

BOOK ANNOTATIONS

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AVI-YONAH, REUVEN, *INTERNATIONAL TAX AS INTERNATIONAL LAW: AN ANALYSIS OF THE INTERNATIONAL TAX REGIME* (New York, New York: Cambridge University Press, 2007).

FLETCHER, GEORGE P. AND JENS DAVID OHLIN, *DEFENDING HUMANITY: WHEN FORCE IS JUSTIFIED AND WHY* (New York, New York: Oxford University Press, 2008).

GUIORA, AMOS N., *CONSTITUTIONAL LIMITS ON COERCIVE INTERROGATION* (New York, New York: Oxford University Press, 2008).

GUSKIN, JANE, AND DAVID L. WILSON, *THE POLITICS OF IMMIGRATION: QUESTIONS AND ANSWERS* (New York, New York: Monthly Review Press, 2007).

HOWARD, LISA MORJÉ, *UN PEACEKEEPING IN CIVIL WARS* (New York, New York: Cambridge, 2008).

PAN, PHILIP P., *OUT OF MAO'S SHADOW: THE STRUGGLE FOR THE SOUL OF A NEW CHINA* (New York, New York: Simon & Schuster, 2008).

PESKIN, VICTOR, *INTERNATIONAL JUSTICE IN RWANDA AND THE BALKANS: VIRTUAL TRIALS AND THE STRUGGLE FOR STATE COOPERATION* (Cambridge, United Kingdom: Cambridge University Press, 2008).

SPILLER, PABLO T. AND MARIANO TOMMASI, *THE INSTITUTIONAL FOUNDATIONS OF PUBLIC POLICY IN ARGENTINA* (New York, New York: Cambridge University Press, 2007).

TROCHEV, ALEXEI, *JUDGING RUSSIA: CONSTITUTIONAL COURT IN RUSSIAN POLITICS, 1990-2006* (New York, New York: Cambridge University Press 2008).

The Anatomy of Torture: A Documentary History of Filartiga v. Pena Irala. By William J. Aceves. Leiden, Netherlands: Martinus Nijhoff Publishers, 2007. Pp. xxiii, 793. \$125.00 (hardcover).

REVIEWED BY YOO-SOO HO

The Alien Tort Statute, or Alien Tort Claims Act, has recently become a vehicle for transnational litigation attempting to bring violators of international law to justice. At the same time, the Foreign Sovereign Immunities Act, the Act of State Doctrine, the urge for judicial restraint, and the lacking definition of *jus cogens* have hindered plaintiffs from successfully litigating their claims. In *Anatomy of Torture*, William Aceves describes the evolution of transnational litigation on behalf of torture victims. Aceves starts with an analysis of the well-known Second Circuit case *Filartiga v. Pena Irala* and continues by describing the case's legal progeny, including the Torture Victim Protection Act (TVPA), the Anti-Terrorism Act, amendments to Foreign Sovereign Immunities Act, and the Supreme Court case *Sosa v. Alvarez-Machain*. As the title suggests, *Anatomy of Torture* is rich in facts and well suited for those who seek a deeper understanding of the issues surrounding human rights litigation. Finally, the book contains an extensive appendix, reproducing not only the litigation documents from *Filartiga*, but also Paraguayan police files and communications from the American embassy in Asunción, exceptional sources for scholars interested in extrajudicial background material on international politics and the machinations behind torture.

Anatomy of Torture is structured in four chapters: an introduction, *Filartiga v. Pena Irala*, post-*Filartiga* developments, and a conclusion. Chapter II contains both the factual and judicial history of *Filartiga v. Pena Irala*, and Chapter III is divided into sections on legislation, six cases of post-*Filartiga* litigation, Holocaust litigation, and *Sosa v. Alvarez-Machain*. Although the book advocates transnational human rights litigation—the emphatic foreword by Professor Harold Koh makes that much clear—it does not hesitate to point out the dismissal of Holo-

caust cases and general limitations to collecting rewards. By placing a heavy emphasis on underlying facts, legal arguments put forward by parties, and outcomes of litigation, *Anatomy of Torture* avoids the danger of transmuted itself into a one-sided glorification of international moral values. As the book never loses its focus on legal doctrines, each reader may independently decide what the strengths and weaknesses of seeking remedies under the Alien Tort Statute are, and whether the law provides an effective remedy. On the other hand, the reader should not expect an unprecedented, radical, or mind-blowing argument. Above all, *Anatomy of Torture* is a documentary.

Chapter II begins with the abduction of Joelito Filartiga, leading to his torture and death. It lists chronologically the efforts by his family to obtain justice, first in Paraguay and then in the United States. It describes the conflict between and within the Justice Department and State Department in the wake of *Filartiga v. Pena Irala*. While both departments strongly desired the recognition of torture as a violation of international law, some favored judicial abstention on policy grounds. Aceves also describes the amicus brief jointly submitted by the Departments of Justice and of State—one of the rare occasions when an amicus brief has been submitted by the U.S. government in an Alien Tort Statute case in favor of the plaintiffs. Needless to say, Chapter II describes the Second Circuit's ruling and its reasoning, holding torture to be a *jus cogens* violation and upholding the constitutionality of the Alien Tort Statute. The chapter also continues with the default by Pena-Irala and the damages hearing before the federal magistrate. Quoting testimonies and affidavits put forward by the plaintiffs, Aceves illustrates the impact of torture on the plaintiffs and the symbolic significance of awarding damages. In addition, the detailed description of the Filartiga family's long search for justice promotes sympathy for the plaintiffs. Thus, *Anatomy of Torture* endorses the decision in *Filartiga v. Pena Irala* through third party statements and by implication. On a less optimistic note, Aceves concludes by noting plaintiffs' difficulties in actually receiving awards.

Chapter III begins with the legislative extensions of the Alien Tort Statute. The Torture Victims Protection Act (TVPA) broadens the Alien Tort Statute to include U.S. citizens' remedies for torts suffered abroad. However, the TVPA

limits its scope to civil remedies for extrajudicial killings and torture; other violations of international law are not included. The chapter also lists the concerns and reservations raised by the U.S. Executive, namely concerns against politically motivated lawsuits, foreign policy implications, and reservations against applying the TVPA to actions of the U.S. military. Aceves also describes the Anti-Terrorism Act, which enables civil lawsuits arising out of acts of terrorism. While suits have been dismissed for plaintiffs' lack of U.S. citizenship or personal jurisdiction, the courts have refused to dismiss cases based on lack of subject matter jurisdiction, insufficient service, improper venue, and *forum non conveniens*. The chapter proceeds to the 1996 amendment to the Foreign Sovereign Immunities Act, removing immunity for acts of terrorism, including extrajudicial killing and torture, committed by a foreign government. The chapter describes how the amendment aided the until-then mostly unsuccessful lawsuits against foreign governments for human rights abuses. On the other hand, the chapter does not fail to mention that the failure to collect judgments has led to a Congressional scheme of partially paying judgments against Iran and Cuba out of the U.S. Treasury.

The second part of Chapter III starts with *Forti v. Suarez-Mason*, where the District Court for the Northern District of California refused to dismiss a suit after invocation of the Act of State Doctrine. Instead, the Court recognized torture, summary execution, prolonged arbitrary detention, and "disappearances" as violations of universal norms, but found no international consensus prohibiting cruel, inhuman, or degrading treatment. The next case illustrated is *Doe v. Unocal*, where the Ninth Circuit held torture, murder, and slavery to be violations of *jus cogens* norms, and causes of action under the Alien Tort Statute, and likewise declined to apply the Act of State Doctrine. The case ultimately ended in a settlement. The chapter describes a Ninth Circuit case, *In re Marcos Human Rights Litigation*, where the appeals court found torture, summary execution, and forced disappearance to be violations of *jus cogens*. It also held that torture, summary execution, and disappearance cannot be considered official acts subject to immunity, and refused to dismiss on political question doctrine grounds. Among others, a Second Circuit case, *Kadic v. Karadzic*, is also discussed. There, the Court of Appeals held

that violations of international law are not limited to state actors, and that the international prohibition against genocide and war crimes applied to both state and non-state actors; however, the court found torture and summary execution violated international law only when committed by state actors.

The final part of Chapter III describes how Holocaust lawsuits were mostly dismissed because of statutes of limitations or because claims were nonjusticiable. The book nonetheless notes how the litigation led to settlements, even when suits were dismissed. Lastly, Aceves elucidates *Sosa v. Alvarez-Machain* and quotes from the brief filed by the United States in support of the defendant, as well as the amicus brief filed by the European Commission. He describes the ruling of *Sosa v. Alvarez-Machain* as strange, given that the Supreme Court held the Alien Tort Statute to be only jurisdictional in nature but also held definite and widely accepted international law to be part of common law. The Supreme Court decision was celebrated by the proponents of the Alien Tort Statute for its rejection of policy considerations as grounds for dismissal; on the other hand, opponents of the Alien Tort Statute have claimed that the decision instructed lower courts to consider foreign policy considerations. Aceves notes that the decision has left great and very real ambiguities and that future developments remain unpredictable. The chapter ends with a subsequent unsuccessful attempt to amend the Alien Tort Statute.

In his conclusion, Aceves addresses critics of transnational litigation, arguing that issues of foreign policy can and have been addressed by the courts through the doctrines of judicial abstention, political question, and state action. However, Aceves also rejects attempts to accept an understanding of the political question doctrine that would consequently see the dismissal of every suit filed. In rejecting application of the political question doctrine to all Alien Tort Statute cases, Aceves cites *Baker v. Carr*, where the Supreme Court held that not all questions touching on foreign policy are political questions, and that controversies related to foreign relations are not automatically beyond the “cognizance” of the judiciary. He also invokes the separation of powers in arguing that when Congress has expressed concern for human rights violations (as with the enactment of the TVPA), it would be inappropriate to employ judicial abstention. Aceves further suggests that it constitutes no judicial imperialism to recognize the universality of

jus cogens norms, norms accepted by the entire international community in an area of law that is distinctly international in scope. Further, he addresses the concern that transnational litigation may undermine democratization processes around the globe. He recognizes that foreign nations have made such claims, but offers counterarguments made by organizations within those very nations as an alternative perspective. The book concludes by underlining the suffering of victims of human rights violations, emphasizing how the crimes in question in an action under the Alien Tort Statute are grave violations not only of rights, but also of persons in physical and psychological dimensions. While recognizing the limited nature of the financial and ultimately declaratory remedy, the book closes with a strong case against any marginalization of the Alien Tort Statute.

