by providing legal protection for plant varieties, providing little legal space for states to accommodate the views of indigenous peoples to the contrary. Similarly, Mgbeoji argues that the American refusal to accept orally transmitted information from foreign sources as legally protectable intellectual property, or even as evidence that a purported invention lacks novelty, demonstrates that the IP regime is systematically tilted against holders of traditional knowledge.

It is not just the cultural and epistemological biases of the patent system that enable the appropriation of indigenous knowledge and biological resources. Mgbeoji also contends that the technical regulations that implement the patent regime mask their appropriative functions. His examination of current legal instruments relevant to biopiracy, from soft and hard international law to subtle concepts of patent scope, is notable for several reasons. First, Mgbeoji accounts for the reality that legal instruments do not function in a vacuum. The globalization of minimum intellectual property standards through the TRIPS Agreement has created a complex interplay between international and domestic law as developing countries reform their statutes to make them compatible with their international obligations. A rough sketch of the interface between international and domestic law is therefore vital, and Mgbeoji does a commendable job of introducing the international law of intellectual property, and the fundamental principles of the international legal system in which those laws operate.

The analysis is also significant because Mgbeoji undertakes a thorough examination of the ever-expanding scope and the increasingly lax criteria for patentability, which he argues have facilitated the appropriation of biological resources and indigenous knowledge. For example, although most patent laws ostensibly exclude ‘products of nature’ as patentable material, developed countries are now allowing patents on purified biological chemicals. U.S. Patent No. 5,929,124, granted for derivatives of the African tree Swartzia madagascariensis, is an example of the creeping biological appropriation. Extracts of this tree, which “had long been used by natives for treating fungal infections, were pointed out to two Swiss scientists who ‘announced’ its potential for curing drug-resistant fungal infections, including athlete’s foot” (p. 145). Mgbeoji rounds on the “bias and illogicality in the law on patenting of purified natural substances” as but one example of how the increasing laxity of the patent system allows the easy appropriation of traditional knowledge relating to plants (p. 144).

In response, Mgbeoji makes the case for strong policy prescriptions to combat biopiracy. For example, he supports the institutionalization of indigenous intellectual property regimes at the national and international level, or in the alternative, “community patents” which would grant legal personality to “families, villages, bands, clans [or] kindreds” to own a patent (p. 169). The rationale is that either of these grants of IP rights could serve as a defense against patents by foreign industries. Mgbeoji notes the tension created by introducing “liberal ideology of capitalist profits” into indigenous cultures, but
dismisses concerns that it will contaminate their traditional values as “nonsensical and intellectually lazy” (p. 164). To his credit, this sensational language is backed up with a fairly detailed argument for why this option is workable.

Other proposals, however, receive markedly cursory treatment. For example, the Convention on Biological Diversity (CBD), which is one of the most influential legal instruments to deal with biopiracy, recognizes a new sovereign right of states over their biological resources. Mgbeoji’s implicit support of this provision of the CBD is somewhat surprising (p. 152). While in theory indigenous peoples’ welfare in relation to biological resources and traditional knowledge is protected through the CBD’s provisions for domestic legislation governing access and benefit sharing agreements, this framework is merely hortatory, as it does not confer any legally-enforceable rights upon these peoples. Yet, Mgbeoji pays little more than lip service to the problem that many “gene-rich states operate under conditions of medieval serfdom… [where] there is little hope that domestic legislative initiatives designed to promote the interests of poor peasant farmers will come to fruition” (p. 189). So paradoxically, even as Global Biopiracy routinely suggests both sweeping and subtle changes to patent law, no such consideration is given to crucial legal provisions of the CBD that have already been implemented by numerous developing countries.

