# **BOOK ANNOTATIONS**

- COOTER, ROBERT D. AND HANS-BERND SCHÄFER, SOLOMON'S KNOT: HOW LAW CAN END THE POVERTY OF NATIONS (Princeton, New Jersey: Princeton University Press, 2012).
- DAWSON, MARK, BRUNO DE WITTE, AND ELISE MUIR, EDS., JUDI-CIAL ACTIVISM AT THE EUROPEAN COURT OF JUSTICE (Northampton, Massachusetts: Edward Elgar Publishing, 2013).
- GAINES, SANFORD E., BIRGITTE EGELUND OLSEN, AND KARSTEN ENGSIG SØRENSEN, EDS., LIBERALISING TRADE IN THE EU AND THE WTO: A LEGAL COMPARISON (New York, New York: Cambridge University Press, 2012).
- JOVANOVIĆ, MIODRAG A., AND ĐORĐE PAVIĆEVIĆ, EDS., CRISIS AND QUALITY OF DEMOCRACY IN EASTERN EUROPE (The Hague, Netherlands: Eleven International Publishing, 2012).
- NOORANI, A.G. AND THE SOUTH ASIA HUMAN RIGHTS DOCUMEN-TATION CENTRE, CHALLENGES TO CIVIL RIGHTS GUARAN-TEES IN INDIA (New York, New York: Oxford University Press, 2012).
- RHEA, HARRY M., THE UNITED STATES AND INTERNATIONAL CRIMINAL TRIBUNALS: AN INTRODUCTION (Portland, Oregon: Intersentia Publishing Ltd., 2012).
- ROTH, BRAD R., SOVEREIGN EQUALITY AND MORAL DISAGREE-MENT: PREMISES OF A PLURALIST INTERNATIONAL LEGAL OR-DER (New York, New York: Oxford University Press, 2011).
- SARAT, AUSTIN, LAWRENCE DOUGLAS, AND MARTHA MERRILL UM-PHREY, EDS., IMAGINING NEW LEGALITIES: PRIVACY AND ITS POSSIBILITIES IN THE 21ST CENTURY (Stanford, California: Stanford University Press, 2012).

- SATTERTHWAITE, MARGARET L., AND JAYNE C. HUCKERBY, EDS., GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES (London, United Kingdom: Routledge 2013).
- STAN, LAVINA, TRANSITIONAL JUSTICE IN POST-COMMUNIST ROMANIA: THE POLITICS OF MEMORY (New York, New York: Cambridge University Press, 2013).
- THOMPSON, GRAHAME F., THE CONSTITUTIONALIZATION OF THE GLOBAL CORPORATE SPHERE? (Oxford, United Kingdom: Oxford University Press, 2012).
- WHEELDON, JOHANNES, AFTER THE SPRING: PROBATION, JUSTICE REFORM, AND DEMOCRATIZATION FROM THE BALTICS TO BEI-RUT (The Hague, The Netherlands: Eleven International Publishing, 2012).
- Solomon's Knot: How Law Can End the Poverty of Nations. Robert D. Cooter and Hans-Bernd Schäfer. Princeton, New Jersey: Princeton University Press, 2012. Pp. 344. \$22.95 (paperback).

## REVIEWED BY JOCELYN HUANG

The collapse of the financial industry five years ago triggered a sharp ideological divide in public policy that seems to have found a permanent home within today's political and economic discourse. It is in this context that Robert D. Cooter and Hans-Bernd Schäfer have given us *Solomon's Knot*, a broad and informed work through which they argue that a liberalized market economy, so long as it is effectively regulated and responsibly administered, is the best tool for incentivizing creativity and lifting nations out of poverty. Although some readers may find the authors' use of extreme examples and binary distinctions to oversimplify the issues, the book actually sets out to fulfill an ambitious task: to provide an alternate vocabulary and set of principles for those seeking a solution to chronic poverty.

Solomon's Knot makes a skillful argument that robust laws facilitating private transactions between innovators and investors can transform liberal economic theory into a means of

improving the lives of all. This argument is not necessarily a new one. Proponents of free trade have long promoted the liberalization of domestic and international markets as the key to increasing wealth across the globe. The uniqueness of *Solomon's Knot* lies in the authors' distillation of liberal market theory into three central principles—the strengthening of property law, contract law, and business law—and its recommendation that sustainable growth, rather than strict equality, serve as a limiting principle for liberalization. In making their argument, the authors sweep from the eighteenth century to the present, use case studies from the world's many regions, and refer to many of the leading economic theories that have captivated different groups in various periods of world history.

The book begins by introducing readers to the fundamental premise upon which the book relies: Economies grow when people make wealth through innovation. Thus, sustainable growth depends on a framework of laws (or, in some cases, voluntary codes of conduct) that incentivize innovation. Cooter and Schäfer argue that the primary obstacle to innovation is the "double trust dilemma," a predicament in which innovators fear that investors will steal their ideas, and investors fear that innovators will squander capital. Laws must help both parties overcome the double trust dilemma in order to match ideas with capital. The following chapters proceed with the authors' central arguments: that robust property laws, contract laws, and business laws provide the most effective means for combining ideas with capital to produce wealth-creating innovation.

Cooter and Schäfer emphasize the importance of a predictable and efficient regime of property rights that allows innovators and entrepreneurs to keep much of what they make in order to create the stability and security necessary to encourage investment. They recognize that this regime may at times conflict with traditional notions of fairness and social justice. In a brief discussion in Chapter Six of the situation of Brazilian landowners, they critique the tension between certain provisions of the Brazilian Constitution and human economic behavior as the reason why less than ten percent of rural landowners in Brazil rent out their land (compared to over forty percent in the United States, France, and the Netherlands). They point out that the Brazilian Constitution provides that land that fails to fulfill its "social function" may be seized and put to another's use. For this reason, landowners are reluctant to lease their property to tenants for fear that the tenants might declare that the land was failing to fulfill its social function and then stop paying rent. Further, the constitutional right to housing makes it difficult to evict homeowners who have become delinquent in their mortgage payments, which in turn has made banks hesitant to extend mortgage loans. In this instance, the authors argue, the law has created a scenario where the poor might have an easier time seizing the land than actually buying and financing it. The apparent conflict between the authors' theory and popular notions of social justice replays throughout the book. In Chapter Eight, for example, they state plainly that strengthening debt collection procedures, while politically unpopular, is critical in keeping credit lines open to the poor. At the same time, in Chapter Ten, they argue for strong bankruptcy laws that will both shield insolvent debtors and also recycle capital back into the economy. Their recommendation for strong debt collection procedures in the context of reliable bankruptcy protections highlights a central theme in their book—that facilitating transactions and moving resources from the hands of those who cannot manage them to those who can will encourage economic growth that benefits all.

Once innovators feel secure in coming forward with their ideas, Cooter and Schäfer emphasize that a strong contract law regime protected by courts and regulations must exist to give innovators and investors a framework through which to enforce agreements. In Chapter Seven, the authors highlight the particular predicaments faced by developing nations and offer solutions based on aggregated data, legal doctrines, and crosscountry comparisons. The authors offer interesting and valuable recommendations for economies that are at different stages of development. For example, they argue that specific performance judgments ought to be applied more broadly in developing countries where a party is less likely to have assets with which to satisfy a money judgment. For countries with developed public markets, the authors advocate for government regulation to enforce public contracts in order to standardize the terms and conditions of exchange so as to reduce information costs for buyers.

Here, the authors take advantage of their broad knowledge of comparative law to recommend legal reforms that can help address problems faced by developing countries. They do this deftly in their discussion of judicial interpretation of contracts in environments where improper interference with the legal system is common. Cooter and Schäfer begin by comparing the German legal regime, which determines liability on principles of good and bad faith, with the English common law regime, which leans toward strict construction. Having flagged these two ends of the spectrum, the authors then settle squarely in the middle with the framework used in India. Indian law, as they point out, operates within a nuanced system that allows judges in the higher courts to use the principle of good faith to develop law, but precludes judges in lower courts, who tend to be less educated and face rampant corruption, from doing the same.

In Chapter Nine, the book discusses the corporate form as the ideal solution to the double trust dilemma. With a stronger legal framework that facilitates public investment into a private firm, innovators can be confident that their secrets are being protected, while investors can simultaneously be confident that the law will prevent businesses from squandering their money. This chapter discusses various forms of joint stock, limited liability companies, from the joint stock companies that dominated the seventeenth century spice trade to more recent reforms of corporate law in Korea. Accompanying this discussion of the corporate form is the authors' argument that bankruptcy law must be exercised without government interference. In Chapter Ten, they tell the story of Yukos, a Russian private oil company that was purchased by the state after the government had depressed its value by bringing it to the brink of bankruptcy. The thrust of their argument here is that the success or failure of these private firms should not be determined by state authorities who may fall vulnerable to political pressures in ways that are counterproductive to economic growth.

The book's arguments are aptly captured in a slogan coined by Deng Xiaoping and quoted by the authors: "For everyone to get rich, some must get rich first." The authors make it plain that their theory is not one of per se equality. Rather, they use historical data trends to illustrate that moderate inequality and fast growth are often correlated, and innovators should be allowed to keep the amount of wealth that maximizes the sustainable rate of growth. However, they caution against extreme inequality—especially if it is caused by oligarchies, corruption, cartels, poor education, and poor health pointing out that extreme inequality can undermine the laws that are instrumental to achieving levels of trust and security that underscore economic growth. They also caution against depending on features other than innovation to achieve sustainable growth. Policies that simply increase labor, for example, are not sustainable and will cause growth to collapse. Instead, by applying "the property principle for innovation," lawmakers and judges will make greater strides toward lifting people out of poverty, even if the principle fails to give people a larger percentage of the pie.

Cooter and Schäfer anticipate and are sensitive to some of the prominent social justice concerns. They remain firm that innovation and sustained growth constitute the most effective recipe for achieving the goals of justice and fairness, even if these economic principles have not traditionally used the language of justice and fairness. Using data from the World Bank, they argue that "instead of trickling down from entrepreneurs to workers, historical and international comparisons suggest that growing income cascades down like the Blue Nile flowing from Lake Tana." Distribution of wealth is necessary for the "residual poor"—those who are unemployed thus do not benefit from increased productivity and wages during periods of economic growth—but, in general, innovation is the best means for increasing worker productivity (and thus wages) and developing sustainable technology.

Central to discussions of justice and fairness is the question of whether the wealthy are in fact "too rich." Cooter and Schäfer address this question by distinguishing between those who "make" wealth (i.e., entrepreneurs and innovators) from those who "take" wealth. Those who are "too rich" are those whose money comes from "taking wealth," such as through corruption, cartels, or fraudulent or deceptive business practices. On the other hand, entrepreneurs and innovators, such as Warren Buffet, Bill Gates, and Carlos Slim, actually have less wealth than the value of what they provide to society and share with other innovators, imitators, and consumers. While this distinction is useful and underpins many of the arguments in the book, it is somewhat flawed in its presentation. The authors use extremes to illustrate both the makers and takers of wealth, with Bill Gates and Warren Buffet on the one hand, and Russian oligarchs on another. What is less clear is how their theory operates in the vast and colorless middle ground, where the complexity of corporate governance and organizational structures makes it hard to identify who "makes" and who "takes."

The book closes by challenging the direction of contemporary ideological discussion. Although the authors make recurring comparisons between liberal market economies and government-controlled economies, they point out that current debate on the proper scope and form of the government "misses the point." These arguments fail to account for the fact that the presence or absence of strong property, contract, and business laws speaks volumes on whether a process of deregulation will succeed or fail. The authors also contend that discussions on fairness and justice too often ignore the fact that sustainable economic growth-and not strict equality-is the best tool for increasing income. Thus, economic policies aimed at relieving poverty ought to focus on discovering ways to improve the marginal productivity of workers, such as by bolstering educational programs and health services, and incentivizing innovation by allowing those who make wealth to keep wealth.

Solomon's Knot is an informed and useful book. Notably, it highlights many worthwhile distinctions (like the binary distinction between makers and takers of wealth) and recasts many interesting identities (such as the counterpoising identities of the innovator and the investor), which, even if not meticulously defined, may prove instrumental for those seeking to discipline future political and economic rhetoric. Further, while it relies largely on familiar economic principles, it sets them in motion against the broader context of global history and competing political ideologies. This worldview is one of its key strengths. By enhancing one of the mainstream economic theories with discussions of comparative legal frameworks from across the globe, it not only provides a diverse collection of principles but also helps connect discussions of ideology and economic theory to the global perspective that we should be using to inform political and economic policies today.

Judicial Activism at the European Court of Justice. Edited by Mark Dawson, Bruno De Witte, and Elise Muir. Northampton, Massachusetts: Edward Elgar Publishing, 2013. Pp. viii, 292. \$130.00 (hardcover).

