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The Health of Nations: Society and Law beyond the State. By Philip Allott. New York: Cambridge University Press, 2002. Pp. vii, 436. \$30.00 (paper).

It is the rare scholarly work that not only announces its intention to change the direction of intellectual discourse in a field, but also succeeds in overcoming this self-imposed challenge. In *The Health of Nations*, Philip Allot provides such a book, advancing a new paradigm for the evaluation of international law. Allot argues that international society must undergo a fundamental revolution of ideas, akin to those that have produced rights-enabling societies on the national level. He further contends that the current model of international relations, which sanctions most acts of cunning and deceit by states against other states, must be transformed into a model in which the fundamental dignity of the individual is recognized and protected by international law.

Although similar arguments have been made before, what distinguishes *The Health of Nations* from other works is the sheer scope of the book's analysis. Allott is not content merely tracing the modern development of the *status quo*; instead, he chooses to present and examine larger trends, often extending back a millennia or more. This analysis is accompanied by a remarkably broad interdisciplinary approach, drawing on psychology, sociology, philosophy, and legal thought. Allott provides a holistic appraisal of the development of international law, which lends his theories an air of inevitability.

Allott begins with an examination of the phenomenon of the law and the course of its development throughout Western history. He describes the law as one of the most important inventions of humans, as it captures the rules of the past and applies them in the present, while allowing flexibility by ulti-

mately looking towards the future. As Allott notes, the existence of the law “outside of time” makes it a remarkable glue in both preserving the social values of a community and creating a sense of “one-ness” amongst its members.

With this general background, Allott examines the current development of international law. He notes that those seeking a more humane international system, premised on universal norms that protect individual dignity, face monumental challenges. Chief among these, Allott posits, is the lack of any truly global society; individuals are defined by their relationships within a variety of societies, ranging from their families to their nations, but it is rare for individuals to identify with a larger, all-pervasive, global community. Allott suggests that in the absence of such a community, international institutions will ultimately be constrained by the leaders of nation-states. He asserts that the democracy and legitimacy of supranational bodies are intimately tied to the constituencies those bodies are able to represent. He argues that current institutions, which seek to establish global governance, will lack legitimacy for that project in the absence of any true global community of individuals. Allott illustrates this fear within the context of the International Criminal Court, warning that without the requisite sense of community, the Court will always be fighting to establish its legitimacy.

In addition to discussing the need for a new global awareness of “human society,” Allott discusses the need for a heightened awareness of European identity as a critical component of the European Union project. Allott unleashes harsh criticism against European leaders, including national officials and E.U. commissioners, lamenting their inability to foster a truly European community. He reminds them that this sense of pervasive society is a prerequisite for any effective institutional structure, and worries that without such foundations the Union will ultimately be doomed.

The rigorous scholarship and scope of Allott’s thinking, ironically, undermines the strength of his argument on several occasions; his broad scope tends to dilute the impact of much of his analysis. A similar problem arises within the book’s footnotes, which are exhaustively detailed yet often lose their connection to the underlying text. More generally, Allott’s reliance on psychological and philosophical concepts may make it difficult for those without solid backgrounds in these fields to

grasp the full force of his argument. Put simply, this book is a difficult read for those without a broad grounding in the social sciences. Allott's writing style also confuses his analysis at several key points, particularly when he uses terms that he has either invented or redefined for the purposes of his analysis.

Despite these relatively minor flaws, it is hard to overstate the importance of the final product. Allott captures much of the current discontent with existing global institutions, while effectively suggesting alternative models of global governance. His presentation succeeds in convincing the reader that the problems of democratic legitimacy in international institutions are neither insurmountable nor inevitable; to the contrary, Allott argues forcefully that it is the solution to these challenges which cannot be denied. Allott's vision of the future gains further strength from his authoritative analysis of Western history. Whether or not one is ultimately swept away by Allott's argument, *The Health of Nations* is required reading for any student or scholar of international governance.

BY INDER COMAR

Who Owns Native Culture? By Michael F. Brown. Cambridge, Massachusetts and London, England: Harvard University Press, 2003. Pp. ix, 305. \$29.95 (cloth).

In 2001, the Zia Indian community demanded \$76 million from New Mexico for the use of a Zia sun symbol on the state's flag and letterhead. In 1997, an Australian Aboriginal painter sued a textile firm that featured unauthorized representations of his work, citing the "spiritual harm" caused. In 1999, in the middle of the Zapatista uprising, researchers at the University of Georgia entered into a financial partnership with Mayan communities to discover medicinal plants and secret botanical knowledge in the state of Chiapas, Mexico. In *Who Owns Native Culture?*, Michael F. Brown, a professor of Anthropology and Latin American Studies at Williams College, examines cases such as these in order to outline various strategies used to protect indigenous heritage.

Brown's book discusses the battles indigenous peoples and others are waging across the globe for cultural protection. The first chapter focuses on the struggles of American Indian and Australian Aboriginal groups to protect their perceived rights of cultural privacy. Chapter Two documents the at-

tempts of Australian Aboriginal artists and communities to copyright folkloric art and representations of mythic and religious themes in order to protect their work from replication by textile companies. Later chapters discuss the trademarking of culturally and religiously significant images, the extraction and patenting of traditional botanical remedies, and negotiations over sites that have historic, religious, and recreational value. The final chapters explore the problems stemming from the conflict between indigenous beliefs and modern land use policy, the complexities surrounding the native attempts to secure "Total Heritage Protection" from capitalist globalization, and the political (as opposed to rights-based) possibilities for compromise through negotiation.

Brown's book untangles the complicated knot of ethical, legal, and political questions imbedded in its cases. By presenting each of these issues as both identifiable and interconnected, Brown catalogues each relevant factor, while jumping (in some cases unsystematically so) from one issue to another. For example, in the first chapter alone, Brown examines the ethically questionable practices of the famous Hopi anthropologist H.R. Voth, discusses the nineteenth century legal scholarship of Samuel Warren and Louis Brandeis, questions the policy prohibiting female museum curators from handling sacred Native American artifacts, and analyzes different legal interpretations of property and privacy. The result, however, is an illuminating explanation of the many factors underlying the concept of heritage.

The narrative prose Brown uses to describe factors surrounding cultural protection efforts is both engaging and easy to understand. Moreover, Brown often brings his own experience to bear on these cases. He has studied many of the cultures and cases firsthand, and has personally interviewed some of the key players, including numerous indigenous leaders. The account of the Australian case *Bulun Bulun and Milpururru v. R & T Textiles Pty. Ltd.*, for instance, not only offers detailed legal and social analyses, but also hints at his own presence in the courthouse during the trial.

In spite of this personal touch, Brown presents the legal and ethical problems raised by each case in an unbiased manner. With few exceptions (most notably regarding the anti-ethno-botany actions of the public interest group Rural Advancement Foundation International), Brown navigates the

maze of legal and ethical issues with astonishing impartiality. He recognizes the concerns on each side of the issues and refuses to cast any of the players as the villain (even when an obvious injustice has taken place). Brown presents an even-handed account of the facts and the competing motivations underlying each conflict, thereby enabling the reader to independently assess the situation. This impartiality allows Brown to credibly analyze each case and to suggest meaningful solutions to the problems they raise.

Throughout his book, Brown identifies various solutions to problems associated with efforts to protect indigenous culture in modern societies. His final chapter concludes that compromise within current legal and political systems is simpler and more effective than “protective” legislation. Brown’s ultimate finding is neither novel nor complex. Rather, the book’s value stems from the even-handed and decidedly analytical treatment that he consistently pays the subject matter.

BY JEREMY BROWN

Russian Law. By William E. Butler. New York: Oxford University Press, 2003. Pp. lxi, 761. \$225.00 (cloth).

From the early days of the medieval Kievan Rus through nearly three-quarters of a century of the Soviet era and then more than a decade of democratic and market reforms, Russia has gone through a series of substantial transformations. Not surprisingly, its law and legal system “have yet to find an established place in the world of comparative legal studies.” In *Russian Law*, William E. Butler, a professor at the University of London, takes an important step toward remedying this problem by offering a comprehensive legal overview of Russia after the collapse of the Soviet Union.