Although the conclusion of *Anatomy of Torture* may be unfitting for a documentary, as it reiterates the conviction of the author and offers arguments for transnational litigation, the overall balance of the book is neutral, introducing the reader to the topic of human rights litigation in an effective manner. Ultimately, the book pushes the reader to consider different sides of many arguments surrounding the use of torture, instead of marginalizing one side on normative grounds. *Anatomy of Torture* constitutes an excellent introduction to the topic, yet has much to offer for those seeking deeper insights.

International Tax as International Law: An Analysis of the International Tax Regime. Reuven Avi-Yonah. New York, New York: Cambridge University Press, 2007. Pp. 188. \$29.99 (paperback).

REVIEWED BY GAIA LARSEN

Taxes are important. Higher taxes can bring state revenue; lower taxes can attract investors. The power to devise and choose a tax policy is therefore central to the operations of any government. Limitations on this power represent potentially significant restrictions on governmental freedom of choice. The fertile ground of global tax regimes provides *International Tax as International Law* a convincing platform to apply the domestic import of taxes to a broader vision of international tax policy. As such, Avi-Yonah's thesis is compelling, arguing that

elements of international tax policy amount not only to an international tax regime, but to international law, including international customary law. If the proposal is true, governments globally may be bound in their choice of tax policies, with potentially enormous consequences, including limitations on strategies for economic development, restrictions on methods for attracting investors, and more. If customary international law governs tax policies, non-complying nations can be brought to court, while the sovereign power to choose tax policies becomes a global imperative. Yet, while Avi-Yonah's thesis that certain tax policies have become international customary law is compelling, his supportive arguments are somewhat less so. In general terms, the book gives a good overview of tax policies affecting cross-border transactions, particularly in the United States. But this overview provides a shaky foundation for the solid existence of a tax regime governed by customary international law and ultimately debases the premise for Avi-Yonah's thesis.

In defining this regime, Avi-Yonah suggests that international tax law is embodied in a "network of two thousand or more bilateral tax treaties that are largely similar in policy, and even in language." These treaties, he suggests, along with domestic tax laws, give evidence of underlying principles that today constitute customary international law. Though not without merit, this claim still must be justified. Customary international law is evidenced by general practice and *opinio juris*. The relationship between treaties and customary law continues to produce much debate among scholars and international actors. Treaties can crystallize already existing customary law, or they can provide evidence of *opinio juris* requiring subsequent supporting general practice before attaining customary status. In addition, some argue that the mere process of forming important treaties constitutes the creation of customary law. This stance is controversial, though, especially when it entails mere bilateral agreements—as opposed to multilateral treaties—such as the tax treaties of concern here. While a large number of bilateral treaties may indicate a consensus, it does not establish that one truly exists, or that an existing consensus translates into international law. Indeed, treaties may even indicate the opposite of a customary law, for the very fact that treaties must be written and signed can underscore the need to pronounce a special rules to guide behav-

ior that, without such a pronouncement, remains unconstrained. Thus, painting international tax law as customary ends up challenging reliance on the treaties alone. Ultimately, like any other instance of customary law, there must exist both established general practice and *opinio juris*.

International Tax as International Law is divided into ten chapters. The first and last cover the author's take on the international tax regime as international law generally. The central portions each cover a distinct area of tax policy including transfer pricing, tax jurisdiction, and distinctions in taxation between residents and non-residents. Ostensibly, the chapters attempt to show the contours of the international tax regime and its status as international law, as well as to demonstrate general practice and *opinio juris*. By focusing almost exclusively on policy in the United States, however, and by failing to show a sense of legal obligation as the basis for practice, Avi-Yonah leaves the reader with plenty of information about U.S. international tax policies, but unsatisfying evidence that these policies embody customary international law.

Avi-Yonah puts forth two concepts, in particular, equating the international tax regime to customary international law: the "single taxation principle" and the "benefits principle." The "single taxation principle," says Avi-Yonah, holds that a person should be taxed once—no less and no more. In the international arena, this means that only one country, no more, may tax a person's income. The "benefits principle," on the other hand, relates to the income generated by each state involved. Internationally, the author argues, this has manifested itself as a system where "active" income (such as manufacturing) is taxed in the source country of the income, while "passive" income (such as interest) is taxed based on the residence of the tax payer. Avi-Yonah claims that tax treaties and domestic tax practice embody these principles.

To prove that the single tax and benefits principles constitute international law, the author guides the reader through many elements of the U.S. tax doctrine. Avi-Yonah analyzes the U.S. definition of residency (which differs from all other nations), looks at complications in defining income source (particularly in today's highly technological world), and notes the American stance on corporate residency (also different from that of most other developed nations). He shows differences in the concept of jurisdiction when it comes to tax ver-

sus other international law matters. And he explains the use of gross-based taxation versus net-based taxation for passive and active incomes. The result is a rather thorough walk-through of American tax policy related to international income, and the challenges and ambiguities that arise in attempting to piece together a reasonable tax policy. These challenges may well be amplified by an international push for the single tax and benefits principles. It may be true that international pressure adds to the complexity of formulating U.S. tax policy, but it is far from a given that this is so.

One problem with Avi-Yonah's presentation of his international law argument centers on his lack of focus on the international arena. The United States is a behemoth on the international financial scene, and so its policy choices are vital. But they do not themselves indicate established international law. As was outlined in the International Court of Justice advisory opinion on the Legality of the Threat or Use of Nuclear Weapons, to prove international customary law, a diversity of states must follow the practice out of a sense of legal obligation. There is no real indication in this book, however, that such a widespread acceptance exists. Indeed, to the contrary, Avi-Yonah notes that developing countries have for decades resisted the proliferation of tax treaties. He also explains that the United States often faces the challenge of negotiating treaties with parties interested in creating tax loopholes, which suggests that not all countries agree with U.S. policies. Recently this may have changed. Nonetheless, Avi-Yonah's lack of attention to non-American, and particularly non-Western, tax policies leaves salient arguments for customary international law wanting.

Moreover, the author's analysis lacks solid evidence of *opinio juris*, the second requirement for customary international law, regarding international tax policy as an international obligation. Even if countries do generally follow the single tax and benefits principles, it is not clear that they do so out of a sense of legal obligation. And again, Avi-Yonah's own analysis often gives fodder for his antithesis. Other interests, usually economic, seem a more likely motivation behind most tax policies. Avi-Yonah notes, for instance, that the U.S. policy eliminating withholding tax on interest gained by foreign lenders was created in the 1980s as a response to the "tremendous demand for foreign capital." Similarly, in relation to the

taxation of controlled foreign corporations (CFCs), Avi-Yonah writes that other countries “will not tax it for the same reasons that Americans and other people do not tax it: reasons of competition.” Thus economic incentives, not legal pressure, seem to lie behind most policy choices. In addition, Avi-Yonah acknowledges that most treaties themselves were passed to reduce “administrative bother.” In other words, they did not necessarily attempt to create or influence international law and, therefore, do not clearly represent *opinio juris*.

International Law as International Tax constitutes, as the author intends, an adequate description of the “contours of the U.S. tax regime and how U.S. law fits into that regime.” This description falls short of providing convincing evidence that the international tax regime is grounded in international law, or even enforceable on treaty non-signatories. In addition, the author further muddles his thesis by occasionally shifting from description to prescription. Rather than consistently expounding upon how tax policy constitutes international law, Avi-Yonah includes critiques of the system, as well as suggestions for improvements. These suggestions, though quite possibly valid, threaten to confound the primary thesis of the book. The result is a work replete with information, but somewhat less coherent as an argument in support of the notion that an international tax regime exists and has become customary international law.

Defending Humanity: When Force Is Justified and Why. By George P. Fletcher and Jens David Ohlin. New York, New York: Oxford University Press, 2008. Pp. xvi, 257. \$27.95 (hardcover).

REVIEWED BY RYAN GEE

Some of the more tragic events of recent human history challenge the way we define collectives at the global level. Traditionally, international law has focused on the rights and obligations of states, although this has been changing with the growth of the human rights field. But when the victim is not, for example, Rwanda, but instead the Tutsis, one questions the relevance and fairness of a state-centric legal system. In their book *Defending Humanity: When Force Is Justified and Why*, George P. Fletcher and Jens David Ohlin advocate for a recast

of international law, specifically a recast right of self-defense, that recognizes the rights of nations independent of states. Their provocative suggestion of granting the right of self-defense to nations existing within states, while not without its weaknesses, both convincingly defends the concept of nationhood and provides a novel legal justification for humanitarian interventions.

Chapter I introduces the book's background principle of transposing domestic legal doctrines onto international law, arguing that domestic criminal notions of self-defense should inform the debate over when force may be legally used on the international level. The authors enable the importation of domestic law into international law by arguing that both fields regulate free agents: individuals in the former, and collectives in the latter. Equating collectives to individuals, though, seems inherently problematic, especially when dealing with criminal law doctrines. To assign guilt to a state, and thus perhaps allow the military exercise of self-defense against it, obscures the fact that many of its vulnerable citizens in fact had nothing to do with its culpable acts. The authors' most convincing argument, though, ironically rests on the well-known tautology of international legal personality: Nation-states are individual free agents under international law because the law treats them as such. The great body of international law relies on the idea that collectives may act as unified bodies and accordingly be held responsible for their actions. Accepting this as so, adopting domestic criminal notions in international law becomes a conceptually easier task.

Fletcher and Ohlin then go on to detail their thesis regarding the importation of domestic principles of self-defense into international law. First, they emphasize how formulating self-defense as a justification as opposed to an excuse alters the legal character of the defensive use of force. An excuse provides a legal defense but leaves behind the shadow of a wrong. A justified use of force, however, precludes any implication of illegality or wrongfulness. While the difference may seem trivial, its importance lies in its implications for how one may respond to an act of purported self-defense. If such an act is justified, then no illegal use of force has occurred, and therefore no force may be used in response. As the authors note, contemporary theorists largely conceptualize self-defense as a justification rather than an excuse. In general, Fletcher and

Ohlin approve of this construction. However, as they note in Chapter VII, self-defense in the form of a preventive war becomes merely an excuse when based on mistaken information. To use the book's example, Iraq was legally entitled to respond with force to the United States' preventive attack in 2003 since it was based on false intelligence regarding the threat of weapons of mass destruction. The self-defense argument would therefore only become operable if invoked as an excuse in a legal forum. Moreover, the authors argue that even a claim of excuse would fail because the faulty evidence provided by the United States in support of its use of force fell short of the necessary level of reasonable objectiveness and openness.