#### REVIEWED BY PAUL HENSON

Judicial Activism at the European Court of Justice (the "ECJ") is a broad examination of how the Court is continuing to establish its role in the constantly evolving social and political structure of the European Union. The subject is both timely and important, since, as the book's various academic contributors point out, the efficacy and legitimacy of the Court have been the subjects of contentious continent-wide disagreements for a number of years now. As a result of these disagreements, the institution itself may end up being changed sometime in the near future: Editors Dawson, De Witte, and Muir note that in 2001, the President of the Court sent a letter to the Council and the Parliament of the European Union requesting various amendments be made to the Court to address contemporary problems. There has been no answer to that formal request yet, but the editors propose that the role of this book is to shed light on various issues facing the Court that should be considered in any future efforts at institutional reform.

The ECJ has been both criticized and hailed as being "activist," but not exactly in the same sense that American judges are accused of it. In fact, the editors do not set out the discussion with a single definition for judicial activism in the European context, but instead allow the authors to explore the different reasons critics level that claim at the ECJ. Collectively, the authors propose that the current claims that the Court has been judicially activist are rooted in both: (1) the fact that E.U. law has expanded in recent years to encompass areas previously left to the member states, allowing the Court to hear cases regarding an increasingly diverse set of legal issues; and (2) the Court's own willingness to deliver bolder and more expansive decisions.

It should be borne in mind that this book might be best appreciated by those who already have a familiarity with the history and functioning of the European Union and of the ECJ itself. European scholars have contributed all twelve chapters of the volume, and it seems to be directed towards a European audience as well. As a practical matter, none of the book's chapters (including the Introduction) provides a lengthy background, although a front-to-back reading of the work will probably give even a novice in E.U. institutions and law enough context to understand how the Court generally functions. The editors have grouped the subject areas covered in each chapter into broader topics. After an introduction explaining how the ECJ is a political actor in the E.U. system, four chapters deal with the possible reasons why the ECJ has been accused of judicial activism. The following four chapters attempt to conceptualize judicial activism at the ECJ in terms of interaction between various actors. Finally, the last three chapters focus on potential responses to activism on the Court's part.

The first set of chapters offers some propositions for why the Court is seen as activist. Mark Dawson suggests that the problem could be rooted in an imbalance between the European Union's legal and political spheres: A legal order providing individuals with realizable rights (which the ECI has shown itself willing to protect) has progressed far ahead of the Union's political integration. Marcus Höreth argues that the European Union lacks enough checks and balances to keep the Court accountable to the other 'branches' of E.U. government. The ECI is contrasted with the national courts of constitutional democracies, which typically have to contend with checks and other forms of pressure from stronger executives and parliaments. Clemens Kaupa then narrows in on the Court's labor cases to point out that the absence of *political* consensus in Europe regarding how the Union's economic goals can best be achieved leaves the Court free to build on an economic approach of its own choosing. In most cases, it turns out that the Court has chosen to push for more market freedoms even at the expense of labor concerns. Finally, Elise Muir suggests that the increasing importance of fundamental human rights in Europe has shaped and expanded the Court's judicial role. The Court has in fact been very eager to identify and grant individual fundamental rights, even when it leaves member states nervous about the European Union asserting itself too strongly in what has traditionally been the domain of national governments. In these chapters-and in those to follow-important ECI cases are periodically identified and analyzed to different extents. Unfortunately, the book provides no

In the second series of chapters, dealing with how the ECI's alleged judicial activism can be conceptualized in terms of its interactions with other actors, Vassilis Hatzopoulos begins by examining how the Court interacts with other political institutions in the European Union. He argues that the Court's conceived role includes a responsibility to foster dialogue among the Union's political actors through its judicial decisions, and notes that the Court's case law has been consistently well received. Ellen Vos follows by exploring how the Court interacts not just with political actors, but with *experts* as well, in an effort to propose that the appropriate role for the Court is to act as an "information catalyst"—ECJ judges should try to strike a balance of welcoming new, expanding, and often complicated legal issues, while at the same time avoiding acting as amateur experts themselves. Writing in a particularly difficult style, Loïc Azoulai studies the interaction between the ECJ and its national interlocutors by focusing on the tension between E.U. law's responsibility on one hand to serve as a unifying device that is not dictated by particular national agendas, while on the other hand recognizing the fact that the diverse group of member states may have divergent views on what the European Union's legal priorities and positions should be. Lastly in this section, Maartje de Visser gives a comparative account of how constitutional courts-more or less the national analogues to the ECI—have typically dealt with accusations of judicial activism, in order to provide insights for the ECI's own experience. For example, Visser recommends the ECJ follow the example of constitutional courts and use rhetoric that is more deferential to the legislature (in this case the European Parliament), an approach that would not only help shield the Court from claims of judicial activism but would also bolster and give more credibility to the Parliament itself, an institutional currently perceived as weak.

By this point the reader will likely notice that while the editors have made an effort to link the articles together into broad categories, what results is not necessarily a clear progression. A chapter like Vos' delves into the problems that courts face when dealing with complicated scientific issues, a domain that is completely left behind in Azoulai's largely theoretical discussion of the interplay between a type of federal law like the European Union's and lower, but not necessarily acquiescent, national laws. This may in fact be an indication that each of the book's chapters are best read and digested as standalone articles, leaving the reader to choose what particular topics he or she is interested in exploring.

The last three chapters are perhaps the most practical, and focus on offering potential responses to charges of judicial activism. Anthony Arnull discusses the role of academics in holding both the ECI and the European Court of Human Rights accountable in a chapter that might strain the interest of non-academics. He only reaches the question of what academics should do in the chapter's final pages, but one of his suggestions is particularly interesting: He argues that the concept of "judicial activism" is too indeterminate to provide a "useful prism" through which scholars should examine the ECI's case law. Unfortunately, this assertion would seem to conflict with the premise of the entire book. Next, Sergio Carrera and Bilyana Petkova draw attention to the opportunities for human rights groups and other civil society organizations to address third-party petitions to the Court and consequently influence the types of legal issues it will have to address. They point out that those opportunities come particularly from the Court's willingness to identify fundamental rights, as discussed previously in Elise Muir's chapter. Rounding the book off, Mielle Bulterman and Corinna Wissels present strategies that governments can employ to make the Court their ally. The most obvious strategy is for member states to group together and coordinate when they have reactions to or concerns regarding the Court's decisions. History has in fact shown that states can be successful in overcoming dissatisfactory Court decisions through enacting national legislation afterwards. Together, these chapters are probably the most readable, not least because they deal less with theoretical issues and frameworks and more with feasible ways in which different actors can take advantage of the ECI's efforts to find its place in the E.U. system to determine their own roles.

As the editors note in their introduction, *Judicial Activism* at the European Court of Justice does not intend to provide a simple answer to the question of whether the Court is in fact engaging in judicial activism. The diverse topics covered in each of the book's chapters each deserve (and are receiving) more extensive academic attention than they are provided with here. The book does serve, however, as a useful, generally interesting, and occasionally connected survey of the ways in which the Court has been approaching its jurisprudence and the implications for the rest of the European Union. Its contribution to the wide field of E.U. law is certainly valuable, and a reader with a basic familiarity with that field will likely find it very useful in understanding one of the European Union's most unique and interesting institutions.

## Reviewed by Evan Zatorre

In contrast to previous literature, which focused on predictions of the evolution of trade liberalization and on discrete issues, Liberalising Trade in the EU and the WTO takes a broader, more fundamental approach to analyzing the different methods and experiences in trade liberalization in both the World Trade Organization (WTO) and the European Union. Indeed, the authors emphasize that the book is a broad comparison of experiences, rather than a technical comparative legal text. Such a comparison comes some twenty years after the Single European Act and the Uruguay Round of trade negotiations allowed these institutions to implement stronger trade liberalization regimes. These changes sparked a wave of studies comparing the two systems, but now both systems are consolidating these earlier changes. Against this academic and historical backdrop the authors argue that the European Union and the WTO fulfill similar functions for trade liberalization, but do so in different ways and in different contexts. Thus, in order to adequately compare the two systems, the authors compare the functionality of the WTO and the European Union in different contexts regarding topics, with a view to harmonizing the two systems and understanding how one might illuminate the other. While the authors provide a thorough analysis of the two systems' approach to trade liberalization, they occasionally

Liberalising Trade in the EU and the WTO: A Legal Comparison. Edited by Sanford E. Gaines, Birgitte Egelund Olsen, Karsten Engsig Sørensen, New York, New York: Cambridge University Press, 2012. Pp. Xiv, 500. \$125.00 (hardcover).

fail to draw successful proposals for harmonizing the two systems.

The authors organize the book into various parts in which each author addresses specific subordinate themes. Part I provides an introduction and explains the layout of the book itself. Part II focuses on the legislative and judicial structures in the European Union and the WTO. Part III seeks to examine and compare the substantive principles and frameworks that affect trade liberalization in the European Union and the WTO, with a heavy emphasis on discrimination in international tariffs and trade. Part IV then shifts to discuss specific trade policy themes with a view to proposing strategies for harmonizing the systems. This framework effectively organizes what could otherwise be a confusingly disjointed range of topics to provide an incredibly thorough and fully comprehensive look at the current state of trade liberalization in the two systems, and provides meaningful analysis of the need for harmonization.

Part II attempts to determine how the fundamental frameworks of the two systems differ and to what extent these differences are indicative of the strengths and weaknesses of either system. Topics discussed in Part II range from general principles of law to financial sanctions. The first chapter in this section focuses on how both systems support and promote good faith during negotiations. One crucial difference is that the European Union's hierarchy and parliament focus on benefits for the European Union as a whole and its member states and citizens, while the WTO's member-driven structure means that proposals for negotiations are only focused on the impact on the member. This hierarchy and support from the E.U. Parliament allows for expert supervision and the amendment of proposals, while the WTO forces members to evaluate proposals on their own, requiring expertise and trust between the WTO members. Secondly, the authors argue that the European Union is better at producing substantial results because proposals and negotiations come out of experienced issues within the European Union, whereas the WTO only requires that parties enter into negotiations, and the WTO Secretariat cannot bring cases for non-compliance. Thus, the WTO can learn from the European Union's strengths in both providing adequate support to negotiating members and in reaching decisions by increasing the WTO's monitoring and support functions.

In comparing the two systems' functional approach to good faith, the authors provide meaningful insight into the strengths and weaknesses of each approach. However, they are also careful to delineate when the contexts of one organization's function may make the other's approach untenable. For example, during the discussion of the two systems' approach to general principles, the authors highlight the WTO's reluctance to adopt concrete unbending principles as bases for claims because of the need for sensitivity to specific context and purpose when interpreting an agreement. This is also evident in the discussion of financial sanctions when the authors note that the European Union's ability to control financial assets and thus enforce financial sanctions cannot be matched by the WTO because of the absence of member state contributions; instead WTO members' trade concessions stand in their place. As a comparison of the systems' structural strengths and weaknesses, Part II is exhaustive and remarkably neutral. In explaining when the experiences of one system may be useful to the other the authors are careful to "translate" the particularities and context of one system's advantages into the other.

Part III continues along the same "big picture" lines but moves the discussion to substantive principles, particularly non-discrimination. Non-discrimination refers to affording equal treatment to trading partners. It is reflected primarily in the principles of Most Favored Nation and National Treatment which ensure that no trading partner is treated any worse than any other, and that foreign goods are put on the same footing as domestic goods, respectively. The authors argue that non-discrimination plays a fundamental role in both EU and WTO law. Despite this, the European Union has taken non-discrimination beyond the trade context and established non-discrimination on the basis of sex, religion, and race and established a Charter of Fundamental Rights enshrining these non-discriminatory human rights. The WTO, in contrast, remains specifically focused on trade. Adopting non-discrimination as a social concern in the European Union facilitates the development and implementation of processes and production methods (PPMs), the ways in which countries internally regulate inputs and domestic production of goods. Because the European Union must balance trade liberalization with

broader, competing goals of human and labor rights among its states, it treats PPMs as a fundamental right. Further, the European Union allows for easier transfer of technology, expertise, and trade amongst member states when compared to the WTO. In recognizing broader policy goals the European Union allows for easier adaptation and technological development, which are essential to economic development and combating global issues such as climate change. The authors emphasize that the WTO should recognize broader policy goals to better address global regulatory needs as the European Union has done.

A similar argument is advanced in the discussion of trade and social objectives. Both systems allow for discrimination to promote social good via a balancing test that measures the trade restriction against the importance of the objective. However, the European Union, because it has judicial and legislative powers, may more easily apply and harmonize acceptable trade barriers and principles of proportionality. This is especially important in the environmental context. While the European Union may legislate or use judge-made exceptions to non-discrimination to promote EU-wide environmental protections, WTO member states must attempt to peg their exceptions to international environmental law as no exceptions to non-discrimination are automatically deemed acceptable by the WTO. As before, the authors are careful to point out that this advantage may be purely institutional, and that the WTO may never be able to achieve the flexibility of the European Union because of its structure. Despite these qualifications, the comparison of the two systems' approaches to exceptions to non-discrimination for social or environmental objectives lacks the "learn from their experiences" focus of previous chapters. There are enormous contextual and institutional differences between the European Union as a domestic legislative body and the WTO as a global trade organization. These differences make the European Union's ability to better accommodate exceptions to non-discrimination something that the WTO is necessarily unable to do as well because of its global membership and restricted legislative power; it is comparing apples to oranges. This section exemplifies the authors' occasional tendency to compare for comparison's sake without necessarily discussing or drawing concrete lessons or proposals for the future from one organization's experience.

