

## BOOK ANNOTATIONS

CHESTERMAN, SIMON, *YOU THE PEOPLE: THE UNITED NATIONS, TRANSITIONAL ADMINISTRATION, AND STATE-BUILDING* (Oxford University Press).

DIXIT, AVINASH, *LAWLESSNESS AND ECONOMICS: ALTERNATIVE MODES OF GOVERNANCE* (Princeton University Press).

GARFINKLE, ADAM, ED., *A PRACTICAL GUIDE TO WINNING THE WAR ON TERRORISM* (Hoover Press).

IGNATIEFF, MICHAEL, *THE LESSER EVIL: POLITICAL ETHICS IN AN AGE OF TERROR* (Princeton University Press).

MARAVALL, JOSÉ MARÍA AND ADAM PRZEWORSKI, EDS., *DEMOCRACY AND THE RULE OF LAW* (Cambridge University Press).

MCGILLIVRAY, FIONA, *PRIVILEGING INDUSTRY: THE COMPARATIVE POLITICS OF TRADE AND INDUSTRIAL POLICY* (Princeton University Press).

MIROW, M.C., *LATIN AMERICAN LAW: A HISTORY OF PRIVATE LAW AND INSTITUTIONS IN SPANISH AMERICA* (University of Texas Press).

MOORE, MICHAEL, ED., *DOHA AND BEYOND: THE FUTURE OF THE MULTILATERAL TRADING SYSTEM* (Cambridge University Press).

PASQUALUCCI, JO M., *THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS* (Cambridge University Press).

WELSH, JENNIFER M., ED., *HUMANITARIAN INTERVENTION AND INTERNATIONAL RELATIONS* (Oxford University Press).

WOLF, RONALD CHARLES, *TRADE, AID, AND ARBITRATE: THE GLOBALIZATION OF WESTERN LAW* (Ashgate).

*You the People: The United Nations, Transitional Administration, and State-Building.* By Simon Chesterman. New York, New York: Oxford University Press, 2004. Pp. 320. \$95 (cloth).

REVIEWED BY E. TAMMY KIM

Nearly three years ago, President George W. Bush called an end to military combat in Iraq. Since then, during Iraq's transition to democracy, the world has witnessed violence and destruction more destructive than the war itself. The United States—occupier, liberator, nation-builder—now struggles with an increasingly common challenge: what is the best way to bring about a peaceful, meaningful transition to democracy? In *You the People: The United Nations, Transitional Administration, and State-Building*, Professor Simon Chesterman analyzes the most recent century's transitional scenarios. He details past failings and offers sobering prescriptions for future administrations.

*You the People* is divided into eight chapters and begins with an introductory historical survey that draws lessons from early occupations, colonialism, and decolonization. The Allied Occupation of Germany and UN participation in mid-century decolonization are among the introductory case studies. In the Free City of Danzig (1920-1939), the League of Nations oversaw constitution writing and balanced the authority of domestic (Poland) and appointed authorities. Despite the many differences from 1945, when one-third of the world lived in European colonies, today's transitional administrations "might benefit from being more, not less, colonial," Chesterman argues.

Chapter 2 connects the historical developments discussed in the introduction with the remainder of the book's focus on current transitional operations. Modern case studies serve as the empirical basis for Chesterman's theoretical arguments in subsequent chapters. Various transitions—from Namibia, Western Sahara, Sierra Leone, and Somalia to Kosovo, Bosnia and Herzegovina, and Cambodia—are explored through the lenses of decolonization, transfers of territory, elections, peace processes, and state failures. The author describes the gradual, halting development of institutions in response to decolonization, as well as the inconsistent degrees of auton-

omy afforded to local control; since problems persist in today's transitional operations in Iraq and Afghanistan, Chesterman's analysis is all the more relevant.

In the third chapter, Chesterman focuses on a controversial topic: the use of force in peacekeeping. The lessons of Kosovo and Somalia illustrate what Chesterman identifies as an emerging "three-tier class structure" in UN peace operations, in which some actions are undertaken by peacekeeping troops from developing countries while remaining under UN command; some are undertaken by NATO and other industrialized countries who remain under national command but receive UN authorization; and still others are undertaken by the United States "effectively operat[ing] as a free agent." His examples illustrate the need for settled doctrine in this area, as well as the unfortunate reality that, in certain circumstances, the military must engage in activities outside of its sphere of expertise.

Closely related to military involvement is the issue explored in Chapter 4, "benevolent autocracy," a term capturing the irony of pursuing democratic governance through imposed United Nations rule. In East Timor, the UN administration and NGOs "tended to treat the Timorese political system as a tabula rasa," resulting in a crisis of self-determination for the Timorese. Common to transitional operations is the creation of oversight offices like the Office of Inspector General in East Timor. However, international accountability and the difficulty of reconciling the use of force with installing good governance pose serious challenges for these bodies.

The procedures utilized in installing good governance are detailed in Chapter 5. Chesterman explores advanced stages of transition such as trials, reconciliation, elections, and exit strategies. In terms of foreign involvement, procedures have ranged from full imposition to the deferential "light footprint" approach employed in Afghanistan, where an investigatory Human Rights Commission and Judicial Commission were established by the Bonn Agreement. Looking at the celebrated example of South Africa's post-apartheid Truth and Reconciliation Commission, as well as similar enterprises in East Timor, Cambodia, Guatemala, El Salvador, and Bosnia and Herzegovina, Chesterman argues that administering sustainable justice should be among the chief priorities of transitional opera-

tions. Moreover, military force may be responsible for instituting and maintaining the rule of law.

In what is perhaps his most sensitive analysis, Chesterman analyzes the meaning and efficacy of elections amidst the instability and chaos of post-conflict territories. Often elections are held while international interest in the territory is still high, with less attention paid to long-term stability and the authenticity of the procedure. Various constitutional and party structures are explored in this chapter, but Chesterman argues that the domestic perception of legitimacy must be the overriding concern. For example, Cambodian elections occurred without restoring peace and the rule of law; as a result, the very project of democratization was questioned.

Underlying every step of a transition is the challenge of obtaining adequate funding. Contrary to the principles of the Marshall Plan, today's humanitarian and development assistance is driven by the context of democratization, non-governmental actors, and donor politics. Chesterman argues that aid is now supply-driven, influenced by the agendas of the donor community, the popular effect of media conveying "telegenic crises," and the accountability of donors to their domestic constituencies. Furthermore, there are perverse effects of assistance on post-conflict economies. For example, in transitional Afghanistan, international assistance became one of the primary sectors of the economy; thus, an Afghan civil servant could make up to 400 times more by working for the UN or a foreign NGO than by employment with her own government.

Chesterman concludes his volume by examining the future of state building. He faults past transitional administrations for being inconsistent, inadequate, and irrelevant, and he seems agnostic about future improvement. A significant part of the final chapter focuses on U.S. hegemony and its impact on state transitions—at best, a relatively benevolent, calculated interference; at worst, the kind of "absent-minded engagement" that has taken place in Afghanistan and Iraq.

Transitional justice is a hot topic in international human rights law and political science. Yet, while there is already substantial literature on tribunals and reconciliation, there are few comprehensive examinations of transitional scenarios; *You the People* thus stands as a unique and necessary compendium. The book targets a scholastic audience, particularly students of

law or international relations, and is intended to explain what has been attempted rather than to announce a grand unifying thesis. Its tone is dry and academic, but the writing's clarity and structure provides a useful catalog of illustrative examples of states in transition.

Transitional administration, the author rightly observes, is an exceptional activity—one that requires a deep understanding of the cultural, political, and economic contexts in which it exists. This new volume appreciates the intricacies of state-building projects, and Chesterman's analyses treat a number of cases realistically, if fatalistically (dooming transitional administrations to adopt colonial practices and override local authority). Rather than advancing a theory or making a normative claim, the author weaves together the lessons of various transitional administrations, offering detailed examinations that should give pause to future state-builders.

*Lawlessness and Economics: Alternative Modes of Governance.* By Avinash Dixit. Princeton, New Jersey: Princeton University Press, 2004. Pp. 176. \$35 (cloth).