Second, and more intriguingly, the authors argue that the traditional doctrine of international self-defense reflects a misunderstanding of article 51 of the United Nations Charter, as well as underlying domestic principles. While the bulk of legal interpretation has focused on the English Charter's preservation of the "inherent right to self-defense," Fletcher and Ohlin point to the French version, which protects "*le droit naturel de légitime défense*." Legitimate defense, a concept found in Continental European legal systems, differs from Anglo-American self-defense by encompassing the right not only to defend oneself, but also to come to the aid of others, whether or not they have asked for help. Applying this concept to international law, intervention on behalf of others, even without consent, becomes a sanctioned act of legitimate defense. While innovative, this thesis suffers from the lack of a compelling reason for adopting the French version of the Charter, and the corresponding idea of legitimate defense, over the English version.

The full force of legitimate defense comes to bear when applied to humanitarian interventions, as the authors detail in Chapter VI. They begin with a defense of nationhood, a concept that has largely fallen out of favor in contemporary discourse. Understandably, Fletcher and Ohlin have some difficulty in drawing the contours of nationality. In effect, they adopt a "you know it when you see it" approach. One might be disturbed by such a loose standard, but perhaps no other better reflects reality. How can we define what exactly it means to be American? Or, more important to humanitarian interventions, how does one delineate between nations existing within a modern state? For example, looking to the sol-

emn history of defining nationhood, the distinction between Hutus and Tutsis was at best arbitrary, and at worst prejudicial. Moreover, it was largely manufactured by outside forces. Yet regardless of the distinction's origins, it clearly affected how Rwandans viewed and treated each other and how they were viewed by the rest of the world. With this example, the authors suggest their most interesting and pertinent definition of nationhood: groups of people bound together by oppression and persecution by others.

Having established the continuing relevance of nationhood, Fletcher and Ohlin demonstrate how that concept, in light of the notion of legitimate defense, provides a legal justification for humanitarian intervention. First, international law vests the ultimate right of self-defense in nations, not states, in collectives defined not necessarily by territorial borders, but instead by unifying—albeit amorphous—socio-cultural factors. Article 51 recognizes the inherent right of self-defense, or, in the more illuminating French version, *le droit naturel de légitime défense*. On its face, the text of the article might be read as protecting a right to be exercised solely by member states. Fletcher and Ohlin, however, argue that states and the inter-state system exist only as a result of social contracts formed among and between nations. Accordingly, the natural right of self-defense remains always with nations; states serve merely as vehicles for the exercise of that right.

Second, the concept of legitimate defense entitles what the authors refer to as “the world community” to intervene on behalf of nations. Moreover, since the right to self-defense rests in nations, it may be exercised against a nation's own governing state. Thus, according to this theory, the aerial bombing of Serbia—although lacking Security Council authorization—was nonetheless justified as an act of legitimate defense of Albanian Kosovars, a nation under attack by its own state.

The authors' thesis, however, is not without its problems. First, as previously mentioned, they offer no convincing reason for adopting the French over the English version of the Charter. It seems the only motive for doing so is that it supports the authors' arguments. Second, one could challenge their analysis of natural rights by arguing that nations gave up their right to self-defense upon forming states. Such a critique, however, could be rather easily answered by invoking the well-

recognized principle that one cannot bargain away such fundamental rights.

More problematically, the expansive theory of legitimate defense could have unintended, yet grave, consequences. First, a broader legalization of the use of force risks undercutting the Charter's basic purpose of preventing the escalation of violence. One could easily imagine how legitimate defense would open the door to dubious claims of humanitarian intervention. Second, the authors leave somewhat unclear with whom the right of intervention, as an aspect of legitimate defense, lies. If legitimate defense truly is a natural right of nations, then presumably the right to intervene could be exercised by nations as well. In other words, Nation A would have the right to come to the defense of Nation B in a foreign state, even if Nation A's own government objects. The possible consequences of such a situation are unsettling, especially considering the difficulty of defining a "nation." Would the Tutsis in Burundi have had the right to band together and bear arms in Rwanda as an act of legitimate defense of the Tutsis there? And what would, or legally could, have happened if the Burundi government attempted to block them from doing so? The natural right of legitimate defense, as explained by Fletcher and Ohlin, raises the prospect of loosely defined groups of people, unused to and perhaps unbound by the traditional laws of war imposed on states, engaging in destabilizing uses of force throughout the world.

Moreover, while the authors argue that the need for an exercise of legitimate defense still must be proven to the world community, such a right could dilute the moderating role of effective international consensus on force reached through—arguably inadequate—UN mechanisms. Loosening the need for consensus is especially troubling in light of the right of intervention under legitimate defense even without the consent of the "victim" nation: As suggested by the debate in the wake of the *Nicaragua* decision, a powerful state (or nation) may manufacture the need for humanitarian intervention as a pretext for the pursuit of its own interests.

These questions should not lead us to dismiss the authors' arguments, but rather more fully to develop their contours. Fletcher and Ohlin have produced a work which at its core values the vibrant diversity of mankind. History has taught us that humans, as individuals and as collectives, are resilient, but

not invulnerable. This book guides us on a path toward protecting and preserving the national cultures which, as the authors write, “enrich the tapestry of human existence.”

Constitutional Limits on Coercive Interrogation. By Amos N. Guiora. New York, New York: Oxford University Press, 2008. Pp. xiv, 172. \$55.00 (hardcover).

REVIEWED BY TED CARDOS

According to Amos Guiora, we should take care not to be fooled by the sadistic smile on the now-infamous visage of Lyndi England “walking” Iraqis at Abu Ghraib. Rather than indicating an innate evilness within her, Guiora implies that Ms. England’s grin is the foreseeable consequence of an unacceptable U.S. policy on coercive interrogation. To Guiora, Ms. England is the poster child of the most ignored group of victims in the security/human rights debate—the interrogators and prison guards themselves. His current book is written with these practitioners in mind and is consciously “law lite” in an effort to move the debate from academic theory to feasible solutions ready for use in the boardroom. However, one should not get too excited about the prospects of reading a “best practices” manual for torturers, as none of Guiora’s suggestions are new, and all of his “coercive interrogation” techniques are better described in *Darkness at Noon* and *The Gulag Archipelago*. Nonetheless, as a former interrogator in Israel and Palestine, Guiora is able to focus his analysis through a unique lens, managing to raise several key questions about the permissible boundaries of the global war on terror.

Guiora begins his argument by pointing out the failure of the right and left to address seriously the issue of detainee rights. On the right, security fetishists engage in sophisticated mental gymnastics, best demonstrated in the Bybee memos that justify “torture lite” for detainees in a virtual human rights “black hole.” Equally unacceptable to Guiora are the international law worshipers who demand full constitutional protections for all detainees, regardless of their nationality or territorial location. Guiora argues that a new “hybrid paradigm” must be created to deal with the war on terror since detainees are neither prisoners of war (they cannot be returned to their respective countries at the end of hostilities), nor can they be

treated as criminals as this would strain the national security regime to a breaking point. Guiora argues that intelligence sources must be protected and so cannot be required to testify in criminal trials. Guiora does not address how this situation is significantly different from any criminal trial with undercover or informant testimony, nor does he address the fact that similar arguments regarding legal battles against organized crime have turned out to be unfounded. But convinced that terrorists are a protected class, though not a fully protected class, Guiora sets out to determine the bounds of this protection.

Ironically, Guiora chooses the Jim Crow South as a historical analogy to support his hybrid regime. The choice is ironic because Guiora overlooks the painful parallel between the two classes: On the one hand are black Americans who were considered second-class citizens and on the other are detainees to whom Guiora wants to extend only partial rights. However, Guiora points to the civil rights movement and the slow extension of constitutional protection against forced confessions as a model for extending those same protections to detainees. Totally overlooked by Guiora is the end result of the civil rights movement, the protection of minority rights via constitutional and statutory regimes, as well as certain Supreme Court decisions buttressing those rights. Thus, using that historical episode to support the notion of partial rights seems a total betrayal of the spirit of that movement and, more importantly, ignores the possibility that the very notion of partial protection is untenable as a legal doctrine as it invites "slip-page."

Even more problematic is Guiora's cursory treatment of the clear distinctions between blacks in the Deep South and detainees. In the former, actual citizens were subject to obvious violations of the Constitution, whereas detainees are non-citizens held outside the United States. Moreover, blacks were routinely beaten and interrogated for no reason other than to impose racial terror, while detainees, at least in theory, may pose a substantial threat to national security, and the information sought through interrogation is directly related to that security. As a result of these foundational differences, it is hard to maintain an argument by analogy between the two scenarios. However, there was a significant similarity between the Deep South interrogations and the "hybrid regime" that deserves comment: The proposed hybrid regime would employ

many of the methods banned by the Supreme Court in its forced confession cases. As the civil rights movement painfully demonstrated, lowered legal protection for minorities invites vigilantism, especially when those groups are unpopular among the majority culture. In the current climate, commentators routinely describe terrorists as “Islamists,” which, combined with lowered protections for accused terrorists, invites the same type of abusive stereotyping directed this time at Muslims rather than southern blacks.

The next section of Guiora’s argument focuses on the constitutional basis of his hybrid regime. Specifically focusing on the Fourth, Fifth, Eighth, and Fourteenth Amendments, he attempts to construct a rationale that would justify partial protection for detainees in off-site locations. This argument requires a three-step process, beginning with the establishment of constitutional protection for non-citizens, and is based on the use of “the people” in the Fourth Amendment as contrasted with “person” in the Fifth. Similarly, the Fourteenth Amendment refers to a “person,” although the drafters of that amendment were well aware of the use of the narrower word “citizen” in the Articles of Confederation. These textual arguments convince Guiora that some aspects of the Constitution were meant to apply only to citizens, while others were meant to apply universally. The recent line of habeas cases at the U.S. Supreme Court deal directly with these issues, however, and the Court never engaged in this type of linguistic parsing, which casts doubt on whether the peculiar diction of these amendments will support the legal weight Guiora places on them.

