Noteworthy New Titles

China


In the last year, China has received a great deal of attention from the West, particularly from the United States. Despite repeated State Department reports that China had not made substantial progress on human rights abuses, President Clinton renewed China's most favored nation status in 1994. According to Nicholas Lardy, Director and Professor of the Henry M. Jackson School of International Studies at the University of Washington, a Visiting Fellow at the Institute for International Economics, and the author of *China in the World Economy,* the President made the right choice.

In his study, Lardy gives a pithy outline of the trends in, and significance of, foreign trade and investment with and in China. His study concentrates on who is investing and trading in China and with what effect, rather than on Chinese investment abroad. Thus, the book would be more appropriately titled *The World Economy in China.* Lardy does, however, present a great deal of empirical information and admirably debunks many myths about Chinese growth potential, currency manipulation, and trade balances.

Any attempt to understand Chinese laws and policies of trade, investment, property ownership, or commerce must consider the politico-economic contexts of those laws. Lardy's commentary on the implications of his economic data to policy issues may be useful in this regard. While his liberal economic positions lead him to opinions more ideological than empirically-based, his data do support many of his important policy conclusions. This work is therefore highly recommended reading for legal scholars and policymakers with an interest in China.


Written by a professor of political studies at the University of Calgary, Alberta, *China's Struggle for the Rule of Law* is both a survey of Chinese scholarship and press reports and a lengthy theoretical treatise on a deceptively narrow issue. Ronald Keith's latest book on the People's Republic of China exposes the philosophical and political tensions that prevent the Chinese from adopting a western conception of the "rule of law," as opposed to the "rule by man." The book's premise seems to be that China cannot coherently embrace the western definition of "rule of law" because of
philosophical and cultural differences between our societies.

In form, *China's Struggle for the Rule of Law* is a vast collection of scholarly opinion, newspaper excerpts, and reports from governmental agencies. This structure at times leaves the reader feeling as if she has merely digested the raw research data à la carte, without summary analysis. This form, however, constitutes a large part of Keith’s argument. Keith argues — claims by the U.S. Department of State notwithstanding — that the Chinese have continued their debate about the “rule of law” after the Tiananmen Square massacre, and that they have moved closer to defining a more uniquely Chinese “rule of law.” Although it might have been simpler to summarize the Chinese positions, Keith’s voluminous discussion of the scholarly debate in China successfully discredits the State Department’s position.

While Keith stubbornly resists drawing other explicit conclusions from the commentary that he cites, his material clearly shows that many Chinese scholars reject both the separation-of-powers constraint and the highly individualistic conception of human rights that characterizes western legal thought about the “rule of law.” The Chinese do not rely heavily on European legal thinkers like Kant, Locke, Aristotle, and Montesquieu, who have influenced the foundational structure of western legal regimes. Instead, they have fashioned an eclectic philosophy of statehood from their legalist and Confucian traditions, Marxist-Leninist-Maoist thought, and modern western definitions of civil and human rights.

Thick with transliterations of Chinese words and phrases, *China's Struggle for the Rule of Law* is a highly academic work useful for scholars interested in, and already somewhat knowledgeable about, Chinese legal history and legal philosophy. Indeed, the book is a study of ideas, not an analysis of interest-group politics. As such, it is an odd attempt to understand Chinese politics, given Deng Xiaoping’s historical pragmatism. Deng has explicitly said, and his invention of “capitalism with socialist characteristics” proves, that he does not care whether the legal regime is called westernized or Confucian or legalist, as long as it accomplishes politically expedient ends. Thus, although Keith may well be correct in his belief that the State Department wrongly denied the continuance of a Chinese debate on the “rule of law” versus the “rule of man,” it would be hard for one to argue (and Keith does not) that this debate will materially alter the dictatorial character of the Chinese government any time soon.
Human Rights


With the end of the Cold War and the collapse of the Soviet Union, human rights issues have quickly risen to the forefront of political debate and international deliberation. Ian Martin was intimately involved in this process in the course of his tenure as Secretary-General of Amnesty International (1987-1993). In this brief but enlightening speech delivered at Harvard Law School in April of 1993, Martin outlines his own perspective on human rights by focusing on the potential contribution of the human rights movement.

Martin discusses the evolution of the human rights movement's goals from its beginnings in the early 1960s. At that time, human rights violations were most often perpetrated against particular individuals by the secret actions of authoritarian regimes. Thus, the most crucial task of the human rights movement was one of public awareness. Present day human rights violations are not individualized and secret, but instead are committed *en masse* and openly broadcast. This trend, Martin argues, is the result of newly revitalized and increasingly antagonistic ethnic and national claims that have emerged in the wake of the Cold War. Political and social instability, and the violations of rights they allow, now result from the impotence of the weak state rather than the brutality of the strong.

Martin suggests that the new problem requires a new set of responses from the human rights community. To begin with, the focus must no longer be "what conduct to condemn, but by what forms of pressure it is possible to effect it."

The replacement of East-West confrontation with a North-South polarity is also important to the human rights movement. The preparatory discussions for the 1993 World Conference on Human Rights in Vienna demonstrated this, breaking down sharply along North-South lines. The Southern position, represented by the Bangkok Declaration of the Asian group, focused on economic rights, such as the right to development, and condemned the North for using aid-conditionality to force "incompatible values" upon them.

Martin speaks quite strongly for the South's position, and discourages the human rights movement from associating itself too rigidly with Northern "democratic" values. He questions aid-conditionality, even for human rights reforms, and emphatically discourages the movement from "working through the existing power relationships in an unequal world." Rather, in his view, the movement ought increasingly to turn its attention to economic rights, as "[i]t is worse that a child dies of starvation than that an adult is beaten by the police." Traditionally, the Western-based human rights movement *has* concentrated its energies on civil and political rights. Yet, in today's world, massive disparities of wealth and social welfare make this an untenable position.

Martin concludes by criticizing overly enthusiastic support for the use of
military power in humanitarian interventions. Because Western powers control these processes and have the ability to misuse them, the human rights movement should stand apart from such policies. This stance represents a shift from the traditional position of the movement, which so energetically and effectively worked to undermine the absolutist view of sovereignty and non-intervention that was the norm only a few decades ago.

According to Martin, the task of defending human rights in the new world order will be even more challenging than the task faced by Amnesty International thirty-two years ago. Moreover, this task will carry even broader consequences for international politics than did the early actions of the human rights movement.

