

BOOK ANNOTATIONS

CHRISTENSEN, THOMAS J, *WORSE THAN A MONOLITH: ALLIANCE POLITICS AND PROBLEMS OF COERCIVE DIPLOMACY IN ASIA* (Princeton, NJ: Princeton University Press, 2011).

DANCHIN, PETER G., AND HORST FISCHER, EDs., *UNITED NATIONS REFORM AND THE NEW COLLECTIVE SECURITY* (New York, NY: Cambridge University Press, 2010).

DERVIS, KEMAL, MASAHIRO KAWAI, AND DOMENICO LOMBARDI, EDs., *ASIA AND POLICYMAKING FOR THE GLOBAL ECONOMY* (Tokyo, Japan: Brookings Institution Press, 2011).

ECKES, CHRISTINA, AND THEODORE KONSTADINIDES, EDs., *CRIME WITHIN THE AREA OF FREEDOM, SECURITY AND JUSTICE: A EUROPEAN PUBLIC ORDER* (Cambridge, UK: Cambridge University Press, 2011).

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Worse Than a Monolith: Alliance Politics and Problems of Coercive Diplomacy in Asia. By Thomas J. Christensen. Princeton, NJ: Princeton University Press, 2011. Pp. ix, 306. \$24.95 (Kindle).

REVIEWED BY WALTER BRUMMUND, III

Is it more difficult to oppose a loose coalition of rivals or a unified alliance? Does disunion in the enemy coalition weaken it or make it more formidable? In *Worse Than a Monolith*, Princeton University Professor Thomas J. Christensen shows how loose alliances and internal rivalries have led to war and delayed peace in Cold War Asia. Christensen, a leading scholar of Chinese foreign relations, focuses on the effects of China's rivalry with the U.S.S.R. on U.S. diplomacy. His principal thesis, which he convincingly supports, is that the rivalry between Beijing and Moscow facilitated and extended both the Korean and the Vietnam War.

Worse Than a Monolith is both a history book and a theoretical treatise, a duality that makes it accessible to the casual reader as well as the scholar. As a history, the book places the reader in the capitals of Cold War Asia, piercing the iron cur-

tain and drawing on primary and secondary sources to present the diplomatic strategies of Communist leaders such as Stalin, Mao, Ho Chi Minh, Kim Il-sung, and Khrushchev. As a theoretical treatise, *Worse Than a Monolith* examines the effects of alliance disunity on coercive diplomacy. As the book moves through the history of the Cold War, Christensen persuasively argues that Beijing and Moscow's competition for influence pushed both countries to escalate proxy conflicts with the United States, making the communist alliance "worse than a monolith" from the U.S. perspective.

In his dense introductory first chapter, Christensen summarizes his main arguments and marshals his most persuasive evidence. With minor alterations, this introduction could stand alone as an article in *Foreign Affairs*, and casual readers more interested in Cold War history than foreign relations theory may want to skim this chapter or skip it entirely. On the other hand, those most interested in diplomatic theory should focus on the introductory chapter and the conclusion.

Chapter Two criticizes U.S. signaling in the lead-up to the Korean War, showing how Kim Il-sung was able to play Stalin's distrust of Mao to his advantage. The starting point is a January 1950 address in which U.S. Secretary of State Dean Acheson pledged to defend Japan and the Philippines, but notably omitted Korea and Taiwan. Christensen describes how Mao and Stalin read this omission as a signal that Japan would become South Korea's guardian. The account of Kim Il-sung's prewar negotiations with Stalin and Mao is compelling; Kim, who asks Stalin for permission to invade the South while reserving the right to ask Mao later, comes across as a child playing both parents against each other. This chapter sets the tone for the rest of the book, as Christensen artfully uses a behind-the-scenes look into communist diplomacy to explain how intra-alliance competition leads to inter-alliance violence.

The arguments raised in Chapter Three, which covers the Korean War's escalation, are less persuasive. Christensen begins by contending that Mao and Stalin's disagreement on how to counter the United States' decision to cross the thirty-eighth parallel escalated and prolonged the conflict; Stalin wanted Mao to immediately reinforce North Korean troops at the thirty-eighth parallel, but Mao feared overextension and held back, preferring an aggressive counterattack once the United States was further north. Although Christensen frames

his argument that Mao's refusal to follow Stalin's strategy prolonged the conflict in terms of alliance dynamics, his argument is ultimately strategic, predicated as it is on the assumption that Stalin's strategy would have accelerated peace talks.

At the end of Chapter Three Christensen highlights the different Chinese and Soviet interests in French Indochina. Although both Mao and Stalin supported Ho Chi Minh's revolution, Mao provided most of the material support, a difference in policy that seems to have been driven by Russia and China's divergent strategic interests. Stalin had his eyes on Europe and was wary of alienating the French public, while Mao, who was more intent on promoting the international revolution than Stalin, saw French Indochina as a regional security concern. Christensen uses this example to argue that a more centralized communist movement would have been better for the United States because it would not have supported Ho Chi Minh as aggressively. While this may be true, it does not provide much support for his general theory that monolithic enemies are less aggressive than fragmented coalitions. If, *arguendo*, the communist coalition had been centralized under Mao's influence, Ho Chi Minh may have received even more support.

Turning the corner, Chapter Four deals with a period of communist unity at the end of the Korean War. Kim Il-sung was ready to end the war in 1952, but China and the U.S.S.R. wanted to keep the United States tied down in Korea. Although this Sino-Soviet coordination prolonged the conflict in Korea, Christensen argues that it increased transparency in the Communist alliance and helped the United States avoid surprise. He goes on to explain the Sino-Soviet cooperation in terms of aligning interests. Following Stalin's death in 1953, the Soviet Union entered a rebuilding phase as it transitioned politically, and China also entered a rebuilding phase in 1953 by initiating its first five-year plan with Soviet assistance. After these developments, both China and the Soviet Union pushed Ho Chi Minh to reach a negotiated settlement to end the conflict in French Indochina (now Vietnam). Christensen bolsters his theory in this chapter by convincingly framing the Geneva accords as an example of a unified or "monolithic" enemy facilitating peace.

Chapter Five explains the breakdown in Sino-Soviet relations and its disruptive effect on international peace, begin-

ning with the personal dynamics of Mao's relationship with Khrushchev. Although Mao was always willing to help the Soviets, he was perhaps too willing: he condescendingly treated Khrushchev "like a little brother." Khrushchev's 1956 de-Stalinization speech also irritated Mao, who reveled in the cult of personality that Khrushchev publicly criticized. The two leaders' biggest difference, however, was ideological: Khrushchev wanted to spread communism peacefully, while Mao, a violent revolutionary, saw peace as an unfortunate necessity.

The Sino-Soviet rivalry is Christensen's best example of a divided enemy being "worse than a monolith." During the late 1950s and early 1960s, Mao courted not only the Vietnamese communists, but also communists in Laos and Cuba, in an attempt to cast himself as the leader of the worldwide communist movement. The Soviet Union had to respond or lose international prestige; for instance, Khrushchev's decisions to send missiles to Cuba and to support the Berlin Wall are characterized by Christensen as reluctant Soviet responses to Chinese "adventurism."

Chapter Six frames the Vietnam War as the culmination of the Sino-Soviet rivalry and the start of outright Sino-Soviet conflict. The turning point is 1968: as the Soviet Union militarized its border with China, China began to withdraw troops from Vietnam and reduced its aid, and the Soviet Union became China's top security concern as Mao prepared to meet with Nixon. The United States was a natural ally against the Soviet Union, but tensions over Japan and Taiwan remained. President Nixon overcame differences on Taiwan by publicly announcing that Taiwan was part of "one China." Christensen stresses China's concerns over Japan during this period, noting that Chinese Premier Zhou Enlai privately asked Kissinger to keep some U.S. troops in Taiwan to prevent Japanese forces from replacing them. Although Christensen's account of Sino-American discussions on Japan is interesting, the discussions do not relate to the book's overall theme and seem somewhat out of place.

After Nixon's visit to China, Christensen changes course and skips ahead to Sino-American relations after the Cold War. Chapter Seven seems out of place as well, as the author himself admits that contemporary affairs are not the "primary" focus of the book. Modern Sino-American relations are cast as

examples of successful “coercive diplomacy”; for instance, Christensen emphasizes that credible American threats to defend Taiwan against attack were balanced by criticism of Taiwanese nationalism. Although he analyzes contemporary diplomacy against the backdrop of the Cold War, he also notes that 21st-century China is less idealistic and aggressive, and he is right to caution against drawing Cold War analogies to contemporary relations.