The second stage of the argument focuses on the extraterritorial effect of the Constitution. This time relying on the recent precedent of *Rasul v. Bush*, Guiora argues that the hybrid regime applies to any detainee when in the sole control of the United States, regardless of the territorial location. However, this argument fails to reach the current practice of handing detainees over to third countries, including “renditions to torture,” or even cases where a second authority was merely present, as in Iraq and Afghanistan. Indeed, with the amount of interstate cooperation on counterterrorism, it seems increasingly unlikely that any detainee will be in the *sole* custody of the United States, especially if the government can skirt the proposed hybrid regime by striking up ad hoc partnerships.

Another perverse side-effect of this argument, as well as the holding in *Boumediene v. Bush*, is that it requires domestic courts to determine which state is exercising de facto sovereignty over a given territory. Imagine the political fallout from a U.S. court ruling that the United States had de facto sovereignty over Iraq or Afghanistan.

The final stage of Guiora's constitutional argument relies on the Eighth Amendment to specify the rights to which non-citizens outside of the United States are entitled. While he acknowledges that the Amendment only deals with punishment, rather than wartime detention, Guiora argues that what is prohibited in post-conviction punishment must also be prohibited with mere suspects. While this reasoning seems sound and relies on strong precedent, it does not address the fact that the Supreme Court has always taken a relational approach to punishment. It is only "unnecessary" punishment that is prohibited, and the essence of the torture debate is the degree of necessity involved in cases of potential terrorism. As a result, this aspect of his argument seems to miss the point entirely, making the first two steps of the argument moot. Indeed, when reading Guiora's argument, one gets an overwhelming feeling of the extreme clumsiness of the project. In order to support the notion of partial rights, the argument requires not only Bybee-like line-drawing within the Constitution itself, but also dubious arguments for applying the Constitution overseas. A much simpler argument would merely establish the limits of interrogation in light of international human rights and hold all U.S. personnel to those standards, regardless of location. If this approach also adopted a "willful blindness" mens rea standard, then the third-party, black site issue would also be addressed, as U.S. personnel would be held accountable for turning detainees over to jurisdictions where they had reason to believe human rights violations would occur. However elegant that approach might be, Guiora's late treatment of international law makes it clear that he does not believe international law is up to the task.

Indeed, Guiora argues that Article 51 of the UN Charter is far from adequate to address the current needs of states to respond to the threat of terrorism. For him, the Daniel Webster definition of self-defense is a relic of the past and must be updated to account for preemptive self-defense that is still subject to the norms of proportionality, discrimination, and ne-

cessity. Indeed, Guiora likes these requirements of international law so much that he recommends they be applied to coercive interrogation as well. What he doesn't consider at all in his argument is the role of the Security Council in the war on terror. Even if one accepts the premise that the current definition of self defense will not address the terrorist threat, it does not follow that states should be able to use force at their own discretion; the Security Council has the potential to take dramatic action on that front, as evidenced by the existence of the 1267 Committee charged with the seizure of terrorist finances. As a result of this oversight, Guiora's argument is simplistic and overlooks an alternative basis in international law for his hybrid regime, which would have significantly strengthened his case.

Guiora's final suggestions include a list of five coercive interrogation techniques (sleep deprivation, temperature modification, stress positions, sack on head, and loud music) and institutional checks for accountability, including the requirement of a doctor on site and superior approval for any of the listed methods. In the end, these recommendations make sense for Guiora's initial purpose of giving protection to the interrogators themselves, for they provide a legal cover for any potential abuse. While it is surely a good thing to hold the chain of command accountable, Guiora's suggestions do little to flesh out how coercive interrogation will avoid the problem of slippage towards the admittedly forbidden realm of torture. Guiora seems to think that high-level officials will serve as a check on this temptation to cross the line. However, haven't our recent experiences with Abu Ghraib taught us differently? It is hard to imagine Ms. England would be smiling so widely if she didn't think she had support from her superiors.

The Politics of Immigration: Questions and Answers. By Jane Guskin and David L. Wilson. New York, New York: Monthly Review Press, 2007. Pp. 176. \$11.59 (paperback).

REVIEWED BY MARIA J. CHO

Despite the fact that the United States is a country built by immigrants, and has benefited from the contributions of immigrants since its independence, the wave of newcomers into the country has sparked great controversy in recent decades.

What underlies the growing oppression, exploitation, and deportation of immigrants? What types of fears fuel anti-immigrant organizations, and how do politicians exploit these fears? Written by the co-editors of Weekly News Update on the Americas, Jane Guskin and David L. Wilson, *The Politics of Immigration: Questions and Answers* deals with the complex issues surrounding immigration by addressing people's real fears with hard facts. It seeks to dispel commonly held anti-immigration myths and to encourage readers to take a deeper look at the root causes of immigration. The book is comprised of twelve chapters, each dealing with a different theme related to immigration. As the title of the book suggests, each of these themes is explored in depth through a question-and-answer format.

The first chapter, titled "Who are the Immigrants?" refutes common conceptions surrounding the issue by providing answers to questions such as "How do we define immigrant?" and "Who are the undocumented immigrants?" In addition, this chapter focuses on defining common terms used by demographers, such as "illegal aliens" and "out-of-status immigrants." The following chapter goes on to identify the root causes of immigration by answering questions like "Why don't people stay home and fix their own countries?" and "What happens when people do try to fix their own countries?" Guskin and Wilson point out that in recent decades, immigrants to the United States have come mostly from countries where the United States has intervened militarily, politically, or economically, such as Mexico, the Philippines, Cuba, Vietnam, and Korea. They give detailed explanations of the economic and political crises of Mexico, Nicaragua, and Haiti that have sparked mass migration to the United States since the 1980s. These crises, according to the authors, "have their roots in economic policies which are dictated either directly by the U.S. government through its regional 'free trade' agreements, or indirectly through U.S.-dominated international lending institutions like the World Bank, the International Monetary Fund (IMF), and the World Trade Organization (WTO)." The authors provide a surprising breadth of information, illustrating the kind of devastation that leads people to migrate and the United States' share of responsibility in those crises.

Starting from Chapter VI, Guskin and Wilson probe issues at the heart of immigration policy. Starting with the broad

question of whether immigrants are hurting the U.S. economy, they go on to discuss specific issues of whether immigrants take jobs from U.S. citizens and whether they bring down wages. They do not deny that the increase in low-wage immigrant workers results in pay cuts and wage stagnation for competing native-born workers. However, they make it clear that the solution is not harsher enforcement of immigration laws, but improved pay for unauthorized workers so that their low wages do not exert downward pressure on wages in general. In order to do so, they suggest, in highly polemical fashion, “supporting a full legalization for the twelve million out-of-status immigrants already in the country, and ensuring that they can exercise their full labor rights.” In connection with these issues, the authors question whether enforcement of immigration laws poses any solution at all. A detailed look into U.S. border enforcement operations, employer sanctions for hiring out-of-status immigrants, and the current deplorable state of immigration detention and deportation provides the clear answer: “Enforcement tactics waste taxpayer money, violate people’s rights, and generate greater profits for those involved in the trafficking underworld. . . . Enforcement creates more problems than it solves.”

As to whether immigrants pose a threat to national security, Chapter VIII includes a persuasive fact-based discussion on the link between immigration and terrorism. The authors’ stance is clear from the very first sentence of the chapter: “There is no connection between immigration and terrorism.” While they do not, regrettably, support this statement with relevant facts, the authors do go on to discuss whether the crackdown on immigration has in fact made the United States safer. They refer to an eighteen-month review of post-September 11 immigration measures by the Migration Policy Institute, which states that the crackdown on immigrants has actually put the United States at greater risk. By diverting resources from in-depth intelligence work and undercutting the trust that law enforcement agencies have built with immigrant communities, post-September 11 immigration measures have made immigrants less likely to provide critical intelligence information out of fear of detention or deportation. In other words, the authors contend, these measures are providing the nation a false sense of security.

In the final chapter of the book, Guskin and Wilson look into the possibility of an open-borders policy for the United States. After an examination of Europe's opening its internal borders, the authors address whether freedom of movement would really work in the United States, and answer questions about how citizenship would be controlled and whether the current standard of living would collapse. Their final conclusion is that the potential advantages of an open border policy, such as saving billions in tax dollars by reducing bureaucracy, ending immigration enforcement, and eliminating illegal human trafficking, outweigh the risks.

The Politics of Immigration tackles questions and concerns about immigration in a straightforward manner. It asks difficult questions and answers them with hard facts. Citing a wide array of sources, from Immigration and Customs Enforcement documents to fact sheets and reports from non-governmental organizations, Guskin and Wilson present some very compelling arguments that confront common myths about immigration head-on. For example, they make it very clear that the belief that immigrants take jobs from the American people is completely unfounded, citing the general agreement among economists on the issue. They do not deny that immigrants compete with native-born workers for specific jobs. However, citing a study by the conservative Alexis de Tocqueville Institution, they persuasively argue that immigrants also buy goods that involve labor-intensive production, like clothes or food for their children, thus creating more jobs than they take.

In another myth-busting section, Guskin and Wilson cite a study conducted by the Commission on Behavioral and Social Sciences and Education showing that immigrants do not, in fact, burden U.S. taxpayers any more than native-born families do. Immigrants are, indeed, costing households headed by U.S. citizens about \$166 to 226 a year, mostly in public education and health expenses, as they tend to be young and pay less in taxes when they are raising children. In the long run, however, immigrants and their children generate more wealth than they may have absorbed, especially as they earn higher wages and buy more products and services. The authors also confront whether or not undocumented immigrants strain health services. They point out that administrators at Dallas and Fort Worth hospitals in Texas, where federal law requires that everyone entering a hospital emergency room must be

treated, say that a majority of their immigrant patients “have jobs, pay taxes, and have a better record of paying their bills than low-income citizens do.” They cite a study stating that, in fact, the highest emergency room usage was in Cleveland and Boston, cities with relatively low percentages of immigrants. Ultimately, Guskin and Wilson argue that many fears Americans have regarding immigrants come from the mere fact that they are labeled “illegal.” This leads to the enforcement of strict anti-immigration policies, which in turn perpetuate the “race to the bottom” in terms of wages and severe human rights violations in deportation processes. The authors, on numerous occasions, stress that the solution is *not* increased hostility towards immigrants. Instead, in order to address such a complex issue correctly, we must look to the root causes of immigration, such as poverty, war, and human rights violations abroad, and attempt to confront them head-on.