In comparison to the earlier parts' general focus on harmonization, Part IV focuses on how discrete topics within the two systems can be harmonized both explicitly and implicitly. Explicit harmonization refers to situations in which WTO law requires EU compliance with WTO agreements. Sometimes compliance may involve autonomous choices by the European Union, which the book evaluates. Implicit harmonization refers to the lack of a legally compelled need to harmonize, but where harmonization may make sense for efficiency reasons or where one system has a better liberalization technique that the other might adopt.

The first chapter in Part IV provides a good example of this section's goals, but shares the book's general shortcomings. It focuses on technical regulations (essentially minimum standards of quality and production for products) and when and how notification of a change in these technical regulations must be made. After deep comparison and analysis the author concludes that the European Union's notification procedures are more rigorous and comprehensive than its WTO counterpart. Although there is no need for explicit harmonization as the two systems can exist independently, implicit harmonization by the WTO would make it easier for EU member states to comply with WTO regulations. But this harmonization is later deemed largely impossible because it would be too politically and logistically difficult for other WTO member states to adopt. The opposite is also unfeasible; harmonizing the EU system with the WTO would mean shifting from a more comprehensive mutually agreed upon internal market system to a less strict global system. Thus, the author concludes that harmonization might be beneficial if the WTO could adopt an EU-style notification procedure, but that this would not be feasible and therefore ends up back at the status quo, leaving one to wonder why the analysis was done at all.

Other chapters are more successful. The chapter on the precautionary principle—the notion that the risk of irreversible damage to the environment should stop a proposed development even in the absence of scientific certainty—makes interesting comparisons between the two systems' approaches. The chapter advocates that the European Union, which has narrowed the precautionary principle to focus on scientific opinions, should integrate, at least philosophically, the WTO's recognition of the importance of minority opinions and nonscientific concerns such as ethics and public harm. But even here, the suggestions are aimed at reforming the precautionary principle's application in both systems rather than explaining how the comparative WTO or EU experience may be beneficial to one or the other system. To be fair, the purpose of this and other chapters that do not find easily applicable harmonization proposals may be simply to reveal that there isn't a harmonization need, or that harmonization would be impossible.

Liberalising Trade in the EU provides an extremely in-depth comparison of trade liberalization in the European Union and the WTO. Its fragmented approach allows for profound, but also easy to follow analyses of specific trade liberalization issues. Unfortunately, this sometimes leads to chapter compartmentalization in which certain chapters have their own independent purposes, and how they fit into the "organizing" themes" of the four parts of the book is not always clear. Further, as mentioned earlier, many of the comparisons of the two systems seem to be comparisons for comparison's sake, and the harmonization proposals are unfeasible. That being said, the book styles itself primarily as a broad comparative look at the two systems, and at this it excels. The book provides a topically broad, but analytically deep, exploration of the WTO and European Union's approaches to trade liberalization. Insofar as this is the book's main topic it is a fantastic comparative text, and an invaluable source of information on trade liberalization in the two regimes.

Crisis and Quality of Democracy in Eastern Europe. Edited by Miodrag A. Jovanović and Đorđe Pavićević. The Hague, Netherlands: Eleven International Publishing, 2012. Pp. v, 160. \$82.50 (paperback).

#### **Reviewed by Sarabeth Zielonka**

Crisis and Quality of Democracy in Eastern Europe, edited by Miodrag A. Jovanović and Đorđe Pavićević, examines Eastern European democracy from theoretical, political, and economic viewpoints. The collection is a follow-up to the international conference "Crisis and Quality of Democracy in South East European Countries" in November 2011 at the Faculty of Political Science, University of Belgrade and part of the project "Constitutionalism and the Rule of Law in the NationState Building—the Case of Serbia," which was financed by the Serbian Ministry of Education and Science.

Each chapter demonstrates the variety of approaches to the study of contemporary democracy in Eastern Europe, although there is a tendency to focus on Serbia. The first half of the collection explores different theoretical viewpoints, while the second half contains case studies and economic analyses. The case studies in the second half are especially illuminating. However, the first half of the collection fails to delineate the basic contours of the crisis which it is supposed to be investigating. This omission is a critical flaw that leaves the reader without a comprehensive background for following the highlevel, theoretical discussions with which Jovanović and Pavićević have chosen to preface the case studies.

In the introductory chapter, Jovanović and Biljana Dorđević discuss the perceived illegitimacy and decrease in the quality of democratic regimes and the relationship between this perceived illegitimacy and the current economic crisis. The authors examine various democratic protests and upheavals throughout the world, situating the democratization of Eastern Europe in its historical context. They cite surveys from Eastern and Central European countries that reveal a profound reduction in public trust in the institutions, actors, and processes of representative democracy. But beyond the citation of these survey results, the Eastern European dimension of this crisis is left generally unexamined until later in the collection. The reader might wonder why the authors seem to ignore other indicators of dissatisfaction with democracy in Eastern Europe, such as the color revolutions in former Soviet republics and the 2012 protests in Russia.

With Chapter Two, Lorella Cedroni focuses on the relationship between democracy and capitalism, noting how capitalism today is affected by the growth of corporations and their ability to influence and infiltrate government processes. Cedroni first discusses whether democracy and capitalism are compatible, splitting the controversy into three viewpoints which differ as to whether democracy and capitalism are complementary, a means of maintaining economic inequality, or inherently opposed. Cedroni then leaves the question of compatibility unresolved to examine what she terms the "transformative vision," asking whether we are entering a new postdemocratic system controlled by more opaque processes. She capitalism, overcoming the democratic problems of perceived

concludes the chapter by suggesting that democracy requires capitalism, but that a democratic discourse can have a transformative effect that will perhaps lead to the reform of global

illegitimacy and decreasing quality. Chapter Three by Dorđe Pavićević examines the growth of corporate influence in democracies, and claims that the progression of developed and developing democracies is threatened by disenchantment and cynicism. Pavićević assumes that democratic procedures will not necessarily lead to democratic outcomes without outside intervention and proposes the use of external instruments, such as citizen activism, to defend democracy and combat injustice. The author asserts that this external action will help avoid the ills of disenchantment and cynicism by politicizing passive citizens and encouraging democratic institutions to be more adaptive and responsive to social needs. Pavićević cautions against citizens becoming too loval to institutions such as the executive branch, which can sometimes impede democracy and democratic transformation. He concludes by urging that the transformation of democratic institutions into bodies that are responsive to the demands of citizens should be a priority even for developing democracies.

In Chapter Four, Daniela Širinić returns to the issue of the decreasing quality of democracy to examine different methodologies for empirically calculating the quality of democracy (QoD). Širinić acknowledges that the background concepts of QoD are difficult to define. Nevertheless, leading authors are in agreement that there are certain minimum conditions that must be met in order for a country to be considered democratic. She then moves on to the conceptualization of QoD, noting that it is impossible to capture QoD through any single dimension and that it is a multidimensional phenomenon. The chapter ends on an uncertain note, highlighting the inherent contradictions within the QoD framework and the difficulty of accurately comparing context-dependent characteristics. While Širinić's contribution is theoretically complex, it is made more difficult to understand by grammatical mistakes. Like the other contributions in the first part of the collection, it could have benefited from more thorough editing. Luckily the later chapters are not hindered by this problem.

The second half of the book includes a number of case studies, four of which examine different countries, while two have a purely economic focus. In the first of four case studies, András Jakab focuses on the New Hungarian Basic Law of 2011, which replaced the former Hungarian constitution. Jakab questions whether the Basic Law is, or will ever be perceived as, legitimate. He proposes that a legitimate constitution must (1) restrain political power, (2) establish democratic institutions, and (3) serve as a symbol of the political community of the nation. Applying these categories to the Basic Law, Jakab determines that it has serious flaws, including undermining judicial procedure, making it more difficult for Parliament to function without a two-thirds majority, and excluding parts of the population by including a conservative Christian preamble. Due to these flaws, Jakab determines that the Basic Law is in fact less legitimate than the 1989 Hungarian Constitution. Although Jakab implies that the procedure of ratification and successful implementation of the Basic Law could ameliorate these flaws, it is worrisome that Hungary appears to be moving away from the ideal of democratic legitimacy.

Radmila Vasić examines Serbia's transition to democracy in Chapter Six. During its transition to a new constitution, Serbia faced a paradox: How could the country make a clean break with its authoritarian past while maintaining institutional continuity and ensuring legitimacy? Vasić concludes that the public interest was not protected during this period of institutional reform, leading to a stalled democratic transition. Pointing out instances of ambiguous language in the 2006 Serbian Constitution regarding conflicts of interest and the implementation of unconstitutional interpretations of new anticorruption legislation, Vasić determines that Serbia squandered the social and political capital that existed at the start of the transition. She concludes that Serbia should instead look to the European Union as a guide to improving Serbian democracy.

Anna Kalisz turns to Poland in the seventh chapter, concentrating on the principle of proportionality in Polish and European jurisprudence. At its most basic, proportionality requires the state to undertake only the action that is proportional to its objectives, thereby protecting the individual against excessive force by the state. Although this principle is not explicitly found in the Polish constitution, it has been read into the document. In contrast, the Treaty on European Union explicitly mentions proportionality, and the case law of the European Court of Human Rights and the European Court of Justice further develops it. In all of these cases, proportionality demarcates the limits for the intervention of the state or supranational bodies in human rights. Although Kalisz's contribution highlights the importance of European law as a gap-filler for less-developed national law, it seems out of place as it lacks any explicit analysis of the state of Polish democracy that underlies each of the other case studies.

In the final case study and eighth chapter, Nenad Marković examines Macedonia, one of the few Eastern European countries in which social optimism and support for democracy are on the rise. The author points to the younger generation's relatively optimistic view of the future, satisfaction in the quality of personal lives, government efforts to reduce corruption, and relative economic stability as social factors that have contributed to public support for democracy. While Marković does not gloss over the challenges that Macedonia still faces, these do not seem to have negatively impacted public support for democracy up to this point. The second half of the chapter analyzes Macedonian political culture, leading the author to question whether the risk of optimism and the increased support for democracy are a result of short-term political trends, or a consequence of structural changes in the values and attitudes of Macedonian citizens.

The final two contributions discuss the link between democracy and the economy. The ninth chapter by Vladimir Gligorov compares democratic transitions in Eastern Europe and the Middle East. Gligorov begins from the premise that lasting changes in the distribution of power necessarily lead to changes in the economic and social structure. Therefore, one may perceive democratic revolution as appealing because of its potential to serve as an instrument for economic redistribution and to lead to a preferable system of income distribution. Although the Middle East is still very much in flux, the author compares the democratic upheavals with those in Eastern Europe, sketching out several possibilities for the future of democracy in the Middle East. In Eastern Europe, the introduction of democracy and a market economy led to a more egalitarian redistribution of resources and social stability. Nevertheless, inefficient institutions, corruption, and ethnic

conflict in both regions have put the continued success of democracy in question by increasing the appeal of autocracy.

In the tenth and final chapter, Aleksandra Jovanović examines the effect of the faltering Serbian economy on the country's democracy. According to Jovanović, democracy and the rule of law are mutually reinforcing and advantageous to economic performance. However, Serbia is still plagued by a non-functioning legal system and weak law enforcement, enabling legislators and regulators to enact inefficient economic rules in favor of certain interest groups. The author proposes that a proportional electoral system and populist politics have created perverse incentives that unfairly favor the public sector, generating uncertainty and unpredictability and discouraging investment. Jovanović questions whether modern democracies can provide political mechanisms for solving economic problems. But the author thinks that economic crises create pressure for serious institutional and structural reforms. She proposes that Serbia change its economic model so that demands of individuals, interest groups, and the public sector are efficiently aligned.

The essays in *Crisis and Quality of Democracy in Eastern Europe* add to the existing scholarship on the relationship between the development of democracy and economic conditions. Readers who are interested in non-Balkan Eastern Europe would be best off looking elsewhere, as the collection primarily concentrates on Serbia. Further, the emphasis on democratic theory seems unnecessary to understanding the regionally oriented contributions. Nevertheless, the collection serves to illustrate developments in an area of the world that is increasingly relevant as a guide for further democratic transitions throughout the world. It will be interesting to see how the authors' predictions about economic and democratic success fare in the years to come. Challenges to Civil Rights Guarantees in India. By A.G. Noorani and the South Asia Human Rights Documentation Centre. New York, New York: Oxford University Press, 2012. Pp. 283, \$60.00 (paperback).