In 1893, G. F. Shershenevich, a Russian legal scholar, pronounced that “Russia, forced to catch up with Western Europe, must be acquainted with everything that is done in the West, including in the legal domain.” The central message of *Russian Law* is that the reverse is true as well: the West, including the U.S., would be well-advised to learn about Russia and its legal system. From this perspective, *Russian Law* is an indispensable source for learning, as it combines surveys of the foundational substantive areas of Russian law with studies of the historical and theoretical evolution of the Russian legal sys-

tem as a whole. Butler's book puts black-letter law in context, allowing the reader to better appreciate, and master, the substance of the rules.

In Part I, Butler explores the social and political context of Russian law. First, he examines the heritage of Russian law before the 1917 Great October Revolution, arguing that its future evolution should be guided by the need for continuity that encompasses a reckoning with Russian history. Second, Butler analyzes the development of legal theory in Russia. He argues that prior to 1917, Russian legal thought was in its infancy, and, thereafter, all disciplines, including law, were grounded in the theories of Marxism and Leninism. With the collapse of the Soviet Union, these theories were discredited, as was the legal order to which they gave birth. As a result, Butler argues that "Russian legal theory . . . has been set unexpectedly adrift to seek new moorings in the Russian past, in the Russian present, and in the world of legal theory at large." Butler suggests that in order to move beyond this theoretical crossroads, Russia must choose from three emerging doctrinal paths: the liberal-democratic (his preferred course); the modernized Marxist-Leninist; or the so-termed "traditional" path.

Part II of the book deals with the Russian legal system and includes chapters on the sources of law, the legal profession and legal education, the legal administration, and legal procedure. Butler contrasts the legal system in Russia, which attaches significance to "formalistic hierarchy" of the sources of law, with the common law, which ascribes "no special priority" to them. He also notes that the 1993 Russian Constitution "has introduced an entirely new dimension to that [formalistic] hierarchy, whose implications continue to unfold." Butler proceeds to examine the legal profession and legal education in Russia, contrasting two types of Russian lawyers, the advocate and the jurisconsult, who most closely approximate the Anglo-American barrister and solicitor. Butler concludes Part II by exploring the "bodies directly concerned in the Russian Federation with application and enforcement of the law" before providing an overview of Russian civil, *arbitrazh*, and criminal procedure.

Part III, entitled "Substantive Law", is the heart of the book. Butler carefully reviews several foundational legal areas, including constitutional and administrative law, civil law, family law, entrepreneurial law, securities regulation, banking law,

taxation, environmental law, labor law, and criminal law. Each of these areas is discussed in a separate chapter, with a focus on its fundamental rules and policies. In each area, Butler is careful to provide a detailed historical context before delving into the analysis of the current state of Russian law. He then carefully assesses current statutory law and legislative trends, with attention to both the normative and positive developments within each area.

Finally, Part IV addresses the law and foreign relations and includes chapters on the law relating to foreigners and foreign affairs, foreign investment and trade law, and the Commonwealth of Independent States. Butler notes that, "Russian legal doctrine does not look upon foreign relations law as a separate branch of law"

Russian Law is a truly remarkable study, which will be of value to anyone interested in the continuing development of Russian society. Given its breadth, the book should appeal to a wide variety of readers. For those with academic interests in Russia, Butler's historical perspective should prove invaluable, while practitioners should appreciate his detailed appraisal of foundational substantive law.

BY DMITRI V. VERENYOV

An Insider's Guide to the U.N. By Linda Fasulo. New Haven, Connecticut: Yale University Press, 2003. Pp. ix, 245. \$27.00 (cloth).

In *An Insider's Guide to the U.N.*, Linda Fasulo provides a guidebook to the United Nations that is both engaging and readable. Fasulo offers a true insider's perspective; she is currently the U.N. correspondent for NBC News and MSNBC, and her U.N. news updates are broadcast weekly on National Public Radio. Fasulo's journalistic incisiveness and in-depth knowledge of the United Nations make *An Insider's Guide to the U.N.* both an academic resource for international lawyers and an informative primer for the layperson.

The book is divided into twenty-six substantive chapters, although the chapters fall into several general thematic categories. Fasulo walks the reader through the nuts and bolts of the U.N. system. She starts with an overview of the U.N. structure, aided by a clear and informative chart, and then briefly

examines the U.N.'s foundational documents. Next, considerable space is devoted to a description of the Office of the Secretariat. This section focuses primarily on the work done by current Secretary General Kofi Annan, who Fasulo describes as the "best Secretary General ever appointed." In particular, Fasulo lauds Annan's work as a human rights advocate, and credits him with changing the scope of both the Secretariat and the U.N. as a whole. Fasulo then describes the work of ambassadors, with particular attention to the American diplomatic presence. This section is highlighted by several colorful insights from former American Ambassador to the U.N., John Negroponte.

Subsequently, Fasulo turns to the controversial subject of the Security Council. After providing a clear, yet detailed, description of how the Security Council works, Fasulo tackles the problems and criticisms faced by the Council. First, the need for more effective leadership on the Council is addressed. Fasulo contrasts the historically dominant role of the United States with recent U.S. actions taken over the objections of the Council, paying particular attention to the 2003 invasion of Iraq. Fasulo remains true to her role as a journalist; rather than drawing potentially biased conclusions of her own, she lays out the facts and allows the reader to reach his or her own conclusion. However, Fasulo does conclude the chapter on the Security Council by detailing several suggestions for Council reform.

The following chapter on peacekeeping logically follows the chapter on the Security Council; it is the Council that, in Fasulo's words, "authorizes the deployment of an operation, defines its mission, and recommends how it should be carried out." Fasulo aptly describes how the peacekeeping process works, while also providing an overview of how U.N. sanctions are implemented. Finally, Fasulo concludes her discussion of the fundamentals of U.N. structure with a description of the General Assembly (GA). She not only details the procedures that facilitate discussion among the world's nations, but also describes the numerous issues the GA regularly confronts.

Next, Fasulo analyzes the U.N.'s role in managing international crime. In the preface, Fasulo acknowledges she would have written the book differently if she had been writing prior to the terrorist attacks of September 11th, 2001. Fasulo's chapter on the U.N.'s role in combating international terror-

ism would likely be the most affected. Perhaps the most critical role that the U.N. can play in this fight is enumerated in an excerpt from John Negroponte, who highlights U.N. efforts to prevent developing countries from becoming "failed states," which serve as breeding grounds for terrorist activity. As Fasulo contends, development initiatives are perhaps the most effective U.N. tool in the fight against terror.

Fasulo also devotes chapters to the U.N.'s efforts to manage nuclear and biochemical threats as well as international drug trafficking. In each of these chapters, Fasulo provides a concise overview of how the U.N. implements its measures in these substantive areas. In addition, Fasulo broaches the topic of the International Criminal Court (ICC). Although not formally a part of the U.N. system, the ICC, like the International Court of Justice (ICJ), is affiliated with the U.N. However, unlike the ICJ, which deals with the actions of states, the ICC is a tribunal charged with trying military and government personnel involved in perpetrating war crimes and crimes against humanity. Fasulo highlights the benefits inherent in such a tribunal but at the same time devotes a portion of her discussion to the United States' objections to the ICC, as well as the objections voiced by the international press corps.

Arguably, the U.N. is best equipped to deal with social and economic development issues. Fasulo devotes a significant portion of *An Insider's Guide to the U.N.* to a discussion of the Economic and Social Council (ECOSOC). These sections describe U.N. efforts to coordinate the protection of the biosphere and to rescue efforts designed to aid refugees and famine victims. Through her analysis of these actions, Fasulo highlights many of the U.N.'s strengths while also suggesting areas for improvement. In addition, she provides a roadmap to the many human rights and development agencies within the U.N. system.

Throughout *An Insider's Guide to the U.N.*, Fasulo's narrative is highlighted by colorful chapters providing "off-the-cuff" information including information on careers at the U.N. and the social community encompassing the "U.N. Village" of diplomats in New York. Fasulo even provides a comprehensive "tour" of the U.N. headquarters in New York City. In sum, *An Insider's Guide to the U.N.* provides an accessible and interesting

resource that should appeal to both scholars of international law and amateur aficionados of international law and politics.