Chapter Eight concludes the book by revisiting the author’s theoretical arguments and reinforcing them with examples outside Asia. Chapter Two’s discussion of failed U.S. signaling during the buildup to the Korean War, for example, is supplemented by a discussion of how similar signaling failures led to the 2008 war between Georgia and Russia (a discussion that may be unnecessary, as the author himself notes that it accords with traditional deterrence theory). The remainder of Chapter Eight is devoted to Christensen’s primary thesis: that a divided enemy alliance is more troublesome than a monolithic enemy alliance. He first notes that his theory does not apply when compromise becomes impossible, such as in World War II or the United States’ ongoing “War on Terror.” Finally, he leaves East Asia and applies his thesis to the Middle East, noting that rivalries in the pan-Arab movement encouraged Arab rivals to attack Israel to improve their regional prestige—an example so compelling that Christensen could devote a second book to it.

On the whole, the dual nature of this book as a theoretical study and East Asian history works well enough, though it ultimately gets in the way of elaborating Christensen’s alliance dynamics theories. Despite devoting a great deal of space to East Asian examples that only loosely or speculatively support the author’s theories, the book is well written, and chapters Two through Seven will certainly interest any student of Cold War or East Asian history.

United Nations Reform and the New Collective Security. Edited by Peter G. Danchin and Horst Fischer. New York, NY: Cambridge University Press, 2010. Pp. xviii, 431. \$139.00 (hardcover).

REVIEWED BY GREGORY B. WILBUR

The first years of the 21st century dashed the hopes of those who believed that the end of the Cold War would inaugurate an era of international security based on the United Nations (U.N.) Charter's prohibition on the use of force. The longstanding goal of the Charter was to subject the use of force to the rule of law rather than the expediencies of Great Power politics. Under the U.N.'s collective security framework, force was only to be employed to meet aggression or threats to international peace and security. With the exception of the exigencies of immediate self-defense, the determination of such a threat and authorization of a collective response was to be vested in the U.N. Security Council (U.N.S.C.), which was to speak for the global community on matters of international security. However, for a scheme that was meant to transcend and replace Great Power politics as a means of keeping the peace, the structure of the U.N.S.C., with its five permanent, veto-wielding members, bore certain resemblances to previous balance-of-power systems. State practice in the Cold War further eroded the prospects for the rule of law as the central feature of collective security, as the U.N.S.C. became just another arena for the competition between the United States and the Soviet Union. The decade and a half of promise and peril following the end of the Cold War provides the historical context for *United Nations Reform and the New Collective Security*, a collection of fourteen articles, ably edited by Peter G. Danchin and Horst Fischer, which seeks to assess the most recent attempt at institutional change in light of emerging realities.

The period in question began auspiciously enough, with the international community's response to the invasion and annexation of one member state, Kuwait, by another, Iraq, in 1990. Here, the collective security apparatus enshrined in the U.N. Charter functioned as intended: A broad coalition, operating under the authority of the U.N.S.C. and Chapter VII of the Charter, expelled Iraqi forces and restored the sovereignty

of Kuwait. One of the defining characteristics of the Persian Gulf War was American leadership within the collective security apparatus, as President George H.W. Bush rallied the international community to action in defense of a U.N. Member State. But the period also held peril, as the awful stability of the nuclear balance of terror was replaced by an unpredictable and sometimes chaotic new order. The decline of Communist ideology as a unifying force reopened ethnic divisions, and superpower disengagement from the Third World led to the new phenomenon of failed states. These pockets of anarchy in turn helped fuel the rise of transnational terrorist networks, non-state actors that were capable of inflicting damage previously associated with governments and militaries.

This latter trend collided with the unipolar world order on September 11, 2001, and the aftermath of the terrorist attacks on America that day brought the period of post-Cold War promise to a close. George W. Bush's administration initiated an unprecedented military response to terrorism by invading Afghanistan, whose Taliban regime provided safe harbor for Osama bin Laden and his Al-Qaeda network. While this action was not in open defiance of global opinion, neither was it constrained by it. The invasion foreshadowed Bush's most controversial action, the invasion of Iraq and overthrow of Saddam Hussein in order to disarm the regime of weapons of mass destruction—weapons that, it turned out, he never possessed in the first place.

Taken together, the Bush wars represented a dramatic opting out of the collective security system by the most militarily powerful state in the world, as well as a full-throated reemergence of naked power politics. Then Secretary-General Kofi Annan, realizing how tenuous the collective security project could be, convened a "High-Level Panel of Eminent Persons" to explore ways in which to ensure that the U.N.-centric collective security system could remain relevant in the 21st century, and to reduce the incentives for states to opt out of the system in favor of a less-constrained "go it alone" approach. The Panel's report, as well as the Secretary-General's paper titled *In Larger Freedom*, contained proposals for a vastly broader approach to international security than that which had endured during the Cold War. These proposals for institutional reform were presented at a 2005 World Summit of global heads of state and government, where they were largely

rejected. This volume attempts to assess both the process and substance of the preparations for the World Summit, the recommendations of the actors involved, and prospects for institutional reform going forward.

Appropriately, the volume's first article, "Things Fall Apart," by Danchin, lays out the doctrine of collective security, with a focus on the concept's inherent tensions. The first is that in order to protect the sovereignty and independence of all states, it must also restrict each state's sovereignty, which under the present system is done by Article 2(4)'s prohibition on the threat or use of force as an instrument of policy. While relatively uncontroversial in theory, it has proven exceedingly difficult in practice to demarcate the line between aggression and anticipatory self-defense, even when not asserted as broadly as the second Bush Administration, in a way that carries broad legitimacy independent of geopolitics. Decision-making bodies such as the High-Level Panel are meant to ameliorate this problem, but as Danchin asks, "[w]hy . . . does the Panel believe itself capable of accessing the true or objective purposes of the international community in some politics-independent way?" A second tension (or hypocrisy, in the eyes of some critics) is that collective security is premised on sovereign equality but administered by the U.N.S.C., whose five veto-wielding permanent members are more equal than the others. Taken together, these issues erode confidence in the rule of law as an alternative to power politics. Related to both tensions is the dichotomy between formalism and policy anti-formalism, or as Danchin puts it, "the objective meaning of the U.N. Charter (i.e. the textual or formal rules) and the objective reasons that lie behind and justify these rules." Viewed with more regard for substantive outcomes than procedural fairness, the Great Power veto, while *prima facie* inconsistent with sovereign equality, has nevertheless helped prevent Great Power war—the scourge that primarily motivated the Charter as well as previous attempts at collective security.

These tensions, however, are just as acute, if not more so, when we look at the emerging doctrine of Responsibility to Protect (R2P), which George Andreopoulos addresses in his article "Collective Security and the Responsibility to Protect." While collective security was originally conceived as a solution to the problem of interstate conflicts, and built around the idea of states as sovereign equals, the 1990s saw an erosion of

sovereignty as an absolute bar to intervention in the internal affairs of states under the theory of humanitarian intervention. Andreopoulos traces the maturation of humanitarian intervention into R2P following the end of the Cold War and addresses its shortcomings head-on. One is the perception of double standard, particularly when the interests of the five permanent members are involved. Here, Andreopoulos does an admirable job of reconciling the formal and anti-formal schools, showing that the perception of a double standard can reflect an excessive emphasis on the formalities of the U.N.S.C. process. While those formalities may establish the legal basis for intervention, they are not sufficient to justify it alone. For that justification, one must also look to prudential factors, with a particular eye towards the consequences of an intervention and risks of conflict that may be more harmful than the threat being addressed. Some might say this undermines the notion that intervention based on R2P should be subject to the rule of law. However, nothing would undermine either the rule of law or R2P itself more than an intervention undertaken without regard to the risks of harm stemming from the intervention, with negative consequences out of proportion to the original harm the action was designed to prevent or stop. Andreopoulos cites an extreme example of such a hypothetical intervention—one for the protection of Tibetans, resulting in a highly destructive war with China—but the point remains relevant for the closer cases that will require rigorous risk-reward analyses.

As Joachim Wolf observes in his article, “Responses to Nonmilitary Threats: Environment, Disease, and Technology,” the High-Level Panel moved beyond both traditional interstate conflict and the emerging concept of R2P to consider more novel non-military threats to international peace and security, including “environmental degradation, diseases that spread globally, and extreme risks caused by weapons technology.” This was one of the more controversial aspects of the Panel’s report, and World Summit attendees were “unwilling to accept speculative new concepts for global security.” Wolf finds particular fault with the way the High-Level Panel “clustered” these threats together. One might say that the only thing they have in common, other than their asserted transnational nature, is that they have not previously been accepted by member states as threats to international peace and security, the

management of which properly belongs under the auspices of the U.N.S.C. Even if one accepts that issues such as environmental degradation and disease constitute global threats, Wolf argues, that is only the first step in crafting appropriate global responses. Because these threats are so different from the state-based military threats contemplated at the creation of the U.N.S.C., any attempt to subject them to U.N.S.C.-based responses would require a broad re-imagining of the Council's powers. Wolf makes a powerful argument that such a process has only just begun.