Although *The Politics of Immigration* serves as an effective tool to dispel common myths and misconceptions about immigrants, at times the authors seem to oversimplify certain issues. For example, Guskin and Wilson assert that “[s]ince stricter immigration controls do nothing to prevent terrorism, we can logically expect that reducing or eliminating such controls won’t make us more vulnerable to terrorist acts.” While this may be true, if Guskin and Wilson are attempting to persuade readers who are in favor of anti-immigration policies, arguments like these could easily backfire. Additional support for such arguments would help convince skeptical readers. Also, when addressing the issue of whether the United States would be flooded with immigrants under an open border policy, the authors suggest that things will balance out: “If so many people come that there aren’t enough jobs to go around, some people will leave.” This seems to be at odds with their assertions that immigrants are going to come to the United States despite enforcement of immigration policies, since “no matter how bad things get here, the situation in their county of birth is still worse.” The authors make up for this inconsistency, to a certain degree, by emphasizing the need to eradicate the root causes of mass migration, such as poverty and human rights violations. However, it does seem to take away some of the force from Guskin and Wilson’s initially persuasive arguments.

Overall, *The Politics of Immigration* is written in clear and straightforward language, and each chapter is very well-organ-

ized. The clarity and accessibility of the book lends itself to a wide audience, especially students. Someone with a serious academic interest in immigration law and policy, however, may find some of the blanket assertions of the authors to be too simplistic. For these readers, the utility of *The Politics of Immigration* would lie in the fact that the book cites a wide range of sources. Ultimately, it is a very good starting point for conducting research that seeks to probe further, in terms of substance, than Guskin and Wilson.

UN Peacekeeping in Civil Wars. By Lise Morjé Howard. New York, New York: Cambridge, 2008. Pp. xiii, 402. \$34.99 (paperback).

REVIEWED BY MATTHEW ZIEGLER

Lise Morjé Howard's book offers a fresh and thorough analysis of an oft-debated concept in international development: the causes for success and failure of United Nations (UN) peacekeeping missions during and after civil conflicts. Rather than hash out the same litany of theories that have dominated the field recently, however, Howard presents a new and compelling explanatory variable. She labels this variable "first-level organizational learning," or the adaptability of UN forces operating in a conflict zone to respond to conditions as they encounter them on the ground, and to adjust their strategies in carrying out the mandate given to them by the Security Council. As Howard shows through a series of ten well-crafted case studies, this phenomenon, while rooted in higher-level organizational and policy issues at the UN and situational conditions native to the conflict itself, nonetheless stands alone as a critical explanatory factor in the success of UN peacekeeping missions.

Central to Howard's thesis is the notion that, contrary to what many scholars argue, catch-all "situational factors" surrounding the civil conflict in question are not alone dispositive of outcome. Most prominent among these factors is the degree to which the parties to the conflict desire peace and encourage UN involvement: Generally speaking, those who do not desire peace will not cooperate with a UN peacekeeping mission, and those who do—and with whose consent the UN involves itself in the conflict—will cooperate. This is, of

course, a reflection of incentives. Warring parties that find themselves in a mutually damaging stalemate are most likely to consent to UN involvement, since they have little to gain from further conflict.

Indeed, this argument of incentives becomes quite difficult for Howard to rebut. Of the six cases cited in which she deems UN involvement to have been “successful,” five (all except Eastern Slavonia) involved parties that consented to UN intervention. Howard does not contend that this is an element unimportant to success. Instead, she merely argues that there is more to be learned, and that it would be a mistake to reduce success to this variable alone—particularly given that two of the “failed” missions, Angola and Rwanda, also ostensibly arrived with the consent of the warring parties.

A second common argument that Howard challenges claims that success or failure can be traced directly to the degree of interest in and consensus regarding the conflict within the Security Council. Through her case studies, Howard shows that, while consensus within the Security Council is indeed an important variable in a successful operation, too much interest can have a deleterious effect on a UN mission’s chances of fulfilling its mandate. She measures this interest by the number of resolutions passed and/or the amount of funding delegated to a particular conflict. It remains somewhat unclear, however, whether an inflated level of Security Council interest in a particular mission is a cause of failure or a symptom of the general controversy and difficulty that surrounds it. For instance, the two cases to which Howard attributes the highest levels of interest are Somalia and Bosnia. In each of these cases, extreme situational difficulties apparent *ex ante*, which could themselves make the mission more prone to failure, could have caused the Security Council’s willingness to pass resolutions and provide generous funding. Irrespective of the direction of causality, however, Howard shows clearly that conflicts that arouse (a) general consensus within the Security Council and (b) only a moderate degree of interest—as manifested by a combination of generous funding and few resolutions—tend to be most suited to successful intervention. Overly intense interest undermines the “Secretariat’s ability to implement mandates successfully.” Therefore, she argues, the Security Council functions best when it provides the necessary

means for peacekeeping missions to function, but does not interfere excessively with their operation.

Howard's explanatory framework ultimately incorporates all of the above factors—situational conditions, Security Council consensus, and moderate Security Council interest—as necessary but insufficient variables in the success of UN peacekeeping missions. As a keystone to this framework she introduces the concept of “first-level organizational learning,” which she defines as an “increasing ability to engage in multi-dimensional peacekeeping.” In essence, this concept relates to the degree to which members of a UN peacekeeping mission are able to (a) learn from the conflict environment in which they are operating, and (b) implement those lessons organically into their overall strategy for mandate implementation. Of course, a variety of situational and policy factors can contribute to both stages of this process. In the case of Namibia, for instance, Howard cites the mission's unusual openness to civilian interaction as a source of learning (an “integrative” organization); conversely, in other cases where UN deployments remained isolated from the general populations of the countries in which they were operating (“colonial” organizations)—either because of dictated policy or because of the conditions of the conflict—learning has been impaired.

Howard's argument here, while new, is not necessarily as radical as it may seem. Rather than denouncing the currently prevailing theories of peacekeeping success in civil conflict zones, she builds upon them by tracing their modes of operation to the actual sites where their influence is felt, the conflict zones themselves, rather than, say, at UN Headquarters. Instead of settling for “situational factors” as the irreducible causes of success or failure, Howard demonstrates how situational factors affect the types of interaction that peacekeeping missions may enjoy with the populations of their host countries. She then shows how these interactions affect a mission's ability to fulfill its mandate given the inevitable complications peacekeepers face in the field. Similarly, instead of resigning her inquiry to a simple assessment of the overpowering influence of Security Council interests and consensus, Howard illuminates the pathways by which cumbersome or insufficient Security Council involvement can impair a mission's flexibility to adapt to the immediate circumstances it faces when seeking to fulfill its mandate. For example, a Security Council that is

wracked by conflict or controversy may be less willing to allow a deployment to take proactive military measures as it sees fit—a suppression of first-level learning—as in Rwanda.

This situational/first-level learning connection courses through Howard's analysis, often turning up in arguments that, at first blush, may not seem to require such additional explanation. For instance, Howard identifies as a precondition to first-level organizational learning the availability of ample quantities of "well-trained, quickly deployable troops." Intuitively, this seems like it would be a condition of success in general, but why? The answer lies in the "window of opportunity" for positive engagement with the parties to a conflict that opens immediately after they have given their consent for UN intervention. In cases where troops for a peacekeeping mission cannot be mustered quickly enough to meet agreed-upon deadlines, conflicting parties tend to lose interest and old incentives to fight reemerge. When peacekeeping missions arrive under these circumstances, the conflicting parties' trust has already been lost, and the types of interaction between them and the mission that are most conducive to first-level learning are thereby foreclosed or impaired. Thus, Howard illustrates the importance of first-level learning as the mechanism of success that lives or dies according to larger issues of the UN's macro-organization and politics, such as the mustering capabilities and interests of member states.

UN Peacekeeping in Civil Wars succeeds, by way of careful analysis and meticulous historical treatment, in introducing an insightful new element to the traditional framework by which UN peacekeeping success is evaluated and explained. In doing so, Lisa Morjé Howard brings this type of analysis one step closer to the ground by identifying a powerful intermediate mechanism connecting higher-level organizational failures and situational obstacles to observable outcomes in the field.

Out of Mao's Shadow: The Struggle for the Soul of a New China. By Philip P. Pan. New York, New York: Simon & Schuster, 2008. Pp. xvi, 349. \$28.00 (hardcover).

REVIEWED BY AARON SLAVUTIN

Phillip Pan, a correspondent for *The Washington Post* and the newspaper's former Beijing bureau chief, draws on exper-

iences from his tour in the People's Republic of China from 2000 to 2007 to present an anecdotal critique of its current political environment in *Out of Mao's Shadow*. The author argues that free markets do not necessarily create free societies, providing examples of the different ways China has been able to resist demands for political reform despite the country's increased prosperity and global respect. In each chapter the author presents the stories of individuals as illustrations of how the government suppresses attempts to unearth elements of China's recent past and counters the efforts of individuals advocating counter-Party causes. The book consists of a string of demonstrative stories, each tale providing insights into the smothering politics of modern China, allowing the reader to make her own judgments on such processes.

The book is divided into an introduction, eleven chapters and a conclusion. The introduction sets the stage for the remainder of the book by contrasting the jubilant, impromptu revelry in the heart of Beijing—Tiananmen Square—following the 2001 announcement that Beijing would host the 2008 Olympic Games with the massacre in the same place a dozen years earlier. This contrast naturally raises the questions that the remainder of the book seeks to answer: What happened to the demands for political change? How has the Party regained its footing? How long can it hold on? The author contends that the thriving economy and the public's rush to get rich answer the first question. The second is also answered by the country's increased economic prosperity, which allowed the government to reinvent itself, win friends, buy allies, and forestall demands for democratic change. Pan does not directly answer the third question, but suggests that control of the country's future will either be in the hands of the entrenched elite of the government who are fighting to preserve their privileged position in the political system, or in the ragtag collection of individuals fighting to build a more open and tolerant China.

The first four chapters suggest that the kind of democratic transition envisioned by the Tiananmen protestors will not come about as a result of politicians, but will depend on the efforts of those who refuse to forget the country's past, since the Party's ability to maintain its grip on China's future partially depends on its ability to re-write the past in a way that justifies its rule. Pan safely contends that the public is begin-

ning to recover the truth and thoroughly supports this contention by engagingly relaying the stories of several individuals dedicated to de-sanitizing the version of the past available to the public. Chapters II and III present an example of the type of person Pan sees as a potential source for democratic transformation: Hu Jie, a documentarian. Hu was fired from the Central Film Bureau for consistently documenting controversial subject matter. Nevertheless, shortly thereafter, he released *Searching for Lin Zhao's Soul*, hoping to draw attention to an inspiring figure who had been erased from history because of her undesirable political behavior. Hu succeeded: His film generated a significant following. Pan ends his discussion of Hu with a rare moment of recognition of the progress the Party has permitted: Hu notes that had he produced this film at the time of Lin Zhao, he would have been shot, whereas now he could sit and discuss his views and decisions with state agents.