Ultimately, Global Biopiracy is at once a legal analysis and an advocacy piece. The goal is to present the most convincing case possible that the world intellectual property regime must be reformed to better reflect and serve the values of developing countries. The world community of academics, politicians and activists who devote themselves to this objective each fulfill a unique and necessary role. While this book contributes a decidedly legal perspective, it is not a neutral textbook analysis, nor does it strive to be one. Legal issues are framed as the result of “inbuilt primordial prejudices and biases against non-Western cultures and non-Western epistemological frameworks” (p. 3). The piece is heavy on scathing rhetoric and lean on critical evaluation of the demerits of its own arguments; do not look here for any hint of utilitarian concern over the sweeping enclosure of most of the world’s genetic information. And yet, viewed in the role as an agent for change, it is a compelling argument of impressive scope and depth. The holistic approach used to address the legal, cultural, philosophical and economic issues at play will serve well any reader who seeks to understand the plight of the developing world in the debate over intellectual property rights.


In recent years, a cavalcade of scholars and pundits has set out to explain what the “rise of China” will mean for the international system of the twenty-
first century. According to conventional wisdom, the engine driving China’s rise is its galloping and seemingly insatiable economy, which now ranks as the fourth largest in the world. The stunning success of the Chinese economic story is typically attributed to the ruling Chinese Communist Party’s (CCP) strategy of allowing technocratic leaders to gradually unleash the forces of the market and thereby stimulate economic growth.

Minxin Pei, the director of the China Program at the Carnegie Endowment for International Peace, sees things very differently. Pei challenges the assumption of China’s continued meteoric rise by demonstrating that the strategy underpinning the past two decades of Chinese growth—gradualist, pro-market economic reform under one-party rule—is inherently unsustainable. The problem with the strategy, Pei believes, is that it is motivated by politics and self-interest. The CCP is no longer a “mass revolutionary party” bound by a common ideology but rather a diffuse “group of self-serving elites” concerned only with its own survival (p. 182). Given this singular self-interest, Pei argues that the party’s reform strategy should be understood not as aiming to develop a genuinely open market economy, as Westerners assume, but rather at enhancing the CCP’s legitimacy and generating monopoly rents that reinforce its hold on power. These “rents” are used to co-opt new elites through government sinecures and party appointments, to maintain the existing patronage system through which party officials secure benefits for themselves and their friends, and to prop up value-destroying but politically indispensable state-owned enterprises.

Pei concludes that this strategy is unsustainable for several reasons. First, the reforms of the past twenty-five years have ultimately been only “incremental” and “partial” (p. 123). Although Pei acknowledges that the industrial economy is now split evenly between state-owned enterprises and private business, he notes that few sectors have been fully marketized; in particular, the “commanding heights” of the economy—banking, telecommunications, and grain procurement—have scarcely been touched by reformers (p. 120). However, Pei argues that the Chinese government could not liberalize the economy much further without ceding its critical ability to secure and allocate monopoly rents. Given the insuperability of this “political logic” within the CCP’s reform calculus, further pro-market reforms are unlikely (p. 96).

Second, even where further pro-market reforms might prove politically acceptable, a history of bad decisions and poor implementation constrains the government’s opportunities to realize greater efficiencies. Although some economic observers believe that the “gradualist” strategy is superior to the more disruptive “big bang” approach employed by the post-Soviet economies of Eastern Europe, Pei disagrees. Because gradual reform is path-dependent—and thus, bad decisions cannot easily be undone—the gradualist strategy ultimately distorts markets, misallocates capital, and retrenches status quo interests.

Third, and most importantly, the gains from reform are constantly in danger of passing from the public coffers into private hands. Chinese government officials are not loyal apparatchiks, but rather rational, utility-
maximizing individuals who use their positions of authority to enhance their own welfare, even at the expense of the regime that employs them. Given the lack of accountability with which most officials transact state business, a sophisticated system of state “predation” has gradually arisen wherein state agents collude to take bribes, make sweetheart deals, and buy and sell government offices with relative impunity. Such political venality—and the resultant dissipation of government funds—is a key contributor to China’s growing “governance deficits” in areas like public health, education, workplace safety, and the environment (p. 167). Moreover, as the CCP leadership has steadily decentralized decision-making and administrative authority to the regional and local level, the opportunities for official malfeasance at the lowest levels of government have grown dramatically. Corruption has now reached “endemic proportions” (p. 12). At worst, decentralized predation and collusion have resulted in the emergence of “local mafia states” wherein government yibashous (“number-one bosses”) directly ally themselves with organized criminals (p. 159).