Each article in this volume has something to offer, and those of the fourth part of the book, written by human rights practitioners with on-the-ground experience, offer insights not often found in legal academic works such as this. The volume provides useful analysis of an attempt to solve a problem that has not gone away, and ways to think about events that have transpired since then, such as the Chapter VII action against Libya based on R2P. Nevertheless, one potential criticism of the work, while no fault of the authors and editors, is that it catches a moment in time when Bush unilateralism was the biggest issue on the international security scene—a moment that, as other issues have come to the fore, has thankfully passed. However, as the prospects that the U.N.S.C. will be able to prevent another unilateral action against a member state in the Middle East continue to dim, *United Nations Reform and the New Collective Security* serves as a painful reminder that the central problem of international security is no closer to being solved than it was when Mr. Annan's project began.

Asia and Policymaking for the Global Economy. Edited by Kemal Derviş, Masahiro Kawai, and Domenico Lombardi. Tokyo, Japan: Brookings Institution Press, 2011. Pp. x, 200. \$19.95 (paperback).

REVIEWED BY ERIC M. BROAD

From 2007 to 2009, the global financial crisis made more apparent than ever what economists have been discussing since the 1990s: the international economic center of gravity is shifting from the developed west to several emerging Asian economies. At the heart of this shift is the exceptionally rapid economic growth of the People's Republic of China (PRC).

Asia and Policymaking for the Global Economy, a collaborative effort of several eminent international economists, analyzes the shifting global economy from the industrialized countries in the West to the emerging markets in the East, exploring how this shift coincides with the need for a new approach to international coordination of macroeconomic policies and institutions. Each of the independently authored essays in the book addresses a different issue relating to the policies that led to the emergence of the Asian economies, and the future issues that policymakers will encounter as they work towards global economic stabilization.

The first chapter provides an introduction and overview by editors Kemal Dervis, Masahiro Kawai, and Domenico Lombardi, discussing the book's larger themes of how to address the growing global account imbalance, as well as how to construct economic policies and institutions that are relevant and influential to the Asian context. In Chapter Two, Dervis and Karim Foda discuss the recent history of economic policies that led to the current account surpluses in Emerging Asia (EA) and deficits in the west, specifically that between the United States and the PRC. This chapter effectively explains how and why this imbalance developed over the past fifteen years, and suggests policies that would help to catalyze rebalancing. After the devastating effects wrought on most EA countries by the Asian financial crisis of 1997 and 1998, these countries almost uniformly adopted unprecedented government savings policies that have led to large account surpluses for almost every Asian nation. The policies were a direct reaction to the inability of the G7 economies (United States, Europe, and Canada) and international financial institutions like the International Monetary Fund (IMF) to help assuage the debilitating effects of the crisis. The account surpluses, in turn, helped EA to weather the recent global financial crisis, as well as to continue its staggering economic growth over the past five years.

While leading Asian economies like the PRC continue to run annual account surpluses in the billions of dollars, developed western economies on the other side of the scale continue to sink deeper and deeper into debt. The industrialized nations, led by the world's largest economy in the United States, have for years been running massive account deficits. This issue has become painfully apparent over the previous

decade, coming to a head during the recent debt-ceiling catastrophe in the United States that coincided with an unprecedented downgrade of the U.S. credit rating. As this book explains, national deficits and surpluses are a natural part of a healthy global economy, but they have now reached a level at which—to ensure global financial stability—macroeconomic rebalancing is necessary to repair the damage from the 2008 financial crisis and avoid further economic volatility.

Dervis and Foda go on to argue that instead of framing the issue too narrowly, on the domestic policies surrounding the U.S. and PRC accounts, policymakers should focus on the broader global structure of savings and investment in their attempts to rebalance the world economy. They convincingly argue that while the commonly identified culprits of the imbalance—trade disparity between east and west, and the PRC's policies restricting appreciation of the renminbi—should not be ignored, there are other areas that need focus as well. Specifically, there must also be a concerted effort to direct more capital to capital-poor developing markets and to restructure the U.S.-dollar-centric reserve currency policies of international monetary systems that tend to stimulate increased U.S. debt. The authors' observations regarding the reserve currency are particularly interesting; in essence, they argue that the savings policies in EA countries led to massive demand for currency reserves, and that because most of the world's currency reserves are held in American dollars, such demand induces the United States to supply these reserves through policies of sustained deficit spending.

In Chapter Three, Rajiv Kumar and Dony Alex continue in the vein of macroeconomic rebalancing, examining the likelihood and feasibility of various economic policies. Their analysis suggests three ways to achieve a rebalancing between the United States and EA, beginning with the implementation of structural reforms in the PRC to boost domestic demand and reduce dependence on external demand and net exports. They then call for ensuring more stable future income streams to the oil-exporting countries, in order to motivate increased spending of their savings from surging oil prices. Third, the authors recommend measures to enhance intra-regional trade and investment flows that promote pan-Asian economic integration. These arguments seem convincing, and they are supported with plenty of economic data. Yet the reader may be

left wondering whether such policy prescriptions are a realistic approach to account rebalancing; after all, the level of cooperation needed to achieve these three proposals is astounding, and whether the EA or oil-producing countries are interested in doing so remains an open question.

Kumar and Alex also suggest a pragmatic way of achieving a more integrated regional economy, as well as boosting regional cooperation and demand: the creation of an Asian Investment Bank (AIB) that would supplement, not replace, the efforts of the Asian Development Bank (ADB). This may be the authors' best suggestion, in large part because, since creating an AIB is in the best interests of all EA countries, it is realistically achievable. An institution like an AIB would focus on more efficient utilization of savings generated within Asia, in addition to facilitating the much-needed development of Asian infrastructure and financial markets. Such an institution would also allow the ADB to devote greater attention to the creation and maintenance of longer-term sustainable development paradigms for Asia. With the massive growth in wealth and investment in the region, the growing recognition among EA countries of the need for better regional coordination, and no need to fear that the G7 countries will have undue influence on AIB policies, this is a very practical goal, if not an inevitable one.

Chapters Four and Five shift the focus to international economic organizations and institutions like the G7 (the seven largest western economies plus Japan), the G20 (the twenty largest world economies), the IMF, and the various incarnations of the Association of Southeast Asian Nations (ASEAN). In Chapter Four, Masahiro Kawai emphasizes that many of the pressing financial issues in the industrialized countries are very different from those that EA countries do and will encounter. For instance, many regulatory or policy prescriptions—such as the recent reforms undertaken by the IMF and G20 in response to the global financial crisis—are tailored for the United States and industrialized Europe and are not necessarily relevant to the Asia economies. Kawai thus finds that while the United States and Europe are busy trying to rein in their financial systems to ensure stability, the agenda in EA should be to deepen and evolve their financial systems. At the same time, he argues, EA must not lose sight of the regional cooper-

ation and regulatory innovations necessary to contain systemic risks and maintain macroeconomic and financial stability.

In the final chapter, Domenico Lombardi discusses how the IMF failed to fulfill its underlying purpose of ensuring stability in the international monetary system during the Asian financial crisis, a failure that led directly to EA savings and the G7 deficit spending policies. According to Lombardi, divergent policies have created an asymmetry in the international monetary system, one that has been further exacerbated by the fact that the G7 countries retain most of the influence in international financial institutions such as the IMF. In turn, this imbalance serves to amplify international economic instability, increase EA skepticism of the IMF's ability to meet its needs, and motivate EA countries to break off from institutions like the IMF in favor of regional economic institutions. Lombardi argues that to ensure global economic stability, the share of influence in international economic institutions needs to better reflect the growing importance of EA economies. This assessment certainly seems accurate, but it may not go far enough; the bolder analysis of Kumar and Alex in Chapter Three suggests that, because of the vast divergence in policies between west and east, EA also must pursue a course of more effective regional coordination through an Asian Investment Bank or similar institution created to meet EA-specific needs.

The growing reality in the global economy is that the West needs to relinquish its one-sided influence over international monetary institutions and other financial organizations like the IMF and the G20, or risk alienating the EA countries and frustrating efforts at international coordination. Moreover, EA must embrace regional coordination efforts as an important step in increasing regional demand and shepherding the evolution of Asian financial markets. This book does an excellent job of illustrating the differences between the West and EA in the present and future global economic landscapes, as well as the different options available to each side within the international monetary system in light of the growing importance of EA. Each chapter lucidly establishes the progression of events and policies that led to the current global economic situation, helping the reader to understand how the recommended policy prescriptions can realistically benefit both sides of our asymmetric global economy.