### REVIEWED BY SUVAYU PANT

The common narrative on India is that it is a country of contradictions: It hosts some of the richest people in the world, a movie industry that rivals Hollywood in its glitz-andglam (and out-rivals Hollywood in its rapid-fire production of movies), and is the world's largest democracy. Yet, it also hosts too many of the world's poor, a bureaucracy that creaks at the joints, and, writes A.G. Noorani, a weak tradition of civil rights. In Challenges to Civil Rights Guarantees in India, Noorani, in association with the South Asia Human Rights Documentation Centre, surveys areas of concern to civil rights lawyers: from the death penalty and the continued use of narcoanalysis in criminal investigations, to extra-judicial killings and preventive detention. At points, the author presumes rather than argues the validity of his conclusions. Regardless, the book is very well researched and presents a compelling picture of a state that has too often resorted to over-reach as it has struggled to meet a full-menu of governmental challenges.

In Chapter Two, the author criticizes India's preventive detention regime. Preventive detention is the government's power to detain, without court approval, individuals it suspects have committed or are likely to commit some offense against the state or public. In India, as elsewhere, the practice is justified as necessary to protect the public interest or national security. Yet, the author criticizes India's preventive detention regime as overly expansive—that it violates detainee's rights as guaranteed by India's own constitution, and as developed by international law.

In describing the Indian regime, the author helpfully begins with the Constituent Assembly in 1949, where legislators were split on the issue. Some thought that the government needed sweeping powers of detention to protect the public during those early, heady years following independence and partition. Others felt that the government should protect individual rights against state excess. Ultimately, the assembly reached a compromise: The state would have powers of preventive detention, but those powers would be disciplined by procedural protections, such as a detainee's right to be informed of the grounds of detention.

The central and state government took advantage of this broad remit and enacted laws that cut deeply into detainees' rights. This culminated with the Maintenance of Internal Security Act (MISA), enacted during Indira Gandhi's controversial rule, which the author calls "one of the worst instruments of executive abuse of power in India's history." The author argues that India hasn't sufficiently cleaned up its act after its excesses of the 1970s. The Janata-led government which succeeded the Congress Party in 1978 repealed MISA, and moved to strengthen constitutional safeguards against arbitrary detention. Those safeguards never came into force, and the following decades saw a raft of other abusive statutes. Although the Supreme Court has come to bat in support of detaineesfleshing out the constitution's procedural guarantees, and narrowing blurry exceptions to those guarantees—it has generally been reluctant to second-guess the other branches. The Chief Justice of the Court said in one key case, "a sentence provided by the legislature may offend against the court's sense of justice . . . but that is a wholly irrelevant consideration." The judicial system has also been hampered by weak implementation, as security and local officials have routinely ignored or delayed the implementation of court orders.

In Chapter Three, the author discusses extra-judicial killings, whereby government or government backed-forces kill designated enemies of the state in staged "encounters." The practice, euphemistically called "encounter killings," has captured the public's imagination through action packed box office hits that, at best, have reserved moral judgment. There is evidence to suggest that the state first encouraged encounter killings as a means to quell a notable peasant rebellion in the 1940s and quiet political activists in the 1960s. The state relied more extensively on the practice in the 1980s and 1990s in the face of secessionist conflicts in the Northeast and Northwest, a communist uprising in the rural hinterland, and a crime-wave with links to the global jihadist movement in the cities. An abrupt increase in supposed encounters followed the 1993 terror attacks in Mumbai, as an elite squad police officers known to the media as "encounter specialists" killed 350 alleged gangsters.

The author blames a woefully inadequate legal framework for the state's prolific staging of encounters. The Indian Penal Code, for instance, contains a "good-faith" defense to security officials who cause deaths in the course of their duties—a sensible idea, but also easily exploitable. The Supreme Court also staved an inquiry into police practices in 2009 on the grounds that it would damage police morale in the midst of a communist insurgency. The National Human Rights Commission's admonishments to the relevant authorities that they clean up their act have fallen upon deaf ears. Further, the absence of an adequate check on state excess has led to the institutionalization of encounter killings in the security establishment. The author insightfully notes that the worst-off bear the brunt of the harm, since they lack access to what limited instruments exist to hold the state accountable for its excesses. It is easy to tell the world that a dead villager was a terrorist.

Yet, though the author likely has the better argument, he makes short-shrift of the Court's concerns regarding police morale. As he points out in later chapters, India is host to diverse conflicts: Naxalite insurgents who can melt into anonymity by virtue of their guerilla tactics; urban gangsters who are more conspicuous; and Pakistan-backed jihadists in Jammu & Kashmir that have privileged access at the borders. The author fails to seriously consider that holding the police or military to identical standards in all these conflicts is unreasonable.

In Chapter Four, the author discusses the death penalty in India. India is one of roughly fifty-eight countries that imposes the death penalty, and the author advocates for its abolition. Failing that, the author encourages the state to impose a moratorium on the practice while procedural flaws and inconsistent standards are ironed out. The Constitution sanctions the death penalty if it is backed by lawful procedure, and, according to the criminal code, all capital sentences are to be carried out via hanging. The Supreme Court has accordingly upheld the constitutionality of death sentences and hangings in particular, though it has added procedural protections to prevent abuse. Yet, the author claims that judges retain too much discretion and have applied that discretion inconsistently. Following legislation narrowing the applicable grounds for a death sentence, the Supreme Court moved to discipline judicial discretion and zig-zagged its way to the current "rarest-of-rarestandard." Under this standard, the death penalty should only

be employed if not doing so would harm the public interest and if life imprisonment clearly would not suffice. Despite this apparent narrowing, the author claims the doctrine enables judges to "arbitrarily impose the death penalty as they see fit." The author remains wary of arbitrary application of the death penalty—for instance, by giving undue weight to the social hysteria surrounding a crime. This book was published before death sentences were handed to the perpetrators of a brutal gang rape that occurred earlier in 2013. In view of the circumstances of that crime, the author may hesitate to quibble with this sentence. Nonetheless, his concerns accurately capture the central concern running through commentary on the case: Did the court coolly weigh the merits of the case? Or did it get caught up in the public hysteria?

In Chapter Seven, the author tackles the anti-conversion laws that a small minority of Indian states has adopted. These laws purport to prevent and punish coerced conversions-an uncontroversial goal in a country as diverse as India. In fact, the author claims, they discriminate against minority religions. Thus, a number of these statutes exempt from punishment "reconversions" to the "religion of one's forefathers." In a country where the majority of people call themselves Hindu, and where an unfortunately popular narrative casts Islam and Christianity as foreign religions, the "religion of one's forefathers" is often a reference to the dominant faith. In addition, the author says the statute's vague wording gives the courts wide discretion to give effect to a perceived need to protect Hinduism. For instance, one state's statutes prohibit conversion by "allurement," a prohibition broad-enough to catch within its fold charitable acts by members of other faiths.

This, claims the author, violates the constitutional protection to "profess, practice and propagate" a religion of one's choice. Yet, the Supreme Court has thought differently, disaggregating that protection into two prongs: the right of belief, which is inviolable, and the right convert, which the Court tightly controls according to the threat such right poses to public order. The author claims, however, that the Court has defined such public order broadly, and as a result, recognizes a right to transmit one faith, but not to convert. In line with this analysis, the Court has upheld the constitutionality of the state-level anti-conversion laws that have come before it. The result is systematized discrimination in these states against minority religions to which conversion is integral. It also ignores legislative history, as Constituent Assembly members expressly espoused the right to convert; in fact, they voted down a motion to eliminate the "right to propagate" religion, which suggests compellingly that they anticipated the grievances which motivated the anti-conversions acts in the first place, and expressed strongly their disapproval.

According to the author, such discrimination violates two core constitutional principles: secularism and religious tolerance. Indeed, the Supreme Court itself has called secularism part of the "Basic Structure" of the Constitution, and beyond Parliament's power to amend. It also violates international norms, which implicitly protect the right to convert, and explicitly protects the right to practice religion. Further, to the extent the Supreme Court's position disfavors conversion, it infringes the right to practice faiths that place special spiritual value on conversion.

Noorani's arguments are well-supported and wellresearched. However, he skirts by some of the more interesting issues he raises. If the court has failed to properly distinguish illegal from legal conversion, then where does that line lie? If the state anti-conversion laws define a "forceful" conversion over-broadly, then how does one narrow that definition without then encouraging proselytizers to use non-physical force that is nonetheless real and unfair? The author is often too quick to jump to his conclusions. But that may be a function of the book's length and breadth. Overall, this is a wellresearched book that provides a comprehensive review of India's civil rights challenges.

The United States and International Criminal Tribunals: An Introduction. By Harry M. Rhea. Portland, Oregon: Intersentia Publishing Ltd., 2012. Pp. v, 217. \$97.00 (paperback).

REVIEWED BY LEAH MILBAUER

The United State's position on the International Criminal Court (ICC) is a subject of criticism throughout the international legal community. The United States, possibly more than any other state, has supported ad hoc multinational and international criminal tribunals, such as the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone,

yet it maintains a policy of suspicion towards the ICC. Since the Rome Conference in 1998, the United States' position toward the International Criminal Court has changed. Nonetheless, no President has publically stated that the United States should become a State party to the Court. The ICC, established without the support of the Untied States, has achieved less international justice in its first 10 years than each of the ad hoc international criminal tribunals did during the same time span. In The United States and International Criminal Tribunals: An Introduction—part of a larger series about Supranational Criminal Law-Harry M. Rhea examines the policies of the United States during international debates that developed international and other special tribunals after the First World War. The United States has significantly impacted the successes and failures of each international criminal tribunal. This book explains U.S. policy regarding international criminal tribunals during each international debate.

The book is organized by era, beginning prior to the First World War and concluding with the first term of Barack Obama's presidency. Included in these chapters is an elaborate description of the history of international criminal tribunals and the debates surrounding the creation or proposed creation of each tribunal. In the introduction, Rhea states that he wants to answer whether the United States has an underlying position towards international criminal tribunals that has remained constant, and, if so, what the reasons are for this underlying policy. Rhea also aims to chronicle the evolving relationship between the United States and international criminal tribunals. The extensive discussion of the history of international criminal tribunals makes this book ideal for readers without any background knowledge. However, readers seeking an in-depth analysis of the United States' policy will find this book lacking at points, particularly in the early chapters. Nonetheless. Rhea examines archival sources that have not been previously studied by scholars and his study is certainly an important contribution to the field. Overall, Rhea provides a useful introduction to the subject.

In the first chapter covering the Pre-First World War Era, Rhea provides an account of the origin of United States policy regarding international tribunals. The United States confirmed its belief early on, during the trial of Henry Wirz, that violations of international law should be prosecuted in national courts on behalf of the international community. After the conclusion of the American Civil War, Wirz, the Commandant of Camp Sumter, was arraigned before a special military commission for offenses that included "violating the laws and customs of war." The trial sparked debate over whether the laws under which Wirz was prosecuted were rightfully established and whether he could be held responsible for his subordinates' acts, as there was no evidence that Wirz had directly murdered any prisoners. Nonetheless, by prosecuting Henry Wirz, the United States established a policy of recognizing a "higher law" that may be prosecuted in national courts representing "the great tribunal of nations."

Chapter Two covers the period after World War II and details the debates that surrounded the prosecution of the German Kaiser William II. Politicians, world leaders and American popular opinion held William II responsible for the instigation of the First World War, yet William II was never arraigned due to the United States' inability to agree with other Nations on certain issues. Although William II had committed great moral offenses, there was no positive law declaring his acts to be criminal and the United States was unable to agree to a criminal prosecution. Moreover, the United States could not agree that highly ranked persons, including Heads of States, could be held legally responsible for crimes committed by their subordinates or that any person should be prosecuted before an international high tribunal. Instead, the United States argued for national and multinational prosecutions of war criminals. Although the chapter makes it clear that the United States' reservations were responsible for the non-prosecution of William II, a deeper analysis of how these policies were formed is absent from this section. These policies are never tied into those described in the first chapter, leaving it to the reader to make those connections. Henry Wirz was prosecuted without a recognized higher law and for crimes committed by his subordinates, but the differences between Wirz and William II are never discussed.

Chapter Four analyzes the Post-Second World War Era, which marked a turning point in U.S. policy. William II was never arraigned because the United States could not agree that highly ranked persons could be held responsible for acts of their subordinates. During this era, the United States and the United Kingdom both declared that the United Nations War Crimes Commission would be established to hold enemy "ringleaders" responsible for war crimes. Rhea provides an indepth discussion of the process of creating an international tribunal, but reasons for this shift in policy are notably absent. The Nazis had committed the ultimate crimes, but the author does not explore whether it was the particularly heinous nature of Nazi war crimes or another factor that caused this shift.