Environment


Recent clashes between international trade norms and efforts at environmental protection have appeared in headlines, political speeches, interest group portfolios, and academic articles. Much of the discussion has been fractured, variously covering tuna and dolphins, the North American Free Trade Agreement ("NAFTA"), European bans on hormone-treated beef, and the minutiae of GATT provisions. *Greening the GATT: Trade, Environment, and the Future,* by Daniel C. Esty, provides a welcome comprehensive analysis. It investigates the underpinnings of international trade and environmental policies, identifies points of conflict and convergence, and, on this analytical foundation, constructs a reasoned set of policy prescriptions.

Esty is remarkably well positioned to consider the theoretical and practical realms of the trade and environment debate. Educated in economics and law, he also draws on his experience as a trade lawyer in the private sector, a policymaker at the highest levels of the Environmental Protection Agency ("EPA"), and the EPA’s chief negotiator for NAFTA. *Greening the GATT,* published under the auspices of the Institute for International Economics, clearly reflects his personal expertise.

Esty begins with the now-traditional narrative of rising environmental consciousness in the 1980s and 1990s running up against an entrenched structure dedicated to international trade — the GATT. From this backdrop he distills four fundamental environmentalist concerns about trade: (1) trade spurs economic growth that, absent environmental safeguards, is unsustainable and polluting; (2) the current trade regime favors market access at the expense of domestic or "defensive" environmental protection; (3) that same regime prevents the “offensive” use of trade measures to enforce international environmental agreements or to deter global and transboundary environmental damage; and (4) countries with lax environmental standards benefit from this competitive advantage at the expense of the environment. Rather than trying to rebut and dismiss these concerns (a temptation to which too many trade-
oriented writers have yielded), Esty explores, refines, and largely accommodates them within his policy recommendations.

He reveals that the first concern is more about the effects of economic activity than of trade per se and notes that the failure to fully internalize the social costs of “doing business” is both economically inefficient and environmentally harmful. Esty proposes the creation of a Global Environmental Organization, or (aptly) GEO, which would stand on an equal footing with the GATT. Such an institution, advocating explicitly and exclusively for the environment, could promote “polluter pays,” set minimum international environmental obligations, and resolve environmental disputes. Sensibly, however, the author recognizes that neither the catalyzing impulse (like the interwar economic crash that inspired GATT) nor the general international will exists to create a GEO that is sufficiently empowered to resolve today’s trade and environmental conflicts. While holding to the GEO as a long-term ideal, Esty suggests reforms to the current trading system that would help resolve the conflicts in the short term.

The second and third environmentalist concerns that Esty enumerates directly attack the rules of the trade regime as they affect environmental policy. The very narrow construction given to the GATT’s environmentally oriented exceptions to its market access obligations in Article XX place both domestic environmental policies and the international use of trade measures for environmental goals at risk. In place of the Article XX test, Esty fashions one that explicitly balances the benefits and legitimacy of an environmental policy against the injury to the trading system. While some would demand automatic immunity for any policy labeled “environmental,” the author establishes a more delicate, multilayered balancing test. Environmentalists need not fear for all their hard-won policies, however; the verdicts that result are generally very “green” and all the more legitimate for having survived Esty’s analytical hurdles. Yet, under his analysis, unilateral measures taken to address competitiveness imbalances— in line with the fourth environmentalist concern— are more problematic and may well be disapproved.

Esty’s long- and short-run proposals for reconciling environmental protection and trade liberalization are well-grounded, analytically solid, and carefully elaborated. As the author recognizes, however, the most difficult task is to secure their adoption. Nations disagree not only over why and how these issues should accommodate each other (as between the United States and the European Union) but also over whether they should do so — a debate that flares between developed and developing countries. Esty highlights this second clash, describing the bases of developing country antagonism toward linking trade and environment, and searches for “carrots” (such as a new “Green Fund” or debt-for-nature swaps) that might encourage those countries to join the endeavor.

To the extent that environmental protection and trade liberalization efforts clash, each undermines the legitimacy of the other. Given the importance of both policies, Daniel Esty has made a major contribution by identifying the potential for their theoretical and practical reconciliation.
Foreign Policy


With the shift from the Cold War to the New World Order and the accompanying shift from bipolar superpower relations to multipolar international relations, wars between unequal powers have increased in prominence, if not in frequency. Of these, the Gulf War, with its continuing saga between the United States and Iraq, provides perhaps the most striking example of war initiation by a weaker power. Defying the logic of traditional international relations theories, this peculiar variety of conflict is the subject of T.V. Paul's Asymmetric Conflicts: War Initiation by Weaker Powers, the 33rd volume in the Cambridge Studies in International Relations series. Paul, Assistant Professor of Political Science at McGill University, seeks to fill the gap left by traditional theories.

After Paul reviews and rejects systems-level theories, like balance of power and power transition, as unrealistic and insufficient, he concludes that decision-level theories are a better mode of analysis. He does, however, review and reject certain decision-level theories, such as deterrence theory and the expected utility model for their failure to include strategic considerations and domestic interests in the calculus. Asking why "conditions of neither parity nor preponderance avert war at all times in all historical contexts," Paul attempts to discern the "calculus of decision-makers" in war initiation. He arrives at four critical variables: (1) the politico-military strategy; (2) fluctuations in short-term offensive capability; (3) great-power defensive support; and (4) changes in domestic decisionmaking structure. These four variables represent the missing elements of previous decision-level theories. They share time pressure — the idea that war must be initiated "now or never." The first of these variables, politico-military strategy, determines whether or not a weaker power will initiate aggression, depending upon the likelihood that attack will bring about the desired result. Similarly, the strategic goal in question — political victory versus military victory — will also affect the decision to attack. A nation's opinion of its short-term offensive capability will also affect the decision. The third variable, the nature of alliance support, or "backup," will also play a large part in the decisionmaking calculus. The final variable, domestic structure, is often ignored and refers to the domestic political gains of taking on a more powerful foe. The decision to initiate war against a greater power is, in Paul's estimation, a more detailed cost/benefit analysis than previous decision-level theories admit.

Paul's theory goes beyond speculation. The bulk of his book compares six case studies of war initiation by weaker powers in the twentieth century: the Japanese attack on Russia in 1904; the Japanese attack on Pearl Harbor in 1941; the 1950 Chinese intervention in Korea; the 1965 Pakistani offensive in Kashmir; the Egyptian offensive in the Sinai in 1973; and the 1982 Argentine invasion of the Falkland Islands. By contrasting these instances of
war initiation with situations where conflict was considered but dismissed, Paul provides the reader with a greater understanding of those factors contributing to decisions to attack.