The volume also adds to its levelheaded policy analysis by including a separately authored comment following each of the essays, discussing the strengths and weaknesses of the essay's major points. Such an approach lends a crucial measure of objectivity to the book, as there are often several different viewpoints in macroeconomic policy analysis, and it also provides a helpful tool for readers to fill some of the gaps they might encounter in the essays.

As the foregoing illustrates, *Asia and Policymaking for the Global Economy* targets an audience with an interest and background in economic policy. While many of the finer points will be lost on readers without a thorough grounding in the intricacies of the global financial system, they will still gain insight into the larger policy issues; the book is heavy on policy analysis, as its title suggests. It even includes a handful of forays into national and international regulation, though legal scholars seeking a detailed discussion of how laws and regulations in the United States or the PRC have created or affected economic policy will not find those answers here. What *Asia and Policymaking* does provide, however, is an important foundation of information for legal professionals or scholars to frame current international policy debates that invariably bleed into the international legal realm.

Crime within the Area of Freedom, Security and Justice: A European Public Order. Edited by Christina Eckes and Theodore Konstadinides. Cambridge, UK: Cambridge University Press, 2011. Pp. vii, 300. \$110.00 (hardcover).

REVIEWED BY LAUREN N. KATZ

Maintaining the Area of Freedom, Security and Justice (AFSJ) has been a critical objective of the European Union. Title V of the Treaty on the Functioning of the European Union (TFEU), as amended by the Treaty of Lisbon, establishes the Area of Freedom, Security and Justice, while aiming to further develop European criminal justice and cooperation between member states. European criminal justice is by nature controversial, as it extends beyond the original intent of the European Union; however, with the function of a European market, cooperation is necessary to combat criminal activity that threatens the security and stability of States, busi-

ness, and persons. The Treaty of Lisbon and the policy agenda of the Stockholm Programme attempt to further develop European criminal justice and cooperation among Member States, chiefly through mutual recognition and enforcement of orders as well as increased police and judicial cooperation.

In *Crime within the Area of Freedom, Security and Justice*, editors Christina Eckes and Theodore Konstadinides have compiled a set of academic essays that attempt to illustrate the development of European criminal justice and its progress towards establishing a European Order. The editors focus primarily on European policies and legislation addressing corruption, money laundering, organized crime, and terrorism, as these areas have received increased attention in recent decades as crucial to establishing European stability, security, and accountability. The essays attempt to explain the development of EU criminal policies and the effectiveness of such policies, beginning with an introduction to European criminal justice and the Lisbon Treaty that provides readers with an adequate background of European policies and laws. The ten essays that follow attempt to explain and critique the current legal instruments of European criminal justice and possible improvements for the future. While these essays explore the gains of the Lisbon Treaty specifically through the principle of mutual recognition and greater police and judicial cooperation, similar tensions between national sovereignty and security and the need for greater cooperation pervade all areas of criminal law.

The editors' introduction provides the background context of EU responsibilities and priorities in combating crime and terrorism. Chapter One, by Maria Fletcher, provides an outline of the legal and political frameworks of the AFSJ and the intensification of EU action under the Treaty of Lisbon and Stockholm Programme. Fletcher provides a clear and basic overview of historical European cooperation in criminal matters, explaining how the Treaty of Lisbon has abolished the pillar divisions created under the Treaty of Maastricht. She identifies the tensions between cooperation and national sovereignty, the policy shifts from an executive to legislative focus, and guiding principles driving European action in the future. The historical and conceptual backdrop she creates

should help readers to understand the more specific essays that follow.

With this context established, Chapter Two focuses on European policies aimed at fighting corruption. Here, Patrycja Szarek-Mason provides a useful framework for understanding European anti-corruption policies by distinguishing between pre-Lisbon EC actions and EU treaties. Examining European policies against international standards, she identifies the strengths and weaknesses of European developments, arguing that the most effective EU instruments in combating corruption appear to be increased police and judicial cooperation among Member States (specifically mutual recognition of orders and the abolition of the double criminality requirement for corruption). Despite these advances, Szarek-Mason calls for greater European strategies, though given such established national policies, this may be an area where cooperation is best achieved through mutual recognition.

Chapters Three and Four discuss European efforts to counter money laundering, finding that the principle of mutual recognition and the benefits of increased cooperation between police officers and courts are significant in developing a successful European anti-money laundering regime. Ester Herlin-Karnell, in Chapter Three, offers an apt critique of the risk-based approach and precautionary principle of European anti-money laundering efforts, opening for debate the risk-based approach and its role in European criminal law. In the next chapter, Maria Bergström offers another critique of European anti-money laundering, revealing the vastly differently implementation methods between Member States and explaining how the Anti-Money Laundering Directives affect both public and private parties. In particular, her discussion of efforts in the U.K. and Sweden to implement the European Anti-Money Laundering Directives provides readers with useful insight into the differences between regimes, as well as the obstacles that must be overcome in harmonizing such methods. Readers interested in this topic may further consider Bergström's argument in favor of greater reliance on private actors for implementation and compliance, in which she finds that private actors such as banks may provide greater oversight and more effective implementation of anti-money laundering policies.

In Chapter Five, Christina Eckes focuses on European efforts to combat terrorism, which readers interested in criminal justice and transnational counter-terrorism may find particularly relevant. For Eckes, aspects of European counter-terrorism efforts such as identifying critical instruments for combating terrorism, or coordinating a common anti-terrorism policy, highlight the tensions between national sovereignty and European cooperation, as well as the tensions between fundamental human rights and shared security. Yet in addition to common policies and action plans, the European Union has used other tools such as the Anti-Money Laundering Directive to combat terrorist financing, and Eckes—echoing a theme that runs throughout these essays—identifies police and intelligence coordination as a critical tool in European security and anti-terrorism programs. In the case of European counterterrorism, efforts at coordination are limited by a lack of mutual trust, specifically in sharing intelligence. In addition to greater coordination and cooperation, Eckes also suggests European counterterrorism goals can be more effectively met through policy integration. Such an analysis may have greater implications for global counterterrorism efforts.

In Chapter Six, Massimo Fichera offers a critique of the European Union's fragmented and inconsistent approach to organized crime. Approaching organized crime from different theories and perspectives, Fichera argues, Member States greatly diverge in their approaches to defining, combating, and prosecuting organized crime, a fragmentation that presents a great obstacle to the creation of a European Order. While he provides a detailed and informed critique of current policies and ultimately calls for greater coordination in future organized crime-fighting frameworks, the solutions Fichera offers are greatly limited. The focus shifts again in Chapter Seven, in which Theodore Konstadinides addresses the 'Europeanisation' of extradition and presents the European Arrest Warrant (EAW) as one of the greatest integration efforts of European criminal law. Focusing on mutual recognition rather than harmonization of laws as the means of coordinating European criminal justice, Konstadinides first addresses the problem areas of mutual recognition of the EAW where offenses differ between Member States; he then highlights the limitations of attempts in European criminal law to strike the appropriate balance between security and fundamental rights.

Through the lens of different aspects of criminal law, these essays provide insight into the European legal instruments that aim to establish European criminal justice. While some essays overlap in background and context, each contributes to a greater understanding of how European directives work to combat crime and terrorism, as well as the limitations these legal instruments currently face. For instance, European cooperation in criminal matters is crucial for effective maintenance of the AFSJ, but criminal law has been, and still is, predominantly a national priority. Ultimately, as the book suggests, the key to European criminal justice will be in mutual recognition rather than harmonization of laws.

The WTO Case Law of 2008: Legal and Economic Analysis. Edited by Henrik Horn and Petros C. Mavroidis. New York, NY: Cambridge University Press, 2010. Pp. vii, 272. \$49.00 (paperback).

REVIEWED BY MAYA LINDERMAN

Under the 1994 Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), the World Trade Organization (WTO) established a system of dispute resolution quite unlike anything the world had previously seen. In contrast to the party-appointed ad hoc arbitral tribunals found in most other international dispute resolution proceedings, under the DSU, member states agree to participate in a multilateral dispute resolution system and refrain from exercising unilateral retaliatory measures. The complete dispute settlement procedures last about a year and may result in the case being heard before an ad hoc Panel, and, if further contested, before members of the permanent Appellate Body. The Panel or Appellate Body findings may then be adopted by the Dispute Settlement Body (DSB), which has the authority to direct the losing state to alter its trade policies or allow the winning state to engage in retaliatory measures. As this system of dispute resolution is still relatively new, and full of both substantive and procedural legal gaps, each final opinion issued by an organ of the WTO has the potential to shape trade policy and practices on a global scale.