REVIEWED BY JASON SANJANA

Despite its self-consciously glib title, *Lawlessness and Economics* is a careful survey of economic scholarship in an ever-evolving field of multidisciplinary research. This field takes widespread observations of informal economic governance seriously and tests the limits of the relationship between informal institutions and economic performance. However, *Lawlessness and Economics* is not an anti-lawyer manifesto. Ignore the dust jacket to this book; Dixit is *not* proposing the Old West. Instead, his models attempt to isolate those situations where informal institutions (economic actors governing their own interactions or paying others to govern for them) do at least as well as formal (traditional, legal) governance. In this sense, the book fits nicely into that strand of law and development scholarship that sees law as an often costly means toward some other end. If law is a tool, then it must be used at the right time and place. It is certainly plausible that economic modeling could help lawyers know when to deploy the tools of their trade.

In some respects, the real triumph of Dixit's work is his bibliography, which strays far from Dixit's base in game theory and includes works from such fields as institutional economics, anthropology, law, and even evolutionary biology. At the same time, the book's multidisciplinary flavor may also be its weakness. One gets the sense that Dixit makes broad assumptions based entirely on the closed universe of case studies upon which relies. More fundamentally, institutions are such complicated macroeconomic creatures that it seems somewhat disingenuous for Dixit to extrapolate policy proscriptions from models based on microeconomic modeling of repeat bilateral interactions in group games: disingenuous because those who study law know that governance issues always involve normative dilemmas. Dixit ignores these normative issues when he links his results to particular case studies and moves on, as if actual observation "in the field" were the end of the story. If Dixit's goal was simply to mathematically model a particular case study, there would be no problem. But he is also making policy prescriptions, at which point the crucial question becomes whether the particular model *ought* to be used as a base.

Nonetheless, *Lawlessness and Economics* is a clearly written work by an extremely important author. Its subject matter is important to lawyers interested in legal reform, and the book serves as a starting point for those willing think creatively as to how institutional governance can work. Along with erudite introductions and conclusions, the book is essentially a series of distinct mathematical models.

The book begins with one such mathematical model. Dixit introduces two types of contracts: relational and formal. Relational contracts are his proxy for the informal economy, as they cannot be enforced in formal courts because they entirely are based on inside information. Formal contracts are based on publicly verifiable information and can thus be enforced in court. In an ideal world, perfect formal outcome-based contracts are possible because the outcome is presumably verifiable. But Dixit posits that most outcomes are actually inside information, buried deep in accounting books. He then derives a set of situations where the parties' best solution is a relational contract, or a formal contract, or a hybrid of the two. Finally, his model envisions intermediate situations where contracts can be effectively two-tiered. The first tier is relational, and the second tier is a credible fallback on for-

mally enforceable information. Dixit is most interested in these types of situations, noting that the model shows a loss in total surplus as the fallback to formal contracting becomes more and more credible. He extrapolates from there, noting that this may mean that “better within-group cooperation may require worse cross-group relations” and that the implication for policy-makers is that piece-meal, gradual legal improvements may “inflict interim costs on the economy.”

Dixit concludes this first model by looking at arbitration clauses in contracts and how they may be affected by informational advantages. The assumption here is that industry arbitrators may be able to use and analyze insider or specialized information that would be unavailable or incomprehensible to a court of general jurisdiction. Predictably, in such a world there is a surplus to be gained by using arbitrators with specialized skills; therefore, he finds arbitration credible only when it is backed up by credible enforcement by courts.

Dixit’s next model examines informal and formal contract enforcement at the group level. Again, there is a proxy for the informal economy, relation-based governance, and a proxy for formal law, rules-based governance. Dixit then introduces an extraordinarily broad concept of distance, including not just geography but “any relevant socioeconomic differences.” Driving the model are the assumption that gains are greater from distant pairings and the assumption that traders are less likely to meet distant trading partners again and, thus, are more likely to cheat them. The two sides are linked in that greater gains from long-distance trade also motivate an actor to cheat on that particular one-off trade. However, mitigating against cheating across long distance is communication technology, which enables those who are cheated by long-distance trading partners to communicate that cheat to those likely to trade with the cheater again. Dixit notes that his model cannot simply grow indefinitely; at some point distance overwhelms communication. He suggests that this means, “as economies become larger and more globalized, such self-governance must eventually give way to formal rule-based governance.” He proposes that the situation is most difficult for those countries that are beginning to outgrow local relational governance but are not yet in a position (due to collective-action problems) to institute costly legal formalization.

The book's final chapters model the possibility that economic actors can pay third parties to undertake governance functions. He introduces for-profit governance as a potential solution for those countries needing to expand their economies outside the realm of informal contract governance but without the political will or resources to undertake legal formalization. The main empirical support for Dixit's model comes from studies of the Sicilian mafia, and his results are interesting. What is striking is that the decisions of both Dixit's arch-type mafia don and her "client" critically depend, like most repeat games, on how the parties value the future. He also finds that, because high profits will attract competitors and uncertainty, private third party governance becomes less and less sustainable as the profits from such activity increase.

Dixit's final chapter on private protection of property rights relies heavily on previous work in property rights. Dixit first develops a modeled game for individual owners operating in a legal vacuum deciding between, on the one hand, using existing possessions to generate output and, on the other, fighting for (either their or someone else's) land. He then explores the idea of property owners hiring third party protection. At the end of the chapter, Dixit turns to Mancur Olson's idea of certain sub-optimal governments as "stationary bandits" and models this situation by looking at how such a government could efficiently tax its subjects.

Overall, *Lawlessness and Economics* is a series of formal mathematical models written for economists by one of the most preeminent scholars alive today (Dixit has been on the Nobel short list for several years now). The book is both a survey and a toolkit for those economists interested in further research. It poses interesting questions and challenges for those lawyers willing to tackle the models. Most importantly, Dixit puts his math into perspective. Lawyers and economists speak different languages. Clear, direct, and carefully crafted texts such as *Lawlessness and Economics* go a long way in bridging the gap between the two fields.

*A Practical Guide to Winning the War on Terrorism.* Edited by Adam Garfinkle. Stanford, California: Hoover Press, 2004. Pp. 230. \$15 (paper).

REVIEWED BY KAITLIN FOOTE

Since September 11, 2001, the “War on Terror” has been at the forefront of American domestic and foreign policy. While the administration actively engaged in military campaigns in Afghanistan and Iraq, it has paid less attention to combating what the U.S. government calls the “nonkinetic” aspects—that is, the underlying social, political, and cultural motivations—of terrorist acts (sometimes referred to as the “hearts and minds” problem). In *A Practical Guide to Winning the War on Terrorism*, Adam Garfinkle postulates that while the military side of the war against terrorism is necessary, it is only a beginning in our quest for national security. In order to truly eradicate terrorism, the United States must develop and pursue practical steps to undermine the intellectual, social, and cultural underpinnings of a mentality that asserts terrorism as a legitimate method of political struggle.

Garfinkle—a speechwriter to the secretary of state, member of the Department of State’s policy planning staff, and former editor of *The National Interest*—solicited contributions from scholars, journalists, and former government officials with intimate knowledge of Middle Eastern politics, society, and culture. The result is a collection of short essays designed to resemble memos read by senior decision-makers; in doing so, he hopes to increase the likelihood that government decision-makers will read them.

The book is divided into four sections. The first contains essays addressing a general problem of sources and potential remedies of terrorism. Amir Taheri’s contribution, “Bush Is Right: Democracy Is the Answer,” asserts that democracy in the Middle East is essential for American security, as well as social and economic development in the Muslim world. Taheri supports George W. Bush’s war in Iraq but sees as unrealistic the view that the United States can invade and occupy all Muslim states until they are democratic. Instead, Taheri suggests that a memorandum of understanding, similar to the Helsinki Final Act of 1975, between the Muslim community and the world’s major democratic powers is needed to hold Muslim

states to certain standards of behavior and to provide a framework for western support for democracy.

Conversely, in "Terrorism: Sources and Cures," Graham E. Fuller labels current U.S. policy as a "lightning rod for global terrorism." Fuller thoughtfully examines the definition of terror, noting that by failing to include terror perpetrated by the state in such a definition, regimes are granted free reign to criminalize local resistance. Until there are legal channels for expression of grievances, there will always be sympathy for acts of violence against an abusive state. Fuller suggests that conflict resolution and institutional reform are necessary in combating terrorist behavior.

The second part of the book offers geographic case studies. In "The Challenges of Euro-Islam," Oliver Roy asserts that Muslims in Europe play a greater political role than Muslims in the United States; thus, the threat of radicalism and terrorism in Europe must be dealt with expeditiously. Roy identifies Islamic terrorism as a youth movement that is less sociological than psychological. Furthermore, he classifies Islamic radicals in Western Europe into one of three categories: foreign residents, second-generation immigrants, and converts. He then deals with the reasons for the radicalization of these individuals, eventually concluding that the best approach to combating radical Euro-Islam is genuine plurality, with the goal of reaching mainstream Muslims without creating closed communities of radicals. While interesting, unfortunately, Roy addresses this extremely complex issue in simplistic and unsupported terms, and the essay leaves you with more questions than answers.