This work is significant for the theory it expounds and for the manner in which the author derives and applies that theory. Paul's analysis, though not revolutionary, improves on previous decision-level theories and is thus a worthwhile contribution to the literature.


This study of naval arms control between World Wars I and II conveys valuable lessons for negotiating peace in our time. Author Emily Goldman attacks the “intellectual and strategic blinders” of a Cold War-style, “military-based” arms control orthodoxy. She argues that treaties of the 1920s demonstrate the usefulness of a second “political-based” strategy of arms control more suited to the modern multilateral world.

Goldman begins with an evaluation of the political, economic, and military considerations that shaped the great powers’ decisions between the World Wars. She emphasizes the importance of these factors to understanding why arms control agreements fail. She then examines the 1922 Washington Conference, the military and political developments following the Conference in the 1920s, and the collapse of naval arms control regimes in the 1930s.

Goldman contrasts the successes of the Washington Conference treaties with the failures of the 1930 London Naval Conference. The Washington treaty system endorsed the strategic vision that battleships would remain the backbone of the fleet, a vision shared by the United States, Britain, and Japan. The treaties promoted security, as each power defined it in the Pacific theater, by limiting ship tonnage and demilitarizing the Western Pacific. The success in the Far East contrasts sharply with failures in Europe, where France’s security concerns were neglected. Goldman argues that the naval arms control agreements eventually collapsed because parties adopted a narrow, military-based arms control approach.

The thesis of this study is that nations must recognize the political dimension of arms control. Effective arms control requires a consensual harmonization of the security perceptions of nations. In the 1920s, such an approach allowed for a relatively smooth transition in the relationship between Great Britain, the United States, and Japan from a British-Japanese alliance to Anglo-American cooperation.

The political-based method differs greatly from the Cold War, weapon-centered approach to arms control. A political view focuses on reducing first-strike weapons and deploying armaments that can survive a surprise attack. The military-based approach promotes deadlock, discourages compromise, and reduces arms control to a technical exercise.

Goldman’s evaluation is realistic without being cynical. She recognizes
that treaties will naturally shape and encourage the development of new strategies and weapons. For example, in response to the Washington treaty limitations on battleship tonnage, the United States and Japan experimented with new aircraft carrier tactics; the British built heavy cruisers; and more powerful submarines were developed. Post-treaty redirection presents a formidable difficulty in maintaining arms control, but can be managed by influencing other nations’ perceptions of their security requirements. Goldman is confident, however, that sensitivity to the political interests and perceptions of countries will help to predict and then influence these developments.

_Sunken Treaties_ is a timely, insightful contribution to arms control literature. Recent events in Somalia, Haiti, the former Yugoslavia, and elsewhere demonstrate that in order to craft a durable peace treaty in our time, it is vital to understand a country’s domestic political landscape.

Africa


This book, which was a long time in the making, went to press after the October 21, 1993 palace assassination of Burundi’s first democratically elected president, Melchior Ndadaye, by the Tutsi-dominated army. Most of the book was written before the free and fair elections of that year, and it does not address the April 6, 1994 assassination of the presidents of Rwanda and Burundi by anti-aircraft fire. Yet, Lemarchand’s observations remain largely accurate.

Lemarchand’s thesis is that ethnic relations in Burundi are historically different from the classic Hutu-Tutsi split in Rwanda, and that any argument of inevitable conflict between these traditional enemies is a political fiction. He supports this argument by noting that socioeconomic tension occurred only at specific times and places, that the ethnically mixed “ganwa” have historically held positions of responsibility, that the colonial state upheld the princely tradition of the ganwa, and that the modern Hutu-Tutsi confrontation results from political decisions made during the competition for control of the postcolonial state.

At the time of independence, the fundamental cleavage in Burundi politics was between the Bezi and Batare, two ganwa groups represented respectively by Uprona and the Christian Democratic Party (“PDC”). The last Belgian Vice Governor-General, Jean-Paul Harroy, openly favored the PDC over the pro-Lumumba Uprona and thereby made a nationalist hero of Bezi prince Louis Rwagosere. A combination of the PDC assassination of Rwagosere and the Hutu-led revolution in neighboring Rwanda undermined confidence in, and the legitimacy of, the “mwami”-ruled constitutional monarchy.

Rwanda’s example has since plagued Burundi. Each wave of Rwandan Tutsi refugees leads to attacks on Burundi Hutus, and vice versa. The solidly Tutsi army provides the muscle for ethnic hegemony in Burundi. In the
classical scenario of ethnic violence, bands of Hutu massacre their Tutsi neighbors to protest their political/economic conditions, and the army indiscriminately retaliates against Hutu civilians. The most vicious backlash came after an attempted coup against the Micomboro government in 1972, when Tutsi leadership attempted to wipe out the entire Hutu elite.

Lemarchand presents Ndadaye’s predecessor Buyoya as a Tutsi Gorbachev, attacked by recalcitrant Tutsi and impatient Hutu alike. Buyoya raised Hutu hopes by allowing free expression, releasing political prisoners, and addressing the “question of national unity.” In response, ritualized social protest (e.g., sorcery) became explicitly political and violent. Violent Hutu rejections of Buyoya’s reforms occurred in 1988 and 1991. In 1988, an estimated 15,000 Hutu civilians were massacred.

Lemarchand deems it unlikely that Burundi can follow Lijphardt’s model of consociational democracy. Socio-economic inequality renders power-sharing problematic, and the absence of regional ethnic homogeneity denies the option of federalism. Moreover, violence has become a routine “political discourse.” Most damning is the lack of checks and balances: the absence of proportional representation, equitable resource allocation, group autonomy, and a mutual veto impede this democratic process. Because a Tutsi majority controls both the bureaucracy and the army, democratic gains are difficult.

Lemarchand tempers his optimism for Burundi’s democratic prospects in the foreword with a recognition that change can come only with the (unlikely) restructuring of the army. Indeed, at present the Tutsi army can block any major Hutu progress at will, and Burundi is thus a de facto military dictatorship. The assassination of Nkakaye in 1993 illustrated this tragic point.

