BOOK ANNOTATIONS

Aitchison, Andy, Making the Transition: International Intervention, State-Building, and Criminal Justice Reform in Bosnia and Herzegovina (Portland, Oregon: Intersentia, 2011).

Bassiouni, M. Cherif, The Institutionalization of Torture by the Bush Administration: Is Anyone Responsible? (Antwerp, Belgium: Intersentia, 2010).

Buyse, Antoine, Ed., Margins of Conflict: The ECHR and Transitions to and from Armed Conflict (Cambridge, UK: Intersentia, 2011).

Edwards, Alice, and Carla Ferstman, Eds., Human Security and Non-Citizens (New York, New York: Cambridge University Press, 2010).

Groen, Lisanne, and Martijn Stronks, Eds., Entangled Rights of Freedom: Freedom of Speech, Freedom of Religion and the Non-Discrimination Principle in the Dutch Wilders Case (The Hague, Netherlands: Eleven International Publishing, 2010).

Leebaw, Bronwyn, Judging State-Sponsored Violence, Imagining Political Change (New York, New York: Cambridge University Press, 2011).

Margulies, Peter, Law's Detour: Justice Displaced in the Bush Administration (New York, New York: New York University Press, 2010).

Perrin, Benjamin, Invisible Chains: Canada's Underground World of Human Trafficking (Toronto, Ontario: Penguin Group, 2010).

Sarat, Austin, and Jürgen Martschukat, Eds., Is the Death Penalty Dying? European and American Perspectives (New York, New York: Cambridge University Press, 2011).

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WILSON, RICHARD ASHBY, WRITING HISTORY IN INTERNATIONAL CRIMINAL TRIALS (New York, New York: Cambridge University Press, 2011).

MAKING THE TRANSITION: INTERNATIONAL INTERVENTION, STATE-BUILDING, AND CRIMINAL JUSTICE REFORM IN BOSNIA AND HERZEGOVINA. By Andy Aitchison, Portland, Oregon: Intersentia, 2011. xxii, 247. $90.00 (Hardcover).

REVIEWED BY MADALYN WASILCZUK

In *Making the Transition: International Intervention, State-Building and Criminal Justice Reform in Bosnia and Herzegovina*, Andy Aitchison posits that Bosnia and Herzegovina (BiH), as a post-authoritarian, post-conflict society with a transitional economy, has much to offer to transitional justice scholars as a case study for international involvement in police, court, and prison reform. Aitchison makes his case by presenting an exceptionally detailed description of the police force, courts, and prisons through documentary evidence from governmental and non-governmental organizations, as well as from interviews with observers of or participants in criminal justice reform in BiH. *Making the Transition* is an excellent descriptive work that details the contours of the justice system and its reform in BiH, but fails as an analytical work in locating criminal justice reform amongst other components of state-building in a transitional state.

The depth and breadth of Aitchison's sources are two of the book's greatest strengths, providing a broad but nuanced view of the social, economic, and political situation surrounding the reforms. Nevertheless, this strength is somewhat undermined by the sources' lack of currency. As Aitchison completed his fieldwork in 2005, many of the sources are now outdated, despite the book's publication in 2011. While a book certainly cannot be up-to-the-minute, the book's failure to address any events post-2009 is frustrating given what the book portrays as a very dynamic situation.

Another strength of *Making the Transition* is Aitchison's detailed description of each of the criminal justice sectors.

Chapters Three and Four focus on the police and police reform, outlining the intransigence of the police force's institutional culture and describing the fragmentation of policing in post-war BiH. In addition, these chapters describe how different international actors, including the United Nations, the United Kingdom's Department for International Development, and the European Union, influenced policing reforms. The most important aspect of Aitchison's analysis of policing is its context. Aitchison carefully situates BiH's policing structures and the community's response to policing reforms within the history of conflict in BiH. This gives the reader a clear understanding of why corruption is a major concern without pathologizing the problem. This highlights the importance placed upon community policing and legitimacy in the reform process while reminding transitional justice professionals to be aware of the roots of institutional culture when applying lessons from BiH to other states with different institutional histories.

Chapters Five and Six deal with the judiciary in a similar manner, describing the state of the post-conflict judiciary and the post-conflict judicial reforms undertaken, respectively. One of the most interesting aspects of judicial reform in BiH that Aitchison addresses is the introduction of a more adversarial system of criminal procedure, which some interviewees perceived as the "Americanization" of Bosnian criminal procedure. Aitchison, however, uses the adversarial system as an example of a reform perceived as a legal transplant, but which was in fact much more complicated. He asserts that there were multiple sources undergirding the Bosnian reforms, including the Federation of Bosnia and Herzegovina Code and the International Criminal Tribunal for Yugoslavia Rules of Procedure. While I remain somewhat skeptical that the prestige of the American system was not a major factor in the adoption of an adversarial system, Aitchison does an excellent job of deconstructing the different elements of the Bosnian reforms and tracing their historical roots. This example of the complexity of policy transfer provides a useful insight for transitional justice scholars. Aitchison demonstrates that even where laws adapted from established systems are grafted into developing ones, differences arise in practice based on historical context. For example, Aitchison describes that given the desire to limit lay participation in the trial process, the jury

system, which is central to the U.S. criminal trial process, is eliminated in the context of Bosnian criminal proceedings.

Finally, in chapters Seven and Eight, Aitchison addresses the prison system, which he notes receives much less attention from the international community in terms of post-conflict reform. Most notably, he addresses the lack of a lustration program for prison employees, which was an integral part of reforms of both the police force and the judiciary. The description of prison reform also highlights the extent to which a fragmented, non-hierarchical political system can interfere with the international community's dominant mode of state-building. In raising this point, Aitchison incisively reveals an important indictment of the international community's accountability mechanisms. Aitchison notes that while human rights instruments address violations at the state level, the Bosnian state has little control over many instrumentalities required to prevent violations. Aitchison exemplifies this through the prisons system, which provides a perfect illustration, because while prisoners' rights are enforced against BiH as a state, the entities, rather than the state, are in control of the prison system itself.

In analyzing the three sectors of reform, Aitchison presents four research questions related to the reconstruction of the Bosnian state: (1) "What role does criminal justice reform play in a state-building exercise, in the particular post-conflict, post-socialist, and post-authoritarian context represented by Bosnia and Herzegovina;" (2) "To what extend do the demands of state-building projects shape criminal justice reform, and how does this differ across criminal justice sectors (i.e. policing, courts, and correctional services), and how are these reforms seen to relate to one another in the context of a criminal justice *system*" (emphasis in original); (3) "In a context which brings together a range of agencies with different backgrounds, priorities and working practices, how do different agencies approach criminal justice reforms within each sector, how do they relate to, and work with, relevant domestic political actors and institutions, and what obstacles do they meet in trying to implement reform programmes;" and (4) "To what extent is the level of international intervention in BiH conducive to the 'transfer' of particular criminal justice policies and institutions or the 'transplant' of practices and models in criminal justice."

Unfortunately, these research questions fail to focus the book sufficiently. Instead of answering them with clarity, Aitchison drowns them in a vast sea of description and data regarding post-war criminal justice reform in BiH, and then hurriedly attempts to answer them in the concluding chapter. Rather than relegating the bulk of the analysis to the end of the book when it could be presented as a whole, it may have been more helpful to the reader to highlight each of the questions and systematically analyze them within the chapters devoted to the criminal justice sectors themselves. That way the reader could also have been presented with more direct examples, rather than the somewhat vague reiterations of examples described in earlier chapters that were afforded in Chapter Nine.

Putting aside the research questions, Aitchison lays out a useful analytical and historical framework for considering reform in BiH. He begins with a very thorough literature review, defining important concepts underlying transitional justice including lustration, international intervention, policy transfer and transplant, the state, and state-building. Furthermore, he makes clear that he is writing for an audience beyond area-expert scholars by providing an easy-to-understand history of BiH, including an outline of the current governmental system and the entity governments, Republika Srpska and the Federation of Bosnia and Herzegovina. Where he likely loses those without an intimate knowledge of the region is his description of municipal elections. While Aitchison describes which parties have won and lost over time, he fails to explain the parties' platforms or why the rise or decline of certain parties is significant. As a result, his discussion of municipal government becomes a blur of acronyms without much meaning.

All in all, *Making the Transition* provides a wonderfully detailed description of the post-conflict criminal justice system of BiH. While the book may run short on analysis, it is highly useful providing a snapshot of a transitional justice system based on a vast amount of information, including firsthand descriptions of observers and practitioners. As such, it serves as a important building block for those seeking to construct a geographically wide-ranging understanding of the issues and challenges involved in state-building and criminal justice reform in a post-conflict, post-authoritarian society.

The Institutionalization of Torture by the Bush Administration: Is Anyone Responsible? By M. Cherif Bassiouni. Antwerp, Belgium: Intersentia, 2010. Pp. l, 301. $63.00 (Paperback)

Reviewed by Ann Vodhanel Preis

M. Cherif Bassiouni most recently made news by heading an independent commission at the behest of (and on the payroll of) the Bahraini government after it came under fire from the international community for its crackdown on protestors in the wake of the Arab Spring. But in the year before he and his commission compiled a fact-finding report of detention, torture, and death at the hands of authorities in the Middle Eastern kingdom, Bassiouni published *The Institutionalization of Torture by the Bush Administration: Is Anyone Responsible?*, a book investigating the very same practices as they were allegedly carried out by the U.S. government under the Bush Administration. A thorough synthesis of the open source material available on the policy and practice of torture at Guantanamo, military detention facilities in Iraq and Afghanistan, and CIA blacksites, Bassiouni's book at times reads like a prosecutor's case for a criminal indictment of all those involved in the torture of War on Terror detainees, and at times like a jeremiad against the refusal of the Obama Administration and the American people to condemn or hold accountable those most responsible.

The bulk of *The Institutionalization of Torture* is dedicated to laying out the ways in which U.S. military and civilian personnel tortured detainees. Confronting the euphemism of 'enhanced interrogation,' Bassiouni lays out each interrogation technique in plain language, providing case studies of how specific victims were tortured and cataloguing the detention related abuses that occurred at multiple locations. Bassiouni then turns to the bureaucratic apparatus that supported, or at least allowed, such treatment. Bassiouni may not have known the names of the individuals who did the torturing, but when he turns to the individuals who participated in the policy making and memoranda writing, he names them all. Bassiouni has essentially prepared the charging documents for dozens of high-up Bush Administration officials—including the Vice President and possibly the former President himself.