In another case study, F. Gregory Gause III examines American oil interests and concludes that Americans must accept that the role of Saudi Arabia in the development of al Qaeda is overblown. However, Gause's essay is undermined when he simultaneously points out that Saudi Arabia played a key role in developing Sunni Muslim extremism through funding, ideological legitimation, and recruitment. Despite this internal inconsistency, his essay is one of the few that offers significant journalistic evidence in support of its propositions. Overall, Gause would disagree with Amir Taheri regarding the role of democracy: democracy is not the answer, as it would expose the degree to which Saudis are anti-American. Instead,

the United States must support the Saudi monarchy because it will provide oil and find terrorists.

The book's third section discusses the most effective means of public diplomacy in the Middle East. Martin Kramer suggests that the United States should learn from history. Specifically, Kramer identifies Napoleon's public relations campaign during his invasion of Egypt in 1798 as something American foreign policy should emulate. (Napoleon utilized an Arabic printing press on board his invading ship in order to produce a broadsheet that promised to use French power to benefit Muslims; he also professed complete respect for Islam.) However, Kramer does recognize that America's goal is not to be loved and admired; rather the goal is to win the war.

In contrast, William A. Rugh offers a more contemporary strategy for fixing public diplomacy with Arab and Muslim Audiences. He chastises the Clinton administration for transferring responsibility for "American public diplomacy" from the U.S. Information Agency to the Department of State. Rugh asserts that this move resulted in a loss of coherence and professionalism, both of which needs to be restored. Unfortunately, his essay makes broad, unsupported statements regarding the opinions of "most Arabs," posturing, for example, that most Arabs are only critical of U.S. foreign policy but that they love American culture. This section ends even more disappointingly with an essay by Daoud Kuttab offering a similarly simplistic and idealistic explanation of U.S. diplomacy.

In the final section of the book, Garfinkle has the final word in an essay entitled, "Anti-Americanism, U.S. Foreign Policy, and the War on Terrorism." Garfinkle explains that anti-American sentiment is only marginally tied to American policy and that changing American policy under terrorist threats would be a mistake. In his discussion of anti-Americanism, he asserts that data supports his sweeping generalities, although he fails to refer explicitly to such empirical support. Like the rest of the book, this final chapter is wrought with unsupported, vague assertions and leaves the reader feeling confused and hopeless.

The authors of the essays represent diverse opinions on the war on terror, and they often reach entirely different conclusions regarding the very intricate and nuanced nature of the subject. Despite the complexity of the issues involved, the

authors tend to have a few things in common: simple arguments, lack of a true analytical framework, and, with some exceptions, a consistent absence of critical introspection regarding American foreign policy.

*The Lesser Evil: Political Ethics in an Age of Terror.* By Michael Ignatieff. Princeton, New Jersey: Princeton University Press, 2004. Pp. xii, 170. \$22.95 (cloth).

REVIEWED BY ELISABETH GENN

The attacks of September 11, 2001, and the war on terror that unfolded in their aftermath launched to the international fore an impassioned debate over the very nature of liberal democracy. Such crises confront democracies with existential questions. What limitations on liberty, if any, are permissible in the name of national security? Can democracies effectively take on a ruthless adversary that knows no limits unless they dispense with the constraints imposed by their own liberal institutions? And if they do, would such use of coercive power in the name of self-preservation undermine the very foundational commitments liberal democracies are sworn to uphold? The temptation for political leaders in a time as full of uncertainty and as seemingly unprecedented as our own is to go back to the drawing board, dispensing with the lessons of history. In *The Lesser Evil*, Michael Ignatieff reminds us that although the contours of the debate may have shifted, these questions are as old as democracy itself.

In the arguments raging over the propriety of certain provisions of the Patriot Act, the preemptive war in Iraq, the treatment of Guantanamo detainees, and other contentious measures justified as part of the war on terror, there has been a pronounced tendency to traffic in absolutes. On one side of the dividing line is the absolute civil libertarian position, which draws on a "moral" reading of democratic institutions; according to this position, individual rights never can be subordinated to the majority's interest in security and self-preservation. On the other side stands the pure pragmatist whose only criterion for the propriety of a democratic response to terror is its effectiveness. Drawing upon an astounding array of historical case studies as well as philosophical, legal, and literary sources—from ancient Rome to Weimar Germany, from Eu-

ripides' *Medea* to Joseph Conrad's *The Secret Agent*—Ignatieff charts a precarious course between Scylla and Charybdis, making a compelling and impassioned argument for a principled middle ground.

At the heart of Ignatieff's "lesser evil" approach is the notion that a people living in perpetual fear cannot be truly free. Thus, far from inimical to the democratic enterprise, the use of force can be integral to it, and when faced with the threat of terrorism, democracies should be able to defend themselves through the use of violence. The question is how one can restrict the government's use of coercive force in a time of emergency so that it does not unduly infringe on the demands of human dignity in the short-term or erode the resilience of democratic institutions in the long run. Striving to achieve this balance is an inherently messy and imperfect pursuit, as the author is the first to acknowledge. Thus, in Chapter 1, he distills the analytic framework for his explicitly "antiperfectionist" stance, providing justifications for the toleration of lesser evils and erecting the safeguards—in the form of liberal democratic institutions themselves—that will prevent their slippage into greater ones.

Chapter 1 concludes by borrowing from both international and domestic legal standards to generate a proposed set of tests to which policy-makers should subject coercive anti-terror measures. First, no measure can infringe on the ultimate inviolability of individual human dignity. Under this test, no exigency could justify torture, cruel, inhuman or degrading treatment, extrajudicial execution, and other serious violations of human rights. Second, the measures must pass the "conservative" test, rebutting the presumption that departures from existing due process standards should not be necessary. Third, the measures proposed must be truly effective in making citizens more secure, both in the near future and over the long-term. Fourth, any coercive measures must be the last resort, used only once all conceivable alternatives have been exhausted. Fifth, such measures must pass the test of open adversarial review by legislative and judicial bodies. When secretive measures cannot be avoided, the decision to employ them must not be made behind a veil of secrecy. Finally, in the resounding words of Thomas Jefferson, a democracy fighting terror must show "decent respect for the opinions of mankind" as embodied in the advice of its friends and allies, and it

must comply with its international obligations as both a moral and a practical imperative.

Having set out the foundational underpinnings of the “lesser evil” approach, Ignatieff goes on to trace its historical, philosophical, and ethical roots as well as its broader implications for the future of democracies. In Chapter 2, he explores the justifications offered for and the lasting impact of emergency measures through case studies such as Lincoln’s suspension of habeas corpus and the internment of Japanese Americans, while at the same time weaving in the body of international human rights norms as a set of precommitments “in times of calm to prevent ourselves . . . from succumbing in times of danger.” Chapter 3 traces various responses to terrorist threats, both real and imagined, showing that terrorism alone has never brought about the downfall of a state; in fact, the defining characteristics of democracies—open borders, public debate, and restraints of government power—are sources of strength that democracies can marshal against their enemies rather than vulnerabilities for terrorists to exploit.

Beginning with Chapter 4, Ignatieff shifts away from his examination of democratic responses to terror in pursuit of a searching look at the politics and psychology of those who perpetrate terrorist acts. It is here in his refusal to treat terrorism as a monolithic phenomenon, his ingenious dissection of the various motivations and allegiances of terrorist actors, his examination of their complex relationships with the groups they purport to represent, and his analysis of the downward spiral of *la politique du pire* that Ignatieff is at his best and most original. The literary and visual portraits of terrorism he deploys in Chapter 5—from Joseph Conrad’s *Professor* who stalks through London with one hand on a detonating switch in his coat to Fyodor Dostoevsky’s *The Possessed* in which a small terrorist cell led by a charismatic leader takes over a Russian town setting off, “a fire-raising rampage that leaves buildings burned, innocents dead, and one recanting member of the terrorist group murdered”—provide a glimpse into the world of terrorist nihilism that is as insightful as it is chilling. He concludes his work with thoughts on the unthinkable: mounting a democratic response in the face of terrorist Armageddon.