The following chapter details the Chongqing cemetery and its caretaker, Zeng Zhong, another figure seeking to preserve China's less-known past. The government, according to Pan, was remarkably effective at preserving the Party apparatus by presenting the chaos of the Cultural Revolution as a warning of the chaos that could follow democratic reform, rather than as a symptom of one-party rule. Because so many had been taken in by the Revolution's rhetoric, participated in the violence, or stood by in silence, it was easier to forget about the Revolution than to talk about it. But some, like Zeng, were committed to remembering it. Pan utilizes Zeng's story to show an alternative way in which some in Chinese society process the memory of an event as traumatic as the Cultural Revolution. He suggests convincingly that examining what happened too closely could be divisive, but erasing it or forgetting it completely would be dangerous.

While the first four chapters depict the way individuals have raised the public's awareness, the next three implicitly suggest that awareness may not be sufficient to create significant change since unscrupulous individuals control, and the business elite depend on, the Party. In Chapter V, Pan contends that one of the most offensive and hypocritical aspects of the Communist Party is its attempt to present itself as a champion of the working class. The kind of capitalism adopted in China is not restrained by democratic institutions and, accord-

ingly, has produced grim work conditions, as Pan demonstrates by highlighting the 2002 labor protests in Anyuan province. The government responded to these protests with force, but also slightly increased welfare benefits to laid off workers nationally. Though this appears to be a success story for the working class, a lead organizer regretted not holding out for longer, viewing it only as a victory for the Communist Party.

Chapter VI challenges the West's assumption that the growing ranks of private entrepreneurs in China represent a force for democratic change. While there are some entrepreneurs who might prefer a more lax government in order to assure a political environment conducive to commerce, there are many who support and depend on the authoritarian system. Chen Lihua, China's sixth wealthiest person and the country's richest woman, with assets of more than \$550,000,000, is an example of the latter. Her success, like that of many of her peers, came as a result of her recognition that the best way to secure advantages was by winning the favor of Party bureaucrats. Pan peppers her story with examples of bureaucratic favor as a buttressing force for China's political superstructure.

As an example of the measures the Party elite will take to solidify their rule and the extent to which they are convinced of its legitimacy, Pan recounts the actions and beliefs of Zhang Xide, a Party Secretary. Zhang deployed police to Wangyang Village to confront peasants who complained to him about unfair taxes. When the peasants were not there, the police destroyed their homes and poisoned their harvests. Zhang holds that the Chinese masses have an insufficient awareness of the law to restrain themselves adequately. Accordingly, he sees himself as maintaining order in the country. Though he recognizes some of the country's superstructure needs reform, in the end he maintains that China is not suited for a multi-party democracy because free elections would lead to great disorder.

The last four chapters present struggles that highlight the lengths to which the Party will go in order to prevent being incriminated. Chapter VIII depicts the shameful HIV crisis of the early 1990s in China, when hundreds of thousands of impoverished farmers in Henan Province were infected after hospitals injected them with mixed blood so they could donate their blood more frequently. The government responded to this crisis by remaining silent, arresting activists who chal-

lenged the practice, and restricting reporting on AIDS in state media. Similarly, as Chapter IX describes, when confronted with SARS, the government published an article that was a blatant lie, entitled “Beijing Effectively Controls Imported Atypical Pneumonia.” However, Jiang Yanyong, a doctor, broke rank and sent information regarding the extent of the outbreak in Beijing to news agencies internationally, leading to pressure on Party cadres. Once the government acted openly and directly to remedy the outbreak, the virus quickly abated. The Party had to acknowledge publicly that it had lied about a pressing matter of public health. The SARS outbreak showed that one man could challenge the one-party state and prevail. Nevertheless, several weeks later the Party placed Jiang under “administrative detention,” where he remained for several weeks before being returned home.

Addressing China’s questionable legal processes, Pan demonstrates in Chapter X that the Party exercises firm control over the judiciary and that the word of a Party boss trumps that of any law, judge or prosecutor. Judges are appointed by the Party and preside over cases, but often don’t have the authority to decide them. Instead they can make a recommendation to a Party committee that decides the verdict. In a survey, less than five percent of judges said they would rule according to the law if it conflicted with the instructions of their Party bosses. And as Chapter XI illustrates, when confronted with a controversial case they will turn a blind eye to injustice. Chen Guancheng, a lawyer, was arrested because he attempted to challenge the vagaries of the one child policy, namely the forced sterilizations of middle aged couples who already had two children. The court that was supposed to hear the case brought on behalf of Chen changed the hearing date at the last minute and the lawyers meant to represent him were arrested on trumped up theft charges.

Given the disappointments and uphill battle faced by those willing to take action for reform, it is not surprising that Pan ends on a somewhat pessimistic note. Ultimately, the epilogue emphasizes the primary theme of the book: While Chinese society races forward, its political system is stuck in the past, with Party officials struggling to preserve their power and privileges. Party officials can determine who succeeds and who fails in the new capitalist economy, effectively preventing the emerging class of businessmen and entrepreneurs from

supporting political change. While there are those, like the individuals discussed above, who are willing to push for political change, many in China choose not to concern themselves with politics. They recognize that the Chinese Communist Party will not surrender power without a fight and so they would rather give in to the distractions and temptations of a booming economy than face the often severe consequences of challenging the state. Through their stories, Pan puts a human face on this political stalemate.

International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation. By Victor Peskin. Cambridge, United Kingdom: Cambridge University Press, 2008. Pp. xxi, 272. \$85.00 (hardcover).

REVIEWED BY ADAM ABELSON

The United Nations (UN) created the International Criminal Tribunals for Rwanda (ICTR) and the Former Yugoslavia (ICTY) to bring to justice individuals suspected of war crimes, genocide, and crimes against humanity. In that capacity, they have tried some of those most responsible for the atrocities in the Balkans and in Rwanda. Though the Tribunals embody lofty goals and have legal primacy over states, they depend on the cooperation of targeted states, such as Serbia, Croatia, and Rwanda, to turn over suspects and provide access to evidence and witnesses. Since the Tribunals' investigations have sometimes implicated those countries' leaders, that cooperation has not always been forthcoming. In *International Justice in Rwanda and the Balkans*, Victor Peskin examines the complex politics of state-tribunal cooperation, highlighting the political maneuvering underpinning the Tribunals' role in international criminal law.

Throughout the text, Peskin takes a comparative approach to illustrate how the interactions between the Tribunals and targeted states are best understood as "trials of cooperation," in which the chief prosecutors put the states themselves on trial for violations of their legal obligation to comply with tribunal orders. In these "trials," the chief prosecutors have become chief strategists, chief diplomats and chief negotiators, roles in which they have to bring political pressure to bear on targeted states in order to secure cooperation. Peskin

examines these international political struggles and negotiations, as well as the political struggles within targeted states that have arisen when the Tribunals indict suspects whom sectors of society continue to support. Based on hundreds of interviews with tribunal officials and other observers, Peskin ably portrays the hidden contours of the proverbial iceberg. His analytical framework highlights four key themes.

First, Peskin demonstrates that the impact of the Tribunals on international law and international relations is far more nuanced than commonly believed—while limited in certain respects, their impact is nonetheless significant. Many human rights advocates champion the Tribunals for bringing human rights violators to justice and enforcing international law. However, Peskin demonstrates that the road to international justice is a tortuous one, defined and complicated by the realities of international politics. Moreover, the Tribunals have at times caused short-term political destabilization, particularly in the Balkans. Thus, the manifestations of their legal processes are sometimes less “benign” than some human rights advocates claim. Nonetheless, Peskin criticizes as similarly narrow-sighted the *Realpolitik* notion that the Tribunals are irrelevant or impotent. Despite political obstacles, the Tribunals have repeatedly secured state cooperation where such cooperation was not consistent with the state’s narrow self-interests. This cooperation evinces the viability of the Tribunals’ “soft power.” While targeted states may not face immediate legal consequences from non-cooperation, the Tribunals’ capacity to leverage their “perceived legitimacy as guardians of justice and accountability” to shame recalcitrant states reveals substantial power beyond that conferred by the UN Security Council.

Second, Peskin defines the Tribunals as “new experiment[s] in international law,” not simply as instruments of law but also as dynamic political entities. Their ultimate success in developing international criminal law depends on the outcome of power struggles between states, institutions and individuals. As such, the common conception of the Tribunals as pure judicial institutions is shortsighted. The UN, which created both the ICTY and ICTR and granted them jurisdiction to prosecute genocide, war crimes, and crimes against humanity, also granted them legal primacy over national governments. As a matter of international law, the respective countries are

bound to comply with the Tribunals' directives. Yet, as a practical matter, the governments of Serbia, Croatia, and Rwanda have repeatedly demonstrated that absent political incentives, their international obligations do not carry the weight needed to independently induce their cooperation.

As dynamic political institutions, the Tribunals' power to carry out their mandates effectively depends on the convergence of three political forces. First, international actors, particularly Western powers, determine the extent to which public shaming by the chief prosecutors carries consequences for targeted states. Absent decisive intervention in the form of persuasion, incentives, or coercion by such international actors—such as pressure by the United States on Serbia to extradite Slobodan Milošević to the Hague—targeted states rarely cooperate with the Tribunals in any meaningful way. Second, the domestic politics of targeted states also constrain the Tribunals' and international actors' capacity to induce cooperation. For example, when domestic public support of Croatian Prime Minister Ivica Račan waned in late 2002, the government demonstrated far less willingness to cooperate with the ICTY than it had when the government enjoyed more widespread domestic support. And third, the chief prosecutors must effectively exercise the Tribunals' soft power. They have a range of diplomatic tools available, both adversarial—such as public shaming and private negotiation—and conciliatory—such as timing indictments to minimize domestic political fallout and deferring some cases to domestic courts. The Tribunals' capacity to employ these tools strategically shapes their ultimate success.