At times the book's language appears so one-sided as to read like a conspiracy theory: Bassiouni makes sweeping statements about Bush Administration motivations, including that they pursued the War on Terror, in part, because "it created opportunities to expand Presidential powers[,]" without providing the necessary evidence to back up his assertions. He likewise suggests that certain Executive Orders, like those that listed new interrogation techniques without setting limits for "enhanced interrogation", were issued as a cover to provide plausible deniability. Bassiouni uses the fact that there were respected voices in the Administration speaking out against the enhanced interrogation memoranda to conclude that the illegality of the proposed techniques were obvious to all, but he never explains why those speaking out against torture should have been heeded more than those advising that the techniques fell within the law. When discussing drone strikes, Bassiouni condemns the killings as summary and arbitrary executions without considering the argument advanced by both the Bush and Obama Administrations that drone strikes are targeted and not arbitrary because they receive due process within the executive branch. Further, Bassiouni never explores the details of the Bush Administration's well-known theories of inherent executive authority. He invokes anti-Muslim bias to explain the failure of the court system to stop "enhanced interrogation" on the grounds that the techniques are "shocking to the conscience" without exploring motivations of fear and concern for maintaining a robust Commander-in-Chief power. In Bassiouni's discussion of intelligence cooperation between the United States and countries that torture, there is little acknowledgement that foreign states can have reasons to torture independent of benefiting and currying favor with the United States.

Such unsubstantiated allegations of maliciousness and utter disregard for rule of law might undermine Bassiouni's arguments if presented in a different format, but Bassiouni is not simply providing an academic catalogue and analysis of detainee abuse. Nor is he putting anyone on trial. With *The Institutionalization of Torture*, he is building a case for indictment. Laying out the international and domestic laws surrounding torture, Bassiouni systematically shows the various ways in which each element was probably, not definitively, violated.

Bassiouni makes the strongest case for conspiracy to commit torture. An expert in international criminal law, he connects the decisions and actions of Vice President Dick Cheney to those of President Bush, Department of Justice attorneys John Yoo and Jay Bybee, civilians in the Pentagon, and a number of military and civilian personnel working under them. He shows a web of winks and nods where lawyers were providing legal cover for clear violations of international and domestic anti-torture laws and those at the highest levels of decision-making were those most protected from accountability. Where it may otherwise be difficult to identify moments of direct participation with which to condemn high-level Bush Administration officials, Bassiouni brings in *Pinkerton* liability—alleging that the drafting and approval of policy memos approving certain torture techniques as "enhanced interrogation" were acts in furtherance of the conspiracy to commit torture. This legal theory may be unsatisfactory to those who find *Pinkerton* an overly broad rule of vicarious liability, but it serves Bassiouni's purposes well.

Bassiouni's treatment of humanitarian law is a little less convincing. He blurs the distinction between international humanitarian law and criminal law when he criticizes the decision to hold detainees deemed too dangerous to release even though there was insufficient evidence to try them for any crimes. The questions of whether and how the laws of war and prisoner of war detention apply are hotly debated questions, but Bassiouni never tackles them. He simply conflates the law of armed conflict and criminal law without considering that the United States might have a prisoner-of-war-like interest in keeping those who would fight against it off the battlefield. In his treatment of Yoo and Bybee, he also fails to adequately address the central rationale of the Margolis memo advising against pursuing sanctions for ethics violations: good faith. But if *The Institutionalization of Torture* sometimes paints with broad strokes, it is only because Bassiouni is pursuing every potential violation of domestic or international law and every possible theory of each crime in hopes that something will stick. After all, it might only take one attractive theory to convince the United States that a special investigator or a congressional "truth commission" needs to take up the case.

The indictment of the Bush Administration only makes up half of the book, as Bassiouni regularly moves beyond legal

analysis to moral outrage. He is outraged at the dehumanization and brutalization that took place. He is outraged that members of the legal profession played so critical a role. He is outraged that so little has been done about it. And he is outraged that large swaths of the American populace do not seem to care very much about it.

Perhaps it is inevitable that a case about torture, bureaucracy, chain of command, and the expansion of executive power will reference the Nuremberg Trials. But Bassiouni goes beyond case law. Stopping short of drawing a direct analogy to the Holocaust, he highlights the banality of American evil throughout the book and draws similarities between the industrial bureaucracy and legal manipulation of the Nazi project and that of U.S. torture. He makes comparisons to Vietnam, the USSR, Stalin and the mafia. Against this backdrop he poses the question of accountability after the fact. It becomes difficult to agree with President Obama, speaking in April 2009, that "nothing will be gained by spending our time and energy laying blame for the past." But as much as Bassiouni may succeed in stirring a sympathetic outrage in his reader, it is hard to take seriously his criticism that "Government lawyers simply interpreted constitutional and other legal norms by giving them a technical meaning without regard to substantive content." Many legal arguments have been made and decisions rendered on similar grounds. Bassiouni fails to critique these developments in the American justice system as a whole or, in the alternative, to show why torture should be treated differently. This failure does not diminish the weight of his moral critique, but does little to advance his legal arguments.

Yet, despite his assertion that the United States is no longer a great nation, but only a mighty one, Bassiouni has not given up on the country. Towards the end of *The Institutionalization of Torture*, the book pays homage to the "unsung heroes" of the torture era. In his descriptions of those who risked sacrificing their careers in their efforts to stop torture, he includes a statement by Lt. Col. V. Stuart Couch, a military prosecutor who resigned from Guantanamo in protest of the base's interrogation practices: "We cannot compromise our respect for the dignity of every human being. . . . If we compromise that, then al-Qaeda has been able to affect much more of an impact on this country than they have by driving a couple

of planes into the World Trade Center or crashing one into the Pentagon. Because they've torn at the very fabric of who we are as Americans." (p. 245).

Bassiouni makes it clear that the Unties States has lost its moral standing, but he believes it can be regained. His book provides a roadmap for reestablishing a rule of law that prevails over politics. And yet, though the book displays little in the way of political realism, one gets the sense that even Bassiouni recognizes that his proposed criminal charges are unlikely ever to be brought and accountability is unlikely to extend beyond accounts like his own. Still, even if Bassiouni's indictment remains nothing more than an academic exercise, *The Institutionalization of Torture in the Bush Administration* proves an excellent resource as a comprehensive account of the most serious allegations waged against the Bush Administration in relation the War on Terror.

Margins of Conflict: The ECHR and Transitions to and from Armed Conflict. Edited by Antoine Buyse. Cambridge, UK: Intersentia, 2011. Pp. v, 196. $74.25 (Hardcover).

Reviewed By Raquel Saavedra Pickens

Margins of Conflict: The ECHR and Transitions to and from Armed Conflict provides a basic starting point for students and practitioners hoping to understand the issues surrounding the use of the European Convention on Human Rights ("ECHR") as a tool for helping countries rectify human rights abuses during transitions to and from armed conflict. The book is part of the Series on Transitional Justice published by Intersentia, which aims to provide a scientific starting point for research in the field of transitional justice. The editors of the volume emphasize that the collection is meant to explore human rights enforcement during the transitions immediately before and after the conflict as opposed to the time during armed conflict itself. Through this lens it hopes to shed light on the particular challenges of both states and the European Court of Human Rights ("the Court") in addressing transitions in the margins of conflict. Thus, the goal of the book is to study how transitions to and from war can be dealt with from a human rights perspective materially and, especially, procedurally.

Margins of Conflict explores these transitions through the voices of various authors in seven different articles. The first of the authors, Egbert Myjer, argues that the Court is ill-equipped procedurally to deal effectively with human rights violations that arise from armed conflict since the Court is unable to solve the underlying political problems that give rise to armed conflict. To support his argument, Myjer cites extensively from the Grand Chamber judgment in *Varnava and Others v. Turkey*. Although the case is meant to illuminate his conclusions, his extensive use of block quotes from the Court's opinion without any analysis of the significance of the passages weakens his argument. Because of this, the article is a weak starting point to *Margins of Conflict*, leaving the reader feeling as if they still do not have a grasp of the strictures of the Court in addressing human rights abuses arising during the margins of conflict.

Conversely, Jan-Peter Loof's chapter, "Crisis Situations, Counter Terrorism and Derogation from the ECHR," successfully lays out the legal background and the societal context against which the Court interprets the derogation clause in the ECHR. He utilizes case law arising from the Court and weaves in analysis of its significance. He thus comes closer to making a successful argument that the overly generous margin of appreciation afforded to states by the Court is cause for great concern. In spite of the article's strengths it still falls short in proving its ultimate argument, specifically that in spite of the concern surrounding the margin of appreciation used when evaluating States' use of the derogation clause, no harm has been done in practice. Loff's lack of empirical evidence to support his findings renders the argument unsubstantiated. Ultimately, the article drops off at the end without a satisfying summary of his conclusions.

Following the first two essays, the authors' arguments improve considerably. Rick Lawson's article, "Really Out of Sight? Issues of Jurisdiction and Control in Situations of Armed Conflict under the ECHR," explains jurisdictional issues surrounding cases in which one state in armed conflict is not a member state to the ECHR. He argues that there is a trend in recognizing jurisdiction even in cases where the violation of the Convention takes place outside of a member State's territory. He uses a rich analysis of a long line of cases to highlight the inconsistencies of the Court's rulings with respect to

this issue and the emergence of a trend in one direction, suggesting that the Court is strengthening its ability to enforce human rights outside of member State territory, which is crucial for protecting human rights in the margins of conflict.

Yves Haeck and Clara Burbano Herrera use a more explanatory versus normative approach in "The Use of Interim Measures Issued by the European Court of Human Rights in Times of War or Internal Conflict." In the article the authors try to analyze the usefulness of the practice of interim measures in protecting applicants to the Court who are in situations that are extremely grave or urgent. Although this article thoroughly explains a great number of cases, the analysis of whether the interim measures are actually useful in preventing further injury to the applicant is lacking in explicitness. Instead, the reader is left to imply that the interim measures are useful because states tend to honor them and because the Court has developed different levels of interim measures to make the measures both more effective for the endangered person, and more palatable to the offending state. As a whole, however, this article accomplishes its goal and contributes to the reader's understanding of how the Court can address the citizenry's safety during the transition into conflict.

Next, the collection examines two substantive areas of the Convention that could be used to address human rights abuses in the transition to and from armed conflict. Marloes van Noorloos argues that controlling hate speech is essential in slowing or stopping the transition from peace to armed conflict. He demonstrates that Article 10 is used by the Court to both protect freedom of speech, as well as, define its limits. He argues, however, that the Court consistently struggles with the balance between democratic society and the causal link between hate speech and violent conflict and he concludes that the failure of the Court to understand the difference between "extreme speech against the state" and "hate speech against minorities" weakens the Court's ability to protect minorities in the context of the transition to armed conflict. Van Noorloos' rigorous analysis of the underlying tensions that color the Court's decisions in this area makes this article one of the most insightful articles in the collection.