“We must defend ourselves,” Ignatieff writes on the final page, “with force of arms, but even more with force of argument.” True to his own advice, the arguments of *The Lesser Evil*

are forceful and convincing, even if they occasionally tread on well-trampled ground (sometimes his own). His paradigm of emergency coercive measures within boundaries policed by a renewed confidence in our own liberal democratic institutions strikes a chord between pure counter-majoritarian idealism and the kind of realpolitik that ought to make the most hard-headed among us shudder. Still, the answers Ignatieff proffers pose troubling new questions. What does it mean to condemn the measures we justifiably adopt as an *evil*, to say that something is a wrong even though we believe it is the right or proper thing to do? Such ethical labels may adhere in theory, but can we prevent them from coming unglued in practice when real human beings are asked to perform the very acts we continue to condemn? And if the ineffectiveness of emergency measures past has only come to light long after they were lifted, how are policy-makers to resist the pressure to act now and examine later? Perhaps this is the intrinsic grace of Ignatieff's antiperfectionist stance—he never aspired to explain it all.

*Democracy and the Rule of Law*. Edited by José María Maravall & Adam Przeworski. New York, New York: Cambridge University Press, 2003. Pp. vii, 321. \$65 (cloth), \$23.99 (paper).

REVIEWED BY KATHLEEN O'NEILL

According to recent studies undertaken by economists in both the developed and developing world, the rule of law and democracy promote economic development. *Democracy and the Rule of Law* challenges this argument by suggesting a more complex relationship between democracy and the rule of law. The book is a compendium of theoretical and empirical chapters written by political scientists and edited by two prominent scholars who have done extensive work on the politics of developing countries. Viewing the relationship between democracy and the rule of law through the lens of power, the core chapters of the book probe the questions: how can the rule of law be introduced and sustained in societies where organized groups obtain their preferred outcomes by transgressing laws?

While each author agrees that the powerful will only obey the rule of law when it is in their interest to do so, they disa-

gree over which mechanisms are most likely to channel elite interests in this direction. Indeed, two debates form the core of this book: The first (between Barry Weingast, Adam Przeworski, Catherine Smulovitz, and, to a lesser extent, Stephen Holmes) addresses those factors that sustain the rule of law; the second concerns whether the relationship between democracy and the rule of law is complementary or oppositional.

Holmes, building on insights from Machiavelli and Rousseau, begins the debate by arguing that the powerful will agree to limit their power in some arenas when they receive net gains from doing so. For example, society's elite may require security in the form of soldiers; however, in order to motivate soldiers to protect it (rather than turn their arms against their masters), the elite must be able to credibly commit to protect the soldiers' interests (payment for services once they are rendered, as well as payments to the soldiers' families should they fall in battle, among other things). Eventually, these deals are enshrined in laws. Generally, the elite will spread power across organized groups as it expects to need these groups' cooperation over time. As more and more groups within society become organized and demand equity, power is disbursed. On this almost evolutionary account, development of the rule of law seems inevitable. However, not all accounts are so optimistic.

Barry Weingast's model requires a great deal of coordination between distinct social groups. The ruler chooses whether to follow the law or transgress it for material gain. Society is then divided into two groups that must act together to restrain the ruler, and this introduces a coordination dilemma. Exacerbating this problem, the ruler can theoretically "buy off" one of the two groups by redistributing resources from one to the other, while expropriating a great deal for himself. The rule of law is only maintained when both groups can coordinate to restrain the ruler even when, in the short term, one of them would benefit from the ruler's largesse. In Weingast's model, a Constitution plays a pivotal role: it facilitates coordination by setting out the mutually agreed upon bounds of state power. To maintain the rule of law, citizens agree on the bounds of the state and must be willing to police them even when it is not in their short-term interests to do so. In other words, Weingast requires high standards in his idea of the rule of law, which makes them few and far between.

Two chapters attempt to alleviate this gloom with alternative models. Catherine Smulovitz formulates an argument in which the government takes actions that lead to critical reactions from various groups in society according to predictable patterns; this in turn may spark widespread resistance. Because groups have different views about the limits of state power and react without coordination and because rulers are risk averse and have imperfect information about what will spark reaction and who may join once one group has begun to rebel, the government must stay alert. Contrary to Weingast's account, the rule of law is sustained by the decentralization and fragmentation of interest groups.

Adam Przeworski offers yet another account of the rule of law in fledgling societies. Beginning with the observation that democracy requires its citizens to follow at least one law—that the losers accept the outcome of elections—he inquires into the conditions under which this behavior is likely. In his model, electoral losers compare the payoffs of (1) overturning the elected government (leading to a battle for authoritarian control in which the winner takes most of the resources); and (2) acquiescing in election results and awaiting future elections for another chance at governing (the rule of law outcome where resources are redistributed in accordance with campaign platforms). In addition to distribution of military power, the main variables are the relative costs and benefits of redistribution under authoritarian and democratic rule and levels of risk aversion. In poor societies, the costs of rejecting electoral outcomes are smaller because there is not as much to lose in the fight for authoritarian control; however, as incomes rise, even electoral losers may lose quite a bit in a struggle for authoritarian rule. Przeworski's argument rounds out the central debate over what sustains the rule of law: coordinated beliefs; decentralized interest groups and a risk adverse ruler; or economic interests?

One thing on which all three authors agree is an emphasis on pluralism and organized interest groups within society. Potential challenges by organized rival groups appear to be a necessary condition for the rule of law's success. Democracy (a topic that often receives little attention, despite its prominence in the title of this book) does not appear to be necessary. In fact, only Przeworski's model explicitly requires elections, and even Holmes's chapter on the genesis of the rule of

law does not assume democracy. It is noteworthy that Barros's analysis of Chile's Pinochet dictatorship finds that some semblance of the rule of law was possible under this authoritarian regime—despite its lack of democracy—because power was dispersed between different branches of the military within the dictatorship, a perfect example of pluralism without democracy.

Indeed, what one might expect to be a natural, positive relationship between democracy and the rule of law is challenged throughout the book. Several authors consider the two concepts to be fundamentally at odds—democracy rewarding electoral majorities (raw electoral power) and the rule of law placing constraints upon majority power. Maravall fleshes out many of the potential relationships between democracy and the rule of law: electoral losers might use courts to curb the power of election winners; the elected may use courts to expand their power against the opposition; sufficiently popular winning majorities may bypass courts and the rule of law to increase their power. The chapter by John Ferejohn and Pasquale Pasquino points out the tendency toward a judicialization of politics in countries with fragmented, indecisive, or gridlocked political systems, suggesting that too much pluralism might lead to certain pathologies in the rule of law and democracy balance; Roberto Gargarella discusses (and attempts to allay fears about) the dangers of populist democracy for the rule of law. These and other chapters suggest an uneasy balance between democracy and the rule of law, which are—as Ferejohn and Pasquino point out—competitive, peopled institutions (the courts and the legislature), uneasily sharing power.

By focusing on power and self-interest as the central underpinnings of the rule of law and by challenging the relationship between democracy and the rule of law, these political scientists provide a useful addition to the literature on the rule of law that is often dominated by economists and lawyers.

*Privileging Industry: The Comparative Politics of Trade and Industrial Policy.* By Fiona McGillivray. Princeton, New Jersey: Princeton University Press, 2004. Pp. 224. \$55 (cloth), \$19.95 (paper).

REVIEWED BY JOSEPH A. SCHWARTZ

All politics is local, even that of international trade, argues Fiona McGillivray. In proposing a novel explanation of how democracies respond to demands for protectionist trade policies, *Privileging Industry: The Comparative Politics of Trade and Industrial Policy* does not focus on the international components of such decision-making; rather McGillivray introduces a two-step model to analyze the relationship between democratic governance and protectionist policies. As such, she focuses entirely upon national traits of the domestic industrial and political systems. First, legislators' preferences are driven by geographical distribution of industries in correlation to national electoral rules. Second, the relative strength of parties within the given electoral system indicates how these preferences become policy. In sum, McGillivray's model establishes whom legislators *want* to help and whom they *can* help through redistributive policies. Through this analysis, McGillivray extrapolates a general theory that predicts which types of industry a given type of government is likely to protect.

Following these guidelines, McGillivray derives a set of expected results for three categories of political systems: strong-party majoritarian, weak-party majoritarian, and strong-party proportional representation governments. Strong-party majoritarian governments, in which the ruling party is concerned with maintaining its legislative majority, will concentrate their efforts in swing districts where the margin of victory is small. Hence, the protected industries may not be the largest or command the most votes on a nationwide basis. On the other hand, weak-party majoritarian systems depend upon constantly shifting coalitions of legislators to pass laws, each of who maximizes aid to her home district. Thus, the industries rewarded will be those distributed over the largest numbers of districts. Finally, strong-party proportional representation nations have larger numbers of parties, any one of which may appear in successive governments and reward its core voters. The bargaining process inherent in coalition governments re-

sults in more consistent support for industries commanding significant numbers of overall votes.