The Chinese government’s own reports suggest that senior officials are well aware of the problem of “regime decay” and have taken some steps to increase accountability. But Pei disputes that political reform is happening in China in any meaningful way (p. 165). As long as the partially reformed economy generates a stream of resources sufficient for maintaining the CCP’s patronage system, there are strong incentives for ruling elites not to pursue democratization, which would threaten their own slice of the pie. Although optimists view the direct election of village mayors and the growing role of the elected National People’s Congress as evidence of a meaningful political opening, Pei argues that these reforms are token and that the “core features of a Leninist party-state remain essentially unchanged” (p. 4). Moreover, despite achieving some successes in modernizing its legal system, the CCP still refuses to allow “real judicial constraints” on its own authority (p. 65). Given the CCP’s strong survival instinct, democratic transition under the party’s leadership is a “distant, or even unrealistic, prospect” (p. 7). Pei believes that democratization, if and when it occurs, will come not by elite initiative but rather through the demands of a broad-based social movement.

One of Deng Xiaoping’s best-known pronouncements was to “seek truth from facts,” a mantra which Pei has clearly taken to heart. Throughout the book, Pei supports his arguments in exhaustive detail by mustering data from scholarly articles, NGO reports, and government surveys and polls. These Chinese government documents present stunning insights into the regime’s awareness of its own effectiveness, although Pei unfortunately foregoes the opportunity to discuss the reliability of their conclusions.

In an introductory theoretical chapter, Pei succeeds in integrating models from both economics and political science, among them the famous “stationary bandit” and “roving bandit” models of the predatory state developed by Mancur Olson (p. 42). At times, however, Pei’s use of economic language becomes strained, as in his characterization of China’s stalled transition as a “partial reform equilibrium” (p. 9)—a term whose connotations of stability better reflect the CCP’s aspirations than an accurate description of
present conditions, especially given the rising social unrest that Pei takes pains to document. Pei’s rigid adherence to the framework of political economy also comes at the expense of considering the relevance of cultural or social perspectives or of interrogating the government’s own description of its reformist vision as “socialism with Chinese characteristics.”

Pei’s appeal to the “self-destructive logic” inherent within the system of “predatory authoritarianism” is also problematic (p. 215). Given that Pei’s assertions about the stagnation of the Chinese state rest upon the presumed “logic” of his theoretical model, Pei’s argument seems in some sense just as deterministic as the development-begets-democratization tenet he so thoroughly discredits. Moreover, his argument contains implicit contradictions that would merit further inquiry: for example, Pei describes Chinese leaders as too confident in the regime’s stability to countenance further political reform, yet he also notes that they are feeling so insecure that they are taking bribes and exercising their “exit options” (i.e., cashing out and fleeing the country) at ever-younger ages (p. 152).

Pei’s invocation of the logic of authoritarianism also rings hollow when the Chinese experience is juxtaposed against the success that other East Asian “tiger” states have had in developing their economies and slowly evolving into democracies. Although Pei acknowledges their success, he offers no analysis of why they could circumvent the “political logic and institutional determinants of autocracy” while China cannot (p. 207). A more comparative approach would have been welcome, especially given Pei’s expertise with the region. This potential shortcoming aside, however, Pei’s argument does present compelling reasons why economic liberalization need not lead to democratization in China.