Next Rhea provides substantial discussion of the United States' involvement in the development of international criminal tribunals during the Post-Cold War Era. Rhea explains that by contributing to the International Criminal Tribunals for the former Yugoslavia and Rwanda, the United States may have been attempting to show that ad hoc tribunals were better forums than the International Criminal Court or that the International Criminal Court should imitate ad hoc tribunals. Yet, in reality, the United States was helping to create the very institution that it would subsequently attempt to prevent. Here, Rhea effectively provides the analysis that the previous chapters lack. The level of involvement the United States had in the creation of tribunals for Yugoslavia, Rwanda, Sierra Leone, and Lebanon shed light on the reasons for the current United States policy towards the ICC. For example, the United States sent twenty-two Americans to the International Criminal Tribunal for the Former Yugoslavia and donations of up to \$3 million and would have provided more funds and personnel had the United Nations permitted. Around the same time, the media was publicizing NATO airstrikes and calls for indictments of United States officials-one of the apprehensions the United States has always had concerning international tribunals. This chapter effectively presents why the United States prefers tribunals without jurisdiction over U.S. nationals and tribunals that are initiated by the concerned state to a permanent legal body with universal jurisdiction.

Chapters Seven and Eight detail the creation of the ICC and the time period after the Court's creation through 2012. These chapters show how the United States' influence has waned with the creation of the ICC. The debates that went on within the United States are related back to those regarding the prosecution of William II, and Rhea finally ties that time period to the present. This time, however, U.S. opposition did not prevent the creation of an international court. Initially the United States only signed the Rome Statute creating the ICC in order to play an influential role in the Preparatory Commission's meetings. Once the Rome Statute received its 60th ratification, the Bush administration did everything it could to protect U.S. nationals from the Court. Undersecretary of State for Arms Control and National Security John Bolton wrote a letter to the United Nations Secretary General, Kofi Annan, stating that the United States no longer considered itself a signatory to the Rome Statute sixteen days after the 60th ratification. Additionally, President Bush signed into law the American Service Members' Protection Act, which restricts states that receive U.S. military support from cooperating with the ICC, restricts U.S. military personnel in certain U.N. peacekeeping operations, and authorizes the United States to free persons detained or imprisoned by or on behalf of the ICC. Since then, the United States has become more accepting of the Court while never becoming a State party. Under President Obama, the United States participated for the first time as an observer in the Assembly of States Parties to the ICC in November 2009, and attended the Review Conference of the ICC in 2010, although there has been no significant change in the U.S. stance toward the Court.

Concluding the book, Rhea explains that despite the United States' opposition to the Court, the United States and the ICC have a lot in common. Both the United States and the ICC promote national prosecutions of genocides, war crimes, and crimes against humanity and both concede that the U.N. Security Council plays a major role in prosecutions of non-State parties when a state is unable or unwilling to prosecute perpetrators of international crimes. Rhea notes that one option for the United States is to work with the ICC on a case-bycase basis for the foreseeable future, treating it as an ad hoc international criminal tribunal. Examples of this approach to date include the situations in Sudan and Libya. Rhea finally notes that there is still a question of whether the ICC will become a permanent institution and, if it does, whether and how the United States would change a position that is so deeply embedded in its foreign policy.

Rhea is very successful in chronicling the evolving relationship between the United States and international criminal tribunals, providing enough detail for readers without background knowledge in this area. Moreover, Rhea provides thought-provoking predictions of the United States' relationship with the ICC going forward and questions that remain to be answered. A deeper analysis of underlying policy in the early chapters and the reasons for policy changes throughout would create more continuity between the chapters and further Rhea's goal of analyzing the United States' underlying position towards international criminal courts. Nonetheless, this is a useful book for those looking for an introduction into the relationship between the United States and the International Criminal Court.

Sovereign Equality and Moral Disagreement: Premises of a Pluralist International Legal Order. By Brad R. Roth. New York, New York: Oxford University Press, 2011. Pp. x, 303. \$78.00 (hardcover).

## REVIEWED BY IAN MURRAY

Sovereign equality is the first principle enshrined in Article 2 of the U.N. Charter, enjoying pride of place above even the notion that member states shall endeavor to fulfill their obligations under the Charter in good faith. However, to movements seeking to "end impunity" or establish a "responsibility to protect" (R2P), sovereign equality may seem less like a fundamental building block of international order and more like an obstacle to progress towards global justice. Brad Roth rejects this worldview in *Sovereign Equality and Moral Disagreement*, wherein he develops a basic normative structure for the international system with sovereign equality at its nucleus.

Roth's overall conceit is fairly straightforward: The framers of the U.N. Charter got it right when they positioned sovereign equality at the heart of the international system. According to Roth, international law encourages peaceful coexistence far more effectively than it promotes substantive justice. Thus, by chipping away at the doctrine of sovereign equality, wellmeaning activists in fact undermine the true value of international law in pursuit of virtues that are at best uncertain and at worst self-defeating. The animating spirit of his approach is a preference for "bounded pluralism" over "transcendent justice," reflecting both a conclusion that normative differences of opinion among states are at present intractable as well as a judgment that the efficacy of international law depends on its legitimacy, which in turn depends on equating morality with presumptions of consent and obligation.

Part of the strength and novelty of Roth's work rests not on the particular premises he establishes, but rather on the ones he avoids. For example, he manages to vindicate pluralism without relying on a relativist assumption that universal substantive justice is a chimera. His qualms lie not with the ultimate vision of his opponents, but with the priorities they set in trying to attain it. His foil is not the natural law devotee positing universal moral truths; it is rather Peter Tosh singing, "I don't want no peace / I need equal rights and justice."

Roth also circumvents the troublesome premise, central to the theories of both Walzer and Rawls, which predicates the defense of international pluralism on respect for cultural difference. He borrows from the liberal cosmopolitan critique that holds this premise empirically flawed because the link between culture and ideology is attenuated. He nevertheless manages to uphold global pluralism on other grounds: a moral right to self-determination not linked to "embeddedness in a collective past" but rather a "present and future dependence on collective projects."

Under Roth's model, the sovereign prerogative of an individual state does not require a cognizable claim to justice. The existence of legitimate moral disagreement *anywhere* in the world, which he considers an enduring attribute of the human condition, is enough to compel the maintenance of a system founded on consistent and unbiased pluralism. "Collectivities must be said to have a right to be wrong about justice," albeit only "in certain respects" and "within certain limits."

Another strength stems from Roth's structure and organization. He strikes a pleasing balance between elaborating his theoretical model and applying it to relevant contemporary debates. While some disconnect perhaps stems from the fact that these two elements of the project are treated sequentially, it is hard to imagine the alternative—the framework needs to be developed before it can be applied. Roth tempers disjunction with symmetry, dedicating three chapters each to elaboration and application (Chapters One and Eight serving as introduction and conclusion). The chapters billow slightly in the second half of the work, but this serves as an effective counterweight to the comparative density of the more theoretical chapters.

Roth crafts each chapter such that it could stand on its own. Most notably, Chapter Three provides a thorough and largely dispassionate survey of the operation of sovereign equality under the U.N. Charter, particularly suitable for inclusion on a law school syllabus. Each chapter ends with a well constructed one to three page summary, granting the reader a good deal of freedom as to how to approach the book. This makes it easier for the reader to skim through large swathes and focus on particular elements. This applies equally to those who are well versed in the subject and wish to appraise Roth's original contribution to the literature, as well as for those who are looking to this book for more introductory purposes and do not wish to be bogged down by semantics.

When he turns his gaze to hot-button issues, Roth's analysis is sober and precise, though not paradigm shifting. He urges restraint, so the reader will be disappointed who expects innovative new solutions to pressing issues. In the realm of R2P, he rejects both the flight to "moralistic positivism"—the conscious decision to privilege morality over legal duty-as well as the resort to methodologically fuzzy policy-oriented jurisprudence designed to graft an ever-expanding range of exceptions onto the legal framework. As an alternative, he advocates what he sets up as a "third way," but which appears to consist mainly of an insistence on more rigorous and limited consent-based approaches to defining exceptions. When considering the recognition of states, he freely admits the unpleasantness of the effective control doctrine, which he characterizes as a local trial by ordeal, but throws up his hands in the absence of preferable alternatives. His most dramatic rhetoric is reserved for his response to the movement to "end impunity," which he characterizes as a "dirty word." Here, he relies on his premise that coexistence is the touchstone of international law, pronouncing as a corollary that doctrines such as nullem crimen sine lege (no crime without a pre-existing penal law) and immunity ratione materiae (granted to persons performing certain state functions) are part of the ramparts of international order.

Roth tempers the necessary rigor of his work with a certain imaginative rhetorical flair, encapsulated in pithy formulations of key themes. I have already mentioned the "right to be wrong about justice," but further examples abound. He speaks of the effective control doctrine as preserving "the right of each [nation] to fight its civil war in peace and to be ruled by its own thugs." He summarizes his views on the destabilizing influence of unilateralism by proclaiming, "this book stands not for the conservative proposition that 'hard cases make bad law,' but for the moderate proposition that 'extreme cases generate bad dicta.'" If this epigram may seem cryptic in isolation, there is no need for concern; by the time it arrives he has already outlined in more punctilious terms his "caution against unwarranted extrapolations [from unilateral action] that may have the ultimate effect of spurring undue dissatisfaction with international law as it actually is." The only subtle drawback is that Roth appears so enamored by these locutions that he can't bear to stop at a single utterance, lest he deprive some inattentive skimmer of the opportunity to revel in his humor. Overall, however, Roth transcends such moments of professorial self-indulgence and creates a work that is amusing at times, but rigorous in all the right places.

For the reader who only has time to read half of the book, I would recommend starting at the beginning. Roth is at his best reasoning from first principles and distinguishing the works of his eminent forerunners. The second half of the book, while analytically sound, contains few grand ideas that the assiduous reader could not deduce from the first. That having been said, each individual case study stands alone as a valuable addition to scholarship on its topic, and merits the attention of those particularly invested. One cannot fault Roth for failing to solve the world's problems with one fell swoop such wanton exuberance is the very specter that inspired him to put pen to paper. While the book is unsatisfying in that it attacks more solutions than it proposes, it is ultimately as persuasive as it is sobering. Imagining New Legalities: Privacy and Its Possibilities in the 21st Century. Edited by Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey. Stanford, California: Stanford University Press, 2012. Pp. xi, 208. \$65.00 (hardcover).

#### REVIEWED BY JENNIFER HUH

In Imagining New Legalities, Editors Sarat, Douglas, and Umphrey present various ways of conceptualizing privacy rights in response to new technology and changing social norms that challenge the traditional dichotomy between the private and the public. They acknowledge that they are not attempting to provide a comprehensive overview of threats to privacy and possible solutions. Instead, they present five scholarly works that consider several conceptions of privacy in different contexts. The editors have organized these works into three categories: the domain of intimate relations and sexuality, criminal investigations, and control over information in the digital age. Through these lenses, the editors shed light on how changing social norms and evolving technology challenge the long-held private/public binary in important aspects of our lives. Also, the works present creative possibilities for conceptualizing privacy rights that are more aligned with the changing reality. However, while the collection as a whole provides readers with various inventive possibilities for replacing or supplementing the traditional public/private binary, it does not engage in in-depth normative assessment of these new alternatives. In some of these works, it is not clear how these new proposals significantly depart from or are normatively better than the public/private binary the authors critique.

The first chapter, *Disenchanting the Public/Private Distinction* by Kathryn Abrams, outlines the changing notion of privacy rights in the domain of intimacy and intimate relations. Focusing on political contestation of gender and sexuality, Abrams first provides an overview of the gendered nature of the traditional ideology of separate spheres between the public and the private; the public domain is characterized as objective and male-dominant while the private domain is characterized as a subjectified realm into which females are relegated. Abrams moves on to discuss how LGBT and queer advocacy and the women's rights movement altered this traditional boundary by moving sexuality and related forms of intimacy into the public domain. Abrams convincingly analyzes how the same-sex marriage debate played an important role in disrupting the gendered boundary. Then, Abrams describes the notion of "pastoral private"—rhetoric used by conservative groups to resist this shift by trying to reinstate the traditional dichotomy between the public and the private. The author argues that by couching the private domain in nostalgic and pastoral terms, conservative groups are trying to re-establish heterosexual marriage as the norm and to maintain the status quo. Abrams argues that law must be used inventively to resist this movement and to recognize the diffusion between the private and the public realms. However, Abrams does not specify how this should be achieved. Abrams gives examples of changing legal conceptions such as increased enforcement of laws prohibiting discrimination in the workplace based on family responsibilities and through bringing the private duty of raising children into the public domain of the workplace. Yet, Abrams does not provide a specific normative direction that the legal actors should follow to strike a right balance between recognizing the hybridization of the public and private and retaining the private realm that is immunized from the state regulation. While Abrams suggests examples of collaboration between state and the private realm from different contexts, it is not clear how this collaboration can be made in the context of intimacy and intimate relationships.