A third key theme of Peskin's analysis traces the clashes between the Tribunals and states to the Tribunals' emphasis on neutrality. Whereas the powers that won World War II carried out the Nuremberg and Tokyo war crimes tribunals, the UN has mandated that the ICTY and ICTR prosecute individuals from all sides of the armed conflicts suspected of committing serious violations of international humanitarian law or genocide. As a result, the Tribunals have had to secure state cooperation when war crimes suspects belong to a government's own ethnic, national or political group. It is in these contentious instances that the Tribunals' political role becomes most salient. The Tribunals' neutrality also leads states to create images of themselves as victims, since such characterization

provides political strength to governments. For example, the Tutsi-led Rwandan government has sought to portray itself as a victim of the genocide, rather than as a unity government of Hutu and Tutsi, and has argued that the UN—and thus the ICTY—has no moral right to prosecute Tutsis since it failed to intervene to prevent the genocide in the first place. Similarly, in the early years of the ICTY, the Serbian government pointed to the disproportionate number of Serbs among ICTY defendants as purported evidence of that Tribunal's bias.

As a final key theme, although many people conflate the ICTR and the ICTY, Peskin illustrates that many of the lessons of state cooperation surface only in light of the contrasts between the two Tribunals' experiences. Most notably, the ICTR has had far less success in gaining Rwanda's cooperation in prosecutions of Tutsis than the ICTY has had in securing the cooperation of Serbia and Croatia in prosecuting their own citizens. While the Rwandan government has cooperated with the ICTR in prosecutions of Hutus, it has been far more obstructionist when the ICTR has sought to prosecute Tutsis suspected of atrocities during and after the 1994 genocide. When ICTR Chief Prosecutor Carla Del Ponte announced that she was investigating atrocities against civilians committed by Tutsi Rwandan Patriotic Front army officers, she found herself in a contentious struggle with the Rwandan government that at times threatened the very survival of the Tribunal. As a result, for the Rwandan government that came to power after the genocide, "the normative drive for justice" has been inextricably linked to "material considerations of power."

While Peskin comprehensively analyzes the political and diplomatic role of the chief prosecutors, future research should expand upon Peskin's comparative analysis to examine the role of the tribunal judges themselves. Such research should seek to distinguish between the judges and the prosecutors, a distinction that is sometimes lost in the book, which at times implies that the Tribunals are synonymous with their chief prosecutors. To be sure, the judges would have no cases were the prosecutors unable to induce state cooperation and thereby produce and try defendants before the judges. But, as Peskin argues, the dynamics of state cooperation do not end when a particular suspect arrives in the custody of the Tribunals. For example, in *Prosecutor v. Barayagwiza*, the Appeals Chamber found prosecutorial misconduct, and as a remedy or-

dered unconditional release of the defendant. The decision caused uproar in Rwanda, where the government saw the release of a high-level *genocidaire* as a travesty, despite the due process justifications for the decision. The Rwandan government then announced a suspension of all cooperation with the tribunal. The Appeals Chamber, citing “new facts,” reversed its decision and ordered a new trial instead of release. The Appeals Chamber’s reversal of its own decision seems to illustrate the depth of Peskin’s thesis, and to reveal the importance of understanding the influence of politics on judges dependent upon tribunal-state cooperation.

International Justice explicates two layers of “trials” that arise out of the work of the ICTR and the ICTY: trials of individual defendants based on individual guilt and trials of states based on their level of cooperation with the Tribunals. As Peskin argues, the Tribunals’ central objective is to “foster deep cooperation and encourage the internalization of the norms of justice while winning the battle for compliance with defiant states at the same time.” In evaluating the Tribunals in those terms, Peskin recognizes a third “trial,” namely that of the legitimacy and sustainability of international criminal courts. International criminal tribunals remain on trial, and the jury of public opinion is still “out” as to the Tribunals’ long-term role as international institutions. Peskin’s thorough, well-supported analysis is crucial for a full understanding of the ICTR and the ICTY, and it provides lessons applicable to the International Criminal Court and other international criminal tribunals, such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia. His analysis demonstrates how important it is for international lawyers to speak the language of political science, particularly in the relatively nascent area of international criminal law. In so doing, *International Justice* carries us much closer to a realistic conception of the tribunals.

The Institutional Foundations of Public Policy in Argentina. By Pablo T. Spiller and Mariano Tommasi. New York, United States: Cambridge University Press, 2007. Pp. xiii, 237. \$84.18 (hardcover).

REVIEWED BY ROBERT E. O'LEARY

The 2001 sovereign debt default in Argentina and the unprecedented economic crisis that ensued prompted many economists to speculate as to its root causes. In *The Institutional Foundations of Public Policy in Argentina*, two economists utilize novel variations on game theory to dissect public policymaking in their country of birth. Through empirical analysis based on their framework, Pablo T. Spiller and Mariano Tommasi effectively demonstrate how Argentina's public policy environment has been ineffective in implementing high quality policies. They persuasively argue that political instability in Argentina has been the root cause of the country's failure to sustain effective economic policies over significant periods of time. Yet in spite of the authors' clarity of analysis and innovative framework, they ultimately fail to provide suggestions for how to fix the problems that they so astutely identify.

In Part I, the authors explain the underlying assumptions of their economic model for predicting whether a political environment will produce policies that are volatile, rigid, or of high quality. This is the most economically and mathematically technical section of the book. However, there is plenty for the non-economist to glean from the material. The authors imply that a given policy may induce different outcomes, "depending on aspects of the country's institutions, history, and policy-making capabilities." Key factors in determining the quality of outcomes are institutional credibility, adaptability, coherence, coordination, and the quality of implementation and enforcement. Policymaking processes are exceedingly complex and, therefore, any analysis focusing on only a few institutional characteristics provides only a fragmentary solution. Spiller and Tommasi argue for an approach taking into account the particular political circumstances, time frames, and overall characteristics of the country being analyzed. They "model policy as a noncooperative game among political actors bounded by contracting moments." The model assumes that the game is populated by self-interested

rational actors. Under this view, actors who are sufficiently far-sighted produce "first-best policies." Moreover, political cooperation leading to effective public policies becomes more likely when the short-term payoffs from noncooperation are low, there are fewer political actors, the system is transparent, and there are strong delegation and enforcement technologies (the executive appropriately delegates responsibility and enforces regulations and law). The authors emphasize that bad transaction environments are more reactionary to political shocks, which may lead those in power to create rigid rules and poorly coordinated or incoherent policies in attempts to prevent opportunism by opponents.

Part II utilizes the framework developed in Part I to analyze political institutions and policymaking in Argentina. Spiller and Tommasi show that Argentina's institutions do not facilitate the development of consistent policies or capabilities over time. They demonstrate that Argentina's key political actors tend to have short-term political horizons and the wrong incentives, and that Argentina lacks institutions that would provide the "missing institutional glue to facilitate intertemporal coordination and the enforcement of agreements." For example, as noted below, each new executive virtually ignores the underpaid and under-skilled permanent bureaucracy, and instead hires a cadre of political loyalists and relies almost entirely on this parallel bureaucracy for executive regulation and administration (which is replaced in full by each new president). The authors argue that Argentina's institutions are uncoordinated, incoherent, at times overly rigid, and systematically unstable, leading to low-quality policies and a lack of incentives to invest in long-term capabilities.

To begin, the authors analyze the characteristics that result in a weak Congress. Argentine legislators are overly beholden to their provincial political bosses, do not play an active role in policymaking processes such as the budget, and belong to too many committees, resulting in a lack of expertise. Other than the presidential office, governors own the most important position in Argentina. This is due in large part to power grabs perpetrated during periods of political instability and regime change. Party bosses in the provinces create the local party list, which forces those in Congress to maintain good relationships with them. Most Argentine legislators do not even attempt to run for a second term. The influence

of their parties leads them to seek positions in the provincial government immediately after serving in the national legislature. Furthermore, although Congress has an important constitutional role in the budget process, in reality, much of that power has been usurped by the executive. Most of Congress's role is relegated to attempts to acquire pork barrel funding for their province. Finally, the authors emphasize that the committee system in Argentina's Congress results in the over-extension of individual legislators because it incentivizes membership on many committees and results in lack of specialization.

Next, the authors examine Argentina's federal system and conclude that the provinces hold far too much sway on the national stage. Argentine provincial bosses took advantage during volatile political periods and developed deals to gain more seats in Congress and more tax revenue for their province. With their overrepresentation in Congress, Argentina's least populated provinces have garnered excessive amounts of federal tax revenue, resulting in a situation where some pick up as little as 30% of the tab for provincial expenditures. Thus, provincial political actors feel unconstrained by budgets and systematically overspend as they find politically expedient, with the expectation that the federal government will bail them out. In sum, national legislators tend to represent provincial political powers, not specific groups of citizens. Furthermore, provincial citizens tend overwhelmingly to reelect the bosses of those "clientelistic machines." Incumbent governors are rewarded not according to the quality of their policies but according to their ability to obtain as much pork as possible from the central government. The majoritarian problem created by the overrepresentation of the least populated provinces leaves the urban segments of the population underrepresented and further undermines the policymaking arena.

Spiller and Tommasi then move on to the Argentine Supreme Court, noting that the Court historically has had some degree of success in constraining executive power. However, during periods in which the executive holds a greater ability to effect change on the Court, either by altering its size or through impeachment, the Court's willingness to check presidential power decreases substantially. The effectiveness and ingenuity of Spiller and Tommasi's models are most evident in this chapter, as they carefully control for the relevant factors

and empirically evaluate the Court's effectiveness at constraining executive power. The authors dig deep, acknowledging that judicial independence cannot be measured solely by how often presidential action was overturned. Instead, they search for decisions, regardless of the political inclinations of the Court's justices, at the time of which the executive had the power to punish the Court by impeachment or by altering its size. They find that as executive power to punish increases, the Court's lenience towards executive action does as well. The turnover of Supreme Court justices in Argentina is remarkable in comparison with the U.S. Supreme Court. Although Argentine Supreme Court justices are appointed for life, their average tenure between 1960 and 1990 was 4.4 years, while in the United States it was 18.8 years. The authors argue that their results say more about the political environment in which the Court operates than about the constitutional validity and effectiveness of the Court itself.