Although Pei’s emphasis on political economy and his limited discussion of China’s foreign relations leave little room for any explicit consideration of international law, his thesis does present a few interesting implications for China’s role in the world. First, the very notion of a “rising China” is called into question. Pei asserts that “a China stuck in [an] incomplete transition means a much weaker China incapable of mounting a real challenge for global pre-eminence” (p. 213). Secondly, if Pei is right that Chinese leaders are increasingly incapable of controlling lower levels of government, the ability of China to enforce treaties or international norms regarding intellectual property, trade practices, human rights, or other issues will clearly be compromised. Moreover, given the pivotal role that China must play in combating problems like climate change, nuclear proliferation, and the spread of HIV/AIDS, a China that becomes the “sick man of Asia” will not only fail to serve as a responsible global citizen, but its own domestic problems may become those of the whole world as well.

With a comprehensive analysis of the relationship between Islamic law, Islamic states, and modern terrorism, Javaid Rehman’s Islamic State Practices, International Law and the Threat from Terrorism poses the latest challenge to Samuel Huntington’s “clash of civilizations” view of an inherently violent “Islamic civilization” locked in perpetual conflict with “Western civilization.”

Following in the tradition of academics John Esposito and Edward Said, who have criticized Huntington for his simplistic and historically inaccurate view of Islam, Rehman specifically targets the misapplication of the clash of civilizations theory to the American-led “War on Terror.” Since 9/11, Huntington’s thesis has grown in its appeal as certain neoconservative circles have come to see the “War on Terror” as a clash between Islam and the West, and as the mainstream Western media increasingly portrays Islam and Muslims as aggressive, intolerant, and backward.

On the critical issues of terrorism and international law, however, Rehman shows that “Western” and “Islamic” civilizations — if such entities can be defined at all — are in almost complete agreement. He contends that Western states and those adhering to Islamic legal principles share similar ethical positions toward international terrorism and employ similar policy methods in dealing with it. Thus, Rehman argues that Huntington’s clash of civilizations cannot and does not exist on this issue.

Rehman attempts to counter the prevalent view of Islam’s relationship with terrorism in three primary ways. The first is to dispel monolithic notions of Islamic law by discussing its sources and showing its compatibility with the fundamental principles of public international law. The book provides a sound introduction to Sharia and Siyar (the aspects of Islamic law relevant to international law) and hot-button issues such as Jihad, religious freedom, and minority rights. Rehman accurately presents the historical development of Islamic legal discourse and the diversity of opinion therein, but the discussion is thin in a handful of important areas. For example, Rehman does not adequately discuss the difference between Sharia (the way of life a Muslim should follow to reach “the source” (God)) and Fiqh (the Islamic “jurisprudence” of interpretive methods used to deduce legal rulings from the Qur’an and other primary Islamic texts). Moreover, his contention that the Hanafi school of Islamic law is the “most liberal and flexible of the four Sunni schools” is highly contestable and requires further support (p. 20). Some of these shortcomings are made up in his superb analysis of Jihad, in which Rehman nicely weaves together the pertinent historical, political, and theological complexities of this phenomenon (pp. 51-60). Arguing that Sharia enjoins the killing of non-combatants and permits the use of force only against aggressors and in self-defense, he concludes it is impossible to equate Jihad with modern acts of terrorism.
While Rehman bases his first contention on classical Islamic legal theory, his second is rooted in the practices of present-day Islamic states—defined as those belonging to the Organization of the Islamic Conference (OIC). Rehman challenges the conventional Eurocentric view of the development of public international law with respect to terrorism. He argues that many Islamic states have made key contributions to a variety of global anti-terror measures, including prohibitions on hostage-taking, conventions dealing with aerial and maritime terrorism, and methods to prevent the financing of terrorism. This largest section of the book provides a detailed examination of the various regional and international treaty regimes against terrorism and the role Islamic states have played in their creation and implementation.

Despite his firm belief in the compatibility of the views of Islamic and Western states on fighting terrorism, Rehman warns that a clash between Muslims and the West could become a self-fulfilling prophecy. His final argument suggests that injustices within the present-day system of public international law, exacerbated by the “War on Terror,” are producing strong reactions within Muslim countries against certain Western nations. Specifically, the book contends that the domination of the U.N. Security Council by the United States and a select band of powerful states is provoking deep-seated resentment throughout the Muslim world. Rehman complains that “[t]he Security Council has proved to be least supportive in matters which mean the most to the Muslim peoples” (p. 224). He singles out U.S. support for Israel, the war in Iraq, and the treatment of detainees at Guantanamo Bay as three current American policies that have heightened tensions between citizens of Islamic states and Western governments.