As part of an effort to analyze the implications of recent WTO decisions, Henrik Horn and Petros Mavroidis, on behalf

of the American Law Institute (ALI), have put together a collection of nine critical essays examining these disputes from both a legal and economic standpoint. Each essay is co-authored by scholars or practitioners from both disciplines. While some background knowledge about the terms of the General Agreement on Tariffs and Trade (GATT) and the workings of the WTO is helpful in understanding the substance of the disputes in question, each essay provides at least a brief summary of the facts being analyzed. Although the descriptions of the disputes and their outcomes are generally adequate, the economic and legal analyses of the cases seem for the most part rather disjointed and at times somewhat superficial. Also, a basic knowledge of economic theory is often necessary to fully understand the arguments at issue. For the most part, the individual scholars do a fine job of providing an introduction to the recent developments in the WTO, but the volume itself seems to be working at cross-purposes. It requires more background knowledge than most practitioners working outside of trade law may possess, but ultimately fails to deliver the sort of in-depth analysis scholars in the field might appreciate. It would be best to gear future collections more strongly toward one group or another.

In the first work featured in this volume, Simon Schropp and David Palmeter explore the implications of the Appellate Body's report in *Bananas III*, the latest chapter in the protracted saga concerning tariff quotas on banana imports to the European Union. Beginning in the 1990s, a number of nations raised concerns relating to the EU practice of allowing certain banana exporters, many of them former colonies, to import a specified quantity of bananas tariff-free. The existence of a discriminatory, and at times prohibitive, tariff-quota structure provided for a balance of trade that did not reflect conditions in either a free-market or tariff-only economy, something the GATT mandated member countries to attempt to approximate with their trade regulations. While the tribunal ultimately ruled that the existence of this tiered tariff-quota system went against GATT principles, it also appears that provisions of the GATT may in fact be in conflict with themselves. Article XIII, which specifically discusses quota systems, allows for import proportions to be determined based in part on historical quota allocations—something that Schropp and Palmeter point out is inconsistent with free market-ap-

proximation, as any quota system without permanent reallocation based on comparative advantage is inherently flawed.

Although their economic analysis of the GATT provisions at issue in *Bananas III* is fascinating, it also seems somewhat disjointed from the rest of their article, which emphasizes the importance of the Appellate Body's redefinition of what constitutes "nullification or impairment" under the GATT. Nullification or impairment, a measure used by the DSB to determine whether a nation is entitled to seek countermeasures, now consists not only of actual trade damages suffered by a state, but also of impairment of competitive opportunities and the impact on the internal market of the complainant in the affected industry. How this reformulation may impact allowable countermeasures or even systems of quota distribution is yet to be seen, and, considering its importance, it may have been particularly helpful if the authors had devoted more of their analysis to this topic. Far more interesting, though barely touched on within the article, is Schropp and Palmeter's assertion that "the WTO is an incomplete contract" where the "usability" of temporary emergency relief mechanisms is impaired. They astutely suggest that the lack of WTO provisions for temporary deviations from agreed-upon concessions may skew the relief system and provide certain nations with political or economic leverage to influence the trade policies of their neighbors. A more thorough examination into the nature and potential consequences of allowing temporary deviations under the GATT and WTO would certainly have provided the sort of analysis this volume seems to lack.

Also of particular interest is Meredith Crowley and Robert Howse's article on the *US-Mexico Stainless-Steel* dispute. Unlike *Bananas III*, which speaks directly to trade, *Stainless-Steel* is concerned with the authority of the Appellate Body to produce binding legal precedent. The case itself is ostensibly about anti-dumping regulations within the United States and whether simple-zeroing (a method employed in the calculation of dumping margins) is WTO-compliant. Its importance in trade law, however, stems not from the trade measures involved, but from the original Panel's decision to disregard a prior Appellate Body ruling that disallows simple-zeroing. In its report, the Appellate Body writes that the Panel's decision "undermines the development of a coherent and predictable body of jurisprudence," essentially deciding, as Howse and

Crowley rightly point out, its own authority to create binding precedent. The authors believe that the Appellate Body has the apparent competence to engage in such behavior, because of its more permanent and allegedly more politically independent nature than that of any first-order panel, and they recommend that the Appellate Body refrain from overruling its own prior decisions if it wishes to preserve its legitimacy. However, the subsequent *US-Continued Zeroing* Panel raises a valid point. If Panels, which could easily be overruled, were to follow Appellate Body jurisprudence without question, they may be acting in contradiction to their own mandate, adopting as binding precedent something that would only be considered as informative in the greater field of international law. Howse and Crowley present interesting arguments for why *stare decisis* may in fact be preferable in an imperfect system. Regrettably, however, they stop short of fully examining how an entirely precedent-based system would function in the long run, or asking whether allowing the WTO's Appellate Body to rule on its own competence may undermine other non-adjudicatory functions.

In another article questioning Appellate Body procedure, William J. Davey and Andre Sapir examine the *United States – Subsidies on Upland Cotton* decision. *Upland Cotton*, a dispute between the United States and Brazil, concerns export subsidies and certain domestic subsidy measures that Brazil claimed caused significant price suppression. After an initial ruling by both a Panel and the Appellate Body that at least some of the challenged products were in violation of WTO agreements, the United States revised or repealed its relevant legal provisions. Brazil, however, further complained that the U.S. policies continued to result in disallowed export subsidies, and that the United States failed to comply with the initial ruling. In this continuation of the dispute, the United States asserted that the Appellate Body could only rule on “narrowly focused measures” that the nation in question was required to implement, rather than passing judgment on the entirety of a program that may encompass such measures. This argument was ultimately rejected, and the Appellate Body stated that since the program was a single measure, it was within the Panel's jurisdiction, as the method of policy implementation was entirely up to each WTO member.

Davey and Sapir agree completely with the Appellate Body's rulings on these matters, overlooking the potential problems that they raise. For instance, allowing the WTO to broadly define the challenged policy in compliance proceedings may bring issues not previously raised or already discounted into the dispute. Furthermore, Appellate Body limitations on the issues that parties may raise in compliance proceedings, particularly in relation to items not previously ruled on when originally raised, may prove troublesome if a state definitively knows which measures a future compliance panel may expect it to revise. Despite this oversight, the authors astutely point out the problematic nature of the Appellate Body's treatment of Panel determinations based on conflicting statistical and modeled evidence. Rather than plumbing the inadequacies of the Panel's determinations, the Appellate Body accepted Panel findings despite their faulty methods. Disappointingly, the only advice the authors seem to provide to the WTO in this regard is that future panels should employ experts for assistance of evidentiary issues. Additionally, where detailed economic analysis might have been particularly helpful to assist the reader in understanding the scope and potential implications of the evidentiary issues involved, it is sorely lacking.

Overall, Horn and Mavroidis's effort to create a sort of WTO yearbook proves informative; each article provides a research springboard for those interested in WTO jurisprudence and solid legal analysis concerning the decisions of the Appellate Body. Some of this analysis could be better integrated with the economic perspective. Regardless of these deficiencies, however, the project itself is extremely commendable, particularly considering the nature of the WTO as both a trade organization and a forum for dispute resolution – there is a need for understanding of both disciplines to truly comprehend the WTO's inner workings.

Eurolegalism: The Transformation of Law and Regulation in the European Union. By R. Daniel Kelemen. Cambridge, MA: Harvard University Press, 2011. Pp. xi, 366. \$49.95 (hardcover).

REVIEWED BY MATTHEW R. LADD

The two bulls locking horns on the cover of R. Daniel Kelemen's *Eurolegalism* offer a visual symbol of the author's central thesis: that the best way to understand the changing face of legal governance in the European Union is through the lens of "adversarial legalism," the litigation-heavy legal culture whose transplantation from the United States to Europe has resulted in the hybrid creature that provides the volume's title. In advancing this thesis, Kelemen himself is also locking horns with several scholars of international law—including Robert A. Kagan, who first coined the term "adversarial legalism" to describe legal governance in the United States—who argue that EU law is best understood through reference to "soft law" techniques such as indicators and guidelines, non-binding resolutions, sharing of best practices, and the Open Method of Coordination (OMC). To these scholars, *Eurolegalism* is offered as a comprehensive rebuttal—one that adds depth, nuance, and empirical support to a debate too easily framed in generalities.

Generalities, however, are where Kelemen must begin. Given that *Eurolegalism* arrives in the midst of what is evidently an ongoing debate, readers new to international administrative law will be grateful for the introduction, which condenses a sprawling range of legal issues into a handful of key concepts. The author first introduces adversarial legalism as a legal style emphasizing reliance on "hard law"—the most visible component of which is litigation, especially the brand of industrial-scale class action litigation for which U.S. federal courts are known. But the term also denotes the procedural infrastructure that allows such litigation to thrive: statutes providing private rights of action for rights violations, for instance, or a centralized regulatory regime that gives power to oversight bodies and enforcement agencies. Such a regime is clearly evident in the United States, where statutory authorities such as the Securities and Exchange Commission and the Equal Employment Opportunity Commission are empowered to bring

actions on behalf of disgruntled shareholders or victims of workplace discrimination. Turning to the European Union, Kelemen focuses on three fields of law—securities regulation, competition policy (in the United States, antitrust law), and disability rights—to illustrate how elements of adversarial legalism have colored the EU regulatory state.