BY STACEY DELICH-GOULD

Toward Juristocracy: The Origins and Consequences of the New Constitutionalism. By Ran Hirschl. Cambridge: Harvard University Press, 2004. Pp. 223. \$49.95.

Over the past few decades, even the most resistant governmental systems have incorporated elements of judicial review into their institutional designs, placing an unprecedented amount of power in the hands of courts across the globe. This phenomenon, termed “juristocracy” by Ran Hirschl, is characterized by the transfer of power from representative institutions to the judiciary, which is largely unelected and consequently less directly accountable to popular opinion. In *Toward Juristocracy*, Hirschl argues that this shift is one of the most significant developments in late twentieth and early twenty-first century governance.

Hirschl attempts to fill gaps in current understanding of the origins and consequences of judicial review through a comparative analysis of these processes in several countries. He examines constitutional revolutions in four states: Israel, Canada, New Zealand, and South Africa. Through these case studies, he attempts to ascertain: (1) the political origins of recent constitutional trends; (2) the real impact of the constitutionalization of rights and the strengthening of judicial review on high courts’ attitudes toward and advancement of distributive justice; and (3) the political consequences of judicial empowerment through constitutionalization. Specifically, Hirschl analyzes Israel’s two 1992 Basic Laws protecting core civil liberties; the Canadian Charter of Rights and Freedoms of 1982; the 1990 New Zealand Bill of Rights Act; and South Africa’s interim Bill of Rights of 1993, final Bill of Rights of 1996, and Constitutional Court Act of 1995.

Chapter one details the substantive constitutional changes in each of the four countries, as well as the effects of those changes on litigation practices. Chapter two describes and refutes a number of existing theories of constitutional transformation, dividing them into evolutionist theories, functionalist explanations, and institutional economic models. Hirschl concludes that all of these theories fail to account for the varied

timing, scope, and nature of juristocracy's expansion. Instead, he concludes that judicial empowerment results from the strategic interplay between three groups: threatened political elites, economic elites, and judicial elites. His "hegemonic preservation thesis" contends that these powerful but increasingly threatened elite groups seek to insulate their policy preferences against the ebb and flow of democratic politics, resulting in the empowerment of the judiciary.

In chapter three, Hirschl provides empirical verification of his thesis through an in-depth analysis of the Israeli case. Hirschl maintains that Israel's 1992 constitutional reforms were a concerted attempt by the Ashkenazi secular bourgeoisie to transfer power from the Knesset to the Israeli Supreme Court in order to safeguard their political interests against the encroachment of opposing parties. As liberal elites had traditionally dominated the Court, the "old school" Knesset members were comfortable with this delegation. He also notes that strengthening the Court ensured the continued liberalization of the Israeli economy, which had been heavily regulated in the past. Other factors that reduce the risk of such a constitutional revolution are the political elites' control over the personal composition of the high court and the ubiquitous public faith in and respect for the political impartiality of the judiciary. Hirschl offers further analyses for the application of his hegemonic control thesis to Canada, New Zealand, and South Africa in the remaining portion of chapter three.

In chapter four, Hirschl provides an overview of judicial interpretations of the newly-enacted bills of rights in the four countries. He bases this overview on a survey of all high court bill of rights cases from the date of enactment of the relevant legislation to 2002; this in itself is a praiseworthy study. Later in the chapter he examines the decisions more substantively, separating them into four categories according to their principal subject matter: criminal due process rights; privacy rights (including freedom of expression and sexual preference); subsistence social and economic rights (including the right to health care, education, and social security); and freedom of association and occupation (predominantly in the context of labor relations). He notes that the high courts tend to interpret the rights afforded by the constitutional reforms as protections against interference by the collective (i.e., state regulation). In general, the high courts of Israel, Canada, New Zea-

land, and South Africa are much more generous in protecting freedoms associated with protection of privacy, personal autonomy, economic activity, and property than in advancing distributive justice in the form of employment, health, housing, and education benefits.

Chapter five highlights the shortcomings of the constitutional reforms, especially their tendency to increase the disparities among rich and poor. Although the reforms may enhance personal freedoms, Hirschl maintains that the impact of the constitutionalization of rights on the socioeconomic status of historically disenfranchised groups is exaggerated. In chapter six, the author discusses the judicialization of contentious political controversies as a result of the delegation of power to the courts.

Finally, Hirschl suggests that the judicialization of fundamental political questions may be a matter of convenience. Judicialization insulates politicians from having to make no-win moral and political decisions and puts those decisions in the hands of elites who are likely to comply with the expectations of the politicians. Ruling elites are thereby able to reduce the risks to themselves and rely on the public image of the courts as professional and apolitical to lend support to what might otherwise nonviable policies. Thus, judicial review is driven primarily by a desire to block attempts to challenge the political status quo through majoritarian politics, rather than by genuine commitments to social justice or universal rights. Hirschl cautions that broad claims about the beneficial effects of the constitutionalization of rights should be met with skepticism, for such constitutionalization has not promoted distributive justice and has instead helped to resist reduced socioeconomic disparity.

Hirschl's work is well-researched, informative, innovative, and concise. It will be of interest to political theorists and constitutional law scholars alike, although readers without a basic grounding in political science may find the book difficult to follow. *Toward Juristocracy* is a valuable contribution to comparative constitutional law, and although it sets a high standard, will hopefully inspire additional comparative studies.

BY JENNY RUZOW

Understanding China's Legal System. Edited by C. Stephen Hsu. New York: New York University Press. Pp. 400. \$55 (cloth).

As a young professor beginning his career in academia, Jerome A. Cohen embarked upon a challenging and unprecedented journey that would consume his professional attention for four decades and have a significant impact on the legal community. In 1960, at the invitation of the Rockefeller Foundation, Professor Cohen became the first Western lawyer to study the foundations and intricacies of the law of the People's Republic of China, quickly establishing himself as the leading expert on Chinese law in the Western world. *Understanding China's Legal System* is a testament to the dedicated work of Professor Cohen. The volume, which contains articles by both students and colleagues of the acknowledged master, demonstrates just how far scholarship in the field of Chinese law has come since Cohen began his work. It also provides more than sufficient evidence that there is a bevy of distinguished and enthusiastic scholars ready and willing to carry the torch that Professor Cohen lit more than forty years ago.

The collection begins with William C. Jones' article, "Trying to Understand the Current Chinese Legal System." Jones demonstrates the importance of tradition in assessing current Chinese law, highlighting the differences between Chinese traditions and those accepted in the West. He places particular emphasis on the early development of dynastic codes, which were an outgrowth of highly centralized and bureaucratized social orders. In these codes, promulgated in the name of the emperor, individual rights and affairs were often secondary to the interests of the empire. Jones argues that China's modern legal system will continue to be shaped by this legal heritage.

The next two articles focus on the comparative study of the Chinese legal system. First, William P. Alford's "Exporting 'the Pursuit of Happiness,'" is a substantive review of Thomas Carothers' recent book *Aiding Democracy Abroad: The Learning Curve*. Alford criticizes attempts (particularly those made by the U.S.) to promote democracy without full consideration of the history and traditions of targeted nations. Alford argues that a more comprehensive, broadly comparative, and historically grounded approach to the understanding and advancement of democracy is required. Second, Donald C. Clarke reflects on the methodological difficulties in choosing a frame-

work within which to compare the Chinese legal system against those of other nations. He ultimately suggests that different models are appropriate depending on the substantive field and time period and advocates flexibility in moving between possible models.

The next three articles explore various periods in Chinese legal history. In "Grave Matters: Warring States Law and Philosophy," Susan Roosevelt Weld examines the Warring States period of over 2,000 years ago, during which the basic elements of Chinese culture took shape. She examines the legal, religious, and philosophical documents that have been excavated from the kingdom of Chu, and draws a rich picture of the theory and practice of law in the early fourth century B.C. In "The Role of Case Precedent in the Qing Judicial Process as Reflected in Appellate Rulings," R. Randle Edwards assesses the Qing period, detailing the creation of legal rules by both judicial process and provincial legislation. Alison W. Conner's article, "The Comparative Law School of China" discusses the curriculum of Soochow Law School, one of the most distinguished and influential law schools during China's Republican period. Conner notes that Soochow developed a broadly comparative program in Anglo-American law, and explores the impact of this curriculum on legal education in China today.