This book presents excellent case studies of ethnic relations in postcolonial Africa and of genocide. More specifically, it provides valuable insight into Burundi’s violent present and future. African specialists and those interested in the social and historical contexts of genocide will find Lemarchand’s work useful.


The Organization of African Unity after Thirty Years is the third volume on the Organization of African Unity (“OAU”) edited by Dr. Yassin El-Ayouty. This collection of twelve essays represents a collaborative effort to evaluate the progress of the continental organization from its founding in 1963 to the present. In the context of a changing and increasingly marginalized Africa, the essays focus on how the OAU has functioned in three critical areas: peace, security, and international law; economic, social, and humanitarian development; and relations with other organizations and systems.

Yet, these pieces also go beyond a critical evaluation of the history of this regional African organization. In the framework of a post-apartheid and post-Cold War Africa, the authors look to the future and propose ways in which a struggling OAU can make important contributions to Africa and the rest of
the world.

The OAU has recently come under intense scrutiny and criticism for its shortcomings in peacekeeping and conflict resolution. James Jonas examines this situation and notes that, instead of turning to formal structures, the OAU has relied upon ad hoc commissions and the current Chairman for tackling international disputes. This reliance has resulted in confusion and an unclear role for the Secretary-General of the organization. Jonas argues that the OAU must define more clearly the links between the Chairman and the Secretary-General and must create specific guidelines for conflict resolution.

In addressing the OAU’s reluctance to confront internal conflicts, Jonas reminds the reader that the OAU Charter precludes the organization from intervening in the internal affairs of member states. Nevertheless, he suggests that this traditional approach should be re-evaluated in light of the breakup of Ethiopia and the development of close diplomatic relations between the provisional government of Eritrea and the interim government of Ethiopia.

Michel-Cyr Djiena Wembou discusses the OAU as a source of international law. Although others often challenge the legal validity of texts adopted by this body, Wembou contends that many texts contribute to an increasingly valuable body of rules and principles applicable to the new realities of Africa. He notes that the OAU has also actively attempted to codify three areas of legislative activity: the environment, the law of the sea, and human rights.

Regarding economic development, Leonard Kapungu focuses on southern Africa and the role of the Southern African Development Coordination Conference (“SADCC”) in subregional development. Kapungu examines the SADCC in the framework of post-destabilizing South Africa and the role the organization may play in the incremental establishment of the OAU-proposed African Economic Community.

Making the transition from economic development to human rights, Claude Welch, Jr. critiques the OAU’s newest subsidiary organization, the African Commission on Human and Peoples’ Rights, and its role in challenging the OAU’s fundamental tenet — the sovereign domestic control of member states.

Christopher Bakwesegha reflects upon the OAU and African refugees and laments the lack of political will on the part of African governments to address the base causes of the refugee problem. He makes several policy recommendations, including complete acceptance of the Charter on Human and Peoples’ Rights by all member states.

Turning to the OAU’s relations with other organizations and systems, Berhanykun Andemichael examines the evolution of OAU-UN relations in responding to crises. He argues that both organizations are weak in resolving internal conflicts and lack necessary legal instruments for the return of refugees. Andemichael suggests that the OAU needs considerable reform if it is to become a more substantial partner in cooperation with the UN. Such necessary reforms include the creation of a permanent OAU Peace Council and a secretariat mechanism for conflict management.

In the collection’s concluding essay, the editor looks to the future of the OAU. El-Ayouty condemns the near paralysis of the organization and labels
the status quo intolerable. To meet the challenges of an uncertain future, he argues for recognition of the OAU's secretariat and a strengthening of the position of Secretary-General. The organization must enter into cooperative ventures with the UN and other regional organizations in order to enhance the skills of its junior staff. He advocates the promulgation of concrete mechanisms to address deficiencies in the critical areas of mediation, conciliation, and arbitration. El-Ayouty reminds the reader, however, that structural changes cannot in themselves lead to an effective OAU — democratization and the role the OAU plays in its development are the keys to a revitalized OAU and new international African order.

Because the West is turning its attention to Europe and Asia, Africa must become more self-reliant and forge stronger ties with developing trading blocks and the UN. Clearly, an effective OAU is the most appropriate mechanism to meet this challenge. The Organization of African Unity after Thirty Years is an important work for this critical period in contemporary African history. Although a few of the essays are somewhat idealistic, the work as a whole outlines practical solutions to the deficiencies of the OAU. African leaders now have before them a framework to effect a positive reconstruction of the OAU; Africa must wait to see if they also have the political will.

International Taxation


This book is an interesting exposition of the branch of public international law dealing with transnational taxation. Public International Law of Taxation ("PIT") encapsulates this comprehensive body of international law, which derives generally from international economic law but is also a branch of international taxation. PIT thus integrates general international law, which has a bearing on tax matters, with more specific norms of international law concerning taxation.

Part I provides a basic introduction to international law while emphasizing a broad range of taxation issues, the relation of international law and national law, and general principles of treaty interpretation. In the following chapters, Dr. Qureshi encourages international tax practitioners to familiarize themselves with various aspects of international law, and dedicates a separate chapter to each area he finds particularly important.

In this era of national and international engagements, Dr. Qureshi has made a unique and timely contribution to the development of the international law of taxation by successfully integrating his insight into international fiscal matters with his expertise in international law.

Although this work lacks a theoretical discussion of the sort of international tax order that should be formed, it contains a pointed account of the international tax system in the context of the assumptions that shape and
inspire it. The book is thus a natural extension of the editor's earlier works, which emphasize the relevance of theory to practice.

This book successfully brings together in one source a disparate body of jurisprudence. The approach deliberately avoids being too theoretical, and the text touches on virtually every aspect of public international law. It thus qualifies as an essential source of reference for both tax practitioners and public international lawyers, and should also interest a wide range of general readers in academic circles.

European Integration


The prospect of a unified Western Europe superstate causes excitement and trepidation on both sides of the Atlantic. Implicit in the idea of a single European government is the deterioration of the Western European nation-state. The Frontier of National Sovereignty: History and Theory 1945-1992 provides an historically based examination of whether such a transformation is occurring in Europe.

Milward, Lynch, Romero, Ranieri, and Sorensen do not believe that European integration means the end of the traditional nation-state. Instead, the authors believe the future of integration rests on the same basis now as it has in the past: the extent to which integration allows the nation-state to better advance its own domestic policies. The authors' general line of reasoning rests on this basic hypothesis.