Marthe Lot Vermeulen's article, entitled "The Duty to Take Preventive Operational Measures: An Adequate Legal Tool to Hold States Responsible in Enforced Disappearance

Cases?" shows the Court's creative enforcement of the duty to take preventive operational measures to address enforced disappearance cases. Through this duty the Court is able to hold states accountable, where it would be to difficult otherwise, for state-sponsored abductions that are widely used during times of conflict to promote fear and chaos. She ultimately concludes that the Court's analysis of the duty is a positive trend in the case law of the Court but could benefit "from the inclusion of more structural analysis, such as the extensive case law on the repeated failure by States to investigate and of the evaluation of the efforts of the State to implement structural preventive measures such as training of security forces and police officers," and "a legally analogous application of the analysis of the right to liberty would provide a more integral protection against enforced disappearances." Her article is a well thought out addition to the collection and highlights ways in which the Court is able to protect human rights in the transition to and from conflict and ways in which it can improve it's protections.

The final article, which serves as the conclusion of the book, is written by Antoine Buyse. His piece, "Airborne or Bound to Crash? The Rise of Pilot Judgments and Their Appeal as a Tool to Deal with the Aftermath of Conflict," examines the Court's use of pilot judgments to alleviate structural problems in member states' obligation to protect human rights and concludes that the use of pilot judgments can help to rectify massive human rights violations that tend to emerge from armed conflicts. The hopeful tone of this article forms a nice conclusion to the collection and his points are well substantiated with the use of case law and analysis of trends in the Court's judgments.

Although the collection has a number of strong articles that highlight the challenges the Court faces in addressing human rights abuses in the margins of conflict, ultimately, it seems to struggle with unification. More or less the articles accomplish their goals, but some seem to only loosely connect their arguments to the theme of human rights in the margin of conflict. Aside from changing what the authors wrote, the editors could have promoted the coherence of the collection by adding an explanatory conclusion of the major themes across the articles. What's more is that the reader is left wondering if the collection has comprehensively addressed the issues that surround the enforcement of the ECHR in the mar-

gins of conflict. The ECHR covers a wide breadth of rights and has a relatively strong means of enforcement. Because the collection only addresses two substantive areas of the Convention and doesn't show how the procedural safeguards fit together, it seems as if there are a number of issues that were left unanalyzed. An explanatory conclusion could have helped answer these questions as well. In spite of these weaknesses, however, *Margins of Conflict* is an informative read and is useful for identifying issues in the area of human rights under the ECHR and the margins of conflict that need further investigation.

Human Security and Non-Citizens. Edited by Alice Edwards and Carla Ferstman. New York, New York: Cambridge University Press, 2010. Pp. xxv, 640. $50.00 (Paperback).

REVIEWED BY JACLYN SAFFIR

The ever-shrinking world brought about by globalization has made migration a hot-button issue both in national politics and in international discourse. Concerns about immigrants taking jobs, bringing crime and violence to their destination countries, or posing a threat to national security have become regular features in the dialogue about migration. *Human Security and Non-Citizens* seeks to address this harsh perspective on migration by exploring a new framework for assuring the rights of migrants: human security. First advocated by the 1994 UN Development Program and later by the 2003 UN Commission on Human Security, human security seeks to change the state-centric conception of security into one based on protection of the individual. Through the four sections of this book focusing on the relationship between human security and different types of migration issues, the editors and their authors seek to grapple with the role human security can play in the effort to afford protection to all types of migrants, and ultimately asking what, if any, value the concept can serve to migrants' advocates.

One of the most difficult and important tasks for this book is setting out a clear conception of what is meant by "human security," and this is the primary task of the first of the book's four parts. The editors and essay authors repeatedly acknowledge concerns that the concept of "human security" is vague and overly broad, failing to prioritize certain types of

human misery over others. While I doubt the book would convince human security opponents to abandon these critiques, the editors are extremely successful at framing human security as a new way for the international community to look at security by addressing it at the individual and community levels, understanding that individual threats are interdependent with national and global threats, and transitioning away from seeing individual security as oppositional and subsidiary to state protection. This section also tries to place human security in the context of existing legal regimes, articulating it as a possible tool to strengthen existing legal frameworks, providing human rights advocates an opportunity to enter debates on security, activating multilateral responses to security threats, and encouraging earlier responsive action.

Each of the remaining parts of the book serves as an enormous umbrella under which a range of subtopics are discussed, imparting tremendous insight and breadth into the wide array of vulnerabilities faced by different types of migrants. Though the book's structure lumps essays on tangentially related topics together, overall the book provides the reader with a good sense of the human security landscape with an opportunity to zoom-in on a number of international problems for which the framework could be most useful.

Part II of the book seeks to address the unique challenges in the context of physical and legal security, armed conflict and refuge through essays on topics ranging from statelessness to *refoulement* in the maritime context. The statelessness chapter, by Mark Manly and Laura Van Waas, assesses the strength of existing protection and the value added by human security, particularly with regard to promoting protection and empowerment. Chapter Three, by Frances Nicholson, delves into protection and empowerment in more detail, demonstrating the important links between insecurity, flight and regional security, and promoting empowerment as a long-term solution to individual security concerns. Perhaps the strongest argument in this section is in Chapter Four, in which Edwin Odhiambo Abuya successfully ties the interest of individual human security into broader security concerns by focusing on the regional and international problems created by a failure to protect individual refugees living in protracted situations in Africa. The author notes serious security concerns, at all levels, with the common practice of locating refugee camps in

Africa close to borders and at the mouth of refugee flows. This makes it easier and provides incentives, through forced recruitment, for rebel and government forces to subject refugees to violence and persecution while spreading the suffering across borders. This chapter argues that promoting education and income generation in these protracted situations not only assures better protection of the individual, but diminishes engagement in criminal and military activities and harnesses human capital to benefit the economy of the host state. Thus, the Abuya piece shows how individual human security can play an integral role in promoting other types of security, providing reasons for human security to become a relevant concept in international discussion.

Part III of the book explores human security in the context of migration, development and the environment, discussing a range of issues from labor migration to the empowerment of migrants to the role of human security in preventing human trafficking. Chapter Nine, written by Eve Lester, examines the return of deportees with HIV/AIDS to their countries in which they will be unable to access life-saving treatment. She focuses on critiquing the judicial rational that, if the applicants' circumstances were sufficient for protection, wealthier states would be overwhelmed by applications, jeopardizing the balance between the right of individuals to protection and the general interest of the community. While the author does not abandon the human rights paradigm of protection, she suggests that human security may allow for managed expansion of international human rights law, requiring legal systems to do more than offer expressions of regret, to factor conditions in the country of origin into consideration and to take account of the human implications of their decisions.

Chapter Ten, by Jane McAdam and Ben Saul, ties human security in with environmental security, suggesting that human security can help re-focus international attention and urgency on grave daily human needs, rather than exclusively on military concerns. They go so far as to raise the possibility that human security could be an opportunity for the Security Council to activate its enforcement powers to compel a response to climate change, allowing the Security Council to act upon the values of the international community as a whole rather than a few powerful states. This suggestion, however, highlights that perhaps much of the optimism surrounding

human security is misplaced; human security will not be relevant if it empowers the Security Council and states to protect in ways they wouldn't anyway. Instead, it has to provide reasons to motivate the provision of protection too.

Part IV addresses human security in the context of national security, particularly since 9/11 and the subsequent War on Terror. In contrast to the other sections of the book, this part more regularly applies traditional security and human rights analysis, without wading deeply into the concept of human security. Chapter Thirteen on immigration law enforcement after 9/11, by Daniel Moeckli, examines the obstacles to using immigration law as a tool for deporting terrorists. He argues that, beyond being ineffective, these efforts can be counter-productive by alienating Arab and Muslim communities in the United States, stigmatizing a wide group of people who share relevant characteristics, diminishing cooperation with law enforcement, and contributing to a "class of civilizations" narrative. Chapter Fifteen, written by editor Carla Ferstman, discusses human security, terrorism and extraordinary renditions. Ferstman observes that, though terrorism is a threat to human security fueled by other human security problems such as poverty and gross social or political inequality, the securitization of terrorism has been particularly dangerous for non-citizens. While the human security approach would involve addressing the causes of international terrorism, Ferstman notes that the War on Terror has allowed national security interests to balloon and even expand extraterritorially, denying access to effective remedies for extraordinary rendition.

Overall, *Human Security and Non-Citizens* articulates many possibilities for the future of human security as a protection tool. While the authors explain throughout why the human security framework would afford better protection than existing regimes that have had only marginal success, it is not clear that this framework could do a better job of convincing states to provide protection they are currently disinclined to provide. Rather than predicting human security to be the savior of non-citizens, the book sensibly advises cautious optimism.

The book, however, presents many serious branding concerns about the concept. Chapter Nine discusses the possible conflict between human rights and human security, acknowl-

edging the ease with which states can, inadvertently or intentionally, misapply human security in direct contradiction to its meaning by portraying migrants as a threat. The author further acknowledges that perhaps there is an intuitively collective connotation to the term "security" that makes it so easy for the term "human security" to be the knife that kills the concept. These concerns ought to give us great pause, forcing us to ask whether other frameworks, like human rights law, could accomplish the same goals without the same risks. Ultimately, while the book demonstrates a number of important possibilities for human security to pull its conceptual weight, human security must be able to propel action, while navigating these risks, for that potential to be realized.

Entangled Rights of Freedom: Freedom of Speech, Freedom of Religion and the Non-Discrimination Principle in the Dutch Wilders Case. By Lisanne Groen and Martijn Stronks. The Hague, Netherlands: Eleven International Publishing, 2010. Pp. 5, 134. $28.00 (Paperback).

REVIEWED BY SHARON BARBOUR

In *Entangled Rights of Freedom: Freedom of Speech, Freedom of Religion and the Non-Discrimination Principle in the Dutch Wilders Case*, Lisanne Groen and Martijn Stronks seek to answer the question of how Dutch law, which incorporates various international human rights treaties, accommodates fundamental rights of citizens when the exercise of these rights overlap and conflict. As the publisher notes in the Foreword, the book is intended to explain to an international audience "how freedom of speech, freedom of religion and the non-discrimination principle are entangled." Groen and Stronks situate this "collision of rights" in the context of the criminal prosecution of Dutch politician Geert Wilders, who was charged in 2009 with inciting hatred and group defamation for several public statements he made against Muslims. Joining the xenophobic outcry against the Netherlands' growing Muslim population, Mr. Wilders made disparaging statements about Islam and Muslims in several interviews and editorial contributions to mainstream Dutch newspapers. Groen and Stronks provide excerpts of some of Wilders' statements, which include referring to the Koran as "the Islamic *Mein Kempf*," describing the

Netherlands' increasing Muslim population as an "Islamic invasion," and stating, "if Muslims want to stay here, they have to tear half the Koran out and throw it away." Writing before the Wilders case was decided in 2011, the authors outline the relevant law and present two possible outcomes.