Before turning to his case studies, Kelemen spends the volume's first three chapters engaged in a two-front battle for control of the issue. He first responds to those who favor the OMC "soft law" approach, offering evidence that the EU increasingly relies on hard law to provide its citizens with mechanisms to enforce their rights. He then takes on those who, while agreeing that adversarial legalism has indeed found a new home in Europe, ascribe its migration to European emulation of the U.S. legal culture, rather than to changes within the European Union itself. Kelemen readily concedes that the Eurolegalism model incubated in the United States before making its way across the Atlantic. The rise of class actions in Europe, for instance (European courts employ the term "collective redress"), has been facilitated by a simultaneous rise in legal aid foundations and plaintiff-friendly procedural amendments, presided over by a pan-European, but Brussels-based, legal system that exhibits a "unique quasi-federal character." The parallels with the United States are difficult to ignore.

Yet Kelemen argues that the engine behind these changes is emphatically not emulation of America—whose litigious courts, for many European countries, are models of what to avoid. Instead, change is driven by twin byproducts of growth: political fragmentation (as the European Union struggles to streamline its control over a growing body of law) and economic liberalization (as the EU capital markets grow to accommodate more member states). As the author frames them, these two explanations seem somewhat at odds; the vertical fragmentation between EU governance in Brussels and national bodies of law is undeniable, but chiefly because a sovereign nation's choice to join the European Union—and EU admission of a new member—creates new conflicts between their respective legal systems. This is fragmentation, to be sure, but fragmentation as a natural outgrowth of the political *integration* that occurs when the European Union absorbs another country, and *Eurolegalism* may have benefited from a clearer analysis of political fragmentation vis-à-vis the centralization of

Europe's political power. In this regard, Kelemen's discussion of economic liberalization as a driving force behind Eurolegalism makes more intuitive sense than his arguments concerning fragmentation.

It is perhaps with this intuition in mind that Kelemen chooses securities regulation as his first case study. Here, as with the case studies in competition policy and disability rights, he employs a fairly straightforward structure, beginning with a history of the development of the legal field toward Eurolegalism norms, and followed by a discussion of how such development has played out in four European countries: Germany, France, the Netherlands, and the United Kingdom. Kelemen's basic argument is that as the European Union encouraged member states to scrap their protectionist regulations, deregulating securities law at the national level, it simultaneously embarked on a program of *r*eregulation in Brussels in order to create a single, harmonized regulatory regime, one that protected small investors from market abuses and created tough disclosure rules for investment and brokerage firms. He traces the evolution of EU securities governance from a *laissez-faire* approach in the 1980s, to piecemeal reforms that did little to integrate national markets, to the watershed Lamfalussy Report of 2001 and the creation in 2010 of the European Securities and Markets Authority. The European Securities and Markets Authority, a regulatory body with "unprecedented rule-making and enforcement powers," keeps close watch over national implementation of EU securities directives, punishes member states that are slow or unwilling to comply, and provides the regulatory scaffolding for investors to pursue aggregate securities claims. The United Kingdom probably felt the force of these changes more painfully than its neighbors on the continent, in large part because it expected securities reform to come from the United States; as Kelemen puts it, "critics would view the supposed 'nightmare from America' described by [Stephen] Vogel in the mid-1980s as merely an innocent prelude to the nightmare from Brussels that was to come."

For Europe, the American nightmare can be summed up in one word: litigation. As a method of legal governance, adversarial legalism conjures fears of spurious class actions, "megalawyer" techniques spanning multiple jurisdictions, and massive punitive damages awards. From the European

perspective, the U.S. class action model is at best “unseemly and vaguely scandalous,” and at worst a chronic—and possibly terminal—disease. Litigation in Europe has indeed increased. In securities law, for instance, Kelemen singles out Germany’s Deutsche Telekom (DT) litigation after the collapse of DT’s share price in 2001: with 700 lawyers, 2,500 separate suits, and 15,000 angry investors, the litigation overwhelmed the Frankfurt district court, which at the time had no procedural method for aggregating the claims. Yet the only field discussed here that has actually witnessed a sustained rise in litigation rates is competition policy—in large part because private antitrust litigation was nearly unknown prior to a landmark ruling by the European Court of Justice in 2001.

Kelemen also avoids drawing conclusions from litigation rates, whose growth has not been commensurate with the institutional changes discussed here at such great length. He may see the issue as a red herring; more likely, though, it allows him to develop a more textured analysis than a focus on sheer numbers might permit. In Chapter Three, “Europe’s Shifting Legal Landscape,” he notes that European law firms have indeed begun to emulate U.S. firms, growing larger, offering a more diverse range of services such as lobbying and consultancies, and marketing themselves as “one-stop shops” for their clients’ legal needs. And there is evidence that the European Court of Justice and the Court of First Instance are hearing more and more cases each year. But in an interesting twist on the subject, Kelemen also observes that many European shareholders wishing to bring class actions have done so in U.S. courts, given the lack of a private right of action in many EU countries. Of greater interest to the author are the changes in legal behavior within the European Union that the *risk* of litigation has generated, such as rises in directors and officers insurance, and a growth in corporate spending on preemptive legal services. Put simply, the long shadow cast by adversarial legalism does not give rise to identical legal outcomes; it gives rise to legal behavior designed to avoid those outcomes.

The last substantive chapter of *Eurolegalism*, on disability rights, fully develops what is perhaps Kelemen’s most interesting argument, one that he introduced in his chapters on securities regulation and competition policy but only now explores in depth. With regard to disability rights, he argues, the

European Union's increased reliance on hard law and judicial regulation is a response to a perceived legitimacy crisis, and a desire to mitigate that crisis through the creation of complementary regulatory regimes, at both the EU and the national level, that are based on the preservation of human rights. Here, the parallels with U.S. disability law are too numerous to dismiss, and Kelemen duly notes them: the disability rights movement that arose in Germany in the 1980s was "inspired largely by the disability rights and independent living movement in the United States," the European Council's 2000 Employment Equality Directive (EED) set a demanding equal treatment standard by "drawing particularly on the experience of the United States," and even the EED's evidentiary threshold for workplace discrimination, requiring a reversal of the proof burden if plaintiffs can establish facts "from which it may be presumed that there has been direct or indirect discrimination," bears a strong family resemblance to the rebuttable presumption standard established by Title VII of the U.S. Civil Rights Act. That the United States passed the Civil Rights Act in response to a legitimacy crisis of its own lends credence to the author's view of the subject—though, as he notes in his conclusion to the chapter, the sweeping changes in Europe's disability policy have produced a less vigorous enforcement regime for victims of disability discrimination than advocates had hoped.

For the most part, however, Kelemen's focus chiefly remains on how the European Union's political fragmentation and economic liberalization have opened new channels for adversarial legalism to enter Europe's legal system, and how such a process has wrought changes in both member states as well as the EU central nervous system in Brussels. The volume surely would have benefited from more attentive proofreading; several small words are carelessly dropped, and the discussion of securities litigation in France notes the absence of "an American-style opt-in class action" where it seems clear that Kelemen means an *opt-out*. Yet these are small quibbles. *Eurolegalism* gives a clear and accessible treatment to a complex subject, and while it certainly will not end the debate, it has given the author's allies a good deal more evidence to work with—and his skeptics a great deal to respond to.

The East Moves West: India, China and Asia's Growing Presence in the Middle East. By Geoffrey Kemp. Washington, D.C.: Brookings Institution Press, 2010. Pp. vii, 325. \$29.95 (hardcover).

REVIEWED BY JOSHUA K. PERLES

As Asia's major economic powers expand their influence, the United States' moment of unipolar power in the Middle East is ending. Rather than contribute to the growing body of hysteria surrounding this change, Kemp largely avoids rhetoric of any sort. Rather, he provides the reader with a well structured—if somewhat dry—collection of data related to the growing economic and strategic ties between Middle Eastern states and rising Asian states, principally China and India. His rare forays into normative policy act merely to temper and contextualize what, to many American readers, may seem a set of alarming facts. Given present-day economic realities, a transition to a multipolar Middle East is inevitable:

Absent a prolonged global recession or a drastic shift away from oil to greater use of other forms of energy, the Asian countries will inevitably be drawn into the politics of the Middle East to prevent disruption of oil and natural gas production. Whether they will do so in cooperation or in competition with the United States is a key issue.