When viewed independently, Rehman provides ample support for each of his three primary arguments, but his attempt to weave the three pieces into a coherent whole falls short. For example, Rehman claims that the classical Islamic legal theory he surveys in the first part of the book has significantly influenced the contemporary Islamic state practices regarding terrorism he describes in the second part. The book offers very little evidence to substantiate this contention, however. In fact, it would seem that most Muslim-majority countries today have veered quite far away from classical Islamic law in the vast majority of their legal practices. For example, the civil and criminal codes of many “Islamic states” have been created with little regard to the rulings or methodologies of classical Muslim jurists. Rehman rarely makes this distinction between modern Islamic state practice and classical Islamic law, save for the example of the Iranian hostage crisis of 1979, on which he reports “a consensus among Islamic jurists that Iran violated the established principles of the Sharia and Siyar” (p. 125).

Rehman equally fails to consider a variety of other motives explaining why Islamic states might want to work with the international community to develop and implement measures against terrorism. One compelling reason is that terrorist groups such as al-Qaida view certain Islamic states like Saudi Arabia, Jordan, and Egypt as enemies as much as they do the United States and other Western countries. Arguably, these Islamic states have strong anti-
terrorist measures as much to stifle domestic dissent against their autocratic rulers as to combat terrorism.

A further weakness of the book is Rehman’s inability to offer a full explanation of what he believes are the root causes of terrorism directed against Western interests originating in Muslim-majority countries. While he makes well-supported arguments that classical Islamic law and Islamic state practices both concord with mainstream international opinion on the terrorism issue, he does not adequately provide alternative rationales for why groups that define themselves as Islamic commit acts of terrorism. Rehman only suggests that certain American policies since 9/11 have exacerbated tensions between citizens of Islamic states and Western nations by undermining the human rights of Muslims throughout the world. He further mentions that socioeconomic factors and authoritarian policies are additional reasons why some Islamic states are fertile breeding grounds for terrorists, but Rehman never completely develops either of these assertions.

Despite these shortcomings, the book provides a comprehensive overview of two very relevant issues, namely: 1) the position of classical Islamic law toward terrorism and international law, and 2) Islamic state practices regarding terrorist activities. As one of a handful of texts that does justice to the complexities of the subjects present in this discourse, Islamic State Practices, International Law and the Threat from Terrorism offers a much-needed challenge to commonly held views regarding Islam’s relationship with terrorism.


Naomi Roht-Arriaza, a professor at the University of California’s Hastings College of Law, spent part of her childhood in Chile, and has since devoted much of her career to studying the country’s tortured history. Roht-Arriaza has published before on the horrendous leadership of the late General Augusto Pinochet; her previous work has considered the intricacy and legacy of efforts to hold Pinochet accountable under the principle of universal jurisdiction.

In her book, The Pinochet Effect: Transnational Justice in the Age of Human Rights, Roht-Arriaza expands the scope of her research and reflections on the former dictator of Chile. During Pinochet’s seventeen-year rule, Roht-Arriaza reports, “some five thousand people were killed, over a thousand detained and disappeared, tens of thousands were imprisoned and tortured or forced into exile” (p. vii). As Roht-Arriaza details with exceptional clarity and sensitivity, the effort to bring Pinochet to justice set an important precedent in international law and politics: leaders who committed crimes while in office could no longer shield themselves from prosecution behind the protection of sovereign immunity.
Roht-Arriaza tells a story that takes us all over the world—from the London Clinic where Pinochet was arrested on October 16, 1998, while recuperating after back surgery, to Spain, Belgium, the Netherlands, the former Yugoslavia, Chile, Argentina, Guatemala, Mexico, Chad, Senegal, Rwanda, South Africa, and the United States. Her narrative explores fascinating and often little-understood institutions like Scotland Yard, the European Court of Human Rights, the Inter-American Commission on Human Rights, the International Criminal Court (ICC), the International Court of Justice, the U.N. International Criminal Tribunals for Rwanda (ICTR) and the former Yugoslavia (ICTY), the U.N. Human Rights Commission (now the U.N. Human Rights Council), and Amnesty International. This account highlights, Roht-Arriaza argues, the “tenacity and ingenuity” (p. xiii) of “broad coalitions” (p. 208) of key individuals—such as Desmond Tutu, the Dalai Lama, and Baltazar Garzón, a Spanish investigating judge—to whom she refers as “norm entrepreneurs” (p. 215), invoking political science scholarship. Roht-Arriaza’s book alternately reads like a graduate-level introduction to international relations and international law, a history of recent atrocities in the Southern Cone, and a John le Carré thriller.