Though the book centers on a subject that "cause[s] emotions to run high," Groen and Stronks create a sense of detached neutrality by maintaining a noncommittal tone and eschewing normative or value-laden analysis. The authors introduce the criminal case against Wilders with an almost clinical tone, distancing the text—and therefore the reader—from the impassioned responses Wilders' conduct evoked in the Netherlands and across the globe. The authors' account of Mr. Wilders' attempt to screen his anti-Islam film *Fitna* before British Parliament, for example, provides a brief and muted reference to the "commotion and disagreement that arose" when British Home Secretary Jacqui Smith denied Wilders' entry into England. Perhaps because the book's focus is limited to a "discuss[ion] [of] when freedom of speech can be restricted and how this is affected by criminal law and constitutional provisions," Groen and Stronks avoid any critical analysis of the broader social and political factors that may influence the outcome of this case.

Groen and Stronks proceed by laying out the Dutch legal rights framework with hornbook-like brevity. They provide a succinct, if somewhat mechanical, primer on the sources of fundamental rights that may be invoked before the Dutch judiciary, including the Dutch Constitution and the European Convention on Human Rights (ECHR), and the approach taken by Dutch courts to the scope and application of these fundamental rights. They describe the courts' consideration of fundamental rights claims relating to freedom of speech: a court will consider the scope of the right in question under Article 7 of the Constitution and Article 10 of the ECHR, and the restrictions on the right authorized by the respective formulations of these texts. In each case, the court must give precedence to the source of law that provides the most robust protection to the complainant.

The authors' review of the regulation of speech through penal law to protect religious expression is similarly focused on the black-letter law. After briefly acknowledging the "social function" of Article 137c of the Penal Code, which criminalizes

group defamation,[1] Groen and Stronks break down the elements of group defamation under Article 137c, spreading hate under 137d, and blasphemy under 147. Criminal punishment for group defamation and spreading hatred apply only to oral, written, or visually illustrated expressions that are made in public and offend a group of persons on account of race, religion, ideological belief, sexual orientation, or physical or mental handicap. As a result, the authors impassively observe, the "Hitler salute," a gesture, is not punishable under these provisions.

In their effort to provide an objective overview of the subject, the authors limit their discussion to doctrinal developments, without regard for the Netherlands' shifting demographics or the international and political considerations that may influence the application of these laws. While this narrow focus allows for a clear explication of the black-letter law, it renders their analysis dissatisfyingly myopic at times. For example, despite the authors' apparent effort to remain impartial, their discussion of the case law on restrictions of speech to protect religious freedom reveals—but is notably uncritical of—the judiciary's solicitude for Protestant but not Catholic or Muslim canonical figures.

Similarly, the absence of broader social and political dynamics makes the authors' discussion of the Dutch jurisprudence on inciting hatred and discrimination appear incomplete. After noting that a determination of whether a statement falls under the penal law requires an evaluation of the context in which the statement was made, Groen and Stronks assert that a politician's public xenophobic statements, which the Supreme Court found in 1999 to be punishable, would be assessed differently in light of the "changed social context" since "the turbulent developments at the beginning of the 21st century: the attack on 11 September 2001 and the murders of [Pim] Fortuyn and [Theo] Van Gogh." Without any further elaboration as to how these events would fit into the court's analytical framework, it is unclear what the authors expect the reader to draw from this observation. A footnote later in the

1. "[T]he defamation of groups can reduce participation in society and, for instance, group defamation can have negative consequences on opportunities in the labour market and seriously affect the self-confidence of members of minority groups."

text explains that the Supreme Court rejected the request of the politician's wife to revise the judgment in light of the fact that the lower court was not aware that these xenophobic expressions are shared by "broad groups of society," but this is the extent of the authors' discussion of how the court considers social context.

In their subsequent discussion of the various ways in which the court considers the context in which defamatory statements are made, the authors describe how the court will inquire as to whether the statement is an expression of the speaker's religious convictions, and whether the statement is "significant for the accused in the social debate," to determine whether the statement is unnecessarily offensive—that is, whether it provides "an acceptable contribution to the public debate." This discussion culminates with the observation that the Court of Appeals has noted that a politician's freedom to express and disseminate his political views "does not discharge the politician from his responsibility to provide an acceptable contribution to the public debate," but the authors offer no insight as to how the court defines an "acceptable contribution." Since Wilders argued that his statements are not punishable because he expressed them as a part of the social and political debate, an analysis of the scope of this exception would have been particularly valuable.

The authors provide a more substantial analysis of the case law of the European Court of Human Rights (ECtHR) on restrictions of the freedom of speech. Their discussion of the relevant cases illustrates the tension between the fundamental importance of free speech to a functioning democracy, and the necessity of promoting tolerance and non-discrimination. The ECtHR balances these conflicting considerations by authorizing only those restrictions on speech that are justified by a "pressing social reason" and are "proportionate in light of the pursued goal." Groen and Stronks flesh out the parameters of these requirements by synthesizing the ECtHR's decision in eleven cases, focusing on *Féret v. Belgium*, the facts of which are similar to those in the Wilder case.

Daniel Féret, party chairman of Belgium's Front National, was convicted of inciting hatred, discrimination, and violence during a campaign in which his party circulated pamphlets that decry the "Islamisation of Belgium" and call for the exclusion of non-native Europeans from the Belgium job market,

among other xenophobic and anti-Muslim statements. The ECtHR upheld Belgium's rejection of Féret's defense that his speech was protected because he is a politician and was merely contributing to the social debate. As Groen and Stronks point out, "it is precisely of crucial importance [to the Court] that politicians, in their public statements, avoid giving rise to intolerance." The dissent specifically refuted this argument, arguing that the unimpeded expression of political opinions is critical to a well-functioning democracy. Moreover, the dissent argued, because Féret's campaign did not directly give rise to violence against certain groups, there was no actual incitement of hatred, discrimination, or violence to sustain Féret's conviction.

After this relatively thorough synthesis of the relevant European Court of Human Rights cases, it is disappointing that Groen and Stronks's discussion of the Wilders case reverts back to the analytically thin style of summarization from the preceding chapters. The discussion of Mr. Wilders' statements is restricted to descriptions of how the various parties to the case characterize the remarks, with no assessment of how persuasive the parties' respective positions will be to the Supreme Court.

The Dutch Public Prosecution Service, for example, maintains that although many of the statements are offensive to Muslims, they were made in the context of the social and political debate about Islam and are therefore not punishable. The complainants argue that Wilders cannot be shielded from criminal liability as contributions to the social and political debate because they are inflammatory and incite hatred, and they were made during the legislature's summer break and thus cannot be considered in the context of a political debate. The Advocate General argues that Wilders' statements are not punishable because, in addition to having been made in the context of the socio-political debate, they are abstract criticisms of the Muslim faith that do not affect human dignity, and therefore are not unnecessarily offensive. Wilders, through his attorneys, reiterates the Advocate General's position, and claims that his statements are merely warnings about the ideology if Islam, which he feels are necessary to protect the Netherlands' democracy, rather than attacks on Muslims. The Court of Appeals, in a provisional opinion on whether Wilders should be prosecuted, rejects the positions of the Pub-

lic Prosecution Service, the Advocate General, and Wilders. The Court of Appeals argues that Wilders' remarks are related to Muslims as a group and are unnecessarily offensive; that the political context in which they were made is not a justification for spreading hatred; and that Wilders' conviction for these statements is an acceptable restriction on the freedom of speech under the ECHR.

The authors conclude their discussion of the Wilders case by describing two possible outcomes. Rather than offer a normative or prescriptive analysis, Groen and Stronks present two opposing lines of reasoning that they claim are "equally defendable." The first line of reasoning leads to Wilders' conviction: the statements are objectively offensive and intended to incite hatred and discrimination against Muslims, and the court will find that the political context in which they were made render restrictions on speech more, not less, necessary. The second line of reasoning leads to his acquittal: the statements are not objectively offensive and related only to the religion of Islam, not Muslims; and the fact that they were made in the context of the social and political debate rules out the possibility of criminal liability. It is puzzling that the authors provide no explanation as to why it is equally likely that the court will find the statements objectively offensive or not objectively offensive, or why equal weight should be given to the majority and dissenting opinions from *Féret v. Belgium* as to the significance of the political context. Furthermore, though the authors could not have foreseen the spectacular debacle that the actual Wilders case turned out to be,[2] the strong influence the Netherlands' social and political climate had on Wilders' eventual acquittal indicates that the authors' analysis would

2. Ian Traynor, *Geert Wilders Trial Halted as Lawyer Accuses Judge of Bias*, THE GUARDIAN, Oct. 4, 2010, http://www.guardian.co.uk/world/2010/oct/04/geert-wilders-trial-halted (describing how charges of bias against the presiding judge disrupted the Wilders' case); Ian Traynor, *Geert Wilders Hate Speech Trial Collapses in Netherlands*, THE GUARDIAN, Oct. 22, 2010, http://www.guardian.co.uk/world/2010/oct/22/geert-wilders-trial-collapses (describing how Wilders' trial "collapsed in disarray at the last minute" due to the "highly unusual" finding that the panel of presiding judges were biased).

have benefitted from even a brief consideration of these factors.[3]

Although the book is intended to "provide a modest contribution to a well-balanced image of the Netherlands," the authors' abstention from critiquing or even providing more than a cursory analysis of most of the positions they summarize calls into questions the extent of the scholarly contribution made by the book. The authors succeed in providing students and researchers a clear, if cursory, outline of the framework of Dutch jurisprudence on restrictions on the freedom of speech to protect the freedom of religion, and they offer a concise but thorough overview of the ECHR's jurisprudence on the same subject. Their analysis of the Wilders case, however, leaves much to be desired.

Judging State-Sponsored Violence, Imagining Political Change. By Bronwyn Leebaw. New York, New York: Cambridge University Press, 2011. Pp. xi, 222. $39.95 (Hardcover).