China has been engaged in an ongoing and deliberate process of transformation from a centrally planned economy to a market economy. In "Law in China's Economic Development: An Essay from Afar," Natalie G. Lichtenstein examines the role that law has played in this process. She concludes China's economic reforms have not only made the rule of law a necessity, but that economic reform is essential to make the rule of law a reality. Thus, legal and economic development must proceed in a mutually-reinforcing fashion. Jamie P. Horsley tackles the issue of rural self-government and electoral democracy in the villages in "A Legal Perspective on the Development of Electoral Democracy in China: The Case of Village Elections." Horsley traces the legal underpinnings of China's experiments with local democracy, and claims that village elections are a serious and evolving legislative accomplishment.

The final two articles analyze the rule of law in Hong Kong and Taiwan, respectively. In "The Concept of 'One Country, Two Systems' and Its Application to Hong Kong," Albert H. Chen explores the history and development of the le-

gal relationship between China and Hong Kong, and the modern implications of this relationship. "The Rule of Law in Taiwan: Culture, Ideology, and Social Change," by Tsung-fu Chen, provides a comprehensive analysis of how the rule of law has emerged and flourished in Taiwan. Chen discusses the role of the powerful and active judiciary, and how government is checked by the principles of legality and constitutionalism.

Collectively, the articles in *Understanding China's Legal System* illustrate the breadth and depth of current work in the field of Chinese legal studies. The authors wrestle with important and challenging questions related to China's past, present, and future legal practices and institutions. The articles pay tribute to the intellectual project begun by Professor Cohen in a fitting manner, and should be read by anyone with an interest in understanding the legal system governing the world's most populous nation.

BY RAJEEV ANANDA

Adversarial Legalism: The American Way of Life. By Robert A. Kagan. Cambridge, Massachusetts: Harvard University Press, 2003. Pp. xii, 339. \$19.95 (paper).

Adversarial Legalism opens with an account of the debacle that followed the 2000 election, which culminated in the Supreme Court's decision in *Bush v. Gore*. The Court's de facto determination of the election's winner was widely recognized as unprecedented. Robert Kagan argues that the transformation of this political contest into a legal contest, despite its exceptional nature, typifies much of American political culture. He terms the force that drives legalism and litigiousness into the political arena "adversarial legalism." Through careful analysis of the United States in comparative perspective, Kagan assesses the uniqueness of American legalism.

Kagan begins with a broad survey of recent American social and legal history, exploring how American adversarial legalism differs from the law and governance of other economically advanced democracies. His principal aim in Part I is to trace the consequences of adversarial legalism and to identify its roots in American social culture and political structure and thereby structure the theoretical framework for the comparative content of the book. Kagan advises that adversarial legalism should be considered not only as a method of policy im-

plementation essential to American governance, but also as a characteristic of the day-to-day, “ordinary” legal contests carried out in United States courts. His fundamental thesis is that, as a cultural phenomenon, the pursuit of a legal remedy is significantly more common in America than in other developed democracies.

Adversarial legalism, according to Kagan, is the product of two elements: a political culture in which individuals and groups demand governmental protections and a set of governmental institutions that are inherently fragmented and decentralized. Consequently, individuals are driven to litigate their concerns, and courts are encouraged to fashion compromises and repair policies. Moreover, Kagan stresses that the effects of adversarial legalism are not limited to the pursuit of *ex post* remedies. Rather, the pervasive existence of the phenomenon and the threat of potential litigation also affects both governmental and individual decisions *ex ante*.

Kagan’s opinion of adversarial legalism is, on the whole, a negative one. He concludes that the phenomenon tends to lead to inefficiency and uncertainty in governmental operations, even as it protects individuals and their rights. In contrast, Kagan introduces the more hierarchical and less “coordinate” modes of governmental organization that exist in Europe and Japan.

After introducing the theory of adversarial legalism, Kagan assesses its recurrence in three broad areas of governance: criminal justice, civil justice, and public law. Within his discussion of each of these areas, Kagan incorporates examples from other legal systems to contrast with American practice.

Section Two focuses on criminal justice. As Kagan notes, adversarial legalism provides powerful tools for challenging bias, error, and the abuse of power by law enforcement authorities. On the other hand, he details the inherent unevenness of adversarial legalism’s application, stemming from the inconsistency in the quality of adversarial representation and unequal treatment by law enforcement authorities. Analysis of capital punishment serves as a recent example of the two faces of adversarial legalism. Kagan concludes that the substitution of adversarial legalism for the hierarchical method of criminal enforcement common in Europe explains why the rule of law tends to be applied with less consistency in the U.S.

Section Three explores civil justice. Kagan argues that because the U.S. expends fewer resources than many European nations to regulate industry and oversee private transactions, the need for private litigation to vindicate certain rights is higher. Kagan argues, however, that unlike the European model, adversarial legalism is expensive, inefficient, and unpredictable. The latter half of this section focuses on the tort law system and, in particular, on asbestos litigation as an illustrative example of adversarial legalism. Kagan contends that the tort system has played a unique role in shaping American social perceptions of adversarial legalism as a whole.

The fourth and final Section examines adversarial legalism in the realm of public law, juxtaposing the European welfare state against the United States' more fragmented privately-controlled social programs. Once again, Kagan argues that adversarial legalism is more responsive to individualized claims of justice, but also more cumbersome, costly, and uncertain than European approaches. Kagan concludes that adversarial legalism provides a necessary and fundamental means of enforcing public law; increased litigation is a reaction to the relatively decentralized and "hands-off" model of political governance traditionally found in the United States. In a particularly illustrative example, Kagan compares how Japanese and American regulatory regimes interacted with the same multinational company to demonstrate that the Japanese system of environmental regulation is significantly more cooperative and less litigious.

Kagan tends to idealize the centralized governmental structure of other developed democracies and to criticize the less efficient and less predictable American system. Rather than espousing comprehensive reforms, Kagan merely summarizes suggestions highlighted by the earlier comparative analysis. Many of these proposals, however, are not politically plausible in the United States.

Nevertheless, Kagan's goal to illuminate the attitudes that entrench the culture adversarial legalism in the United States is a noble one. He convincingly demonstrates that an understanding of the legal cultures within other developed democracies is critical to the analysis of the American system.

BY BENJAMIN HAVERSTICK

European Conquest and the Rights of Indigenous Peoples: The Moral Backwardness of International Society. By Paul Keal. Cambridge, United Kingdom: Cambridge University Press, 2003. Pp. ix, 258. \$70.00 (cloth), \$25.00 (paper).

In *European Conquest and the Rights of Indigenous Peoples*, Paul Keal argues that the continuing dispossession and lack of self-governance of many indigenous populations is a moral wrong that current generations have a responsibility to remedy. As individual states are unlikely to grant full rights of self-determination to their indigenous peoples, Keal challenges the international community to facilitate this goal by recognizing the Draft Declaration on the Rights of Indigenous Peoples.

The book is divided into six chapters. The first chapter provides a theoretical framework for later analysis of both international society generally and colonialism specifically, outlining the intellectual foundations laid by international theorists such as Hugo Grotius. The second chapter describes Europeans' dehumanizing depictions of non-Europeans during the period of European conquest. In the third chapter, Keal discusses how international law, as a system of norms created by Europeans but intended to be universal in application, have been used to justify conquest, colonization, and the accompanying land dispossession. The fourth chapter shifts to the contemporary period and discusses the use of international law in the on-going struggles of indigenous peoples to achieve self-determination. Chapter five delves into questions of the collective responsibility of present generations for the wrongs of the past, and chapter six discusses theoretical alternatives that might provide a fuller account of difference and diversity within the international community.