Because of their weakened condition after the Great Depression and World War II, the nations of Western Europe pursued policies to retain and strengthen the allegiance of their citizens. Such policy choices generally included social welfare programs, agricultural protection, employment policies, and industrialization policies. According to the authors, the usefulness of European integration in achieving these policies has been the driving force behind the movement.

This basic hypothesis lends credence to the book's general proposition that the nation-state is not on its way to extinction because of European integration. Instead, the authors present the nation-state as the controlling actor, determining its own future and the future of integration. Nations will only take such steps when limited surrender of national sovereignty to supranational entities will benefit their own goals.

History drives the authors to their hypothesis concerning European integration. They rely upon historical accounts found primarily, though not exclusively, in the governmental records of EC nations. These records offer insight into each participating nation's calculus of the advantage of integration over other methods of advancing their domestic policy goals.

The authors acknowledge the potentially problematic nature of reliance on archival research as the foundation of their theory. The book addresses two
particular problems that could arise from the utilization of this historical data. First, governments often classify the relevant records on which research should be based for several years. Second, research that relies primarily on government sources tends to exclude other types of historical literature, thereby limiting the usefulness of historical research.

The authors credibly address these potential problems. They correctly view the use of classified documents as most troublesome, but note that they derived their general hypothesis from historical writings and then extrapolated to explain developments in integration during recent times. The unavailability of more recent classified documents thus does not represent a fundamental flaw in their analysis.

The exclusion of non-archival research is not a debilitating loss for several reasons. First, the authors assert that such writings take the tone of pro-integration propaganda that is not useful for a rational analysis of integration. Second, government archives were not the only records consulted. The authors utilized business, international organization, and interest group archives as well.

The bulk of the book explores the motives for integration, examining historical episodes in which European nations made decisions about European integration. Particular chapters cover such subjects as Italian emigration policies, the decisions of France to move towards integration, and Denmark's changing views with regards to integration. A critical analysis of these chapters will assist readers in drawing their own conclusions as to whether integration occurs because of or in spite of domestic policy choices.


The European Community is currently facing three phenomena that strongly influence the development of a common police policy: the 1992 Common Market Programme's large-scale success, the collapse of communism in Eastern Europe, and continued economic woes in Western Europe. By itself, heightened commerce between EC nations creates a need for greater international police cooperation because the free movement of goods, services, money, and people necessitates a fluid policing system. With the addition of perceptions of international and economic uncertainty and increased flows of immigrants, the need for greater EC police cooperation becomes a predominant political concern. Malcolm Anderson and Monica den Boer provide a masterful tour of the major theoretical and practical issues surrounding the European Community's formulation of a common police policy.

In his introductory essay, Anderson first highlights the standard
justifications for closer police cooperation within the European Community: international terrorism, drug trafficking, and immigration. The decrease in the EC's internal border controls, occurring as part of the Common Market and Schengen Accords, provides additional incentive to cooperate. Anderson then examines current police cooperation efforts, including those under the auspices of the Maastricht Treaty. The analysis indicates that continued EC integration will increase pressure for greater police cooperation, but that this effort should be carried out carefully with respect for private citizen rights and liberties.

Neil Walker supplements Anderson's analysis by emphasizing how police policies and larger socioeconomic issues are interrelated. He points to an interesting contrast between the European Community's judicial strength and its political weakness. The preeminence of the Court of Justice and the need for enforcement of Community regulations conflict with the Community's difficulty in rendering "supranational" executive decisions. This conflict hampers the development of police policy which, in turn, fails to satisfy the need for new responses to the rapidly evolving internal market.

John Benyon and his co-authors next propose an analytical framework for EC police policy. They analyze the four primary efforts at police cooperation (Interpol, the Schengen Agreement, Trevi Cooperation and Europol) in terms of their "macro," "meso," and "micro" level implications. The effort yields a structure through which proposals for a common policy may be critiqued, and Benyon makes a strong plea for increased research to test this typology.

This need for additional empirical research is emphasized when the book moves to consider specifics of the European Community's police policy. Mike King provides an illuminating account of the transitions in Europe's immigration and asylum policies. He explains how a series of concentric "buffer zones" enforced through readmission agreements is replacing traditional asylum policies as a means of controlling immigration (and the fear of immigration) from Eastern Europe and the former Soviet Union. Frank Gregory explains the enormous obstacles that former communist states face in attempting to establish viable domestic police forces. The perception that crime has increased in Eastern Europe fuels the debate within the European Community on the need for stronger police cooperation and border protection policies. Political decisions regarding both of these issues rely on extremely scant data. Therefore, the authors consistently stress the need for substantive research to allow for more reasoned policy formulation.

In his discussion of police intelligence operations, Kenneth Robertson illuminates another pragmatic difficulty with creating a Community police policy. Enhancing cooperative communication requires improving the level of trust between policing agencies throughout the European Community. Without firm trust, agencies are reluctant to share their precious intelligence information, and a common policy becomes almost impossible. Robertson thus concludes that police intelligence sharing is likely to be limited.

The book's next section, which considers the development of common police information systems and their potential impact on privacy and civil liberties, sharply questions Robertson's enthusiasm for openness. Charles Raab draws an important distinction between "data security" (ensuring that data is not destroyed) and "data protection" (ensuring that data is not abused
and that private citizens retain the ability to correct errors). He then points to
a number of difficulties in maintaining adequate data protection across the
disparate European police systems. Martin Baldwin-Edwards and Bill
Hebenton sharpen this issue by examining the deficiencies in the Schengen
Information System ("SIS"). They convincingly warn that the tangible benefits
of information sharing often easily prevail over the more subtle but equally
significant privacy concerns. Consequently, they caution against the unchecked
expansion of information technology in pursuit of a common police policy.

Having considered the modalities and implications of the European
Community's police policy, Didier Bigo attacks the very basis of this policy.
He argues that it is not empirically grounded, that it is bolstered by a self-
reinforcing dialogue between politicians and bureaucracies, and that
competition between various agencies challenges the likelihood of policy
harmonization. His polemic reiterates the need for greater empirical research
and questions the traditional arguments for police cooperation. Den Boer
rounds out this analysis by explaining that, like any other policy, EC police
cooperation is an ongoing process that is naturally shaped by political
discourse and rhetoric. Consequently, public fears of mass immigration,
terrorism, and crime (whether well-founded or not) inherently influence the
European Community's development of police policy.