Similarly, the next chapter by Ariel R. Dubler falls short of providing normative direction for a new way of conceptualizing privacy rights. Dubler analyzes how the Supreme Court articulates and utilizes the notion of "the sphere of play" as an alternative way of conceptualizing privacy rights in two very different cases: Oncale v. Sudowner Offshore services, Inc., which involved sexual harassment claims under the Title VII, and Stafford Unified School District v. Redding, which involved Fourth Amendment claims against unwarranted searches in a school setting. Dubler describes the sphere of play as the private realm where playful acts may take place and are immunized from legal actions. While the facts of these two cases have nothing to do with play, Dubler persuasively argues that the Supreme Court carves out the sphere of play as a realm beyond legal regulation in both cases. In Oncale, the Supreme Court ruled for the male plaintiff who was sexually harassed by his fellow male coworkers at work. According to Dubler, the

Court's reasoning was that "horseplay" is not a play if it takes place at a public domain like a workplace. Also, in Stafford Unified School District, the Court ruled for the plaintiff, a female student who was searched by the teacher. Similarly, the Court held that female nudity that is immunized in a context of play, such as changing for gym, is not immunized in the principal's office in the context of an investigation. Through this analysis, Dubler shows that while the state's power to penetrate and regulate traditionally private aspects of life are increasing, they are not limitless. However, it does not seem clear how the "sphere of play" is different from the traditional gendered characterization of the private domain. Dubler says "the Supreme Court invokes the realms of play as an idealized sphere of social intercourse in which . . . the natural forces of gender and dominance still reign supreme," indicating how the new concept coexists with the traditional gendered ideology of the private. Thus, Dubler does not adequately address the normative superiority of using the "sphere of play" to conceptualize privacy rights.

The next two chapters examine the interaction between digital technology and evolving concepts of privacy rights. The third chapter, "Coming to Community" by Robin Feldman, describes how technological advancements blur the boundary between an individual and the sovereign. Feldman argues that the traditional private/public binary does not reflect reality, and is inadequate to address the new challenges imposed by technology. For instance, cyberspace cannot be viewed as wholly public or private, as it lies in the gray area between the two. Feldman's main argument is that cyberspace cannot be left as an entirely free and open space characterized by consensual contracts with minimal government regulation. Feldman argues that the very fluidity of interactions in modern society leaves individuals vulnerable, and without any regulation, the powerful will triumph over the weak. For instance, even if individuals voluntarily enter into online interactions through consent, there is always danger of the revelation of sensitive personal information and other risks against which the individuals lack the resources or power to protect themselves. Feldman argues that the current concept of privacy rights, which focuses on determining what constitutes a reasonable expectation of privacy, is inadequate to address these issues. Instead, he argues for creating more assertive "identity cohesion" interests as a means to protect individual rights in cyberspace. According to Feldman, an identity cohesion interest relates to having control over pieces of information that inform who we are, what we are about, where we have been, and how our future will unfold. For instance, if the government uses aggregated data of online flu-related search queries to estimate current flu activity, a person should have access to the record that relates to his or her own information being searched. However, Feldman also argues that the data cannot be economically owned, purchased, or traded as they also may pertain to other people. Individuals should have control over information to the extent they reflect on them personally. Feldman's idea is creative, and sheds lights on a new ways of conceptualizing privacy rights.

The next chapter, Configuring the Networked Citizen by Julie Cohen, also delves into a similar issue. Particularly, Cohen examines how networked digital technologies shape our way of conceptualizing the world. Specifically, she points out that these technologies intensify the mediation process by reshaping the world for us and do so in a less visible way. For instance, online search has dramatically increased our access to information, and it provides information in a user-friendly way by using invisible algorithms that take into account users' profiles and browsing histories. Also, Cohen points out that the regulation of networked information is becoming privatized. In response to this, Cohen argues that rather than reasserting the public and the private distinction, one should reconceptualize governance through the lens of contract. Also, she argues for the model of governance premised on "the reassertion of 'public' values and the harnessing of resources and actors on both sides of the public-private divide." Cohen explains this governance as a model that provides access to knowledge, operational transparency, and semantic continuity. Cohen's proposal presents another alternative to traditional assertion of private/public distinction in regulating networked information.

The collection concludes with a chapter by Sebok and Tragardh, who compare and contrast the public/private binary in American and European law. Sebok and Tragardh provide a historical analysis in which American legal consciousness, which has embraced a "law and economics" perspective, conceives the public/private binary as fundamentally political. On the other hand, European legal consciousness, premised upon legal positivism, conceives the public/private divide as neutral and formalist. Also, the authors illustrate that while private law has prospered in the United States, in Europe public rights dominate, obviating the need for private litigation. Sebok and Tragardh extend their analysis to the healthcare debate, and describe that while the health care system in America recognizes a relatively robust private right, but no public right, to healthcare, the European system endorses a universal social right to healthcare while providing limited individual rights. Yet, Sebok and Tragardh point out that the gap between the European and American legal consciousnesses and healthcare systems is narrowing. For instance, an increasing number of Europeans are seeking private health insurances, raising the likelihood of enforcement of private contract law, while the United States has revived the debate regarding the need for universal healthcare system. Recognizing these complexities, the authors point out the possibility of further convergence between American and European legal consciousness. This last chapter serves to put the previous chapters in a larger international context.

Overall, the authors present how the traditional divide between the private and the public is being challenged in different contexts, and the potential legal alternatives for addressing those issues. Yet, the collection as a whole does not fully shed light onto the uncertainty imposed by new technologies. They provide various possibilities without providing a clear normative direction. However, as the editors acknowledge themselves, the book is not meant to be comprehensive. By providing meaningful examples and creative possibilities, the collection adds to the evolving legal discourse around privacy rights.

Gender, National Security, and Counter-Terrorism: Human Rights Perspectives. Edited by Margaret L. Satterthwaite and Jayne C. Huckerby. London, United Kingdom: Routledge 2013. Pp vii, 267. \$135.00 (hardcover).

## REVIEWED BY AMANDA SABELE

Gender, National Security, and Counter-Terrorism, edited by Margaret Satterthwaite, Professor of Clinical Law and Faculty Director of the Center for Human Rights and Global Justice at NYU School of Law, and Jayne Huckerby, former Research Director and Adjunct Professor of Clinical Law at NYU School of Law, examines the role of gender in counter-terrorism discourse in the post-9/11 world. The editors define gender broadly as a social concept that is de-coupled from sex. They cultivate a geographically and academically diverse group of authors with backgrounds in Asian American studies, defense studies, law, political science, and sociology who attempt to address the absence of a gender dimension in human rights analyses of both the policies and impacts of militarized and nonmilitarized counter-terrorism measures. This wide range of backgrounds and methodologies successfully produce multiple viewpoints into the intersection of gender and counter-terrorism.

Satterthwaite and Huckerby explain in the introduction that while counter-terrorism scholarship and research has become extraordinarily prominent in the post-9/11 world, "the gender and human rights dimensions and impacts of counterterrorism measures . . . are largely undocumented and undertheorized." The editors themselves recognize that human rights discourse is behind the times when compared to other approaches, such as feminist scholarship, that have studied the events of 9/11 and its aftermath. Given its conspicuousness within both academic and everyday discourse, I find it surprising that counter-terrorism scholarship lacks a discussion of gender that, to a reader like myself who is unfamiliar with the subject, appears to be an obvious angle from which counterterrorism measures could be analyzed.

Furthermore, Satterthwaite and Huckerby describe the purpose of the collection as considering how gender interacts with key terrorism-related concepts such as radicalism, extremism, and fundamentalism. Interestingly, the editors recognize that both "gender" and "terrorism," and its counterpart, "counter-terrorism," are terms that are hardly simple to define. Instead, the editors are honest in their assessment of these terms, indicating that rather than "insist on false clarity," they have recognized that each author has engaged with a range of definitions of each of these terms. In spite of these definitional obstacles, it is clear that, broadly speaking, the editors seek to provide greater understanding of how counter-terrorism policies and the War on Terror impact societal understandings of gender roles, how these policies affect each gender differently and to a different degree, and "how women's rights are mobilized in both terrorism and counter-terrorism responses across time and in different contexts."

To this end, the book is divided into three sections, each with its own angle. Part I seeks to illustrate evidence of gender erasure, which the editors describe as the dearth of scholarship considering the role of gender in counter-terrorism discourse despite the omnipresent role gender plays in terrorism and counter-terrorism measures. For instance, in Chapter One, Ramzi Kassem identifies the omnipotence of gender in the rendition, detention, and interrogation practices of the U.S. War on Terror policies and reacts to the failure to address the role of gender in each of these areas. Part II, on the other hand, considers instances in which gender is, as the editors say, "explicitly mobilized" in counter-terrorism measures. One particularly strong instance of this is identified in Chapter Six, "Feminism as counter-terrorism," in which Vasuki Nesiah describes the extent to which feminist groups, particularly International Conflict Feminism, have influenced international law and policy regarding the War on Terror. With these competing conceptualizations of the role of gender in mind, Part III provides several case studies which illustrate the gender erasure and gender mobilization concepts introduced in Parts I and II. For example, Chapter Eight, "Soft measures, real harm," by Lama Fakih, highlights how the United States' strict policies against funding terrorism has greatly reduced the humanitarian assistance available to women in Somalia in ways that have had a detrimental effect on women's rights and safety. Other chapters within Part III explore case studies in Guatemala, Northern Ireland, Pakistan, and Sri Lanka in which U.S. War on Terror policies, development programming, and counter-terrorism legislation have had pervasive effects on women's rights and have prompted an increase in gender-related human rights violations. Thus, while the sections are linked in their consideration of the role of gender in counter-terrorism rhetoric, they differ greatly in their conclusions regarding this role.

At first, Parts I and II appear to be in tension—the authors in Part I set out to fill a gap in counter-terrorism discourse regarding gender whereas the chapters within Part II describe the almost pervasive role of gender in counter-terrorism scholarship. A closer look at the chapters within Part II, however, reveals that gender mobilization is typically implicit or only tangentially linked to counter-terrorism discourse. Chapter Five, by Huckerby, for example, links anti-human trafficking measures to counter-terrorism strategies. According to Huckerby, anti-terrorism and anti-trafficking agendas merged in ways that fundamentally shaped the realization of anti-trafficking objectives due to a greater "securitized approach" that is the focus of anti-terrorism and anti-trafficking elevates the role of gender in counter-terrorism discourse only indirectly due to the stereotypical view that human trafficking is a gendered phenomenon that solely affects women.

Given the careful separation of the discussions on erasure and mobilization it is interesting that Chapter Three, "Gender, terror, and counter-terrorism," by Sunaina Maira, appears in Part I. Rather than focusing on the role of gender, Maira primarily focuses on youth activism as it relates to counter-terrorism in the post-9/11 world. More importantly, the chapter's passing references to gender make no mention of the gap in discourse that both the editors and authors in Part I are concerned about. In fact, Maira's analysis seems to come to the opposite conclusion, finding that gender has become an important part of post-9/11 counter-terrorism scholarship. For instance. Maira writes that "[t]he 'War on Terror' that the United States has waged since 2001 has focused on religion, nationalism and gender as linchpins in its discourse about bringing 'democracy' and 'human rights', particularly 'women's rights', to regions that presumably need to catch up with Western modernity." Given this statement, it is odd that Maira's chapter is included within a section devoted to addressing the absence of discussions of gender in counter-terrorism scholarship.

Despite the odd inclusion of this chapter within Part I, Parts II and III successfully describe gender erasure and the tangential inclusion of gender issues within post-9/11 examinations of counter-terrorism policies, practices, and effects. The impact of this gap is well-captured in the editors' introduction to the book. As the editors note, academia's failure to explore the role of gender in human rights-related counterterrorism discourse "render[s] the full scope of gender-based rights violations invisible to policy-makers and the human rights community alike." However, while the authors in Part I successfully fill this gap, they fail to explain why such a gap has developed and persisted. Ultimately, until it is understood why the academic and human rights communities have failed to discuss the role of gender in counter-terrorism, it is unlikely that any changes will be made by academics, policy professionals, and government bodies to address the gap. Given this issue, I find it surprising that the authors in the collection, and particularly the authors featured in Part I who are most concerned with gender erasure in counter-terrorism discourse, have done nothing to ensure that the gap does not continue to widen in the future by explaining the source of this hole in the discourse.

In his chapter entitled "Gender Erasure in the Global 'War on Terror'," Ramzi Kassem explains that he originally "envisioned an exploration of the policies and practices . . . through a gendered prism, with no a priori framing theory for why these erasures existed." His statement that a pure observation of this gap was his original goal implies that the chapter ultimately went further than Kassem expected and, therefore, it further discusses the "rationales animating the different forms of erasure." One potential explanation provided by the author is that evidence of women's suffering in the 'War on Terror' would be too inflammatory. Kassem argues that a desire to avoid backlash explains why images of men being tortured at Abu Ghraib and Guantanamo were released but similar images of women were not. However, the inflammatory nature of these images and other startling effects of the U.S. War on Terror policies on both women and men do not explain the absence of such issues within academic and human rights discourse by disinterested persons.