When not documenting this shift, Kemp advocates for a graceful transition. Change is not inherently bad, he argues, and the United States has much to gain from an increased Asian presence in the Middle East.

The East Moves West is an effective introduction for anyone considering research on Middle East-Asia relations. First, the book's structure is intuitive and conducive to use as a research reference. In Part II, each major Asian state has its own chapter. In turn, each chapter is neatly cross-divided by Middle Eastern states and regions. Part III divides chapters first by issue—energy, infrastructure and strategic cooperation—and further subdivides each topic on a state or regional basis. Thus, whether pursuing information on a specific Asian state, Middle Eastern state, or policy area, the reader can navigate the text with a degree of deliberation unusual in print media.

Second, while short (under 250 pages, excluding appendices) *The East Moves West* is rich in statistical information. For example, in a mere two pages Kemp presents the reader with several dozen unique data points on Saudi-Chinese trade, including trade volume over time, the value of annual petrochemical sales, the magnitude of Chinese investment in various infrastructure projects, and Saudi Arabia's projected contribution to China's strategic oil reserve. While Kemp's prose sometimes fails to thrill, it is clear and concise. The book is also interspersed with useful maps and diagrams; some show the routes of proposed and existing infrastructure projects, while others illustrate broad principles such as the central Asian "energy ellipse"—an ovoid encompassing Caspian gas fields and most of Iran, as well as Saudi, Yemeni and Omani oil fields. Without exception, these diagrams are accessible and appear where visual explanation adds to the clarity of the work. Between Kemp's clear prose, effective use of chapter breaks, and diagrams, *The East Moves West* can be comfortably digested in a matter of hours.

Lastly, Kemp's research is rigorous and his decades of experience are obvious in his writing. The book's 1000-plus citations not only demonstrate an attention to detail and intellectual rigor, but they also provide a rich research tool for the reader. Unfortunately, Asian engagement in North Africa (particularly Sudan, where both India and China engage in extensive commerce) is conspicuously absent and the Caucasus receives rather cursory treatment. That said, the book's limitation to a narrowly defined "Middle-East" is deliberate and seems to focus, not hinder, Kemp's writing.

The East Moves West is not only a primer or research reference. It is also a call for calm, reasoned policy in an area that is rife with hyperbole and rhetoric. While Kemp often presents the reader with alarming information—hundreds of millions of dollars in Indian and Chinese arms sales to Iran, dwindling U.S. influence abroad, fruitful cooperation between non-democratic regimes—he frequently cautions against reading false significance into this data. For example, every section ends in a conclusion that attempts to contextualize the preceding information. Following the section on Iran-China relations, Kemp is quick to point out that despite extensive commercial and military ties, Iran can expect little more than rhetorical support from China should a U.S.-Iran crisis erupt.

On a handful of occasions, Kemp's assertions strain this neutral tone. For example, in Chapter Three the author states that Saudi Arabia may be buying nuclear weapons technology from China via Pakistan. He supports this assertion by reference to a middle-market Indian newspaper (*Times of India*) article on potential basing of Pakistani missiles in Saudi Arabia, and with a (dead) link to a blog on Indian defense procurements. Even assuming an Indian entertainment newspaper and defense blog are capable of maintaining objectivity when discussing the nuclear cooperation of two nations with which India has ongoing territorial disputes (China and Pakistan), neither article supports Kemp's assertion that Riyadh and Beijing may be engaged in covert nuclear commerce. In another example, the author asserts that "the democratic government of India cannot ride roughshod over its citizens the way that its Chinese counterpart can." This common, if gross, oversimplification of Indian and Chinese domestic politics is forgivable largely because it plays an insignificant role in his conclusion. Again, these questionable assertions of fact are salient because of their contrast with an otherwise well-researched text. Kemp is generally reluctant to make predictions or sweeping statements without substantial factual support. If anything, the occasional slips belie a subtle, anti-Chinese hawkishness that ultimately lends credibility to Kemp's assertion that cooperation with China—and the rest of the rising Asian powers—is in the United States' favor.

Kemp's closing chapter reiterates this call for an objective, fact-based approach. Despite heaps of data, he explicitly rejects the opportunity to prognosticate, instead presenting a series of alternative scenarios based on areas of uncertainty such as continuous linear economic growth in Asia, and political stability in the Gulf States as well as in U.S. policy. While he notes that it is "unwise" to make overly specific forecasts regarding the growth of Asia-Middle East relations, he insists that even a cautious analyst would anticipate the rise of Asian influence in the region. The growth may not be linear, he writes, but the preeminence of the United States will certainly be indirectly eroded over time.

Rather than lament the loss of U.S. influence, Kemp calls this change a "breath of fresh air" in a region characterized by antagonism against perceived U.S. hegemony. Moreover, the

international community as a whole would benefit from a more multipolar international presence in the Middle East:

This volume reaffirms the great economic and political benefits of closer ties between Asia and the Middle East, and why such ties are in the interest of the wider international community, especially the United States, which is reluctant to be the perpetual guardian of the Gulf and the Indian Ocean. . .

Not only is this change potentially beneficial, but it also appears to be approaching gradually. India and China are not interested in replacing the United States as guarantors of security in the Middle East, nor are they currently capable of doing so. China's political role in the Middle East, while more significant than five years ago, remains relatively low, and the Chinese government is well aware of the benefits of a strong U.S. presence in the Gulf and Indian Ocean. India, Kemp points out, is the only Asian state with direct military ties to the Gulf States, and those are presently quite limited in scope.

Moreover, *The East Moves West* contains numerous examples of potential areas for U.S.-Asian cooperation in the region, and in even the gloomiest scenarios, Kemp views the prospects for such cooperation favorably. The United States, China, and the littoral states of the Persian Gulf share common interests in the areas of terrorism, piracy, nuclear proliferation, and energy security. Kemp surmises that perhaps the best way to ensure regional security is to encourage a balance of power among stakeholders with an interest in the status quo.

The East Moves West is an invaluable introduction to the growing relationship between Asia and the Middle East. It is rich in data; the commentary is lucid and balanced. The bibliography alone is worth reading. Moreover, though much of Kemp's research could be used in support of an anti-Asia or anti-China polemic, he editorializes responsibly, repeatedly reminding the reader of the limitations of predictive research and consciously battling our—and perhaps his own—instinctive adherence to the status quo. The rise of Asian political influence in the Middle East is inevitable, but Kemp would be the first to admit he does not know what form it will take. Understanding the speed and scale of this change, as well as the

nature of the underlying motivations, is critical to protecting U.S. interests abroad.

Agricultural Subsidies in the WTO Green Box: Ensuring Coherence with Sustainable Development Goals. Edited by Ricardo Melendez-Ortiz, Christophe Bellmann, and Jonathan Hepburn. New York, NY: Cambridge University Press, 2009. Pp. xxx, 675. \$54.60 (hardcover).

REVIEWED BY ROSS R. WOESSNER

One of the most intractable problems in international trade law is the distorting effect of agricultural subsidies tied to the volume or type of goods that producers choose to make. Aside from changing this sector's dynamics and discouraging effective competition, these subsidies also tend to encourage over-production of agricultural goods in developed countries, retarding the growth of developing countries' domestic production. The Uruguay Round of WTO negotiations brought agricultural subsidies into the multilateral trading system for the first time, establishing limitations and reduction commitments. Subsidies were divided into three boxes: amber, blue, and green. Green box subsidies are those that have no (or at most minimal) trade distorting effects.

Agricultural Subsidies in the WTO Green Box addresses the dearth of scholarship around green box spending. Relatively little attention has been paid to this category of subsidies, despite their eleven years in use. Commentators tend to focus on the more contentious amber or blue boxes; the literature is seen as lacking a rigorous collection and comparison of the different kinds of green box spending. The present volume approaches this understudied subject from several different angles; many sections focus on developed countries, particularly the United States, European Union, and Japan, and the book also discusses developing countries' methodology and enforcement of green box strategies.

Agricultural Subsidies in the WTO Green Box is a collection of essays by distinguished scholars of international trade law. The book, in its own words, seeks to contribute to the transformation of agricultural trade policy "so that it truly promotes equity, food security and sustainable livelihoods [and represents] a wider community of stakeholders." Ostensibly, the au-

thors feel that much of the discussion on this topic is distorted by political priorities, as they pledge “to move away from . . . the ritual repetition of well-worn negotiating positions, and towards a reinvigorated discussion informed by empirical evidence.” Within this framework, the authors place a renewed emphasis on sustainability, particularly biofuels, and developing countries’ use of the WTO green box.