This collection of essays provides a necessary first step toward
understanding the complexities of the European Community's common police
policy. Like any book concerning the rapidly changing European Community,
the work is somewhat dated. Most notably, the accession of Norway, Sweden,
Finland and Austria to the European Community was not yet settled at the
time of writing. Though enlargement further complicates Europe's police
policy, it does not diminish the book's fundamental arguments. Rather, an
enlarged Community only heightens the need for additional research and
analysis regarding the origins and impact of a common police policy.

International Banking

Edited by J.J. Norton, Chia-Jui Cheng, and Ian Fletcher. London: Centre

"[F]or as we all know, markets are like parachutes, they only work if
they are open, and we are all interested in a safe flight and a soft landing."
-Uwe H. Schneider

For the past decade, the Graduate School of Law, Soochow University
in Taipei has paid special attention to problems of international commercial
law. One of the products of this endeavor is this scholarly and timely volume
on international banking operations and practices written in collaboration with
the Centre for Commercial Law Studies of the University of London. The
book consists of nine chapters corresponding to the recent work of nine
leading academics. It is designed to provide a broad foundation for comparative analyses of changes and reforms occurring worldwide in international banking. As such, this volume should prove to be an invaluable aid to domestic and international government officials, financial executives, attorneys, and academics who seek to understand the policies and practicalities that these rapid changes and reforms entail.

The first half of the book, titled "Foreign Banks in International Banking Operations," focuses on the obstacles to deregulation of international banking. In the first chapter, Jane Kaufman Winn argues that globalization in financial services is struggling to catch up to globalization in the trade of goods. However, the strict regulatory regimes of most domestic financial markets, including the United States, hinder progress in the international arena. As one example, Winn uses the United States' application of the "national treatment" standard to foreign banks. National treatment requires foreign banks operating in the United States to toil under the same burdensome regulatory regime as domestic banks. Under the reciprocity standard, which generally governs trade relations, the host country offers the foreign operator the same rights as the host country receives when operating in the foreign land. Winn suggests that the persistence of the national treatment standard reflects the United States' unwillingness or inability to reform domestic banking regulations.

Cynthia Lichtenstein, in her article "Treatment of Foreign Banks in the United States," analyzes particular instances in which domestic regulations prevent foreign banks from operating within the United States. For instance, the Breaux Amendment of 1985 barred banks from involvement in any aspect of the insurance business. While domestic banks sold off or eliminated their insurance concerns, foreign banks could not respond as easily because most of their worldwide business was insurance-related. The practical consequence of the law was to protect the competitive advantage of domestic banks by denying access to foreign banks who were unwilling to fundamentally restructure their operations. Lichtenstein concludes that changes in law like the Breaux Amendment, which are often undebated, can create unnecessary barriers to free trade in financial services.

While the first half of the book argues for deregulation of international banking, the second half, entitled "International Banking and Private Law," makes a plea for countries to develop uniformity and consensus in the practical matters of international banking. To support this plea, Ian Fletcher addresses the conflicts that arise in cases of international insolvency. Because no standardized international rule exists to govern the international insolvency process, a debtor's property located in a particular country will always go to creditors who reside there rather than to the possibly more deserving creditors who reside elsewhere.

Fletcher uses the bankruptcy of BCCI to suggest a possible solution. In the BCCI dispute, a coordinated sequence of judicial proceedings in Luxembourg, the Cayman Islands, London, New York, and Washington provided a workable basis for liquidating BCCI. At the same time, the liquidators concluded an agreement with the Government of Abu Dhabi that provided for an additional contribution to the assets. The net effect of these successive agreements was to boost the anticipated payments to creditors from
a maximum of 10% to 30-40% of their claims. Fletcher hopes that the BCCI insolvency will serve as an ideal model for future cases in which a unitary process is necessary to ensure equality of treatment for all creditors.

In “Governing Law Issues in International Finance Transactions,” Raymond M. Auerback analyzes choice of law issues surrounding international financial transactions. Currently, parties choose to have disputes resolved according to either American or English law. Auerback discerns four advantages of the current practice: (1) the cohesion that results from the uniformity of documentation and practice; (2) the certainty that arises from cohesion; (3) the flexibility stemming from the freedom of contract and lack of codification that are intrinsic to the Anglo-American common law systems; and (4) the uniformity of law and banking practice. However, Auerback does find two grounds for criticism. First, the domination of English and American law leads to a legal form of cultural imperialism. Second, because the common law encourages practitioners to deal with every contingency, transaction documents can “degenerate into an elaborate enumeration of worst case scenarios.”

Overall, International Banking Operations and Practices: Current Developments offers the reader both a worthwhile survey of topical issues and proposals for furthering the growth of international finance. International Banking Operations will therefore be of interest to legislators, regulators, students, and academics in search of a deeper understanding of international banking and finance law.

The Americas


The passage of the North American Free Trade Agreement ("NAFTA") last year has prompted speculation as to whether the United States should embark on a further expansion of trade with Latin America. Western Hemisphere Economic Integration asserts that both the United States and Latin America would benefit significantly from such expansion. The authors, senior fellows at the Institute for International Economics, argue convincingly for greater trade liberalization in the Americas.

Based on extensive quantitative analysis, Hufbauer and Schott conclude that a Western Hemisphere Free Trade Area ("WHFTA") would enhance both prosperity and efficiency in the industrialized north and the developing south. To buttress their argument, they contrast projected post-WHFTA trends with the likely results under a non-integration scenario.

The authors project the effects of a WHFTA implemented in 1990 on the economic landscape for the year 2002. They calculate a $36 billion rise in U.S. exports to Latin America, which represents a 51% gain over estimated figures absent integration. The authors argue further that a WHFTA would
create 60,000 new U.S. jobs. Latin America would also achieve substantial benefits from a WHFTA within the same time frame. Excluding Mexico, the region would gain an estimated $60 billion in additional direct investment, $87 billion in exports, and $104 billion in imports. Compared with the non-integration baseline, the authors predict that in 2002 a WHFTA could raise Latin America's Gross Domestic Product by $273 billion.

Having determined that a WHFTA would benefit all participating countries, Hufbauer and Schott launch into a study of which countries in the hemisphere are most prepared to join an expanded NAFTA. Using an array of both economic and political indicators, they define the necessary preconditions for successful accession. The results of their study confirm the views of many observers: Chile emerges as the most prepared to fulfill NAFTA obligations. Caribbean states Barbados and Trinidad and Tobago also rank highly under the readiness criteria. The authors note that many countries must pursue deeper economic and political reforms before they will be prepared for the demands of integration.