Roht-Arriaza’s expertise transcends the book’s primary focus on human rights, international criminal law, and international humanitarian law to include global and local environmental law and policy. Whereas many scholars and activists concerned with atrocities often treat their subject with too narrow a focus on law (to the detriment of ignoring politics, economics, and culture), Roht-Arriaza draws upon her interdisciplinary background to observe that issues of post-conflict justice “implicate our ideas about expiation of sin, reconciliation, forgiveness, and judgment” and involve political pragmatism, limited resources, the complications of writing history, the need for healing, calls for accountability, and the often competing demands for truth and justice (p. xi).

That said, Roht-Arriaza readily reveals her agenda: she urges legalistic solutions to massive crimes (p. xi), a viewpoint with which many, particularly lawyers and law professors, agree. This perspective pervades the book, sometimes at the expense of considering the non-legalistic issues, values, and objectives that she herself acknowledges are at play. Roht-Arriaza occasionally neglects to examine the benefits of non-judicial institutions, such as truth commissions, that many other scholars and practitioners believe can be as effective as—if not more so than—prosecutorial mechanisms in promoting post-conflict justice. Perhaps self-conscious of this criticism, Roht-Arriaza does acknowledge that transnational prosecutions “will never be the only mechanism for achieving justice. But they are one piece of the emerging architecture, an architecture with a number of pillars” (p. 198).

The penultimate chapter of the book discusses the legal legacy of Pinochet. Although Roht-Arriaza illustrates interconnections between efforts to bring Pinochet (and other Latin American dictators) to justice and a growing network of institutions and individuals, she neglects to mention one of the most obvious relationships. The first chief prosecutor of the ICC, Luis Moreno-Ocampo, was elected to his position in large part because of his role...
from 1984 to 1992 in prosecuting senior officers of the Argentine junta (1976-83)—a regime Roht-Arriaza herself points out was deeply intertwined with Pinochet’s.

In this chapter, Roht-Arriaza succeeds where some other human rights advocates and scholars fail: she acknowledges the reality constraining efforts to bring suspected atrocity perpetrators to justice. In reviewing a number of cases (some of which were unresolved at the time of publication) that “seemed to be natural extensions of the Pinochet precedent,” Roht-Arriaza describes how these cases would “come up against the political and legal limits of prosecution based on universal jurisdiction” (p. 170). For only if we address the limitations Roht-Arriaza identifies—such as the potential for politically-motivated or frivolous cases and the inherent diplomatic, legal, and logistical challenges in coordinating transnational judicial efforts (especially those against sitting heads of state or directed against uncooperative countries)—will we be able to build mechanisms that effectively promote truth, justice, and peace.