REVIEWED BY KARIN DRYHURST

Though the term "transitional justice" gained usage in the 1990s as a term to describe responses by successor regimes in Eastern Europe and Latin America following authoritarian rule, scholarship surrounding the term has developed into what some describe as a distinct interdisciplinary field. The concept of transitional justice, originally focused on legal strategies to allocate responsibility for mass human rights violations, has since encompassed extralegal responses, including truth commissions and strategies based on traditional practices like the Rwandan gacaca courts. The expansion in extralegal responses in practice has been met with an expansion in interdisciplinary scholarship to include fields such as political science. Scholars have described three avenues for expanding transitional justice scholarship beyond law: the effectiveness of transitional justice institutions in achieving goals such as rule of law, democratization, reconciliation, and peace; the gender

3. *Geert Wilders Cleared of Hate Charges by Netherland Court*, THE GUARDIAN, June 23, 2011, http://www.guardian.co.uk/world/2011/jun/23/geert-wilders-cleared-anti-islam (reporting that the court cleared Wilders of hate charges because his statements "always fell within the bounds of legitimate political debate even if they were offensive to many Muslims").

dynamics of transitional justice institutions; and critiques of the concept of transitional justice itself as a distinct form of justice.

Judging State-Sponsored Violence, Imagining Political Change, written by Bronwyn Leebaw, represents a contribution to the interdisciplinary expansion of transitional justice scholarship. Leebaw, an assistant professor in the political science department at the University of California, Riverside, has published several articles on transitional justice, restorative justice, and human rights. As a political scientist, Leebaw objects to the depoliticization of transitional justice institutions and the view that "all forms of political judgment are equally pernicious." Consistent with the expansion of the field from its initial focus on legal institutions, Leebaw seeks to include political judgment as a vital component of transitional justice theory and practice. The book builds on the idea that transitional justice as a field combines "practice . . . and academic knowledge, with a praxis relationship between the two." Leebaw argues that transitional justice institutions in their practical pursuit of depoliticization have departed from theories that would inform effective political judgment.

Leebaw seeks to make three contributions to the literature on transitional justice. First, she challenges prominent approaches to both human rights legalism and restorative justice and argues that transitional justice requires political judgment. Second, she attempts to reconcile views that alternatively argue that the primary function is either to investigate the extent of past violence or to manage power dynamics and encourage compromise. She argues that each of the two functions require both professional policy makers and political judgment. Third, Leebaw argues that the victim-perpetrator framework of transitional justice, rather than an obligation to remember past wrongs, undermines the goal of political change.

Throughout the book, Leebaw provides an extensive overview of prior scholarship on the issues she has addressed, from legalism and restorative justice to political judgment and the individual focus of transitional justice institutions. At times, the extent of the overview provided makes the intended audience unclear. The arguments advanced appear aimed at academics and practitioners experienced in transitional justice theories, but the majority of each chapter focuses on the argu-

ments made by prior scholars. The most interesting portions of the book develop and reconcile those arguments into a coherent goal for transitional justice institutions, and less of the book could have been devoted to a review of the literature.

As to its first goal, *Judging State-Sponsored Violence,* serves as a critique not of the concept of transitional justice itself but of the modern understanding of the theoretical underpinnings of two approaches to transitional justice: legalism and restorative justice. Leebaw offers a convincing study of the ideas articulated as part of the establishment of the International Military Tribunal at Nuremberg and South Africa's Truth and Reconciliation Commission. She successfully argues that contemporary human rights legalism and restorative justice have departed from those animating ideas.

Leebaw relies on the seminal work of Judith Skhlar, *Legalism,* to outline two forms of legalism. Creative legalism can be seen as a "response to the collapse of political authority . . . valuable when guided by good political judgment." Leebaw describes ideological legalism as rigid and academic. She characterizes a debate between two camps within Amnesty International to the division between those who seek to maintain a focus on ideological legalism along with procedural impartiality and those that would develop more political strategies to address human rights injustices. She similarly describes the debate between those who promoted a "duty to prosecute" after Argentina's "dirty war" and those who defended the use of political judgment in responding to political violence. Her use of these examples demonstrate the tension between legalism and its individual focus and the goal of judging political violence and advancing political change.

Leebaw convincingly argues that the prominent conception of restorative justice departs from that proposed by South African thinkers developing responses to apartheid. She outlines how the therapeutic language surrounding restorative justice has led to a narrow "healing model" of transitional justice focused on individuals. Leebaw argues that the thinkers responsible for the formation of the South Africa Truth and Reconciliation Commission articulated restorative justice theories as a response to the legalism of Nuremberg. This response looked to the Commission for political judgment and ongoing change. However, as Leebaw points out, the Commission report focused on the healing framework as an attempt to

depoliticize the Commission rather than guide ongoing change. She contends that the therapeutic approach to restorative justice led the Commission to neglect the political and social dimensions of apartheid and ignored economic injustices and racism.

Leebaw draws on the responses to the Commission by Desmond Tutu, Charles Villa-Vicencio, and Mahmood Mamdani and reconciles their theories to argue that restorative justice requires political judgment. She claims that restorative justice requires the traditional practices advocated by Tutu, the democratic dialogue promoted by Villa-Vicencio, and the crucial historical investigation pushed by Mamdani.

Toward the second goal, Leebaw synthesizes a large body of scholarship to reconcile the theories of different scholars in support of her argument that transitional justice institutions can at once investigate past violence and encourage future political compromise if guided by two forms of political judgment. To Leebaw, transitional justice institutions have tended to disguise the presence of political judgment and instead should be guided explicitly by two forms of political judgment – that of the political actor and that of the spectator. She argues that the individualistic focus has been a strategy for depoliticizing transitional justice institutions by removing them from their political and historical context. That political judgment is essential to transitional justice because the institutions must make judgments about the political systems that authorized violence. Leebaw largely relies on Hannah Arendt for guidance on the role of political judgment in transitional justice, arguing that Arendt's approaches to political judgment, which other scholars have characterized as divergent, can be reconciled in transitional justice institutions. Leebaw contends that both political deliberation and persuasion and the critical distance of the historian must inform transitional justice.

In pursuit of the third goal, Leebaw argues that the common problem with human rights legalism and restorative justice lies in the reliance on criminal justice strategies that "define crime as a *deviance* from common norms and practices" and that such models focus on individual victims and perpetrators and overlook the systematic nature of political violence and the presence of complicity and resistance. Leebaw draws together the arguments in support of political judgment to

contend that transitional justice institutions should investigate resistance and complicity in political violence. In her discussion of restorative justice, she cites African National Congress lawyers who argued, "Criminal investigations can obfuscate the problem of complicity in systematic crimes because such investigations are narrowly focused on establishing individual guilt." She suggests that memorializing resistance might provide a response to the concern that critical historical reflection would destabilize political reconciliation. Leebaw recommends that truth commissions examine "specific conditions, unique to each case, that undermine or diminish the capacity for resistance." Investigating political resistance would inform political reform and innovation. Acknowledging resistance by individuals not identified with the persecuted group can serve to "challenge collective attributions of blame" and demonization.

The discussion of the investigation of resistance provides an example of the author's careful consideration of concerns with and counterarguments to her proposals. Leebaw points to a concern with investigations into resistance by members of the elite or those not identified with the persecuted group, that such investigations may serve to "replicate a problematic dynamic associated with the human rights movement whereby people with means and power view themselves as saviors of the oppressed." She addresses this concern by explaining that the investigation of this resistance can assist in evaluating complicity as well.

Leebaw's arguments find ample support in the works cited. She effectively synthesizes the earlier literature to argue for the use of political judgment and the investigation of complicity by transitional justice institutions. *Judging State-Sponsored Violence, Imagining Political Change* should serve as a launching pad for further scholarship on the benefits and challenges to using political judgment to incorporate the theme of resistance and complicity in responses to systematic atrocities.

Law's Detour: Justice Displaced in the Bush Administration. By Peter Margulies. New York, New York: New York University Press, 2010. Pp. ix, 240. $39.00 (Hardcover).

Reviewed By Francesca Corbacho

Law's Detour: Justice Displaced in the Bush Administration is directed towards an audience primed to be critical of the many machinations of the Bush/Cheney era. Peter Margulies has no small task: to present the Bush Administration's aggrandizements of power in the legal, security, and political arenas in a way that reflects its larger policy goals, and to do so without striking an overly strident tone that might appear agenda-driven. He succeeds in this undertaking, and the result is a work that, while it will be most popular amongst left-leaning readers, has the academic chops to endure for some time to come. Though its rhetoric may alienate conservatives, Margulies, extensively documents his claims. The book contains over forty pages of citations to case law, official government documents, scholarly works, and other sources, making it an ideal starting place for students researching expansion of executive power following 9/11, or for those trying to assemble a clearer picture of an unprecedented phase of U.S. history.

Law's Detour begins with the assertion that the Bush Administration prioritized a results-oriented agenda over fundamental legal concepts such as the separation of powers and the rule of law. While recognizing that, in times of crisis, the executive has in the past used that crisis to arrogate power to himself through legal "detours", as FDR did during the Great Depression, Margulies points to the markedly different character of George W. Bush's detours. Secrecy, impunity, and ideological zealotry formed the foundations of most of the Bush Administration's detours, from the Office of Legal Counsel memos on so-called "enhanced interrogation," to those that, through equally strained readings of federal statutes, gave preferential treatment to faith-based organizations doing anti-poverty work. By beginning in this way, Margulies makes evident that Bush's legal detours were by no means limited to the counter-terrorism arena.

Margulies claims that Bush's myriad legal and policy choices in the years after 9/11 created the "perfect storm" of governmental failure to effectively respond to victims of Hurri-

cane Katrina. Katrina is emblematic of disaster compounded upon disaster, and clearly provides an emotional touchstone that Margulies uses to ground his opening chapter. He repeats this structure in subsequent chapters, providing snapshots of well-known detours that illustrate the dubious fruits of policies like patronage appointments, the attorney general firings, National Security Letters, and the "material support" laws surrounding terrorism. Each chapter then analyzes the ideological, political, and practical foundations for those detours.

Margulies' choice of chapter structure makes the book accessible, as readers can move from chapter to chapter while remaining grounded in events that are, for the most part, familiar. At times it feels awkward, however, especially for readers who are used to a structure that first provides background on, for example, the history of patronage appointments, then their use in the Bush Administration, and finally the disastrous fruits of patronage as exemplified by Michael Brown's inadequate response to Hurricane Katrina. *Law's Detour* leads with high impact and memorable events that will encourage Margulies' more casual audience to read on, but may prompt others to dismiss the book as recounting only the major news of the past several years. I encourage those readers to carry on; *Law's Detour* has a great deal to offer in its later pages.