In the second part of the book, McGillivray applies her theoretical predictions to case studies and examines the effects of party strength upon industry tariffs in several countries. The United Kingdom and Canada are examples of strong-party majoritarian systems, while the United States and Germany are, respectively, exemplars of weak-party majoritarian and strong-party proportional representation nations.

As applied, McGillivray's first hypothesis is supported by Canada and the United States but not by Germany. Canada is more likely to bestow tariff protection upon industries concentrated in electoral swing districts, while in the United States, those industries that receive legislative protection must ordinarily be dispersed and relatively large. This different results are due to each country's respective electoral systems. In Canada, where the governmental structure tightly binds the fortunes of individual legislators to those of their party, legislators can be coerced to support policies that are good for the party as a whole, even if they are detrimental to those of a given legislator. In contrast, the United States has a weak-party system, so the legislature will pursue policies that, on average, attract more support and, in turn, benefit the largest number of districts. Moreover, the strong-party proportional representation system provides less support for the first hypothesis. Such an electoral system nearly always results in collation governments where bargaining occurs at high levels, with individual legislatures maintaining little control over policy direction.

The third part of the book explores why particular firms within a given industry (McGillivray uses the example of steel) receive the benefit of protectionist policies. In addition to the experiences of the United States, United Kingdom, Canada, and Germany, the author draws upon Sweden and Belgium. In all cases, McGillivray finds support for the second hypothesis: that industrial geography determines which businesses within a favored industry will actually benefit from a redistributive policy, such as a tariff.

The next section uses stock price dispersion analysis to measure the equity markets' evaluation of how political change affects a given industry. The underlying premise is the familiar efficient markets theory: that stock prices adequately

reflect all available information about a business and that the prices change rapidly to reflect new information as it becomes available. Because an industry index is an amalgam of all stocks for a given industry, it can serve as a proxy to represent the stock market's overall valuation of the industry as a whole. If the industry is sufficiently distributed, changes in the index prices ordinarily should reflect new information affecting the whole industry, rather than just information specific to one firm. Using historical market data, McGillivray tries to match movements in index price to elections of governments that, according to her theory, should support or oppose redistributive policies favoring the industry. For example, if a party that has promised to impose steel tariffs is elected to govern, the steel index price should move up shortly after the election (after controlling for other factors).

Although successful in many regards, *Privileging Industry* is best when applying the theory to industries as a whole even though there are certain limitations in doing so. These include: (1) difficulty in determining the magnitude of the transfer of resources from the general population to a particular region or industry; (2) complications when industries are protected for non-economic reasons, such as national security; and (3) inability to transfer the theory to non-strong-party systems. While McGillivray convincingly demonstrates that her theory works well with data from several strong-party nations, questions remain as to its workability in the context of other systems.

Overall, students and practitioners of comparative politics should find the ideas in *Privileging Industry* to be fertile ground for future research. The author suggests a number of areas, including investigation into the choice of policy instrument and the effect of international politics. Will some countries prefer to help an industry with tax breaks rather than quotas, and if so, why? How effective is external pressure in opposition to domestic lobbying in various systems, and how does the net result depend upon industry geography and the electoral rule? These remaining provocative questions are some of the best take-aways from McGillivray's work.

*Latin American Law: A History of Private Law and Institutions in Spanish America.* By M. C. Mirow. Austin, Texas: University of Texas Press, 2004. Pp. 343. \$45 (cloth).

REVIEWED BY IVY HERNANDEZ

M. C. Mirow, the author of *Latin American Law: A History of Private Law and Institutions in Spanish America*, seeks to remedy a public interest bias in scholarship on Latin American law, which to-date has focused on constitutional law, criminal tribunals, international human rights, and humanitarian law. In contrast, the study of property and commercial law in Latin America—including subjects such as inheritance, ownership, contracts, and business dealings—remain largely neglected. In *Latin American Law*, Mirow lays a comprehensive foundation by providing a generalized and descriptive 500-year survey of legal evolution in these largely uncharted areas.

Mirow employs a straightforward chronological format, dividing the book into three parts corresponding to the “Colonial Period,” “Independence and the Nineteenth Century,” and “The Twentieth Century.” Within these parts, her breadth of subject matter is impressive. In addition to substantive areas of the law, Mirow’s study focuses on legal institutions. Thus, each part is divided topically to include chapters on the courts, legal education, and written sources of law, as well as the substantive areas of property and commercial law. Additionally, she explores certain topics of particular relevance to a single time period; there is a chapter on slavery in the first part, a chapter on codification in the second part, and a chapter on land reform in the third. The prologue provides an interesting sketch of indigenous law as a reminder that the Spanish colonial system was implemented on top of pre-existing legal structures that were not entirely obliterated; indeed, Spanish legislation specifically stated that indigenous legal customs would govern to the extent they were compatible with the crown and the church. On the other hand, in the book’s concluding sections, Mirow emphasizes the wide gap that existed and continues to exist between written law and law in practice.

In the first part, Mirow emphasizes that “private law facilitated economic extraction from the colonies and sought to replicate Spanish society in a new setting while accommodating new legal objects.” Mirow provides a brief outline of the

most important sources of Castilian private law, such as the *Nueva Recopilación de Castilla* (1567), as background for legal development in the colonies. He examines important institutions established in Spain to regulate commerce with the colonies, such as the Board of Trade, which was located in Seville and served as a civil and criminal court, administrative agency, tax collector, and oceanic and navigational research institute. Mirow provides an overview of legislative structures established in the colonies, as well as a description of the colonial court structure. With regard to commercial law, he describes business partnerships, identifies legislative enactments regarding mineral rights—a major source of wealth during the colonial period—and surveys the judicial procedures used to resolve disputes arising from mining activity. Finally, Mirow explores protective legislation—written yet not enforced—pertaining to Indian status and Indian ownership.

Private law rules continued mostly unchanged after a country's independence until the mid-nineteenth century when codification radically changed their structure and content. In the second part, Mirow explores how and why codification of civil law and procedure was "the most important development during the early national period of Latin American countries." Mirow highlights the codification movements in Mexico, Chile, and Argentina, providing biographical data about the key players and identifying European models on which they based their efforts. Mirow competently explains the general process of codification, which typically involved a constitutional provision providing for legislative power to arrange for drafting, and the obstacles to successful completion, including political instability and lack of funding and legal talent. By showing how codification changed the way in which students studied the law, how lawyers and courts approached the law, and what materials were used to interpret the code, Mirow explains the significance of codification. One particularly interesting feature of the period was the crown's consolidating large land estates by the wealthy in order to curtail the political power of the colonial elite.

The third part explains that the influence of Europe on the region declined as Latin America countries increasingly turned towards the United States (their regional neighbors) and international law for legal guidance. This is perhaps the strongest idea advanced by Mirow; nevertheless, he cautions

that his theory may be an oversimplification since European sources continue to influence tools of interpretation for private law. New legislation shows increased U.S. influence; for example, Mexican securities regulation is modeled on the U.S. Securities and Exchange Commission. Similarly, Mirow uses intellectual property law to illustrate increased dependence on international conventions. Additionally, modern efforts at judicial reform focus on attempts to insulate the judiciary from executive dominance, and recent developments in corporate law, such as the rise of limited liability companies are often a function of the desire to attract international investment. However, his hypothesis is not conclusively supported by the cumulative examples. For example, the chapter on land reform does not further the theme of diminished European influence, as there were autonomous legal developments such as the Colombian Commercial Code of 1977.

For anyone interested in understanding the historical roots of private law and institutions in contemporary Latin American society, *Latin American Law* is a good place to start. As Mirow suggests, an understanding of the historical foundations of Latin American legal practices, viewpoints, and attitudes will become increasingly important as the United States develops ever-increasing economic, educational, social, and cultural ties to this region. The book contains an extensive bibliography of secondary sources, and throughout the work, understudied areas are flagged, such as the intellectual influence of Spanish professors, jurists, and lawyers who fled to Latin America as Franco came to power and the development of tort law. However, readers should expect a high degree of generality, as opposed to country-specific analysis, and will not find much political context to help illuminate the forces behind legal change.