Examining the bureaucracy of Argentina, Spiller and Tommasi emphasize that its structure lacks incentives to attract highly skilled bureaucrats, which motivates the executive to utilize a "parallel bureaucracy" to accomplish its goals. Argentina's bureaucracy pays little and lacks a well-structured career track. Congress, a poor policymaker itself, lacks the incentives to motivate and monitor the bureaucracy. Instead, the executive, realizing the ineptitude of the permanent bureaucracy, has created a parallel bureaucracy of contractors loyal to the executive's party. Turnover is tremendously high, as the president has remained in office an average of only 2.3 years since 1930. As such, each new executive populates a parallel and loyalist bureaucracy to accomplish its short-term policy goals and ignores the permanent bureaucracy almost entirely. The parallel bureaucracy also enjoys more prestige and higher salaries, further undermining the permanent bureaucracy's legitimacy.

Finally, the authors apply their models to four recent policymaking processes in Argentina. They argue that the most notable characteristic of public policies in Argentina is their instability. Rather than blame the content of economic policies, they blame "the characteristics of policies and policymaking, including policy instability, inadequate enforcement, inadequate commitment capacities, and an inability to effect necessary adjustments" for the repeated policy failures of the

Argentine government. This instability weakens the credibility of Argentine institutions in the eyes of international economic actors, making them far less likely to invest and create jobs in a sustainable manner. Spiller and Tommasi use this chapter to explicate the instability and ineffectiveness of Argentine policy by examining recent international trade negotiations, social policy, reform of the pension system, and privatization and regulation of utilities.

The book ends with a three-page chapter entitled “Concluding Remarks.” For all their impressive analysis of the state of Argentine democracy, economics, and the system that created it, Spiller and Tommasi brusquely avoid any suggestions as to how to improve that system with a simple conclusion: “Our short answer is that there is no short answer.” As interesting and effective as their models are for dissecting Argentina’s federal system, the book falls short with its lack of suggestions for improving the country’s policymaking arena. Perhaps the authors did not wish to contradict their emphasis on the complexity of policymaking and their declarations that any focus on acute institutional solutions would be overly simplified. But following such an innovative approach to analyzing the structure of modern policymaking, their lack of any attempt to suggest ways to improve the political situation in Argentina is disappointing, a silence perhaps symbolic of the economic quandary in which the state finds itself.

Judging Russia: Constitutional Court in Russian Politics, 1990-2006. By Alexei Trochev. New York, New York: Cambridge University Press 2008. Pp. xii, 371. \$90.00 (hardcover).

REVIEWED BY YULIYA LAPITSKAYA.

Today, decisions issued by the Supreme Court of the United States are relatively well-known both domestically and abroad, even though the Court faced much resistance from states and other institutions in its early years. Some scholars argue that the rise of and respect for the U.S. Supreme Court’s power represents an excellent example of juristocracy (loosely defined as the transfer of unprecedented amounts of power from representative institutions to independent judiciaries). In contrast, in his book, *Judging Russia: Constitutional Court in*

Russian Politics, 1990-2006, Alexei Trochev examines how, despite the Russian Constitutional Court's (RCC) eventual acceptance by formerly defiant regions, its (ultimately) quite successful institutionalization has not resulted in juristocracy. Trochev points to statistics that indicate that citizens of the Russian Federation do not know much about their federal Constitutional Court. More importantly, unlike various decisions of the U.S. Supreme Court, decisions of the RCC do not have a large impact on the lives of average Russian citizens. This is in large part due to the Court's lack of independence, its nontransparent decisionmaking process, and frequent non-implementation and under-enforcement of its judgments by the executive and legislative branches and by other courts. But the author also examines ways in which the RCC (and its predecessors) endeavored to pursue their own agenda and often "fought" to ensure compliance with their rulings, thereby attempting to reform Russia's governance. Noting this constant "feedback dynamic" between "the three key components of judicial power"—the Court's origins, jurisprudence, and (non)compliance with the Court's decisions—Trochev argues that this constant feedback brings nonlinearity to the process of the RCC's judicial empowerment, thereby impeding the formation of a true juristocracy in Russia. In light of the current international discomfort with Russia's foreign policy and the country's obvious quest for hegemony, the book's particularly topical analysis invites readers to examine the nature of Russia's internal institutions—specifically its federal courts—and whether any of them have any potential for true independence from the powerful state.

Judging Russia consists of nine chapters that, in the aggregate, attempt to find keys to Russia's "black box" of judicial empowerment. Inside that "black box," Trochev hopes to uncover "when, how, and why judicial review is likely to flourish or fail." Given the sheer breadth of this inquiry, the author is careful to make his book as "user-friendly" as possible by laying out his basic assumptions in the first chapter and by explaining the importance of studying Russian courts generally. The author then proceeds to elucidate "keys" in the second chapter of his book dealing with the origins and design of Russian courts, their judgments, and (non)compliance with their opinions. However, Trochev does not embrace the traditional temporal sequence of these variables, arguing that judicial empow-

erment is instead facilitated by the dynamic relationship among them, thereby resulting in nonlinear trajectories of judicial empowerment. Thus, the originality of his argument stems from his realization that it is impossible to reveal the contents of Russia's "black box" (containing the trajectory of Russian courts' empowerment) by following the conventional path of inserting the three "keys" successfully. Instead, four additional factors—uncertainties present during the change of political regimes (including changes that occurred after the break-up of the USSR), the unstable policy preferences of the new ruling elites, judicial behavior, and a high degree of non-compliance with court decisions—all work to facilitate Trochev's nonlinear approach to judicial empowerment with "unintended" consequences.

Trochev explores the first of these factors, design/origins, in greater depth in his third chapter by tracing the origins and "fine-tuning" of constitutional judicial review in the late USSR (1988-1990) and in Russia (1990-2007). In Chapters IV and V, Trochev examines Russian constitutional review "in action" and how, with time, successive constitutional courts were able to extract their nonlinear judicial empowerment from the constant feedback among their institutional setups, jurisprudence, and (non)enforcement of their judgments. This process of judicial empowerment is different from a more common temporal model of judicial process, according to which, upon its foundation, a court begins issuing judgments, which are then enforced. The main variable that distinguishes the two theories is the involvement of "the powers-that-be" and their attempts to influence the impact of courts by changing the values of the three aforementioned variables. Trochev thus argues that the second RCC "succeeded" in its "empowerment" more than its predecessors because it found a workable way to cater to the "powers-that-be" while simultaneously pursuing its own agenda in the areas of separation of powers, federalism, and individual rights.

Trochev focuses on the third process—(non)implementation of constitutional judgments—in Chapters VI and VII. He concludes that the RCC's influence has been limited in many respects in large part due to other Russian "powerbrokers'" refusal to implement the Court's decisions. Chapter VIII is then used to flesh out the (non)implementation process further by discussing the "war of courts" (i.e., refusal of other

courts to comply with the Constitutional Court's decisions) and politicians' attempts to tinker with judicial tenure in order to ensure a loyal bench. Finally, Trochev concludes by summarizing his main arguments and adding further insights into the worldwide process of juristocracy. Above all, he appears to remain hopeful that the RCC and other "developing" constitutional courts around the world can find a way to attain independence and connect with ordinary citizens.

Trochev's two overarching arguments ring true and are relatively easy to grasp, even if the reader lacks in-depth knowledge of the subject matter. Specifically, Trochev proposes that rulers generally do not object to the creation and existence of constitutional courts as long as these courts (1) somehow benefit the new rulers and (2) do not greatly interfere with public policies. In line with this reasoning, Trochev then proposes that each subsequent Russian Constitutional Court fared better in its judicial empowerment specifically because each successive court sought to avoid adjudication of contentious cases (because doing so could result in their total loss of power) and instead focused on cases that did not involve any obvious "political" questions. This approach allowed successive constitutional courts to focus their own agendas in areas that were of no particular interest to respective administrations.

For example, the second RCC (1995-2007) intentionally chose to devote a large portion of its docket to cases involving separation of powers, federalism, and individual claims. According to the author, the Putin administration did not object to the RCC's adjudication of individual claims because access to the Court kept Russian citizens from filing claims with the European Court of Human Rights instead. This practice allowed the Russian regime to cite the RCC's judgments in support of Russia's compliance with human rights and other international norms. More importantly, the RCC's pro-federalism decisions were in line with the Putin administration's agenda to unify the Russian regions under one supreme federal government. Trochev discusses one such infamous decision, *Chechnya*, in several of his chapters because it went as far as authorizing the use of federal troops to prevent the secession of Chechnya under the clout of federalism.

While these arguments seem convincing, one wonders why Trochev puts so much faith into the genuineness of the second RCC and its decisions in areas of separation of powers,

federalism, and individual rights. Trochev faults the Putin administration and Russian institutions for frequently failing to comply with all of the RCC's progressive (or, rather, internationally compliant) judgments. At the same time, he almost tacitly praises the Court for its slow but steady progress towards greater judicial empowerment in some jurisdictions by catering to the wishes of the government apparatus in others. However, Trochev does not explicitly entertain the possibility that the RCC itself and its judges willingly played and play into the Russian politics by "painting" the right face for the Russian Federation on the international arena. A fairly convincing argument can be made that some of the RCC's individual human rights judgments are a clear example of this "technique" and that they do not truly represent the RCC's attempt to push for its own agenda, as Trochev wants us to believe. One also cannot help but wonder whether the fact that Trochev personally interviewed several of the Court's justices and clerks (and openly referred to them in his book) could have affected the presentation of his narrative about the current RCC and its justices. All of these issues are particularly intriguing and topical in light of the fact that Russia currently is the "absolute leader" among countries subject to the ECHR's compulsory jurisdiction in terms of human rights complaints filed against it. While Trochev acknowledges that the Putin administration might have been tolerant of the RCC's adjudication of individual claims to prevent filings of additional complaints with the ECHR, he does not fully discuss why and how the RCC's agenda with respect to this issue was different from that of the Putin administration.

Putting these minor criticisms aside, however, the book is a must-read for anyone who wants to learn more about how courts, and the RCC in particular, fit into the overall governmental structure of the Russian Federation. It also caters to a much wider audience: Anyone who is interested in the study of judicial review, separation of powers, or even federalism would benefit from reading the text. The author draws on a wide array of both Russian publications and personal interviews—materials that are not always accessible to a native Russian, let alone to anyone who does not speak the language or reside in Russia. Trochev also employs useful comparisons between the Russian judiciary and those of other countries, including the United States and Germany. Moreover, he skill-

fully balances dry historical narratives with his discussions of the RCC's decisions, the facts or issues of which should be familiar to any contemporary reader given the relative novelty of the Russian Constitutional Court. As Trochev writes, *Judging Russia* "attempt[s] to explain the growing pains of Russian constitutional review in the past decade," and the reader is likely to walk away satisfied that the author hit his mark.