Chapters Two and Three address Bush's most notorious detours, such as the vast and intricate system of warrantless surveillance known as the Terrorist Surveillance Program (TSP). Compellingly, classifying the program as an end-run around the limits on executive surveillance set by the Foreign Intelligence Surveillance Act (FISA), Margulies takes Bush and Cheney to task for promoting overbroad surveillance as well as for silencing dissenting voices within the Administration. Margulies does not shy away from blaming the legislature for its complicity in legal detours after 9/11. For instance, he notes that Congress, through its passage of the PATRIOT Act, made it easier for the FBI to issue National Security Letters (NSLs). NSLs are essentially demands by the government to telephone and internet service providers for any information relevant to a terrorist investigation. The NSLs were not subject to ex ante judicial review, nor were they initially appealable by the service provider in any way. In short, Margulies faults both the executive for abusing its power in issuing NSLs and a Republican-dominated Congress for not fighting the issue.

Many of Bush's legal detours came in response to the 9/11 attacks on the United States, and perhaps the most notorious is the detention facility at Guantanamo Bay, Cuba. Margulies devotes most of Chapters 2 and 3 to Guantanamo, detention, and interrogation of terror suspects. He also manages to insert a few pages on Bush-led changes to U.S. immigration policy that led to massive racial profiling of Muslim and Arab men (and those who resemble them) in the immediate aftermath of the attacks. Margulies goes beyond the obvious with regard to immigration, noting that Bush lawyers interpreted the PARTRIOT Act's provisions barring refugee status to anyone who provided material support to a terrorist organization, even if the person did so under duress. As Margulies astutely notes, such an interpretation effectively excludes thousands of refuges from Burma. Margulies notes not only the detour itself, but its marked departure from previous U.S. policy on refugees. Margulies discusses the immigration and refugee issue in Chapter Three on targeting, directly before the big-ticket item of Guantanamo detainees. In doing so, he places a slightly more obscure issue in the audience's path, while his extensive citations offer guidance for further research to interested readers.

Chapter Four begins with a vignette that is sure to "hook" any law student. As early as 2002, high ranking officials at the Department of Justice began making hiring decisions for DOJ's prestigious Honors Program for law school graduates based on political ideology, whereas the appointments had previously been determined only by merit. Here, Margulies notes that Attorney General Ashcroft, in partnership with a sympathetic Congress, used the 9/11 attacks to push a law-and-order agenda that included a directive to prosecutors to charge criminal defendants as harshly as possible, "blacklisting" judges who were perceived as giving moderate or lenient sentences, and aggressively pursuing the federal death penalty while, anomalously, exercising leniency in cases of racially motivated violence.

As one might expect, the chapter discusses the United States Attorney firings that led Alberto Gonzales to resign in 2007. It also explores the far less well-known topic of governmental requests for waivers of the attorney-client privilege in investigations of corporate wrongdoing. Here, Margulies asserts that the administration encouraged young prosecutors to

aggressively seek waivers, leading ultimately to reprisals from Congress in 2006. Margulies again manages to strike a balance between merely recounting major Bush-era scandals and getting lost in obscure anecdotes, two extremes that could plague a book of this kind.

Chapter Five deals with the Administration's use of conspiracy laws as part of the nation's strategy to prevent terrorism. Officials used conspiracy laws, which at their best allow for a great deal of discretion on the part of law enforcement, to target vulnerable individuals and groups in the wake of 9/11. Margulies cites the Padilla case as well as lesser-known instances of what he asserts are overblown charges of conspiracy in the absence of evidence to charge the defendants with a substantive crime. He then notes that both conspiracy charges and material support laws have been used by what he terms a "shadow government" that relies too heavily on informers and sting operations, despite obvious risks of inaccuracy.

The book's final two chapters step away from the post-9/11 terrorism framework and discuss election fraud, corporate accountability, selected prosecution of public officials, and the sub-prime crash. Margulies treats all of these issues well, but all too briefly. The sub-chapter on politically motivated prosecutions provides interested readers with ample opportunity to engage in further research, but reads as though in need of expansion.

Chapter Seven focuses in part on governmental use of contractors like Blackwater and Halliburton, which could be the subject of a book in its own right. Private contractors operating abroad are often exempt from liability for their actions, and the corporations that received the most lucrative contracts were often tied closely to high-ranking officials in the administration, including Vice-President Dick Cheney. Margulies describes the situation, but moves on quickly to other topics such as domestic economic regulation and the environment in a way the leaves the reader wanting more.

Law's Detour was a thoroughly enjoyable and informative discussion of the Bush Administration's numerous power grabs. It provides a relatively short and accessible introduction to a number of topics that will be of interest to students and researchers as well as the public at large. Some readers, particularly those who seek to gain more in-depth knowledge of

Bush's more obscure detours, will find themselves wishing that *Law's Detour* was a hundred pages longer. Margulies focused on the better-known detours surrounding the war on terror, and while it is understandable that he did so, one hopes that he will choose to revisit some of the book's more obscure topics in a later, more detailed, work.

Invisible Chains: Canada's Underground World of Human Trafficking. By Benjamin Perrin. Toronto, Ontario: Penguin Group, 2010. Pp. xix, 240. $ 20.06 (Hardcover).

Reviewed by Christine DiDomenico

"Having heard all of this you may choose to look the other way but you can never again say that you did not know."

William Wilberforce, the namesake for the United States' first comprehensive anti-trafficking law, spoke those words in 1789 to Westminster Abbey calling for the abolition of slavery. His admonition rings true today for developed countries ignorant and inattentive to the slavery on their own soil, thus prompting modern-day abolitionist Benjamin Perrin to end his own exposé and call for action, *Invisible Chains: Canada's Underground World of Human Trafficking*, with Wilberforce's quote. Perrin, like many in the Canadian audience he is writing to, originally learned of human trafficking as a "foreign" problem. He traveled to research and work as far as Cambodia before learning about a sex trafficking ring right near the Pete's Drive-In where he used to get burgers after his little league baseball games. In *Invisible Chains*, Perrin seeks to awaken Canada to the reality that slavery is proliferating throughout the nation—citizens just do not see it because the chains holding victims are invisible.

The "invisible chains" include physical abuse and psychological coercion, the latter of which the Canadian government still has not comprehensively recognized in its anti-trafficking law. To a great extent, Perrin compares Canada with the United States and other developed countries that have made anti-trafficking efforts a top priority and encourages his own nation to do the same. One of the most effective features in the book is a chapter detailing the diverse strategies of Belgium, Italy, the United States, and Sweden, each section

concluding with a list of best practices and recommendations Canada should consider.

Despite the thoroughness of Perrin's research—he is one of Canada's leading experts on the subject and in research for *Invisible Chains*, he filed over forty *Access to Information Act* requests with the government—several major questions remain that at times undermine the urgency of the country's trafficking problem. The problem of limited statistical information pervades all of these questions. First, Perrin fails to compellingly convey the size of the problem. It may be that this sort of numerical information does not exist yet, but Perrin does not address this head on from the beginning, and thus the lack of data becomes a problem in his work itself. For example, he only refers to a 2004 study that found approximately 600 foreign nationals are brought to Canada annually for sex trafficking and an additional 200 for forced labor, but in fact, he says that the police no longer cite this study because of uncertainty about the data. While he tells many stories of Canadian citizens being trafficked at various points throughout the book, no clear picture about the real prevalence of trafficking in the country emerges. Canada has an estimated population of 34,744,000; to really persuade the population and government that time and resources need to be allocated to this cause, Perrin would do well to provide clear, comprehensive statistics near the beginning of his book.

Likewise, it is not clear from this work what role Canada plays in global trafficking. Perrin quotes the U.S. Department of State finding that at least 2,000 individuals are trafficked over the border into the United States each year. Do these numbers suggest Canada is more of a transit country to the United States rather than the final destination for victims, and does that imbalance affect the actions Canada should take? Perrin does not address this, though he provides recommendations equally for greater border control as well as internal policing.

Without explanation, Perrin treats the primary forms of human trafficking asymmetrically. Most of the book focuses on sex trafficking, while Perrin relegates all discussion of labor trafficking to one, thirteen-page chapter. No doubt it is perceived as easier to provoke outrage by focusing on sex trafficking, but labor trafficking is often more hidden while still harming many women and children. In the United States and many

other developed countries, labor trafficking is at least as prevalent, if not more so, than sex trafficking. This may not be the case in Canada, but again, Perrin does not offer any statistics comparing the two forms of enslavement in his country. Of course, those numbers may not exist, but in that case, he should emphasize that point.

Nevertheless, *Invisible Chains*' detailed vignettes and comparative analysis should be a resounding wake-up call to Canadians who believe human trafficking is not a problem in their country. The U.S. Department of State annually ranks countries based on their compliance with U.S. standards for anti-trafficking efforts as set in the Trafficking Victims Protection Act. Canada is currently listed as a Tier 1 country, which means it meets all the minimum criteria. Perrin's book is a warning to his government and peers that this U.S. approval should not make Canada complacent

Finally, it is worth noting that Perrin falls into one of what seems to be the two major types of authors and leaders in the in the current literature on human trafficking: white men from developed countries (e.g., E. Benjamin Skinner, Kevin Bales, Ron Soodalter) and trafficking survivors (Rachel Lloyd, Somaly Mam). Survivors of genocide, torture, and domestic violence, among other human rights issues, are always important voices, personifying and giving detailed account of horrors the population might not otherwise believe or fully understand. Is human trafficking unique in that the demographic sometimes responsible for the abuse can also investigate, as done with this cause by going undercover to visit brothels? Perrin tells of gaining access to a Phnom Penh "karaoke bar" by virtue of his gender and nationality, only to be presented with a selection of thirteen- to sixteen-year-old girls seated behind a glass window, colored tags designating their origin country fastened to their shirts. Few others can obtain this sort of shocking and crucial information about the modern-day slave trade. While taking care to avoid allowing the modern abolitionist discussion to be ironically over-dominated by a white, male perspective, anti-trafficking activists and law enforcement ought to recognize this phenomenon as a potentially powerful investigation tool.

Considering Perrin's goals, *Invisible Chains*' strengths outweigh its shortcomings. It is the kind of book that needs to be written and publicized in every developed nation. It is one

that tells its citizens that human trafficking is not a foreign problem, but one occurring even in the countries with the best human rights records; that tells the stories of the victims, thoroughly researches the government response and compares it to other countries' efforts; a book that empowers and inspires readers to take action.