Readers certainly should not reference *Latin American Law* for a unifying theory about legal evolution. Mirow's study is not an analytical synthesis as much as a description of discrete aspects of Latin American legal institutions and substantive areas of private law. The work's overarching theme that private law expresses political and social power and evolves in response to political and social change is, unfortunately, too obvious and too vague to serve as a useful conceptual framework. However, the author is keenly aware of the book's weaknesses, for he repeatedly emphasizes that his study is only a

first step toward the future creation of more critical, socially and politically situated accounts of Latin American private law. Certainly, future scholars could build on his contribution by exploring the private law arrangements of individual countries or by constructing regional studies that refine these similarities and differences among countries in the region.

*Doha and Beyond: The Future of the Multilateral Trading System.*

Edited by Mike Moore. Cambridge, England: Cambridge University Press, 2004. Pp. xx, 184. \$60 (cloth).

REVIEWED BY JIE ZHU

The Fourth World Trade Organization (WTO) Ministerial Conference was held in Doha, Qatar, in November, 2001. As the highest-level decision-making body in the WTO, the Ministerial set out a broad agenda to confront challenges to the Organization, which culminated in the Doha Declaration ("Declaration"). *Doha and Beyond: The Future of the Multilateral Trading System* is a collection of essays written by experts who were enlisted by Mike Moore, the then Director-General of the WTO, to advise him on how the Organization should move forward to address these challenges. Several themes emerge throughout the essays including some familiar ones, such as sustainable development and institutional transparency, and some less studied, such as China's accession to the WTO and the effect of the enlargement of the European Union.

The divide between developed and developing countries has long been a challenge for the WTO. For developing countries, the most important goals are rapid sustainable economic growth and poverty alleviation. Theoretically, trade liberalization should help the developing countries' economic growth; however, reality does not show such a clear, positive relationship. According to T. Ademola Oyejide, developing countries must be attentive to trade negotiations' potential collateral effects: enhancing the developing countries' access to external markets and increasing the supply response capacity of their domestic economic agents. A dispassionate analysis and reformation of the WTO's special and differential treatment of low-income countries, combined with enhanced surveillance of their implementation will help achieve these improvements. In agreement with this proposition, an essay by Jagdish

Bhagwati builds a strong argument that focus on trade with other countries is good for intrastate development. Bhagwati posits that the protectionism of developed countries is not more acute than that of less developed ones. Therefore, giving preference to poor countries is also misguided, according to Bhagwati, because preferences tend to pitch poor nations against each other.

In addition to trade development, discussion of environmental and sustainable development issues permeates the entire Doha Declaration. In response, Konrad von Moltke's essay criticizes the idea that economic growth alone will create the necessary impetus to deal with environment and sustainable development and the idea that the trading system's most important contribution is the growth brought by trade liberalization. He discusses environmental issues by dividing them into four categories: issues slated for negotiation (e.g., multilateral environmental agreements); issues to be considered for negotiation (e.g., the effect of environmental measures on market access); environmental issues likely to arise in the process of negotiating other matters slated for negotiation (e.g., stability of rural communities); and issues not included in the Declaration (e.g., external transparency of the WTO). To combat these challenges, von Moltke proposes two solutions: one uses the WTO's Committee on Trade and Environment and the Committee on Trade and Development as forums for the environmental stakeholders inside and outside governments; the other creates of a high-level WTO Advisory Group on Sustainable Development.

As exhibited by its influence on the environment, the WTO is expanding into many non-trade areas; therefore, its institutional development is crucial for successful fulfillment of its agenda. Although Robert E. Baldwin's essay argues that existing WTO mechanisms can be successfully utilized to deal with new challenges, other contributors propose more radical reforms. LeRoy Trotman examines the conflicts between the WTO's stated vision and the reality of the demonstrable disaffection inside and outside the Organization, as well as the institutional difficulties that contribute to these conflicts. Because of the enormous volume of WTO rules, only countries involved in the conceptualization, drafting, and development of the rules can readily understand and exploit them. Combined with a lack of competent personnel and the disparity in

resources between members, Trotman believes that the WTO is a club that “was not established for the general welfare of the world, in the same way that the ‘World Series’ was not intended for baseball players in China or Germany.” To overcome these problems, Trotman proposes a new formula (not GDP) for measuring a country’s economic growth and improved involvement of NGOs.

In her efforts at proposing institutional reform, Sylvia Ostry discusses the external transparency of the WTO and its relationship to the policy process at the national level. For one, there exist a serious North-South divide in the WTO in which NGOs play a significant role by helping Southern countries and a rise in multi-national enterprises (“MNEs”). After a review of developments in the Organization for Economic Cooperation and Development’s (OECD) transparency and in international, environmental, and human rights law, Ostry argues that the WTO should incorporate better the opinions of different kinds of stakeholders in rulemaking; in other words, it should act more like a representative body enacting legislation.

Peter Eigen, Chairman of Transparency International, also focuses on transparency in his essay, but for a different cause. He argues that in designing and implementing its anti-corruption rules, the WTO can use the help of a variety of multi-stakeholder coalitions, such as the private sector and civil society organizations, governments and civil society organizations, and an occasional *ménage à trois* of all the above. Using empirical studies, Eigen shows the obstruction effect of corruption on trade liberalization, economic growth, and development. While many important organizations of global governance, such as the UN, the World Bank, the IMF, OECD, and the EU, have initiated programs to control corruption, the WTO has failed to make a strong anti-corruption effort. Eigen argues that the WTO should and can play an important role in the global fight against corruption. The WTO can introduce rules on full transparency of government functions, which requires the WTO to overcome its internal resistance to institutional reform by improving internal transparency and equitable opportunities for all members to participate in decision-making.

One of the Declaration’s most important achievements was China’s accession to the WTO. Koichi Hamada discusses

the impact of China's entry on the global economic system by showing how China will be affected in several domestic sectors. For example, as a large agricultural country, but not an agricultural exporter, China largely is concerned with the effects of subsidies in developed countries. In addition, China may use the shock brought by its entry into the WTO to facilitate its state-owned enterprises' transition to market-oriented private enterprises. Hamada then postulates the impact on neighboring countries: Increased participation in trade and technical progress in China will generally help improve the welfare of the rest of the world. Finally, Hamada argues that some of the rules in developed economies should be reexamined. For example, anti-dumping actions often deprive the country that employs them of less-expensive imports, strict protection of intellectual property disserves many developing countries, and China's successful use of special economic zones proves that uniform taxation should not be strictly imposed on developing countries.

After Hamada's examination of China's impact on the WTO, Patrick A. Messerlin looks at a somewhat similarly situated member—the European Union. He argues that the expansion of the existing European Union (called the “EC15”) will lead to the largest-ever consolidation of preferential trade agreements. Messerlin compares the current levels of protection in the EC15 with the ten Central European countries (“CECs”) involved in the enlargement. In concluding that CEC accessions will have a positive effect on reducing the EU's priority on “constitutional” issues, such as competition, environment, labor, and preferential trade agreements, the enlargement will help confine the WTO to its role as “Trade Department” instead of “World Government.”

Overall, *Doha and Beyond* provides a broad survey of the challenges and opportunities faced by the WTO. Delivered by a panel of distinguished experts from a variety of backgrounds, many of the opinions and propositions are exceptionally original and insightful. The essays, however, should have been more accessible to those readers lacking extensive knowledge of the WTO and the global trading system; to this end, more notes about the backgrounds of the discussions should have been provided. As a collection of essays, the book also fails to provide a systematic discussion of issues with which the WTO is currently grappling. Moreover, packaged as advice to the Di-

rector-General of the WTO, the essays advocate rather than describe. Given this, adapting the book for a general audience should have enlisted contributors to provide multiple perspectives.

*The Practice and Procedure of the Inter-American Court of Human Rights.* By Jo M. Pasqualucci. Cambridge, England: Cambridge University Press, 2003. Pp. 536. £100 (cloth), £38 (paper).

REVIEWED BY VILMA ARCE

In 1979, as most Latin American countries were experiencing oppressive rule and gross violence, the Inter-American Court of Human Rights (“the Court”) was established by the Organization of American States (OAS) at the American Convention on Human Rights. Although state-sponsored disappearances, kidnappings, and brutal murders were commonplace in the region at the time, seven years transpired before the Commission forwarded contentious cases to the Court. Many feared that states would refuse to participate in court proceedings; however, surprisingly, states charged by the Court for violating human rights laws actively responded to the applications filed against them.