Keal describes how the shift in the focus of international law from natural law to positive law correlates with a diminished recognition of the rights of indigenous, non-European peoples. He details the work of early theorists, such as Bartolomé de Las Casas and Francisco de Vitoria, who drew on natural law theories to argue that the sovereign rights of indigenous peoples over their territories could not be destroyed through European occupation. Keal contrasts these views with those of John Locke, whose labor theory of property was used to justify dispossession of the lands from Native Americans who were not (according to Europeans) using the land productively. He further asserts that Locke's view, which was in

fundamental opposition to many indigenous conceptions of property, was institutionalized in international legal concepts and the doctrine of *terra nullius*. The early recognition of the rights of non-European peoples gave way to an exclusively statist conception of international personality restricted to "civilized" nations. Therefore, indigenous peoples could only vindicate their rights by appealing to the same states that were arguably violating those rights in the first place. Keal notes, though, that this traditional paradigm has begun to shift once again, with the recent birth of the human rights movement.

Keal provides a clear and succinct description of the various international mechanisms through which indigenous peoples might assert their rights. Several structures have been established within the United Nations to raise and monitor issues of importance to indigenous peoples, such as the Permanent United Nations Forum for Indigenous Peoples and the Working Group on Indigenous Populations (WGIP). Other United Nations organs, including the International Labour Organisation and the United Nations Human Rights Committee, have also played a role in advancing the rights of indigenous peoples. However, Keal argues that the U.N.'s failure to ratify the WGIP's Draft Declaration on Indigenous Peoples has undermined the body's effectiveness. He notes the Declaration has been blocked by states, which resist any potential erosion of state borders and sovereignty over their territory.

Keal argues that the moral legitimacy of states rests on their just treatment of their indigenous populations. He outlines three conditions to satisfy the requirements of justice. First, the state must maintain a program for the vindication of indigenous rights, including land rights. Second, the state must recognize group differences and construct a political system that supports these differences. Third, the state must recognize cultural rights and provide individuals with the freedom to remain part of their group or to live as part of the wider community.

Keal grounds these requirements not in the state's duty to remedy its past oppression and subordination, but rather in the state's obligation to ensure that its current actions are just. He argues that justice requires states to go beyond a policy of non-discrimination to recognize and grant special rights for particular groups, including indigenous peoples' right to cul-

tural identity and community. Keal further contends that the moral legitimacy of international society is based on the moral legitimacy of its constituent states. Therefore, the international community has an obligation to ensure that states take affirmative actions to remedy the continuing oppression of indigenous peoples. Keal suggests that domestic and international law should recognize indigenous peoples' right to self-determination, which need not mean a right to statehood, but should encompass accommodations within the larger polity and the recognition of various group rights.

While the book is wide-ranging in scope, Keal deliberately narrows the core of his analysis. He acknowledges that his book is limited to a discussion of European colonialism and its aftermath, without addressing the myriad of important and complex issues emerging from the colonization efforts of non-Europeans. He also limits the bulk of his analysis to colonialism by English-speakers, although he does draw on a number of examples from South America. While the first limitation does not detract from his solid assessment of the European impact on international law, the book might have benefited from a deeper appreciation of the Asian and African colonial experiences, largely instigated by non-anglophone nations. Keal's book is more theoretical in nature than empirical, so its narrow scope does not necessarily undermine his argument. Yet, a broader analysis would have recognized Keal's own cautionary advice about the homogenization of diverse communities.

While Keal's argument is powerful and relevant, the book is highly theoretical and not readily accessible to individuals without a strong background in international political philosophy (although the summaries and conclusions in each chapter do provide a useful guide for the lay reader). The theoretical nature of the book also underscores Keal's inattention to the opinions and actions of indigenous peoples themselves. While he details the U.N.'s structures for the protection of the rights of indigenous peoples, Keal does not discuss the struggle on the part of indigenous peoples to ensure their voices are heard. Thus, indigenous rights appear to be vindicated primarily due to the foresight of U.N. Member States, which reinforces the passive image of indigenous peoples.

On the whole, the book powerfully illustrates the need for the adoption of the Draft Declaration on Indigenous Peoples.

At the same time, Keal leaves the reader wondering whether the adoption of the Draft Declaration by the same international society responsible for many of the problems faced by indigenous peoples would be sufficient to accomplish the moral and legal transformation he envisions.

BY MIRANDA JOHNSON

At America's Gates: Chinese Immigration During the Exclusion Era 1882-1943. By Erika Lee. Chapel Hill, North Carolina: University of North Carolina Press, 2003. Pp. 331. \$55.55 (cloth), \$19.95 (paper).

The Chinese Exclusion Act of 1882 was the first immigration law in the United States to exclude immigrants on the basis of race. In *At America's Gates: Chinese Immigration During the Exclusion Era 1882-1943*, Erika Lee explores the historical origins as well as continuing impact of the Act on both Chinese Americans and American immigration policies more broadly. By examining the relationships, migration patterns, and political processes related to Chinese exclusion, Lee illustrates how this movement transformed the United States into a "gate-keeping nation," and thereby dramatically shaped the composition of America's population and sense of national identity.

Lee divides *At America's Gates* into four chronological parts spanning the period 1882 to 1943. Part I, entitled "Closing the Gates," explores the first two decades of the Exclusion Era and analyzes the origins of the Chinese exclusion laws. She argues that the anti-Chinese movement was the "critical starting point" for twentieth-century nativism by establishing the patterns through which Americans conceptualized race and immigration. Further, Lee contends that the exercise of federal and state power aimed at regulating citizenship and immigrant communities can be traced to this era. Finally, Lee examines local immigration inspectors in San Francisco and Washington, DC in order to analyze the interpretation and enforcement of the exclusion laws.

An examination of 1910 to 1924 in Parts II and III reveals "growing nativism, a rise in Chinese illegal immigration," and increasingly centralized and systematic government regulation. Through a case study of Angel Island in San Francisco, Lee assesses the plight of immigrants, analyzing how the en-

forcement of the immigration laws were influenced by race, class, and gender and how Chinese Americans reacted to this targeting. Part III details Chinese attempts to evade the immigration laws and explores the consequences of the resulting tide of illegal immigration.

While there is already an extensive literature on the Chinese exclusion law, Lee fills an important gap by extending her analysis to address the effects of such laws upon Chinese Americans. The laws, she argues, affected not only prospective Chinese immigrants, but also Chinese individuals already living legally in the states by making them vulnerable to extortion, arrest, and deportation. This “shadow of exclusion” conflated all Chinese as alien threats, whether they were legal, illegal, or native-born citizens; as a result, all Chinese were viewed as outsiders. This, in turn, caused widespread segregation and the marginalization of Chinese Americans. The exaggerated threat of illegal immigration served to sanction the harassment and deportation of Chinese through immigration raids that infringed their constitutional rights.

Finally, Part IV analyzes the impact of exclusion on the Chinese in America and traces these “echoes of exclusion” to modern times. While the Chinese exclusion laws were repealed more than fifty years ago, the United States is still dealing with their complicated legacy. For example, Lee highlights parallels between the Chinese exclusion laws and current attempts to stem illegal immigration, specifically from Mexico. She concludes that the difficulties first experienced by the Chinese during the Exclusion Era have become mainstream phenomena, shared by all immigrant communities.

Based on nearly ten years of research (which began as a doctoral dissertation), Lee draws on the perspectives of Chinese immigrants as well as U.S. immigration officials to effectively explain how and why the United States was transformed from a nation of immigrants into a nation with closed doors. Grounding her arguments in historical documentation enables Lee to forcefully argue that the exclusion laws normalized America’s gate-keeping role, as well as American attitudes toward immigrants and racial minorities. In addition, Lee’s study is the first to systematically analyze government records on Chinese immigration and exclusion, which were made public in the 1990s. However, such attention to historical detail occasionally obscures the general thesis. It is only in the last

chapter of the book that the plethora of facts presented in the book are woven into a coherent thesis.

Overall, however, *At America's Gates* is an excellent primer to those unfamiliar with the Chinese Exclusion Era. Lee distills pertinent facts into an understandable narrative replete with images of the suffering brought about by the exclusion laws. In doing so, she interweaves her historical treatment with an analysis of contemporary immigration concerns. *At America's Gates* proves to be a valuable contribution to both the historical and contemporary discourse on America's immigration policies.

BY TIANA BERKENBILE

Framing Europe: Attitudes to European Integration in Germany, Spain, and the United Kingdom. By Juan Díez Medrano. Princeton, New Jersey: Princeton University Press, 2003. Pp. 344. \$39.95 (cloth).