While advocating increased integration, Hufbauer and Schott warn that the United States should avoid individual Free Trade Agreements, as their differing terms and standards could create confusion among participating countries. Instead, policymakers should focus on expanding the existing NAFTA regime by allowing either individual countries or subregional groups of countries to join. The authors argue that the United States should encourage such subregional associations, which prepare countries for eventual participation in a WHFTA.

Hufbauer and Schott recommend that future hemispheric talks address all issues raised by NAFTA, including newly incorporated topics such as intellectual property rights, labor, and the environment. Moreover, the United States should seek to expand the agenda to include such issues as human rights and democratic practices. This all-inclusive approach, the authors contend, would allow for more cross-sectoral concessions and speed the process of trade liberalization.

This study takes aim at those who argue that further western hemispheric integration would harm world trade. The authors concede that a WHFTA would divert a small amount of investment and trade from other regions. However, they estimate the damage to be minimal; in the year 2002, only 2.9% of world exports would be diverted. Furthermore, if consistent with multilateral obligations, a WHFTA would not promote competition between competing trade blocs. They argue that hemispheric economic integration could instead be a catalyst for enhanced commercial relations across the globe.

In sum, Western Hemisphere Economic Integration presents a thoughtful analysis of the prospects for continued trade expansion in the Americas. Released in anticipation of the Summit of the Americas in December, 1994, this study makes a strong case for a bolder U.S. approach toward hemispheric trade.

As part of a series of studies sponsored by the Twentieth Century Fund on the relationship between the United States and Latin America, this book focuses on the prospects for the Organization of American States ("OAS") in the evolving world order. Viron P. Vaky, former U.S. ambassador to several Latin American countries, provides the first of the book's two essays, "The Organization of American States and Multilateralism in the Americas." He discusses the structural reforms being implemented in the OAS and the role of the United States in the Organization's future. Heraldo Muñoz, author of the second essay, "A New OAS for New Times," is currently the Chilean ambassador to the OAS. He writes about the changing nature of what is essentially a political forum for the Americas. At a time when many challenge the very existence of international organizations, these two essays provide an affirmation of the need for the OAS and the exciting possibilities that a strengthened OAS can offer.

The OAS was created in 1948 to bring together efforts for collective action in the hemisphere. Since its early days, however, the OAS has struggled to balance its members' desire for unity with their demands for sovereignty. This tension often has precluded the OAS from exercising a meaningful presence in the region. The Cold War's rigid political framework, which strongly discouraged multilateralism, exacerbated the organizational impotence. Now the OAS is seeking to redefine itself and its mission in the post-Cold War context. Both authors stress the opportunities to reinvigorate the OAS and make it a powerful voice for the hemisphere within a new international setting.

After discussing the historical role of the OAS, Vaky analyzes the obstacles facing the organization. Perhaps the greatest is the traditional power asymmetry between the United States and the Latin American nations. This imbalance persists today, and a more powerful OAS thus threatens to become a forum through which the United States can impose its political will on other members. Vaky recognizes this problem but appears optimistic that the OAS will overcome it. He proposes that the United States emphasize cooperation over dominance and suggests specific steps the United States can take to indicate its commitment to the organization's successful future. Vaky also feels that the greatest chance for development in the OAS lies in incrementalism and the gradual building of consensus among its many members. This slower approach, Vaky writes, will lead to strengthened collective behavior capable of translating the many goals of the OAS into concrete action.

Muñoz also expresses the hope that the newly evolving world order will enable the OAS to enhance its influence in the region. He stresses that the primary objective of the organization has become the promotion and defense of democracy. Through recent organizational resolutions like the Santiago Commitment and the Declaration of Managua, the OAS has articulated and
confirmed its aim of furthering representative government in the region. Muñoz concludes that the long-term viability of the OAS depends on its success in pursuing this doctrinal commitment to defending democracy. If it is effective in this regard, the OAS will serve as an indispensable forum for collective action and political dialogue.

Both the Vaky and Muñoz essays present compelling cases for the continued existence of the OAS as a regional alliance through which to channel cooperative efforts. In a world that is increasingly interdependent, these two authors demonstrate the positive role that a regional organization can play in harnessing collective action.

International Arbitration


Within legal communities, arbitration has long been a quick and inexpensive method of resolving disputes. Between legal communities, however, its use has only recently gained acceptance. The post-World War II era has witnessed a considerable increase in international arbitration as a means of resolving the disputes that arise in international commerce. In *Choice of Law in International Commercial Arbitration*, Okezie Chukwumerije presents a thorough and well-organized analysis of the possible solutions to the choice of law problems that confront international commercial arbitrators. The book’s major theme is the interaction between the will of arbitrating parties and the interest of various national legal systems in ensuring fairness and respecting national interests.

The author begins by discussing the consensual nature of arbitration, which empowers arbitrating parties to appoint the arbitrators and to define the scope of their power. The author claims that despite the consensual nature of arbitration, national legal systems legitimately desire a fair and just process. The author then presents two standards commonly used to determine whether or not an arbitration is international — the identity of the parties and the nature of the dispute — and argues that the latter is a better test.

Chukwumerije discusses several theories of arbitration, with special emphasis on contractual and jurisdictional frameworks. In his opinion, neither theory is a complete account of the arbitration process, and he recommends a hybrid as a more comprehensive theory. The author ends the introduction with an extensive review of the history of international conventions to show their contribution to the evolution of international arbitration.

The remainder of the book analyzes various aspects of the choice of law problems that arbitrators encounter. Chukwumerije first declares that because the arbitration agreement is independent of the substantive contract that contains it, the choice of law problem must be considered separately for arbitration clauses and other contractual issues.

Arbitrating parties are free to choose governing law for the arbitration
agreement. In the absence of an express choice by the parties, the governing law can be either the law of the place where the arbitration is held, the law governing the substance of the disputes, or the rules of the arbitral institution, depending upon the stage at which the dispute arises. In the context of this discussion, the author touches upon two issues of arbitrability. With regard to who may arbitrate (subjective arbitrability), he argues that public policy should not permit a state to consent to arbitration and later try to avoid it as contrary to domestic law. Which topics may be arbitrated (objective arbitrability), is best determined according to the law of the country whose jurisdiction is most closely connected to the dispute.