Since then, methods and procedures to address the needs of human rights victims in Latin America have developed over the past twenty years. Sitting in San Jose, Costa Rica, the Court works in conjunction with the Inter-American Commission on Human Rights, which is located in Washington, D.C. *The Practice and Procedure of the Inter-American Court of Human Rights*, by Jo M. Pasqualucci, traces the Court’s evolution from its foundation to its most recent development—the new Rules of Procedure of the Inter-American Court and the Inter-American Commission, which entered into force in 2002. Pasqualucci is well suited for such analysis; she began developing her own professional relationships and expertise at the Court in 1986 when she clerked for the Court as a Fulbright Scholar. At the time, she worked on the Court’s first contentious cases and since then she has followed the institution’s continued evolution and growth.

Human rights advocates and scholars alike will find Pasqualucci’s work informative from both academic and practical

perspectives. The book begins by describing the Court's origins. Focusing on the political and social conditions that necessitated the Court's founding, the historical account serves as an excellent backdrop for the comparisons that Pasqualucci weaves into the book between the Inter-American Court of Human Rights and other international human rights courts and commissions, such as the European Commission on Human Rights, the United Nations Human Rights Committee, and the International Court of Justice. Pasqualucci's analysis is sensitive to cultural, political, and socio-economic differences between America and Europe. She informs the reader when the Inter-American Court has taken a different approach or has addressed a need that is specific to Latin American. At the same time, the author reveals similarities among the systems, particularly with respect to rules of procedure and questions brought before the different courts. In conclusion, Pasqualucci discusses the development of international law and its treatment of human rights over the past twenty-two years.

On a more practical level, Pasqualucci describes how states and parties file and litigate matters at the Court. She details various procedural issues, such as the different types of jurisdiction, the manner in which states challenge jurisdiction, and provisional measures the Court may take in cases involving urgent, life-threatening circumstances.

The book is then organized to guide the reader through the three main roles of the Court. The first part explains the advisory jurisdiction of the Court, which is a power conferred by Article 4 of the American Convention. Advisory opinions are authoritative but non-binding explanations of a question or issue. Member states may submit requests, while individuals and NGOs are permitted to file amicus briefs. Once standing and subject matter jurisdiction are determined on a specific issue, the Court may or may not choose to hold oral proceedings. Pasqualucci explains this process, including the content and delivery of advisory opinions, and preliminary objections states may file to advisory opinion requests. She discusses the importance of such opinions and their role in shaping international common law by contributing to the development of substantive and procedural uniformity and consistency.

The second part of the book discusses the Court's jurisdiction and describes the procedural steps required to file a complaint as well as the other decisions parties may make through-

out the adversarial process. The section begins with preliminary objections a state may have to a tribunal's consideration of a case. It continues with an in-depth description of how proceedings on the merits are adjudicated and ends with a discussion on victims' reparations and how they are assessed and implemented. Pasqualucci continues with a description of provisional measures, which are steps taken by the Court to expedite assistance to victims in threat of imminent danger, and concludes by assessing the Court's general effectiveness.

Pasqualucci ends each section with suggestions and new possibilities for the Court. Throughout, she highlights the flaws and gaps within the current system. For instance, she indicates that the frequency and quantity of preliminary objections are problematic because they cause delay to the resolution of cases. She subsequently makes specific recommendations on how the Court and governments can work together to ameliorate this problem. Finally, the book also features five appendices, among them: the articles of the American Convention of Human Rights, the Rules of Procedure of the Court, and a copy of the form used for presenting petitions on human rights violations.

This is an excellent book for those interested in Latin America, human rights, and the procedure of international tribunals. Pasqualucci's writing style is simple, engaging, and clear. Her enthusiasm for and faith in the Inter-American Court of Human Rights drip from the pages of the book, becoming infectious. She does an excellent job of defining the important role the Court has played in shaping the theory and practice of international human rights and in providing a model of how legal institutions can work to protect marginalized peoples.

*Humanitarian Intervention and International Relations.* Edited by Jennifer M. Welsh. New York, New York: Oxford University Press, 2004. Pp. viii, 229. \$72 (cloth).

REVIEWED BY ELLEN VANSCOYOC

Non-intervention in states' internal affairs has been one of the foundational principles of the post-World War II international order. However, despite widespread acceptance of the non-intervention principle, a series of intrastate humanita-

rian catastrophes in the 1990s has led many to question the validity of non-intervention in cases of massive human rights violations. UN Secretary-General Kofi Annan put the question as follows: "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that affect every precept of our common humanity?" In *Humanitarian Intervention and International Relations*, the product of a series of seminars held at the University of Oxford from October to December of 2001, eight international relations scholars and practitioners add their voices to the continuing debate over humanitarian intervention.

The book addresses both the positive question of whether or not a new norm of humanitarian intervention *has* emerged in the past decade, and the normative question of whether or not the international community *should* embrace humanitarian intervention. Jennifer E. Welsh, the volume's editor, begins with a concise definition of humanitarian intervention: "coercive interference in the internal affairs of a state, involving the use of armed force, with the purposes of addressing massive human rights violations or preventing widespread human suffering." Welsh organizes the volume into two sections. The first, "International Theory and Humanitarian Intervention," evaluates the concept of humanitarian intervention in the context of ethical, political, and legal theory. The second, "The Politics and Practice of Humanitarian Intervention," analyzes case studies of intervention—or lack of intervention—during the 1990s.

The contributors to the book's overarching theory embrace, to varying degrees, the use of humanitarian intervention and agree that a new international norm of humanitarian intervention has been emerging over the last decade. Henry Shue opens the section by placing humanitarian intervention in the context of moral and political philosophy. Shue passionately argues that if the international community believes in human rights in any meaningful way, those rights necessarily imply a duty of protection on the part of the international community when a state fails to meet its responsibility to protect the basic rights of its own citizens.

In the following chapter, Nicholas Wheeler argues that the international community has been moving towards acceptance of the "sovereignty as responsibility" justification for hu-

manitarian intervention under the leadership of western “norm entrepreneurs.” For one, the Security Council displayed an increased willingness to intervene in internal crises during the 1990s, defining intrastate humanitarian emergencies as threats to “international peace and security” under chapter VII of the UN Charter. Furthermore, the UN discussions and resolutions on crises in northern Iraq, Somalia, Bosnia-Herzegovina, Haiti, and Rwanda cited not only international security concerns but also humanitarian motivations. However, states have not yet been willing to justify intervention on purely humanitarian grounds. Wheeler’s analysis of the statements of Security Council members on the Russian resolution to condemn NATO’s unauthorized humanitarian intervention in Kosovo in 1999 leads him to conclude that the “sovereignty as responsibility” rationale was not embraced by countries outside the NATO allies. Wheeler characterizes most members’ votes against condemning the NATO action as “an international equivalent of mitigation in domestic law systems”; while most members viewed NATO’s actions as illegal, they also felt they were morally justifiable given the extent of the crisis.

In the final theoretical chapter, Jennifer Welsh addresses some of the legal and ethical objections to humanitarian intervention. She finds most troubling the “pluralist consequentialist” argument that states are unlikely to agree on which intrastate abuses or oppressions justify humanitarian intervention and that therefore humanitarian interventions will tend to produce more misery by leading to interstate war. Ultimately, however, Welsh joins Shue and Wheeler in accepting a “sovereignty as responsibility” rationale for humanitarian intervention, attempting to address pluralist concerns by advocating a limited version of sovereignty as responsibility in which “minimal protection of human rights” constitutes grounds for humanitarian intervention but the “right to liberal-democracy” does not.

The book’s second section moves away from normative evaluations of humanitarian intervention as a general concept, offering context-specific analyses of different interventions in the 1990s. Sir Adam Roberts opens with a description of the nine cases in which the UN Security Council debated humanitarian intervention during the 1990s: Northern Iraq (1991); Bosnia and Herzegovina (1992-1995); Somalia (1992-1993);

Rwanda (1994); Haiti (1994); Albania (1997); Sierra Leone (1997-2000); Kosovo (1998-1999); and East Timor (1999). Drawing a distinction between coercive humanitarian interventions and non-coercive humanitarian “operations” or “actions” designed to deliver relief to embattled populations, Nicholas Morris, the UNHCR’s Special Envoy in the former Yugoslavia from 1993-1994 and 1998-1999, gives a detailed account of the UNHCR’s attempts to provide humanitarian relief during the conflicts in Bosnia-Herzegovina and Kosovo. Ian Martin, the Special Representative of the UN Secretary-General for the East Timor Popular Consultation in May through November 1999, gives a similarly thorough account of how a UN-authorized force was deployed to halt the violence following the ballot on independence in East Timor. James Mayall provides a broader historical overview of humanitarian intervention—or lack thereof—in Africa, focusing on attitudes towards intervention on the part of the Organization of African Unity and the broader international community. Finally, Simon Chesterman contributes a chapter comparing U.S. action in Afghanistan in October 2001 to humanitarian interventions.