Is the Death Penalty Dying? European and American Perspectives. Edited by Austin Sarat and Jürgen Martschukat. New York, New York: Cambridge University Press, 2011. Pp. vii, 329. $90.00 (Hardcover).

Reviewed by Jaya Kasibhatla

Can the historical and political circumstances in which the death penalty was abolished in Europe offer strategies for abolition movements in the United States? The contributors to the collection, *Is the Death Penalty Dying? European and American Perspectives*, approach this question from a variety of disciplines (including sociology, philosophy, and literature) and conclude that abolition in the United States will not be secured through law alone; rather, a permanent ban on the death penalty requires an active engagement with politics, the legislative process, and the realm of public opinion. The thread that runs through this collection is the recognition that, in Europe, achieving a permanent ban on capital punishment required the support of political elites who were willing to end the practice despite widespread popular support for it.

The book identifies, and seeks to remedy, two problems with existing analyses of capital punishment: (1) the tendency to study it as an exceptional penalty which obscures its similarity to other forms of punishment regarded as acceptable alternatives, and (2) the suggestion, created by an exclusive focus on domestic legal history, that it is too bound up with cultural identity to be susceptible to change. Each of the book's three sections places capital punishment in an international frame: the first explores the nature of the death penalty as a punishment, the second considers the domestic and international publics who witness it, and the third confronts the dilemmas faced by European and American abolitionist movements.

Peter Speierenburg begins by noting that the much-vaunted European opposition to the death penalty is a rela-

tively recent phenomenon, and that up until the 1980s, the trend toward increasing punitiveness was largely the same in Europe and America. Yet a crucial difference lies in the fact that in European countries, the focus of empathic discourse had long been the prisoner, whereas in the United States, the victim has taken center stage as the proper object of public sympathy. If this is the case, then Colin Dayan's analysis of the rise of supermax prisons may turn the tide. In "Did Anyone Die Here?," Dayan argues that treating the death penalty as an exceptional form of punishment obscures the presence and pervasiveness of its functional equivalents, particularly solitary confinement. The intense sensory deprivation of solitary confinement not only inflicts a psychic death, but renders the condemned subject's suffering invisible—illegible in the law as punishment (since placement in solitary is defined as an "administrative decision" rather than a "punitive" one) and unseen by the public at large.

Although the second section of the book builds on Dayan's recognition of the importance of visibility for abolitionist movements, the arguments rely heavily on theoretical frameworks and jargon (e.g. proxemics, performativity) that do little to enhance their otherwise persuasive claims. In separate essays on the hanging of Saddam Hussein, Evi Girling and Kathryn Heard explore what happens when an international audience witnesses an execution. For Girling, the grainy, cellphone video of Saddam's death was an unofficial witness, whose audio of jeering voices presented a spectacle of disorder and sectarian violence that challenged the legitimacy of the Iraqi state. Heard notes that it is precisely this quality of the video that President Bush sought to neutralize in his statement that Hussein's execution was "an important milestone on Iraq's course to becoming a democracy that can govern, sustain, and defend itself." Ultimately, the essays by Girling and Heard focus too much on the fact that the Internet makes "global witnessing" possible, and do not pay enough attention to whether or not this has a measurable effect on public opinion. In contrast to this emphasis on the need to witness judgment, Simon Grivet argues that the success of abolition in France was due in part to the invisibility of capital punishment (effected by a law that banned any reporting on executions after 1939). For Grivet, this absence from public discourse

prevented a popular counter-narrative from emerging to compete with elite political opposition to the practice.

The final section of the book promises to discuss abolitionist strategies *and* dilemmas, yet its actual theme is to identify the dilemmas that result from the use of particular abolitionist strategies. In "Civilized Rebels," Andrew Hammel traces how elite discourse on capital punishment in Europe (from Cesare Beccaria's *On Crime and Punishment* (1764) to Victor Hugo's *The Last Day of a Condemned Man*) characterized opposition to the practice as a mark of refined sensibility. The modern, European critique of the death penalty emphasized the "deleterious effect" it has on those who witness it, thus condemnation of the practice became a way to contrast one's sensibilities from those of the mob who supported it. In "The Death of Dignity," Timothy Kaufman-Osborn argues that the initial focus on the dignity of the condemned in British abolitionist discourse gave way to arguments about technical certainty (regarding the manner and timing of death) that ultimately privileged the viewer as the primary subject of state concern. Although he maintains that an exclusive focus on the pain of the condemned person serves to render him an object, this gives too little credit to the power of empathic identification (which nearly every essay in the collection takes as a core component of abolitionist strategy). It might be more precise to say that focusing on the subject's capacity for pain has had the unfortunate result of encouraging interest in finding ever more technically expert modes of execution that efface the appearance of suffering on which empathy depends.

In what is undoubtedly the most optimistic view of abolition in the collection, Jon Yorke's "Sovereignty and the Unnecessary Penalty of Death" argues that Europe has succeeded not only in ending capital punishment but in preventing it from ever returning. Since the Council of Europe adopted Protocol 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms (banning capital punishment in all cases) after 9/11, the putatively exceptional nature of terrorism has not been able to undermine the ban. Yorke suggests that the post-9/11 resistance to capital punishment will soon mature into a norm of jus cogens and is sanguine about American prospects for abolition, reading the Eighth Amendment's ban on "cruel and unusual punishment," and the "evolving

standards of decency" as the keys to this eventual victory. Yet, in the final essay of the volume, Marie Gottshalk argues that it is these very "standards of decency," and in particular, the judicial view that public opinion polls are the best reflection of such standards, that has hamstrung the abolitionist movement in the United States. In "The Long Shadow of Mass Incarceration," Gottshalk argues that because abolitionist organizations (the ACLU and the NAACP's Legal Defense Fund) focused exclusively on legal strategies to end the death penalty, they were unable to influence a public whose views were still quite fluid in the mid 1960s, before political elites began making support for capital punishment part of their platforms. Once the "evolving standards of decency" became the guiding light for interpreting the Eighth Amendment, the lost opportunity to shape public opinion proved disastrous, since, by that time, "public sentiment" was squarely in favor of death.

Thus, the collection ends on a somber note. If European political elites ended capital punishment in the face of widespread public support for the practice, they could do so because penal policy in Europe was less democratically porous than it is in the United States (where prosecutors and judges are elected and the legal standard for determining cruelty is still tied to public opinion). Aside from drawing back the legal and scientific veil that obscures the death penalty from public view, the essays in this volume offer few alternative strategies for the U.S. abolitionist movement. Perhaps the reason is that any strategy carries with it a dilemma not visible in the moment of use. But another explanation might lie in the gap between theory and practice. For lawyers who defend death row inmates, and for many inmates themselves, life in prison is a real alternative to death. Even though treating the death penalty as an exceptional punishment hinders reform of punitive policies generally, lawyers will still fight for their client's lives by relying on the idea that "death is different." These essays suggest that the best hope for U.S. abolition is to change public opinion, thus American abolitionists must not only cultivate a like-minded constituency of political elites, but focus the public's gaze on the human subject of punishment. Yet the popularity of the victim's rights movement suggests that such sentimental discourse, with its profound ability to mobilize affect, is difficult (if not impossible) to control.

Islamic Law and the Law of Armed Conflict. By Niaz A. Shah. New York, New York: Routledge, 2011. Pp. viii, 176. $135.00 (Hardcover).

Reviewed By Daniel Hanna

The situation in the Middle East is tense. An armed conflict between Iran and Israel may erupt within months. Egypt continues to suffer after-shocks of killings, nearly one year after Mubarak's departure. The violent clashes in Syria, between government supporters and the opposition, continues. What law should govern the armed conflicts in the Middle East, particularly armed conflicts involving Muslim states? Some believe Islamic law should apply, and oppose applying international law. But others argue that international law, rather than Islamic law, should govern. In *Islamic Law and the Law of Armed Conflict,* Niaz Shah bridges the gap between these two camps. According to Shah, both Islamic law and international law are based on principles that are largely compatible, and a mixture of both can govern armed conflicts in the Middle East. Where Islamic law is silent on a relevant issue, such as the legality of air warfare, institutional or individual interpretation of Islamic law can help fill in the gaps. Shah presents a compelling argument, but his ideas—while extensively researched—seem difficult to implement.

In his introduction, Shah carefully explains the three reasons why Islamic law and international law can coexist: (1) neither Islamic law nor international law excludes the other; (2) the basic principles of both are compatible; (3) where international and Islamic law conflict, conflict-resolution mechanisms exist to resolve the conflict. While each point is extensively researched (the introduction alone cites more than fifty sources), Shah spends little time discussing how to implement his thesis. He recognizes, in passing, what must happen for Islamic law and international law to coexist: Muslim jurists must return to the primary sources of Islamic law; they must define new rules that apply to modern aspects of armed conflict, such as air warfare, that Islamic law currently does not address. State legislatures and courts must play an active role in fleshing out the new standards, and Muslim states must collaborate with one another. But Shah never addresses the likelihood of these changes occurring. The tasks seem daunting,

and Muslim states—especially given the current climate in the Middle East—may not implement these changes in the near future.

The stakes, however, are clearly high. Armed conflicts continue to drag on in the Middle East. A clear Islamic law of armed conflict might minimize human suffering. According to Shah, an Islamic law of armed conflict will decrease violence in two ways. First, it will make certain conduct illegal, which in itself may reduce violence. By enacting an Islamic law of armed conflict, Muslim states will encourage Muslim armed groups to comply with this law. Second, since the law springs from the primary texts of Islam, the law may incentivize Muslims to obey its tenets, or risk divine retribution. Hopefully, Shah's predictions are correct. Muslim groups may, however, reject the Islamic law as a faulty interpretation. This seems possible, at least in states like Pakistan, where government forces are struggling against armed groups. In those states, the armed groups might view the legislature, and its proclamations, as a mere extension of the government itself. In other states, the armed groups may simply abide by their own interpretations of the Islamic law of armed conflict, regardless of what the legislature or courts may say. After all, as Shah's discussion of the Koran makes clear, religious texts are open to multiple interpretations. Shah never addresses these possibilities, which is unfortunate. He is clearly an expert on Islamic law, and his opinions would have added welcomed depth to his analysis.