Chukwumerije's discussion of the choice of law problem in substantive contract strains to balance party autonomy and national law interests. He rejects the notion that an arbitral tribunal should entirely disregard a choice of law by the parties if the choice is not bona fide. Rather, the parties' choice should prevail unless it conflicts with the mandatory rules of the jurisdiction, that is, those rules from which the parties may not depart, or those that supersede the law of a contract. In addition, the author rejects the assumption that the parties, when choosing the arbitral seat, necessarily adopt that locality's law as governing. The author also disapproves of the use of lex mercatoria, a set of general principles applied to international trade that does not refer to a particular national system of law, to govern substantive arbitral issues. He recommends instead searching for a sophisticated national law suitable to the needs of the arbitrating parties.

In long-term contracts the assumptions underlying contractual arrangements can change radically. The author suggests amiable composition, whereby arbitrators rely on notions of justice to resolve disputes, for these arrangements. He thinks the amiable compositeurs should not be strictly bound to apply national laws, though they should be bound by relevant mandatory rules.

Choice of law issues arise again in arbitration proceedings. Only in the absence of an express agreement about procedural rules should national law govern arbitration procedures. The author values party autonomy more highly than national jurisdiction in the context of arbitration proceedings, and he finds the national law of the place of arbitration irrelevant. He tries to maintain the balance by reminding us that too much restriction on the supervision of national courts might undermine the effectiveness of the arbitration process. The author then presents and discusses the special problems that arise for contracts to which a state is party.

Choice of Law in International Commercial Arbitration offers a clear and thoughtful analysis that maintains an excellent balance between party autonomy and regulation by national laws. It will be valuable to private parties who must consider whether arbitration awards will be set aside for violating mandatory rules. For students, it is a useful introduction to the analytical complexities of this developing area of law.
World Without End: Economics, Environment, and Sustainable Development


Reviewed by Rodrigo Noriega.

World Without End: Economics, Environment, and Sustainable Development attempts to synthesize the relevant literature regarding the environment and economic development. The World Bank commissioned the authors, David Pearce, professor of environmental economics at University College London, and Jeremy Warford, former senior adviser for the Environment Department of the World Bank, to examine specific issues. The resulting work is divided into three sections. The first provides a theoretical framework of sustainable development, the second discusses the etiology of the environmental crisis, and the third explores more recent international environmental issues.

Traditional economic literature considered natural resources in the less developed countries ("LDCs") to be a main element of their comparative advantage. This literature therefore encouraged, or at least ignored, the degradation of the environment. Pearce and Warford present the sustainable development paradigm as a counternarrative to this dominant interpretation.

The authors' analyses are profoundly rooted in rational choice theory. Pearce and Warford study market and policy failures in order to expose the nature of the wealth of nations. Issues such as poverty, underdevelopment, institutional collapse, and environmental degradation are linked together in a closely knit fabric of social analysis.

Their discussion of these issues reveal several of the international donor community's mistaken assumptions and policies regarding development and the environment. Key members of this donor community, including the World Bank, are active in the implementation of a new international environmental aid order called the Global Environmental Facility. The donor community ignores past failures in assessing LDC realities and consequently fails to articulate effective development strategies.

Although major innovations such as the incorporation of inter-generational equity issues and the linkage of the environment and poverty have characterized this ongoing attempt as a rational choice/sustainable development paradigm, some serious shortcomings are evident. For example, the paradigm omits gender discrimination and its effects on the environment, as well as the fate of indigenous populations and the linkage of the environment with human rights and/or democratic institution building in the LDCs. Given that the richest 20% of the planet controls 82.7% of the resources while the poorest 60% survives with only 5.6%, the omission of any discussion of North-South inequity indicates an international donor community accustomed to acting upon LDC decisionmaking processes, with no effect on the policies of advanced industrialized countries.

A readable, well-documented, and articulate introduction to current international environmental economic analysis, World Without End is a
substantial breakthrough in a usually dry field. Its departure from traditional schemes guarantees that it will be important for scholars, policymakers, activists, and all concerned with the future of international environmental decisionmaking processes.

**Civil Society**


In this monograph, David Bell focuses on the development of the Order of Barristers of Paris from the reign of Louis XIV through the prelude to the French Revolution. He bases his study on exhaustive primary research and thoroughly integrates recent work on the *ancien régime* and the French pre-revolution period.

Bell opens with a brief but tantalizing review of the social makeup and professional life of the Paris bar under the *ancien régime*. His purpose is not to provide a social history of the bar, but rather to explore the nexus between the cultural and institutional frameworks of the bar and the politics of the *ancien régime*. To this end, Bell explores the origins of the bar in the mid-seventeenth century. He details how the Parisian barristers obtained numerous privileges for their order while at the same time seeking to avoid the status of a *corps*, because that status would have subjected them to state control.

In the following sections, Bell traces the interplay between the bar, *parlement*, the monarchy, and the church over the course of the eighteenth century. He demonstrates that the Parisian bar first turned to the mobilization of public opinion in spite of its own far-from-populist views in the course of the Jansenist controversies of Louis XV’s reign. The Paris Order of Barristers took advantage of the *mémoire judiciaire*’s relative freedom from censorship to press the Jansenist and *parlementaire* causes. Even as the Order thereby gained political importance, however, its internal cohesion eroded. As Bell argues, the bar’s increasing involvement in public life led many members to abandon the Order’s longstanding commitment to a “judicial monarchy” identified with the *parlements*. During the Maupeau reforms and thereafter, many barristers instead allied themselves with reformers within the ministerial camp and thereby abandoned not only the cause of the *parlementaires* but the traditional values of the Order itself. In the pre-revolution period of 1788-89, many of these same barristers cast their lot with the cause of the Third Estate rather than with either *parlement* or the crown.

Bell’s work has implications for the study of the bar under the Old Regime and the prehistory of the French Revolution, as well as for a more general understanding of the role of “civil society” in the democratic revolutions of the past decade. He depicts a popular mobilization, occurring not in the interstitial groups and institutions external to the state that Habermas and others have identified with “civil society,” but rather within the fringes of the state itself. Bell’s account suggests significant parallels to the
emergence of similar reform movements from within the party-state apparatus and institutions of Eastern Europe and the former Soviet Union. It also illustrates the weakness of those models of civil society that posit artificially sharp boundaries between the realm of the state and a "public sphere" within which a critical participatory politics can develop.