Chapter Two, "Gender and counter-radicalization" by Katherine Brown, similarly lacks a discussion of the source of gender erasure. The closest Brown gets is in her discussion of why gendered logics form the basis of many countries' counter-radicalization policies. While this provides interesting insight into the justification for different treatment of men and women within counter-radicalization programs, it does not get the chapter, or the book as a whole, any closer to providing an answer as to why the authors in this book are supposedly some of the first to integrate gender into a human rights analysis of counter-terrorism. It is only in Chapter Four, "Missing indicators, disappearing gender," by Margaret Satterthwaite, that any of the authors in the collection provide a potential explanation for the discourse gap. According to Satterthwaite, developmental assistance aimed at countering violent extremism lacks genderbased data because programmers failed to consider the role of women beyond their tangential role in encouraging or discouraging men from joining extremist groups. Satterthwaite's discussion thus provides a clear reason why there is a "lack of gender-sensitive metrics and indicators in the new field of development assistance aimed at countering violent extremism." However, this gap in the discourse is only a small piece of the 'missing' scholarship regarding the role of gender in counterterrorism.

As a whole, the collection makes a valuable contribution to filling a void in counter-terrorism related scholarship by adding a gendered perspective to a conversation where, as many of the authors highlight, such a voice is often missing. However, a reader who is seeking to learn not just about the role of gender in this area but why a discussion of gender as it relates to counter-terrorism has been historically lacking would be advised to look elsewhere. Although the book does not profess to offer such an explanation, it seems to be a necessary ingredient in filling the gender discourse gap, since until we understand why the role of gender is being ignored, it is likely that this gap will continue to persist for the foreseeable future.

Transitional Justice in Post-Communist Romania: The Politics of Memory. By Lavinia Stan. New York, New York: Cambridge University Press, 2013. Pp. xxii, 288. \$99.00 (hardcover).

## REVIEWED BY BO WANG

Lavinia Stan's *Transitional Justice in Post-Communist Romania* examines various approaches that state and non-state actors in post-communist Romania have adopted to address the country's communist legacy, mainly human rights abuses. Stan is critical of most of the state-sponsored programs while applauding activities organized by non-governmental organizations. The issue of transitional justice became a field of interest for scholars after communist regimes fell out of power in Eastern Europe in 1989 and countries such as Germany and

Poland started programs to reckon with their abusive and dictatorial past. However, none of those countries took identical approaches. The differences in their programs for transitional justice and their respective social conditions mean that studies on this subject matter have to be either country-specific, putting description above comparison, or focusing on the whole region, necessarily leaving out many details that might prove important for understanding a specific country's experience. The author chose the first approach with the aim of answering two groups of questions. The first "relates to the relationship between transitional justice and post-communist democratization, especially in countries where the process has paralleled European Union accession," and the second "relates to the sequencing, nature, and goals of transitional justice system." For the author, the country-specific perspective is better because it allows accounting for idiosyncratic characteristics of an individual country, dynamics between different social segments and communities, and an observation of the details of the transitional justice program and of the participation of both the state and non-state actors. But for exactly the same reason, this book will be unsatisfying for the readers who want a broad discussion and systematic comparison of the transitional justice programs in this region.

Each chapter discusses one aspect of the Romanian transitional justice program. Chapters Two to Eight focus on the approaches adopted by the state, such as court trials, public access to secret files, lustration, truth commission and official condemnation, restitution of property, compensation to the communist regime's victims, and rewriting history textbooks. Chapter Nine describes the efforts of non-state actors, mostly civil organizations in Romania. These efforts include renaming streets and cities to get rid of their communist connotations, hosting a citizen's opinion tribunal to judge communism as a whole, providing forensic investigation help to the relatives of victims killed by the communist regime, the Romanian Armageddon, a series of published reports on corruption of incumbent leaders, and a wide variety of arts and movie projects that focus on the communist era.

The author's criticism starts with court trials, the primary method through which most Romanians have sought redress from the state. The author finds at least two reasons why those trials are an inadequate means to address past wrongs. First, the Romanian courts overlooked the time period from 1945 to 1989, and only addressed human rights violations that occurred during the 1989 revolution. Second, the author argues that the goal of these trials to date has been to address the economic corruption of a limited number of former communist leaders rather than to redress the human rights abuses that happened during the communist regime. Unsurprisingly, only a tiny portion of the communist political elites has been brought before a tribunal.

The author offers several reasons for the failure of Romanian courts to redress human rights abuses under the former regime. One reason that may surprise many readers is that former communist party decision makers still have strong political clout after the fall of the communist regime. As Stan explains, "The Social Democrats inherited the organizational skills, financial resources, and territorial organization of the Communist Party, which penetrated every town, workplace, and apartment block. Together, these advantages turned them into a formidable political actor that won the largest number of parliamentary seats in each post-communist election organized until 2008." Stan argues that post-communist political leaders with a tainted past and judges that were used to being submissive to the more powerful branches of the government will strive to ensure that what is uncovered during those trials will not embarrass them and be used against them by their political opponents. Pursuing cases of economic corruption instead of human rights abuse could reach the goal of both satisfying the public sentiments that ask for punishment of former communist leaders and keeping the political damages as low as possible.

The author launches similar criticisms against other statesponsored programs. For example, in Chapter Three, Stan argues that the continued political influence of former communist leaders has caused post-communist leaders to put significant restrictions on public access to secret files. In Chapter Four, the author describes the lustration program adopted in 2006, which was aimed at ridding former communists from public offices. This program has not lead to any significant job loss for politicians with ties to the old regime; rather it has become a purging tool for the executive after each handover in government. In Chapter Seven, the author expresses her frustration with the post-communist regime for its deliberately slow process to compensate the political prisoners imprisoned under the old regime. In short, the author argues that statesponsored transitional justice programs in Romania are deeply flawed because the new regime has significant ties to the communist one, which has resulted in subsequently elected governments that are indifferent to addressing the past and are only concerned with gaining a strategic advantage over their political opponents. Although the government has changed hands between pro-left and pro-right political parties, the mass communist roots in those parties, and in the population as a whole, coopted these programs, rendering them ineffective, restrictive, superficial, and lacking in substance.

However, additional evidence is needed here from the author to bolster her case. First, even though Stan mentions that Communist Party membership had extended to one-third of the adult population and many more had depended on the party-state for livelihood, it is still hard to believe that the successor to the Communist Party enjoys such big successes in national elections. Not every former Communist Party member embraced the old regime, and not every one of its members was involved in human right violations. Indeed, in a communist regime, only a tiny portion of the membership wields enough power to subject political dissidents to hard labor, imprisonment, or worse. Did the Social Democrats' electoral victories stem from voters' desire to protect themselves from scandalous past? Or did they stem from a voting system that was designed to keep former communists in power? Or did they simply stem from the people's prioritization of the social and economic policies offered by the Social Democrats over full-scale transitional justice? Another point that Stan could have raised regards Romania's judicial system: While it is true that the judiciary generally is subject to the will of the Party under a communist regime, that does not automatically mean that court proceedings in post-communist Romania were politically rather than legally motivated, especially if there are protections built into the new Romanian Constitution that ensure judge's impartiality.

Indeed, the author discusses two legal reasons that may explain why the court system has struggled to redress past human rights abuses. First, the former communist dictator Nicolae Ceausescu issued the presidential pardon in January 1988 that annulled all prison convictions of up to ten years,

halved convictions over ten years, and commuted the death punishment into prison terms of twenty years. This Decree, which still remains in force, "effectively amnestied the crimes of the Ceausescu regime" since most of the human rights violations committed by the former authorities, including torture and illegal detention, are punishable up to ten years. Second, the statute of limitations barred prosecutions of murder committed before 1975, of acts of torture committed before 1982, and abusive inquiries committed before 1987. Stan explains that, "According to the communist Penal Code adopted in 1968, which remained in force until 2006 when a new code was passed, the statute of limitations expired in fifteen years for murder, eight years for torture, and three years for maltreatment and illegal detention." Therefore, it could well be that judges are not bowing to the will of the powerful politicians but to the command of the law.

In contrast, the author has a positive view of the non-state activities aimed at addressing these same issues. In spite of the fact that Romania did not have a strong civil society, the author argues that "slowly but surely, these mostly small but often bold unofficial projects have changed the way communism is represented in the public space," rebutting the officials stories propagated by the communists. The variety of the methods and projects of these groups is a testament to the continued persistence of these groups, especially groups associated with former victims of the old regime, to hold communism accountable for its past misdeeds.

Readers who do not have prior exposure to transitional justice issues might wonder after reading this book about the nature of transitional justice. What is transitional justice? Does it mean that all past human rights abuses are tried before a court of law and all perpetrators are punished for past crimes? If redress is the sole component of justice, then the author is certainly correct in arguing that Romania's transitional justice is a failed one because of many of the defects in the programs the book points out. But if one trusts democratic institutions and if there are no observable problems with respect to the operation of those institutions, then justice might have a different meaning. Any laws and policies regarding the country's past adopted by an elected party and insisted upon by the judiciary merely reflect the people's choice to look to the future, even if many of the voters may be motivated by a fear of uncovering the past. For readers with a strong faith in retributive justice, reading this book will be a valuable experience because of the light this book shines on the effect of timing and sequencing on transitional justice and on the relationship between democracy and transitional justice. The author concludes that timing matters a lot in bringing about substantive justice, and thus the concept of "window of opportunity," after which there is almost no chance for a country to engage in meaningful transitional justice programs. To many people's disappointment, it is not necessarily true that transitional justice fosters democracy.

The Constitutionalization of the Global Corporate Sphere? By Grahame F. Thompson. Oxford, United Kingdom: Oxford University Press, 2012. The Hague, The Netherlands: Eleven International Publishing, 2012. Pp. xvi, 219. \$75.00 (hardcover).

## REVIEWED BY AMIR BADAT

Grahame Thompson's The Constitutionalization of the Global Corporate Sphere? is a valuable exploration into the legal and political frameworks that govern (or attempt to govern) the activities of the modern multinational corporation. Thompson builds on his previous work on globalization and global corporate citizenship by addressing how and why multinational corporations have been subjected to and voluntarily participate in globalized schemes of governance. He adopts the parlance of constitutionalism to characterize the developing trend of the multinational corporation acting as a global citizen with certain rights and responsibilities and operating globally amidst complex legal, political, and regulatory frameworks. The interrogative form of the book's title is appropriate, as Thompson intentionally leaves unanswered the question of the ultimate trajectory of the global governance of corporate activity. Still, he skillfully unpacks the "messy" dynamics that are guiding the constitutionalization-or what Thompson finds a more appropriate characterization, "quasi-constitutionalization"-of the global corporate realm.

Thompson begins by outlining the various challenges multinational corporations face in today's volatile business environment: the gradual shift of global economic power from west to east; globalized supply chains that are vulnerable to unpredictable changes in multiple states; increased competitive pressure resulting from rapid advances in innovation; and increasingly hostile global capital markets. He observes that one response to these phenomena has been "the increased subjection of business activity to formal and informal legal or quasi-legal mechanisms of regulation." Interestingly, as nation states have found it increasingly difficult to exercise effective regulation over the corporate world, corporations have opted into globalized regimes of constraints, standards and expectations promulgated by a variety of entities, including groups of national governments, intergovernmental organizations, and non-governmental organizations. Although Thompson suggests that corporations might be compelled to participate in globalized governance regimes by the challenges listed above, throughout the book, Thompson emphasizes that corporations voluntarily participate in these systems. This voluntary participation proves, quite obviously, to be a major limitation on the extent to which a coherent and effective system of global governance or "constitutionalism" may emerge.

Thompson structures his analysis around the idea that the expanding web of international regulations, laws, agreements, conventions, standards, protocols, and other instruments represents a "constitutionalization" of the global corporate sphere. He suggests that "constitutions do two basic things: they allocate powers and they determine rights and responsibilities." However, it is not immediately clear how the focus on constitutionalization as such clarifies the analysis. Although Thompson helpfully describes his notion of the relationship between the constitutionalization and the juridicalization of international corporate governance, it is not apparent, at least initially, what purpose the constitutionalization framework serves to the analysis, given that no semblance of an international constitution, written or otherwise, exists.

However, the significance of constitutionalization as an analytical instrument comes into greater focus in Chapters Three and Four, which explore the concept of global corporate citizenship. The most novel and engaging ideas in the book reside in the discussion of what global corporate citizenship is, what rights and responsibilities it confers, how evolving notions of citizenship impact corporate relationships with shareholders and other stakeholders, and the political role of the corporate citizen. As members of a poorly defined "polity," global corporate citizens possess certain rights, which have been established by the "quasi-constitutional" nature of the international governance framework. At the same time, they are responsible and accountable to a variety of interests, including shareholders, non-governmental organizations (NGOs), governments, and employees and are responsible for other interests that are more difficult to define, such as the environment. The idea of the corporation as a citizen in a quasi-constitutional international order establishes a helpful reference to better understand how corporations operate in the context of global governance and what the challenges to strengthening global governance regimes are.