Given that his book is so meticulously researched and organized, it seems unlikely that Shah forgot to address these points. In all likelihood, he merely intended this text to serve as a concise summary, rather than an extensive treatise on Islamic law and policy. At 149 pages, the book is short but dense. It even contains a short introduction to Islamic law, which explains the difference between *sharia* and *fiqh*, *ijtihad* and *fatwa*, and summarizes the primary objectives of Islamic law (with numerous citations to Islamic texts). Further, the book is well organized. Shah divides each chapter into bolded headings and subheadings, and always summarizes his main points in a concluding paragraph at the end. While this structure makes the book easy to flip through, it often detracts from the reading experience. In Chapter Three, for example, Shah lays out the Islamic principles governing internal armed

conflicts. Each principle is discussed in its own separate paragraph, with its own bolded subheading. The only mention of an overarching theme connecting the paragraphs occurs in a short section in the beginning of the chapter, or in the concluding paragraph at the end of the chapter. As a result, the reader—with no overarching theme to cling to—may drown in the details. The structure of the text, and its overwhelming level of detail, may suggest that Shah never intended anyone to actually read his book from cover to cover. Rather, the book is probably best-suited for use as a reference.

Excluding the conclusion, *Islamic Law and the Law of Armed Conflict*, consists of two main parts. In the first part, Shah summarizes the basic principles of the Islamic law of armed conflict. These principles include military necessity, distinction, proportionality, humanity, and accepting an offer of peace during an armed conflict.[1] Shah then defines other principles that apply to "internal armed conflicts," or conflicts between Muslim groups. He never clearly explains, however, whether these principles apply in addition to the basic principles of Islamic law (mentioned above), or in place of those principles. Shah does explain each principle of the Islamic law of armed conflict well, however, and his references to the practices of early Muslims show how modern Muslims might abide by these principles in actual conflicts. This is one of the most interesting portions of *Islamic Law and the Law of Armed Conflict*, especially for anyone interested in Islamic law and Islamic history. In one section, Shah refers to the Koran and the practices of the Prophet Mohammad to argue that Islamic law does not permit genocide. In another section, he discusses the treatment of spies and hostages during the time of the Prophet. (Apparently, Muslims treated the enemy spies they caught differently, with some being beaten and others being killed.)

Shah recognizes the major flaw of the principles he cites: they are too general to cover the intricacies of modern combat. From nuclear weapons to drones to interrogation techniques, there are many aspects of modern warfare that Islamic law never covers. Rather than deal with this gap in the law,

1. Distinction involves distinguishing between combatants and noncombatants, and avoiding collateral damage. Humanity prohibits unnecessary harm, and requires combatants to kill fairly and respect the dead.

Shah merely states that Islamic law should be developed further. But what kind of rules should apply? Shah never answers this question. He says that rules must be developed on how to use modern weapons, but offers no guidance on what these rules should look like. Herein lays the most glaring flaw of *Islamic Law and the Law of Armed Conflict*: its contents often feel overly academic, with little practical application. For example, Shah argues persuasively that an Islamic law of armed conflict exists, and his research is impeccable; but who is listening? From Libya to Syria to Egypt to the Taliban, the litany of violations appears endless.

The final portion of Shah's book is refreshingly original. Shah puts his principles to work, and applies the Islamic law of armed conflict to the conflict in Pakistan. Several legal systems apply to the conflict, such as municipal Pakistani law, the Islamic law of armed conflict, and international law. The case study shows that the Islamic law of armed conflict does not exist in a vacuum, but rather exists alongside and complements other bodies of law. All three legal systems permit the Pakistani government to fight the Taliban, within limits. For example, Islamic law allows the Pakistani government to use force only until the government subjugates the Taliban rebels or until the parties reach a truce. Islamic law also requires the government to treat fairly any rebels who surrender. Similarly, international law requires the government to treat humanely anyone not participating in the conflict, and any detainees. The targeting of civilians violates municipal law, the Islamic law of armed conflict, and international law. By applying the principles to the conflict in Pakistan, Shah shows how the legal systems work in tandem. He shows that Islamic law truly is compatible with international law, in the sense that the two legal systems often condemn similar conduct.

Shah, in applying Islamic law and international law to the conflict in Pakistan, is also fair. He does not simply focus on the atrocities committed by the Taliban; he also turns a discerning eye onto the drone strikes authorized by the U.S. administration, torture committed by the Pakistani administration, and abuse committed by Pakistani soldiers. He warns that the Pakistani security forces risk violating the principal of proportionality when they kill innocent civilians in addition to killing an important militant. As for the U.S. drones, Shah finds that the drone strikes are illegal under the Charter of the

United Nations and under the international law of armed conflict.

At least one thing is inescapably clear after reading Shah's case study on Pakistan: armed conflicts are complex. They may implicate multiple legal systems, both international and domestic. Violations of domestic and international law are not confined to one side, or neatly contained within the borders of a single state. Even the hands of the "winner" may not be clean, but may bear the stain of war crimes. Perhaps, by recognizing the complementary nature of international law and the Islamic law of armed conflict, Muslim states can curb the bloodshed in the Middle East. If so, then Shah's theory deserves a strong look, and quick implementation.

Writing History in International Criminal Trials. By Richard Ashby Wilson. New York, NY: Cambridge University Press, 2011. Pp. vi, 257. $29.99 (Paperback).

REVIEWED BY FELICITY CONRAD

Richard Ashby Wilson's latest book, *Writing History in International Criminal Trials*, successfully begins a meaningful dialogue on the role of history in contemporary international criminal tribunals, and the tribunals' role in writing history. Despite the proliferation of tribunals in recent years, the role of historical narrative in prosecuting atrocity crimes, and the role of international criminal trials in writing the history of events surrounding such crimes, has been largely overlooked. Utilizing testimony from interviews conducted with prosecutors, defense attorneys, tribunal staff, experts and others, the book presents a comprehensive first look at the intersection between the disciplines of law and history. In doing so, Wilson also presents an accessible and thought-provoking introduction to the history of international tribunals, providing insights into their development and internal workings.

A primary tenet of the book is that historical discussion in international criminal tribunals is inevitable because it is legally relevant to the requirements of international criminal law. For instance, the crime of genocide has a collective aspect that requires an explanation of the relations between groups over time. Similarly, Wilson argues that the historical accounts provide a body of evidence that can be used by historians to

help produce explanations of what happened long after the trial has ended. This intersection of distinct disciplines, complete with their own methods and standards, yields significant problems. Exploring these pitfalls is Wilson's principal concern in *Writing History*.

The author adopts a case study approach, looking at the role of history in trials at three tribunals: the International Criminal Tribunal for the Former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), and International Criminal Court (ICC). After examining the relationship of history and law in each institution and in individual cases within each tribunal, Wilson ultimately, and correctly, concludes that history plays an integral part in most proceedings. Perhaps nowhere is this relationship clearer than in the trial of Slobodan Milosevic, which Wilson meticulously details, where one of the great debates was over the historical existence of a Serbian nationalist mind-set in the twentieth century. Wilson also spends a significant portion of the book showing that prosecutors frequently rely on historical accounts to prove special intent, and defense council often exploit it to show chaos or *tu quoque*.

Despite history's heavy use in international atrocity crime proceedings, Wilson discusses his and others' belief that this use might not yield an accurate depiction of events that can then be utilized by scholars in the future. This topic, although touched upon, could have been more fully elaborated. In particular, it is unclear whether the use of Leadership Research Teams and Military Analysis Teams are, as he seems to indicate at the end, less biased sources of historical accounts. Although such teams are not part of the prosecution itself, Wilson portrays their primary role as aiding the prosecution attorneys in their investigation. Due to this close affiliation with the prosecution, Wilson should have further explained his assertion that they, although arguably better suited to investigation than average Office of the Prosecutor employees (they often possess regional knowledge, languages and social science backgrounds), are somehow less biased in their treatment of history.

A primary theme throughout the book is the use of historical experts in international criminal proceedings. The author uses numerous examples to explore in depth the role experts have played in particular proceedings. Through these exam-

ples Wilson highlights an intriguing discordance: most prominent academics in the field are ill-suited to serving as historical experts in international criminal trials. Wilson argues that prominent academics are often concerned with protecting their professional reputation and are not trained to give direct yes or no answers to extremely complex issues, as the law often requires. As a result, many of the experts that have shaped historical accounts in international atrocity trials are not traditional academics; instead they include individuals like Robert Donia, a retired finance executive. This is a fascinating phenomenon, but again, it would have been helpful for Wilson to have further expounded regarding the effects of the practice.

The book spends a significant amount of time analyzing evidentiary rules at the various institutions. This is relevant because it determines what historical evidence is allowed to be heard at trial, but the lengthy discussion of United States domestic case law to form a background understanding of expert testimony rules seemed unnecessary. Despite this, the author's ultimate conclusion that international criminal tribunals should adopt explicit and more uniform evidentiary standards is well-founded. As it stands, there is little enforced substantive rigor, which allows for the undesirable result that erroneous accounts of history can both influence the individual proceedings, and the enduring historical record. While Wilson discusses the pitfalls of the use of historical narratives in the courtroom at length, the reader may appreciate a more detailed analysis of the subsequent real-world effects of the resulting historical records.

Wilson concludes with a number of recommendations to be employed by tribunals to avoid pitfalls in the inevitable combination of law and history in international atrocity trials. He espouses the less adversarial process adopted by the ICC, and suggests that tribunals maintain a list of verified neutral expert witnesses. Of course, whether such neutral witnesses even exist is a matter of some debate. As mentioned earlier, Wilson advocates for the implementation of more definite evidentiary rules regulating the use of historical evidence. He also suggests that judges employ research officers to advise them on historical issues, which might be overly naïve given judges' general reluctance to admit incompetence. Finally, and perhaps most radically, the author suggests that research units might be created which would be independent from the

prosecution and the defense, as well as possibly the tribunal itself; but this, as Wilson himself hints at, is unlikely to be implemented.

Writing History is presented in a straightforward manner and is written in a crisp and articulate style. It is likely accessible and interesting for a range of readers, including lawyers, historians, and laypersons interested in an introduction to the use of history in international criminal tribunals. At times the frequent use of quotes from the author's numerous interviews can prove difficult to follow, and the importance of various discussions is not always immediately apparent. Fortunately, these instances are infrequent enough to not diminish the general readability of the book.

Wilson's treatment of history and international criminal trials is best viewed as the beginning of an international dialogue on the appropriate role of history in atrocity trials, and such trials as creators of historical accounts. This topic has regrettably received little academic attention, perhaps because international criminal tribunals are a very modern and constantly evolving phenomenon. Against this blank slate, Wilson's book is an excellent first step toward better understanding the complex interplay between history and law in international criminal tribunals. Wilson's work is not a comprehensive treatment of the topic, but sets out the basic tenets and primary issues necessary to initiate an academic debate. If one approaches *Writing History in International Criminal Trials* from this vantage point, they will find it to be an interesting and satisfying read.