Juan Díez Medrano's analysis in *Framing Europe* offers a refreshing perspective on the question of European integration. Medrano attempts to explain the varying levels of support for integration among European nations and to assess the E.U.'s internal debate over the preferred model of integration. He distinguishes his efforts by providing a comparative analysis of the critical variables that give rise to differing national preferences. Medrano draws on personal interviews, surveys, newspaper articles and images, historian's accounts, and other devices to trace the development of national and socio-cultural identities. He explores the ways in which national histories and conditions translate into cognitive frames, which in turn affect attitudes toward European integration. The result is a comprehensive undertaking that delves into the social and political histories of Germany, Spain, and the United Kingdom to uncover the popular conceptions of European integration, explaining why support for political integration is noticeably lower in Britain than in the other states. While none of the book's conclusions are especially groundbreaking, Medrano's comparative methodology is fascinating.

Part I focuses on the ways in which individuals have been informed about the political dynamics of European integration and the evolution of European institutions. Medrano interviews citizens from two cities in each of the three countries,

exploring the respondents' support for E.U. integration and E.U. membership, as well as his or her perception of the E.U.'s economic benefits. Medrano's simple questions evoke thoughtful and telling responses that reveal how the respondents' frame the process of integration. In analyzing the responses, Medrano focuses on word choice and tone, noting significant details for comparison. Instead of asking point blank questions designed solely to assess whether or not the respondents are in favor of integration, he engages the participants and draws out their deeper cognitive images of the E.U.

Medrano groups the results of these interviews by city, in order to emphasize the influence of nationality. He observes that the respondents often referenced specific historical events or E.U. policies in declaring their support or opposition to European integration. For example, Spanish respondents mentioned the Common Agricultural Policy most frequently while the Germans and British respondents were more likely to discuss the common market. These interviews form the basis for Medrano's main argument that national self-perceptions and collective memory play an important role in shaping individuals' images of the European Union.

Medrano masterfully connects these individual associations with a broader study of the depiction of European integration by national journalists throughout the twentieth century. His analysis of Germany is illustrative: Medrano contends that Germans have traditionally been preoccupied with competition from foreign labor and the need to regain the trust of the international community. He further notes that West Germans are particularly haunted by the legacy of Nazi Germany, while East Germans carry the historical weight of Communism. Medrano argues that these critical features of national identity have heavily influenced national opinion with respect to integration.

In Part II, Medrano provides in-depth country studies that analyze the role that cultural resonance plays in shaping the frames in which individuals assess European integration. These case studies develop Medrano's argument that attitudes toward the E.U. are not simply personal reflections on a commonly understood reality; rather they are the subjective analysis of "the distorted image of this reality as it is filtered by national or sub-national cultures act like differently shaped curved mirrors that exaggerate or shrink the dimensions of

the object that they are reflecting.” Medrano delves into the political and social histories of each country, reaching insightful conclusions about the factors that shape national perceptions. For example, he concludes that the United Kingdom is the most skeptical of European integration because its citizens perceive a threat to their national identity and sovereignty, in large part because they have historically felt less “European” than either Spaniards or Germans. Medrano’s analysis culminates in a “statistical validation” of the case studies. He integrates the survey results of the *Eurobarometer Study 51.0* with his qualitative and historical-comparative methods to add force to his ultimate conclusion. Medrano argues that national attitudes toward integration have generally been influenced by national success in the international arena; the degree to which a country’s citizens have felt an ability to compete with European and non-European world powers is inversely related to their support for integration.

As a whole, this book is fascinating and thought provoking. Yet, its uniqueness extends more from its methodological approach than its conclusions. Many of Medrano’s observations about national attitudes and their cultural sources are already recognized and frequently discussed. In addition, Medrano’s study makes no significant mention of the other E.U. nations, nor does it suggest how his approach might be applied more broadly. Despite these shortcomings, the book’s intimate accounts, relentless attention to historical and social contexts, and significant statistical analysis ensure that readers will gain a more complete understanding of the E.U. and a greater appreciation for the cultural factors that shape their own political attitudes.

BY CANDACE BROWN

Measuring Judicial Independence: The Political Economy of Judging in Japan. By J. Mark Ramseyer & Eric B. Rasmusen. Chicago, Illinois: University of Chicago Press, 2002. Pp. 224. \$45 (cloth).

In *Measuring Judicial Independence*, J. Mark Ramseyer and Eric B. Rasmusen test whether the Japanese judicial system operates independently of its political system. After analyzing the data using a variety of regression techniques, the authors conclude that the Japanese judicial process is highly

politicized: Judges who tow the party line are consistently rewarded, while judges who rebel are punished. Ramseyer and Rasmusen explore the sources of this politicization through a comparative analysis of the modern Japanese judicial system, the American judicial system, the Imperial Japanese judicial system, and bureaucratic governance in general.

The authors begin their analysis by describing the context of judicial decision-making in post-World War II Japan. With few exceptions, Japanese judges are effectively appointed for life; this does not, however, correlate into an acceptable level of independence. As the authors demonstrate, the political branches have been able to leverage more subtle mechanisms of judicial control apart from the appointments process. Notably, all judges are assigned to a particular level within the court hierarchy, as well as a particular geographic location, by the Secretariat, a centralized bureaucracy composed of judges who are generally loyalists of the Liberal Democratic Party (LDP). Ramseyer and Rasmusen contend that the Secretariat tends to reward compliant judges with desirable posts, while punishing rebels by relegating them to lower-tier, geographically remote posts. The authors then test whether this claim is empirically verifiable.

Ramseyer and Rasmusen attempt to eliminate extraneous, apolitical factors from their model by controlling for whether a judge graduated from an elite college, began his or her career in Tokyo, and passed the law school entrance examination without repetition, among other variables. They also introduce a variable to control for whether a judge was a member of the Young Jurists League, a Communist-affiliated organization of lawyers. With this basic framework in place, Ramseyer and Rasmusen analyze the effects of judges' decisions on their subsequent placements.

Second, Ramseyer and Rasmusen analyze their data with varying levels of specificity. Initially, they assess the treatment of judges who tend to rule against the Japanese government in all types of cases, finding that such judges tend to receive poorer placements than their similarly situated peers. Then, the authors refine their analysis to examine how the determinations of judges in specific legal areas important to the LDP have influenced subsequent placement decisions. They address cases involving the LDP-supported ban on door-to-door election canvassing, the propriety of a military "self-defense"

force, reapportionment questions, and preliminary injunctions against government policies. In the electoral reapportionment cases, for example, until the mid-1970s, the LDP opposed reapportionment, as it eroded the party's rural voting base. Eventually, however, the LDP effectively abandoned rural voters in favor of the growing urban vote. Concurrent with this shift, the authors find that judges who instigated reapportionment only suffered until the mid-1970s, but not afterwards. In all of these cases, Ramseyer and Rasmusen find that the careers of Japanese judges who tend to rule against the government have suffered.

Third, Ramseyer and Rasmusen examine more mundane cases, in which the government may have less at stake. Specifically, the authors examine tax disputes and criminal cases. Generally, they find that judges have only suffered for ruling against the government when their decisions have been reversed on appeal. The authors argue that this result is likely explained by questions of competence, rather than political retribution. Thus, they claim that the Secretariat is generally willing to allow judicial independence except in cases about which the government cares deeply.

Finally, after demonstrating that Japanese judges are not independent, Ramseyer and Rasmusen develop a general theory as to why judges tend to be more or less independent in different political systems. The crux of their argument is that the degree of judicial independence depends on the underlying assumptions of the permanence of party control. In political societies such as the United States, in which party control has fluctuated greatly, the authors predict greater judicial independence as a means of binding future governments to present legislation. In contrast, in political societies such as modern Japan, where a single party has dominated elections, the authors predict less judicial independence, as politicians have less need to bind future decision-making and a greater incentive to monitor present judicial decisions.

Measuring Judicial Independence presents its argument to as broad an audience as possible, as Ramseyer and Rasmusen take great pains to explain their more complex regression models in lay terms. However, despite their best efforts, it may be difficult to follow their regression analysis without a thorough background in statistics and econometrics. The authors also assume that American judges are independent, without

performing a true statistical analysis of U.S. judicial operations. While the results of this analysis might be unsurprising, they should not be taken for granted. Despite this shortcoming, Ramseyer and Rasmusen have crafted an intriguing analysis of judicial independence (or dependence) in Japan and arrived at an eminently reasonable, but, at this point, largely speculative explanation of their results.