Thompson begins his discussion of global corporate citizenship with an explanation of corporate social responsibility (CSR) and its limited nature relative to global corporate citizenship (GCC). In today's corporate world, corporations are expected to take into account not only the impact that their activities have on their bottom line, but also the impact they have on society and the environment. The "triple bottom line" is a familiar notion in both the public and private sectors. Thompson argues, however, that GCC is actually quite distinct from CSR. The notion of GCC "recognize[s] a different environment in which companies are working: that they need to come to terms with their overall *political role* as active agents of governance and not just as economic agents out to ameliorate externalities, or engage more widely with affected stakeholders." One way to characterize the distinction is that CSR may be ad hoc and self-serving while corporate citizenship on the global level implies integration into the global governance system as an active and accountable participant.

Understanding corporations as global citizens becomes significant when considering their legal and political identity. Indeed, Thompson observes that the corporate entity has a legal identity in international law, albeit one on fairly shaky footing. International corporate personhood may exist in the context of international treaties, national laws that extend domestic jurisdiction across borders, or in private institutions like the International Chamber of Commerce, which arbitrates private contract disputes between corporations. However, when considering the vast array of international obligations, standards, and rules to which many multinational corporations often choose to subject themselves, one may categorize the global corporate citizen as not only a legal entity but also as a powerful political entity. If accepted as a political citizen, corporations may claim the same rights as natural persons. Yet at the same time, they take on more responsibility within the societies (or in this context, the global society) in which they operate. Thus, the idea of citizenship in some type of quasi-constitutional global order is essential in understanding Thompson's conception of the role that corporations might play in the international context and how that role may be expanded or limited by the quasi-constitutional order.

How, then, does this quasi-constitutional order govern its citizens? In an extensive discussion of the potential mechanisms of a globalized rule of law, Thompson highlights several subtle ways in which multinational corporations are bound. One example operates on the national level, in which national governments incentivize multinational corporations to behave in certain ways through legislation. For example, reporting requirements often compel multinational corporations to pay attention, at least facially, to their social, environmental, and ethical policies without requiring them to put in place any specific types of policies. However, even though they are not required to establish any particular policies, corporations still do because of the transparency created by the reporting requirements. In other words, because they know their stakeholders will be able to access information about their activities and impacts on society or on the environment, corporations put the necessary policies in place. The reporting requirement, therefore, has been one way to compel good citizenship.

Although a quasi-constitutional order that governs its corporate citizens may exist, one may question to what extent multinational corporations actually view themselves as part of such an order. It is undisputed that multinational corporations submit to supranational regimes of governance. However, do they do so out of a sense of citizenship? The example of reporting requirements discussed above makes clear that multinationals opt into global governance structures due to a perceived self-interest that seems to resemble more closely what Thompson would characterize as CSR as opposed to GCC. His conclusion highlights the limits in today's world of the quasiconstitutional order.

Thompson concludes the book on a relatively negative note. Here, he explores the incoherence of global administrative law, using the Organization for Economic Cooperation and Development (OECD) and the prevalence of bilateral investment treaties (BITs) as examples of that incoherence. He also uses them as case studies to demonstrate the power that multinational corporations assert in setting standards and dictating the shape of global governance. As economically powerful actors, often with greater expertise than the governments that they work with (primarily in the context of BITs), multinational corporations are able to exert undue influence over the development of the rules and standards that constrain them. Moreover, because multinational corporations voluntarily commit to many of these constraints, they exert greater leverage than the state actors or other entities that have a stake in their activities. Thompson advocates for a stronger commitment to multilateralism and inter-governmental cooperation and integration in order to resolve these issues. However, he acknowledges that the political environment is one that is difficult to adapt, and he suggests that it is actually moving in the opposite direction.

Overall, Thompson's work is an impressive example of a multi-disciplinary dissection of the global corporate sphere. Thompson draws on his expertise in economics, but also utilizes diverse ideas from fields such as corporate law, international law, and political science in order to arrive at the rather bleak conclusion that the global corporate sphere is undergoing a "quasi-constitutionalization" in which the rule of law is relatively weak and incoherent. However, this pessimistic conclusion does not detract from the book's valuable contributions. It sheds light on the current state of affairs while also providing useful analytical frameworks to help predict, and perhaps shape, what global governance of multinational corporate activity might look like in the future. After the Spring: Probation, Justice Reform, and Democratization from the Baltics to Beirut. By Johannes Wheeldon. The Hague, The Netherlands: Eleven International Publishing, 2012. Pp. xviii, 307. \$49.00 (paperback).

## REVIEWED BY AARON KATES ROSE

In *After the Spring*, Johannes Wheeldon takes the reader alongside as he revisits the lessons he learned as a project manager with the Latvian Legal Reform Program, a Canadian government-funded development program that helped to establish probation as a meaningful alternative to incarceration in Latvia. The result is a richly anecdotal look at the Latvia program, one which Wheeldon presents as a bright spot of successful development in a field marked by failures. Equally important, the book is crafted into a methodological and evaluative toolkit that allows its methods to be replicated in future justice reform projects elsewhere, particularly in the Middle East and North Africa (MENA).

Though the author appears to have aimed too high in his search for applicable lessons for the MENA countries experiencing popular demands for democracy as part of the Arab Spring, the book excels in other respects. Wheeldon's work is both precise and personal. He captures in great detail the contributions of individual program staff, and does not shy from the challenges the program faced, such as a cultural exchange trip to Canada in which many participants became distracted by the shopping opportunities. The book also manages to be persistently critical while remaining fundamentally optimistic about the potential for justice reform to help countries transition from autocratic pasts and excessively harsh punitive tendencies. Among the book's greatest contribution is its dedication to methodological questions. Wheeldon provides a useful "three-tier research model" to analyze and evaluate similar projects. He also devotes an entire section to his research methods, explaining their advantages for eliciting the perspectives of the program participants, insulated from the risk of cultural imposition or influence from those conducting and evaluating the program.

Structurally, the book is organized into seven chapters with two "intermissions." The intermissions are shorter chapters in which Wheeldon speaks personally about his role in the

program. The first includes his impressions of Latvia, and reproductions of the concept maps created by the program participants. The second looks at the inherent limitations of qualitative research, and some of the struggles the author faced himself. The first three chapters are foundational. The first chapter looks broadly at questions of criminal justice reform; the second looks at Latvia's history, and specifically the history of its criminal justice system; and the third looks at the need for new methodologies, and introduces the use of the concept maps on which Wheeldon relied. The second triad of chapters is dedicated to the three-tier research model. Each chapter focuses on one tier, with each tier representing a different level of analysis at which to consider challenges and opportunities for successful reform. The three levels-contextual, organizational, and individual-are each explained theoretically, with the author explaining their importance to justice reform, and applied practically to the programming in Latvia. The seventh and final chapter serves both as a summary of the preceding analysis, and a fleeting effort to distill lessons that may be valuable in the MENA region.

Though Wheeldon is refreshingly modest in his conclusions, his thesis is an important one: Probation reform can be an important touchstone in transitions to more accountable and participatory regimes. His argument that probation-related development assistance can be a "pragmatic pretext to begin a dialogue about where each country seeking justice reform should draw the line on the continuum between care and control" is compelling. While many scholars understand democratization and justice reform as limited to top-down processes of constitutional drafting, political reorganization, and support for free and fair elections, Wheeldon situates these processes at the community level, with successful grassroots programs eventually being scaled nationally.

This position, like many others in the book, follows from Wheeldon's focus on micro-level analysis and interpersonal interactions. He objects to other practitioners' obsession with "results-based approaches," criticizing their "fetish for quantitative indices and management tools." In fact, the entire book highlights his commitment to studying subjective factors, and ensuring participants were meaningfully and fairly included in the development program. By ensuring local participants could provide their views freely, Wheeldon makes his central claim—that probation reform was successfully adopted—more convincing. This is especially important since his optimistic view of the program is not shared by others in the field. His view is supported at the macro-level by Latvia's establishment of the State Probation Service (SPS) in 2003, and by consistent reductions in the incarceration rate as a function of the crime rate. However, Wheeldon goes further in defending his optimism by showing the program's success in fostering personal connections and meeting the specific needs of the community in which he operated. It is this latter form of evidence that demonstrates that what occurred in Latvia went beyond a superficial translating of foreign statutes into Latvian, and attests to a more profound change in thinking.

Unfortunately, the focus on individual relationships also carries significant drawbacks. First, it threatens to obscure the background processes in the relevant countries, and risks leaving readers insufficiently clear on the context in which the program took place, or the specific policy reforms that capped its national adoption. For example, though a reader gets to know the author well through his writing, a concise timeline of the Latvian reforms, or precise citations for the relevant statutory changes, are oddly lacking. Second, the reliance on inherently unique relationships may undermine the book's transferability to other areas, one of its central objectives.

The focus also carries implications for the book's audience that are not outwardly evident. Practitioners of legal technical assistance will certainly uncover useful lessons about how to structure a similar program. On the other hand, those primarily interested in a descriptive portrayal of Latvia's justice reforms, or primarily interested in Latvia's incorporation of probation vis-à-vis other states, might be better served elsewhere. Though Wheeldon does sprinkle these details throughout the book, noting in particular the establishment of the SPS and reforms to Latvia's Criminal Procedure Code and Criminal Law, these moments receive considerably less attention than the study visits to Canada, nights of folk singing and dancing, and evenings spent in local saunas.

At certain moments, the focus on individual relationships approaches a level of absurdity, with no discernible lessons available to readers. In the first intermission, Wheeldon reproduces some of the concept maps created by the Canadian and Latvian participants. Though four of the eight maps are in Latvian, Wheeldon does not provide English translations. He justifies the decision by claiming that he hopes the maps "are a reminder of the challenges of data collection in international contexts, and the ways in which maps can demonstrate meaning, even when they are in another language." Instead, the decision forces readers to defer to Wheeldon's analysis, and leaves them unable to draw their own conclusions on the advantages of his experimental method.

A second issue concerns the book's transferability. Though Wheeldon is certainly aware of the dangers of a "onesize-fits-all" solution or a failure to account for cultural and contextual differences, he perseveres in his hope of finding lessons that can be extracted, distilled, and applied elsewhere. Unfortunately, the book doesn't reach those heights. The author does provide some comparisons to Latvia's Baltic neighbors in Chapter Four, where he describes Latvia's contextual challenges, and dedicates the last chapter to brainstorming about which lessons might be useful to the emerging Arab Spring regimes. Still, the book remains overwhelmingly about Latvia.

Compounding this problem, Wheeldon's analysis of the MENA region is unconvincing. Where he prioritized nuance and cultural sensitivity in the preceding six chapters, the concluding chapter is more comfortable painting in broad brushstrokes. He treats Arab autocracies as homogenous in "disappearing those who challenged the established and politically convenient orthodoxy of oil and Islam," gliding over differ-ences between and among MENA states. He dismisses the risks to reform posed by Islamic fundamentalists with the sweeping and unsupported statement that "[t]here is little evidence that almost a billion people have any desire to return to a seventhcentury lifestyle." The statement is followed by a claim that "most Islamist parties are far less popular than many assume," relying on a 2010 journal article but paying no heed to the success of Ennahda in Tunisia's 2011 Constituent Assembly Election, or the success of the Muslim Brotherhood in Egypt's 2011 parliamentary elections and 2012 presidential elections. The chapter even includes questionable factual assertions, referring to the "more than two dozen countries" in the region,

when most commentators count only nineteen, some of which have not been swept up in the Arab Spring.

Despite these setbacks, Wheeldon's perspective is fresh, and his insights are valuable. The book will provide a compelling read for anyone interested in examining the process of legal technical assistance through a microscope of first-hand reporting. Where other scholars might balk at critical appraisals or contradictory opinions, Wheeldon takes them on headlong. The three chapters dedicated to the three-tier research model each include a section on "Counter Views and Contrarian Considerations," respectfully featuring authors who would challenge his factual assertions and those who would challenge international development and legal assistance wholesale.

Ultimately, the book's value lies in documenting an important instance of successful reform. Before instituting the probation service, Latvia faced high rates of incarceration, and a growing chorus of criticism for inhuman prison conditions. Widespread tuberculosis and overcrowded cells were reported as recently as the early 2000s. Forty-three percent of the incarcerated population, and sixty-three percent of incarcerated juveniles, were being held pretrial. Today, the prison population continues to shrink, and the SPS has grown to handle 27,000 clients annually. Wheeldon's book ensures that this success will not be forgotten, and that its methodological developments are available to future practitioners. For all those who seek more humane treatment in criminal justice, whether at home or abroad, Wheeldon's work is an important reminder that it can be attained.