However, Roht-Arriaza fails to acknowledge just how complicated the picture truly is, in part because she seems to be biased by her own preferences. For example, Roht-Arriaza criticizes the ICTY and the ICTR, which are located, respectively, in The Hague and Arusha, Tanzania, for “being far, geographically and culturally, from their ‘target’ populations” (p. 203). She also criticizes these tribunals for a lack of publicity about their proceedings—which are often long, technical, and otherwise difficult for average people, including victims, to understand. Roht-Arriaza does not concede that the exact same criticisms could be made of cases tried on another continent under universal jurisdiction or in The Hague by the ICC. As another example, Roht-Arriaza makes no secret of her support for the ICC, even if she proposes that it merely supplement and “jumpstart” domestic and transnational accountability mechanisms (pp. 198-202). However, the ICC has been severely criticized by humanitarian organizations, such as Oxfam, for prioritizing international prosecution over peace efforts and local reconciliation processes, especially in northern Uganda, one of its first three cases. Roht-Arriaza again leaves these significant concerns unaddressed.

Roht-Arriaza also overstates acceptance of the legacy of litigation efforts against Pinochet. She claims that the “Pinochet cases established the legitimacy of transnational prosecutions based on both universal and passive personality jurisdiction” (p. 197). Many would disagree with that assertion. Despite the fact that the U.S. government itself permits a form of universal jurisdiction through cases brought under its Alien Tort Statute, as Roht-Arriaza points out, the U.S. government—like many other governments, including the governments of Israel and Sudan—is driven largely by self-interest in opposing the universal jurisdiction of other states. After all, as a result of the U.S.-led wars against Iraq in 1991 and 2003, several current and former U.S. officials, including former president George H. W. Bush, current Vice President Richard Cheney, and former Secretary of State Colin Powell, were sued in Belgium for alleged war crimes. In response, the U.S. threatened to withdraw NATO headquarters from Belgium, which subsequently reacted
by amending its laws effectively to bar such cases (p. 190). Roht-Arriaza also mentions, without explanation, U.S. opposition to the ICC (p. 198). The legitimacy of the Pinochet precedent is certainly not as widely held as Roht-Arriaza would suggest.

The controversial and complex principle of universal jurisdiction will remain a subject of discussion, largely because it is already so widely codified in domestic laws. As Roht-Arriaza points out, more than 120 countries have universal jurisdiction provisions (p. 192). Many policymakers, scholars, activists, and victims are desperate to try any innovative tool to bring alleged atrocity perpetrators to justice. If we are to believe Roht-Arriaza, the Pinochet case heralds a new "age of human rights"—one with the hope that universal jurisdiction will effectively deter and hold accountable those who follow in the blood-soaked footsteps of Chile’s former dictator.

Skeptics may assert, however, that the Pinochet case is yet another example of sovereign impunity for atrocities, as Pinochet ultimately returned to live out his life in his home country under the relatively mild penalty of house arrest. Furthermore, many other alleged atrocity perpetrators all over the world, from Sudan to the Democratic Republic of Congo to Uganda and elsewhere, have yet to be brought to justice. The subtitle of Roht-Arriaza’s book thus begs the question of whether we are, in fact, in an age of human rights. The Pinochet case may merely portend some foreign travel annoyance for certain current and former officials. The advent of universal jurisdiction and the ICC may be promising, but they are no panacea for the many problems—legal, political, cultural, economic, moral, logistical—of cases like Pinochet’s that Roht-Arriaza explores.

Roht-Arriaza’s book could not be more timely. Pinochet died on December 10, 2006, ironically the annual “International Human Rights Day,” which commemorates the December 10, 1942, adoption of the Universal Declaration of Human Rights. He ultimately succumbed to his health problems, suffering a fatal heart attack, and therefore escaping efforts to hold him accountable in the same way Slobodan Milošević recently did. Roht-Arriaza’s book would benefit from a revised edition in which she reflected upon the significance and impact of Pinochet’s death for transitional justice generally and Chile, in particular—including the impact on the country’s recent economic success, which many credit to Pinochet’s free-market policies.

Roht-Arriaza is a rare—and refreshing—blend of idealist and realist, willing to identify many (but not all) of the theoretical and practical weaknesses of the very ideas and institutions she champions. Her scholarship adds great value to the expanding literature on transitional justice, although it does not satisfactorily address some of the inherent problems and tensions in this emerging field.