BY DANIEL PILARSKI

The Geography of Ethnic Violence: Identity, Interests, and the Indivisibility of Territory. By Monica Duffy Toft. Princeton, NJ: Princeton University Press, 2003. Pp. xi, 226. \$37.50 (cloth).

The last decade has witnessed unprecedented levels of intrastate violence, often between separatist ethnic minorities and state governments dominated by the ethnic majority. In *The Geography of Ethnic Violence*, Monica Duffy Toft argues that these conflicts are best explained by the deep connections between ethnic identity and territory, which Toft expands into a "theory of territoriality." Although Toft's analysis does suffer from its narrow scope (she limits her analysis to one set of statistical data and four case studies), her book is nonetheless an important contribution to the literature and debate surrounding ethnic conflict that may one day yield a universal and comprehensive method to predict imminent ethnic violence.

Toft's aim is to outline a workable theory identifying the circumstances in which ethnic conflict is likely to turn violent. To this end, she examines the specific subset of conflicts involving separatist ethnic minorities. Toft makes quick work of the extant alternative theories of separatist violence, dismissing through persuasive counterexamples the common explanations for ethnic violence. Toft explicitly rejects the materiality explanation (focusing on the presence of natural resources in a disputed territory), the non-materiality explanation (stressing the ancient historical roots of ethnic hatred), and the elite manipulation explanation (resting on nationalistic manipulation by charismatic leaders).

Instead, Toft contends that territorial and demographic factors, such as settlement patterns, provide more comprehensive and accurate predictors of ethnic violence. Broadly, she argues that violence is likely to emerge when parties view their

interests as indivisible, precluding non-violent compromise. Toft theorizes that states with multi-ethnic populations are more likely to have an indivisible interest in retaining their territory, as these states will fear the effect of a separatist precedent. Ethnic groups, on the other hand, are most likely to identify their interests as indivisible when they form a concentrated majority of the population in the disputed territory; in these instances, ethnic identity is closely tied to the land itself, and sacrificing territory is unthinkable. While Toft recognizes that this attachment is often dismissed as irrational, she nevertheless contends that it should be legitimately addressed in negotiations. Toft contrasts the ethnic group's powerful attachment to the homeland with the equally vital instinct of the state to preserve its territorial integrity.

Toft attempts to validate her theory through a statistical analysis of the Minorities at Risk (MAR) data set, which surveys most of the world's recent ethnic conflicts. Based on the data, Toft establishes an important correlation between violent ethnic conflicts and the settlement-patterns of the ethnic groups involved: Concentrated ethnic majorities in disputed regions were more likely to engage in high intensity rebellion and separatist violence than were concentrated minorities, urban populations, or dispersed populations. This result, according to Toft, stems from both the enhanced capability of a concentrated group to wage separatist violence and the heightened sense of legitimacy in it doing so. Toft finds the statistical correlation so robust that she concludes that concentration is a necessary condition for violence. Further, she finds support for her hypothesis that the strength of the state's fear of a separatist precedent is a better predictor of violence than the materiality, non-materiality, or elite-manipulation explanations.

Toft fleshes out the implications of her theory through an examination of four case studies, each involving tensions between ethnic groups and larger states in the former Soviet Union. In the first case, Toft suggests that Russia and Tatarstan were able to conclude a peaceful settlement in the 1990s because the Tatars were only a concentrated minority in disputed Tatarstan (ultimately the Tatars settled for economic incentives rather than complete autonomy). In the second case, she concludes that Russia and Chechnya resorted to violence because the Chechnyans comprised a concentrated majority in the disputed territory, contributing to the indivisibility of party

interests. In the next two case studies, Toft considers the relationship of the former Soviet republic of Georgia with two of its own separatist ethnic groups: the Abkhaz and the Ajarians. In Abkhazia, violent conflict resulted because although the ethnic Abkhaz constituted only a minority of the total population of Abkhazia, Russia's military interference on the side of the Abkhaz distorted the bargaining positions of the parties. Meanwhile, the Ajarians, who were also a concentrated minority, never advanced indivisible interests, instead striving for only a reasonable measure of increased autonomy. Lacking sufficient legitimacy and the capabilities to wage a full-scale separatist war, Ajaria eventually reached a peaceful settlement with Georgia. All four cases thus roughly fit into Toft's territorial model.

Toft concludes her book with a discussion of the policy implications of her findings. She notes that both states and ethnic groups tend to ignore the potential middle-ground between absolute separatism and total state unity. A deeper appreciation of the connections between ethnic settlement patterns and party interests could permit states to effectively meet the needs of the ethnic groups within their borders. She further argues that states and ethnic groups should pursue creative ways of making their indivisible interests divisible, so that compromise can be reached.

Toft's desire to understand the effect of geopolitical, demographic, and historical settlement patterns on ethnic confrontations is appropriate and timely. By reconceptualizing the foundations of ethnic conflict, Toft opens up a largely unsurveyed middle-ground of potential compromise where dispute mediators can encourage parties to advance divisible rather than indivisible interests. Yet, the broad implications of her theory are limited by the narrow scope of her empirical analysis; Toft limits herself to one statistical set and four case studies. Although she makes cursory mention of several other major ethnic conflicts (and indeed her model, at least at first blush, appears to explain several of the outcomes), a more extensive and persuasive analysis of other conflicts seems necessary to fully substantiate her theory. Despite these limitations, Toft's provision of a unified and novel alternative to previous analytical approaches is a significant accomplishment. *The Geography of Ethnic Violence* certainly charts new territory and

should evoke considerable discussion and progress in a field that is so desperately in need of new ideas for achieving peace.

BY JEREMY KEELE

European Constitutionalism Beyond the State. Edited by J.H.H. Weiler and Marlene Wind. Cambridge, United Kingdom: Cambridge University Press, 2003. Pp. 252. £17.99 (paper); £47.50 (cloth).

The European Union, driven in part by its continuing expansion, has taken steps to formalize its constitutive principles into a single constitutional document. Many of the contributors to *European Constitutionalism Beyond the State*, published prior to the E.U.'s failed 2004 Constitutional Convention, view the creation of a formal written constitution as beside the point or, worse, counterproductive. Collectively, these authors examine the social and legal processes that define constitutional norms in the E.U., and argue that the shortcomings of these processes would not be remedied by any hastily adopted written constitution.

The book presents eight essays, divided into three parts and an epilogue. In the first part, J.H.H. Weiler argues against the adoption of a formal constitution, fearing that such action would undermine current constitutional arrangements based on the voluntary participation of European states. Weiler argues that the current informal structure embodies an ethos of tolerance untainted by the self-aggrandizement he associates with national constitutions, which are only "as deep or as shallow as the last constitutional amendment." In his view, the continuous and repeated ratification of the European constitutional order, which occurs every time citizens choose to obey a European norm, emancipates Europe's legal culture from "collective self-arrogance and constitutional fetishism."

In part two, several scholars who share Weiler's concerns offer their own take on European constitutional development. First, Neil Walker proposes a fundamental reform of European constitutional discourse, arguing that it is inappropriate to criticize supranational entities on normative grounds by relying on statist concepts such as democracy, legitimacy, and accountability. As Walker notes, state constitutionalism has served not just to structure legitimate governments, but also to formally validate illegitimate ones, while statist constitutional

solutions are often too context-dependent to offer any useful general guidance. Walker seeks a more flexible means of translating constitutionalism to the supranational context, in light of a much broader appreciation of how core values are realized in a variety of political communities.

Next, Francis Snyder develops a conceptual description of the European constitution, focusing on three descriptive dimensions: constitutional principles, constitutionalizing processes, and constitutional culture. Snyder analyzes how a constitution in the material sense, which consists of an aggregation of legal norms, becomes a constitution in the subjective sense, with which citizens identify. Then, Miguel Poiaras Maduro argues that the concept of European constitutionalism should balance a diverse range of interests and fears. He further contends that the reformation of European constitutionalism might actually improve the national constitutional discourse, as many of the constitutional problems at the European level reflect long-neglected paradoxes extending from the underlying limitations of national constitutionalism.