A great strength of the volume is its juxtaposition of the theoretical perspectives of international relations scholars such as Welsh, Shue, and Wheeler in the first section with the practical perspectives of practitioners such as Morris and Martin in the second section. The chapters describing specific interventions and non-interventions provide a realist counterpoint to Wheeler’s description of a new norm of humanitarian intervention and Shue’s vision of a duty of protection. As Mayall comments on the international community’s failure to prevent the Rwandan genocide, “if there are any events when international action is required regardless of calculations of national interest—and this is what the existence of the Genocide Convention implies—Rwanda was surely such a case. The explanation, one suspects, is that the major powers do not accept this proposition.” Outside states’ failure to intervene in some cases of humanitarian crises and willingness to intervene in others may not be the product of a new norm of humanitarian intervention; rather they serve as an indication that humanitarian intervention occurs only when a strong state has a complementary national interest in halting the crisis (e.g., Australia’s interest in stabilizing Indonesia and preventing an

influx of refugees from East Timor and NATO's interest in European stability during the Balkan conflicts). Chesterman states this latter view of the current state of humanitarian intervention most bluntly in his chapter: "Far from being the legal prohibition of the use of force, [the primary] barrier [to humanitarian intervention] is the perceived lack of interest in getting involved at all."

Overall, *Humanitarian Intervention and International Relations* would benefit from a more explicit integration of the theoretical chapters and practitioners' observations, addressing the more cynical implications of some of the case studies. Mayall proposes, and Welsh alludes to, an alternative explanation of the international community's reluctance to undertake humanitarian interventions in Africa—the fear of the "imperial implications" of humanitarian intervention. As Mayall explains it, intervening in civil conflicts requires taking a political position, and, especially in the case of failing states, the international community might be understandably reluctant to engage in establishing a "new political order from the ground up," particularly when a state has a history of colonialism. However, the theory is not fleshed out in sufficient detail.

The book's exploration of how and why the international community intervenes in intrastate humanitarian crises will be of great interest to many readers today, particularly considering the tragedies currently unfolding in Darfur, Sudan. Given the importance of the subject, a more explicit exploration of how the gap between the current inconsistent practice of humanitarian intervention and the authors' normative visions might be bridged would be tremendously valuable. Several authors briefly refer to the recommendations of the Canadian-sponsored International Commission on Intervention and State Sovereignty, which suggested that the UN establish criteria governing when to intervene in humanitarian crises and that Security Council members agree not to exercise their veto power in cases of humanitarian intervention. Welsh, in contrast, argues that codifying the criteria for humanitarian intervention could have the dangerous effect of legitimating more uses of force in the international system, and, at any rate, is not likely to emerge given U.S. opposition. She would advocate instead a more representative selection of states on the Security Council, in order to allay fears of neo-imperialism, and would encourage more attention on non-military means

of building states' capacities to act responsibly and to protect their own citizens. Shue, thinking broadly, implies that we must engage in a form of public education, geared towards developing motivation for people to protect non-compatriots by showing that such protection is necessary in order to secure fundamental rights and that it is possible to fairly divide the duty of protection among the members of the international community. A concluding chapter exploring these proposals in more detail would have been a welcome addition to an otherwise excellent volume.

*Trade, Aid, and Arbitrate: The Globalization of Western Law.* By Ronald Charles Wolf. Aldershot Hampshire, United Kingdom: Ashgate, 2004. Pp. 306. \$114.95 (cloth).

REVIEWED BY JANELLE FILSON

The term "globalization" seems to be all-encompassing. Whether the blistering pace of the growth of international trade, the compression of time and space due to technological innovation, or the "soft power" of American cultural dissemination, volumes have been written about the social and economic implications of our increasingly transnational existence. In *Trade, Aid, and Arbitrate: The Globalization of Western Law*, Ronald Charles Wolf makes an important contribution to the literature of globalization by pointing out that not only is there such a thing as social, political, and economic globalization, but inherent in all of these things is *legal* globalization. Law is an abstraction—it is a reflection of social norms and a recognition of economic relationships. As a result, the increasing influence of Western law has the power to transform human activity. In this way, legal globalization can be distinguished from the internationalization of goods and ideas because it can fundamentally alter the way individuals understand and relate to one another.

Wolf describes this trend by examining, broadly, the mechanisms of international trade, international arbitration, and international aid—specifically, organizations such as the WTO, the World Bank, the Organization for Economic Cooperation and Development, and the IMF, among many others. Unlike states, which have legal principles derived from centuries of tradition and custom, international institutions operate

without the benefit of much historical precedent. Without a specific heritage to draw upon, international organizing principles tend to be expressed in terms of universal concepts of justice such as “fairness” and “equity,” words that are inherently contested. Lacking inherent content, Western legal understandings of these concepts fill the void because administrators must rely upon their own cultural heritage to supply meaning. Depending on the institution, there are also various other explanations for the spread of Western law. The WTO, for example, lacks an enforcement mechanism for its dispute settlement decisions. A powerful nation like the United States can ignore the decisions of the dispute panel as its own discretion. As a result, it is natural and inevitable for the WTO to formulate opinions that are less likely to be ignored, opinions that are framed according to legal principles that the United States will accept. Without specific definition and an enforcement mechanism, trade law “drifts according to the whims of major economic players.”

The same dynamic exists in the increasingly dominant use of international arbitration to resolve economic disputes. Corporations are understandably wary of being subject to idiosyncratic foreign law—business by nature craves stability and predictability. As a result, they turn to international arbitration as a means of minimizing the risk that a dispute will wind up being litigated in a jurisdiction hostile to their interests. Again, though, international arbitration operates above and outside of sovereign legal traditions. It relies on supposedly universal notions of fairness. Wolf uses the example of *Agricultural Products Ltd. v. Republic of Sri Lanka* to underscore the point that rules of arbitration are virtually content-free. Once again, the law of the dominant players—those of the West—rush in to fill the gaps.

Wolf also makes the standard points about abrogation of sovereignty in the face of international trade agreements and international regulatory organizations. However, he cites one benefit of international trade as the novel capability of an individual to challenge a sovereign through a bilateral investment treaty, which permits a private investor to arbitrate disputes with a host country before an international arbitration board.

Although a laudable attempt to advance the literature regarding the existence of legal globalization, *Trade, Aid and Arbitrate* has several critical flaws. Chief among them is extremely

poor organization and editing. The principal argument of the book—that globalization leads to the globalization of Western law—becomes redundant and after two hundred pages, the study of yet another international organization adds little to the exposition. Indeed, the thought that the dominance of neo-liberal organizations at the global level would lead to the dominance of Western, neo-liberal legal thought is hardly earth-shattering news. It would be helpful and a great deal more interesting if Wolf had gone further and taken a position on the effects of legal globalization, rather than remaining at the descriptive level. For example, Wolf mentions but does not resolve the criticism of Professor Martin Shapiro that it is difficult to talk about the globalization of Western law at the same time one argues that there is no law at the international level, only meaningless principles of “fairness” and “equity.” Instead of an argument, the reader is left to grapple with enigmatic statements such as the following throwaway line that concludes a chapter on NAFTA: “That the US will also be a frequent defendant in a law suit under NAFTA articles is an eloquent testimonial to the impartiality of Western law.” One could write a book on the assertion made in that sentence alone, yet it comes out of nowhere to conclude a discussion on the abrogation of sovereignty under NAFTA.

Wolf’s book would benefit greatly from aggressive editing and re-organization. For example, although the theme of the book is the spread of *lex mercatoria*, the term is not defined until page 212. Nor is it made explicit at the outset what “Western” law is and how it might differ from alternative legal traditions. Many other key concepts and arguments are left undefined or implicit, making it difficult to discern Wolf’s point in a given chapter, if there is one. The overwhelming sense is that the author was unable to restrain himself from mentioning without elaboration every thought that occurred to him and every theory he had come across on the subject at hand. The overall effect is somewhat overwhelming.

Nonetheless, the other effect of such breadth is an enormous array of issues that warrant further exploration. Though lacking focus, the work does succeed in provoking thought on a wide array of sociological and legal issues relating to the vast phenomenon that is globalization. It is an important, if flawed, first step at addressing the profound consequences of the dominance of Anglo-American law in the modern world.