Marlene Wind then posits that the acceptance of constitutional flexibility could help to relax the boundaries of restrictive political concepts like "state," "international organization," and "federation," none of which accurately describes the E.U. However, she cautions against a concept of flexibility that would allow Member States to pick and choose the obligations to which they adhere ("Europe à la carte"), favoring instead a "permanent differentiated evolution of the Community," consisting of a non-state-like union with polycentric orders of authority. She notes that, in an E.U. of increasing size, differential integration may be unavoidable but need not result in a complete absence of coherence; rather, fundamental constitutional principles like human rights, democracy, and the rule of law should provide a solid basis for integration.

The two pieces presented in part three assess specific proposals for constitutional reform. Renaud Dehousse suggests that, in view of the problems inherent in parliamentary representation, increasing the power of the European Parliament would not remedy the democratic deficit in the E.U.—especially as the scale of the polity continues to increase. Rather, he advocates the recognition of a procedural right of civic participation in comitology (Europeanese for bureaucratic decision-making). Because a growing number of important Euro-

pean decisions are made by administrative committees, Dehousse argues that good outputs from comitology are no longer sufficient to legitimate E.U. governance: "People no longer accept that the quality of decisions is all that matters: They want a say in policy choices which affect their destiny."

Antje Wiener then recommends a constitutional mechanism to safeguard an equitable allocation of policy dialogues within the European polity. She argues that compliance with supranational norms depends on the extent to which they resonate in domestic contexts. She further contends that such resonance is established through the contestation of those norms by Member States, a process which allows for the definition and internalization of the norms. Wiener suggests that the continuing debate surrounding E.U. expansion and E.U. constitutionalism must be reformed to permit greater contestation in order to avoid a "resonance gap with the constitutional bargain." She concludes that a greater tolerance of contention—i.e., lack of compliance—by acceding states would have long-term benefits in terms of legitimacy, which will then "loop back into" and inform the E.U. constitutional process. Without such tolerance, Wiener suggests that different normative visions would be projected by different member polities, generating "political unrest, objection and backlash."

Finally, Phillip Allott's jeremiad-style epilogue asserts that Europe needs to reconstitute its self-consciousness in order to avoid either becoming a European super-state or terminally disintegrating. Allott labels European integration "the continuation of war and diplomacy by other means," noting that it has been based on outdated conceptions of interstate relations. He argues that the internal contradictions produced by the "failure of social metaphysics" in current European self-conceptions must be converted into a dialectical unity. Unfortunately, he offers few specifics as to how Europe should accomplish this self-re-imagining.

The contributors to this volume are all academics, utilizing a variety of theoretical approaches that can become quite complicated. The level of jargon varies from essay to essay, at times reaching an intensity that might be prohibitive for those outside academia. This is unfortunate, as the core insights could usefully inform the views and activities of the politicians negotiating Europe's written constitution. Notwithstanding

this limitation, the volume contributes to the ongoing constitutional debate in laudable fashion.

BY RYAN SUDA

The United Nations System: Toward International Justice. By Nigel D. White. Boulder, Colorado: Lynne Rienner Publishers, 2002. Pp. xi, 334. \$65.00 (cloth), \$24.95 (paper).

The United Nations is undoubtedly one of the most complicated intergovernmental organizations in the world. The original mandate of the U.N.—to preserve international peace and security by providing a forum for the non-violent resolution of international disputes—has only grown over the past fifty-odd years. At the same time, the U.N. has been criticized since its inception by those who argue that it merely replicates international politics within a powerless institution. In *The United Nations System: Toward International Justice*, Professor Nigel D. White provides a comprehensive analysis of the U.N., assessing whether the U.N. system is capable of fulfilling its purposes and objectives. He provides timely and thorough insight into the sources of the controversy surrounding the U.N., and the types of systematic changes that might avoid such controversy in the future.

White examines the complex interrelations between the main U.N. bodies from a legal (as opposed to political) perspective and applies this legal framework to an analysis of past U.N. endeavors. He analyzes the principle organs (such as the Security Council, the General Assembly, and the Secretariat), lesser organs (such as the International Court of Justice and the Economic and Social Council), specialized agencies (such as the International Labor Organization and the World Health Organization), member and non-member nations, and outside intergovernmental organizations (such as the World Trade Organization). Despite the scope of this project, White cogently presents an overview of the U.N. that, while slightly obtuse at times, provides an excellent understanding of the system's legal foundations.

The United Nations System is organized into three sections. The first section assesses the foundations of the U.N. legal order, and examines the core values and principles that help to guide the U.N. and its subsidiary bodies. White builds his analysis from the ground up, beginning with the question of

whether the U.N. should be considered a system at all, as opposed to a group of loosely related entities. After concluding that the U.N. does possess a systemic legal order that flows from “constitutional” documents like the U.N. Charter, White examines the evolution of this legal order. He surmises that “the treaties of the UN system are living instruments . . . kept relevant by the practice of the organs created by those treaties” Thus, he implies that the conduct of U.N. organs helps to shape the legal order within which core Charter values are expressed, interpreted, and realized.

White expands his conceptual systemic analysis by delineating the “goals to which the system aspires, as well as the benchmarks against which the success and failure of the system can be measured.” White posits that the U.N.’s actions must be measured against its fundamental values: Peace and security, justice and law, human rights, self-determination and democracy, the environment, and economic and social well-being are elucidated as the fundamental values or goals of the U.N. system as a whole. White argues that, while peace and security in the negative sense (i.e., the absence of conflict or war) is a specific fundamental value expressed in the Charter, the pursuit of positive peace and security (i.e., proactive measures to advance peace, cooperation, and the human condition) is the “overarching value of the system . . . encompassing all others, including negative peace.”

After defining this legal framework, White surveys the institutional framework of the U.N. in the book’s second section. Much of this portion of the book reads like a political science textbook examining the institutional structure of any government body. However, White places special emphasis on those aspects of administration and institutional action that are unique to the U.N. as an intergovernmental organization. For example, White discusses the U.N.’s democracy deficit—decisions of the U.N. often fail to represent the will of the “Peoples of the United Nations”—suggesting that the involvement of non-state actors and non-governmental organizations may help to alleviate this deficit. Moreover, White posits that “the answer to the democracy deficit at the United Nations does not lie with the General Assembly and the plenary bodies . . . but with national assemblies and parliaments.” In other words, he argues that the true problem lies in the inability of domestic populations to effectively influence their govern-

ments' foreign policy choices at the U.N. White also examines issues of political accountability within the U.N. itself, and how coordination within the U.N. system might be increased to reduce institutional inertia and provide for accountability and review.

No legal analysis of the U.N. would be complete without an inquiry into the inner workings of the U.N.'s principal legal organ, the International Court of Justice (ICJ). White explores the legal and institutional context within which the ICJ operates, paying special attention to the Court's deficiencies. White notes, for example, that the Court is still locked into its role as arbiter, which stretches back to its pre-U.N. origins. He suggests that the Court should be redefined along the lines of a constitutional court, so that it might take a greater role in the prospective development of international legal principles and the international rule of law.

The final section of White's book applies the legal and institutional frameworks developed in the previous sections to the main areas of U.N. policymaking and action. Through an examination of the U.N.'s track record in promoting peace and security, ensuring human rights, protecting the environment, supporting democracy, enforcing international criminal justice, and spearheading international economic and development initiatives, White ultimately concludes that the U.N. is both a manageable and effective system. Despite setbacks, deadlocks, and many internal disagreements, the fundamental values of the U.N. continue to guide its operations. While the results achieved by this sometimes unwieldy system are inadequate, White concludes that the U.N. can be reformed into a much more effective intergovernmental organization, while remaining grounded in a definable legal order.

Overall, White's analysis of the U.N. is thorough and accessible. While by no means an exhaustive treatise on U.N. operations, the book does provide an understandable and grounded framework within which U.N. action and effectiveness may be evaluated. White's legal analysis provides a timely new perspective on the many issues and criticisms surrounding the U.N. that compliments previous work in the field.

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