The authors argue that many developed countries have presented subsidies as “green box” spending even though they do not meet the spirit of that designation. Consequently, developed countries declare marginal programs to meet green box criteria, and sometimes receive only passing scrutiny. This so-called “box shifting” strategy undermines the Agreement on Agriculture framework, and is the target of the book’s proposed solutions. First, the authors argue that domestic groups have responded to green box spending by securing greater total expenditure on these less distorting policies; thus, while the structure of the subsidies is minimally distortive, their total effect still distorts international trade. In these pages, the preferred solution seems to be a cap on total green box spending, although that is politically unlikely. The second solution focuses on more effective monitoring and compliance systems under the Agreement on Agriculture. Countries have taken advantage of the fact that green box spending is monitored less closely than amber and blue box spending. Yet the authors suggest that revised formal criteria are not needed; rather, the appropriate solution is more effective enforcement, including enhanced monitoring and allocating more resources to the Secretariat and the Committee. The authors suggest that enhanced monitoring is necessary because these decision-making bodies often lack relevant and timely information, such as reporting on the volume of crops or the subsidies allocated to them, which may arrive years after the fact, making it hard to maintain oversight.

Green box subsidies have also proved unsatisfactory to developing countries, whose inadequate use of green box measures the authors attribute to two factors. First, these states often suffer from structural infirmities that make it difficult to adapt their burgeoning agricultural sectors to green box subsidies. Second, the limitations that green box subsidies impose can be quite stringent; for example, a bloc of African countries have argued that the box system discriminates against them,

because the green box has been defined to include subsidies that they lack the institutional framework to implement. These countries suggest that their goals would be reached more effectively through direct subsidies as a means to combat poverty, rather than something like research for more productive seeds; thus they argue that developing countries should have an exception to the box system for “developing policies,” creating more policy space. Some of the scholars included in this volume are skeptical of the African countries’ proposal, arguing that providing subsidies to agriculture is not limited by restrictions inherent in the green box measures. Oduro, for example, argues that developing countries’ relatively little use of green box policies is attributable to their lack of resources, rather than the green box’s definitional criteria. Furthermore, he argues, developing countries are not truly interested in reforming the green box, and instead are using defensive language as a hedge in case they are subject to unfair trade suits before the WTO.

The discussions in *Agricultural Subsidies* are informative and at times provocative, but they could be strengthened in several ways. First, some chapters suffer from stylistic flaws that make the prose less clear than it could be, and a number of the authors are not native English speakers, which sometimes shows through their writing. For example, one such argument proceeds as follows: “[t]he action by the offensive domestic interests to convince parliaments and the public opinion of the advantages of opening up high-tech and service markets around the world supplemented the former defensive action.” Surely this point could be made more concisely.

Second, some policy discussions could benefit from more political context. The book’s stated goal is to reinvigorate policy discussions by making them more data-oriented and less determined by negotiating positions, and some chapters do just that. For example, Nasser et al.’s discussion of developing countries’ critiques of Green Box criteria does an excellent job of eliminating easy political answers; developing countries, they write, typically take the position that the WTO’s “box” system disadvantages them because it privileges support programs that developing countries do not have the institutional framework to institute, but which developed countries can use. Developing countries have therefore taken the negotiating position that formal criteria for green box classification should

be changed to their advantage, a position that the authors criticize as political posturing. This tendency to “focus on the wording rather than the reasons behind the low use of the green box is common practice in local politics It is common for politicians to focus on changing legislation rather than spend energy on how the current laws are being applied [A]ny new wording on the legal text of these programmes will not stimulate those countries to develop new programmes.”

So far, so good. The authors have dispatched the political bromides, told the negotiators to stop wasting everyone’s time, and identified the source of the problem. But the authors too often circumscribe the debate arbitrarily, refusing to engage with the retail-level politics and domestic constituencies that interfere with the “appropriate policy context.” Domestic politics is ostensibly the kind of “ritualistically repeated negotiating positions” that the authors sought to eject from the discussion in the first place; they seem to suggest that “local” politics should not clutter a discussion of such analytical clarity. However, their discussion here could benefit from more context. What are these countries supposed to do about such problems? We don’t know. Such concerns, evidently, are not sufficiently policy-oriented.

Agricultural Subsidies is a valuable snapshot of the evolving strategies that developed and developing countries have used in response to the “box” system. Especially useful are the discussions regarding developed countries’ “box shifting” strategy and lack of transparency, the summary of how different developing countries deploy different types of green box spending, and the rejection of revised formal criteria in favor of stronger compliance. While it could benefit from clearer writing and more political context, its authors’ conclusions are thoughtful and convincing. WTO policymakers would be well advised to follow this volume’s call for increased transparency and monitoring.

Domestic Law Goes Global: Legal Traditions and International Courts. By Sara McLaughlin Mitchell and Emilia Justyna Powell. New York, NY: Cambridge University Press, 2011. Pp. v, 263. \$83.26 (hardcover).

REVIEWED BY ADRIA S. GULIZIA

In the past century, international tribunals have multiplied, from a mere handful a century ago to over a hundred today. These tribunals are dedicated to resolving issues on a multitude of fronts—some exist to address treaty violations, while others regulate trade, and still others are designed to prevent and punish human rights violations. Some are regional in scope, some are global, and some are restricted based on other factors. In some respects, this proliferation is mystifying. With all the fora available for inter-state dispute resolution, why are new tribunals still formed? Why do states join some tribunals and not others? Why do states accept a tribunal's jurisdiction, only to burden their acceptance with numerous reservations? Does supporting an international tribunal affect a state's actions, even apart from the actual cases brought before the tribunal?

Political scientists Sara McLaughlin Mitchell and Emilia Justyna Powell provide convincing, empirically supported answers to these questions in *Domestic Law Goes Global*. They argue that the key to understanding a state's support for an international tribunal, and the effect of that support on the state's actions, is to examine the relationship between the state's domestic legal system and the design of the tribunal. Dividing states into civil law, common law, Islamic law and mixed law countries, and painstakingly analyzing the structure of the World Court and the International Criminal Court, the authors conduct an impressive empirical study of the relationship between domestic tradition and the support for and effectiveness of international tribunals. According to their compelling account, international tribunals' designers will make the court resemble their domestic systems as closely as possible in order to reduce uncertainty; states will seek to join tribunals that they perceive as fair, a characteristic identified with their procedural similarity to the states' domestic courts; and states will most effectively bargain in the shadow of international

tribunals whose structure resembles their domestic structure with states that possess the same legal tradition.

In their first chapter, "The Creation and Expansion of International Courts," the authors introduce their main argument: that the creators of international tribunals, who are able to negotiate the courts' rules, seek to "create international courts in their own legal image" in order to maximize the predictability of future rulings, while nations join courts to send signals about their willingness to resolve disputes peacefully. The authors then describe existing theories that purport to explain the proliferation of international tribunals and remark on the strengths of their theory relative to such competing narratives. This section is very useful, as it helps to situate their work while simultaneously underlining its importance for understanding the potential, and limits, of international tribunals. Mitchell and Powell then proceed to flesh out some of the reasons behind their argument, giving the reader a succinct and effective three-page preview of their hypothesis. In an argument broadly influenced by game-theoretic principles, the authors suggest that states create tribunals that mirror their legal system, or join such tribunals, in order to credibly signal their "type" to other states and, especially, to fulfill their desire for certainty in the courts' future adjudication. They then convincingly argue that this desire affects state support for tribunals, the extent to which states submit themselves to a given court's jurisdiction, and the influence of international courts on member states' behavior.

In their second chapter, "Major Legal Traditions of the World," Mitchell and Powell introduce the three major legal systems of the world: civil law, common law, and Islamic law. They also go into impressive detail in defining and giving historical context to each of the legal systems they study, along with a concise comparison of the systems that highlights major differences in key realms, such as the treatment of precedent, the doctrine of good faith, and the principle of *pacta sunt servanda*. Finally, the authors discuss the convergence between civil and common law. This chapter, though interesting, seems slightly too long, in particular the passages defining the term "legal system". While it is important to ensure that readers have a common understanding of what constitutes a legal system, achieving such an understanding should not necessitate four pages of text. Moreover, the authors' description of

the differences between the systems could have benefited from an explanation of why they analyzed these differences along the selected axes; presumably, Mitchell and Powell chose the characteristics they deemed most relevant for the design of an international tribunal, but the lack of an explanation leaves the reader wondering whether the characteristics might have been chosen for other reasons as well.

In Chapter Three, "A Rational Legal Design Theory of International Adjudication," the authors begin to truly argue their thesis. Revealing why states create new international courts, Mitchell and Powell explain that, in addition to functioning as dispute resolution fora, international tribunals also allow states to send credible signals about their willingness to bargain peacefully to resolve disputes. Additionally, according to the expressive theory of adjudication, the tribunal itself may serve as a focal point providing each party with information about the others, reducing the uncertainty that is a part of interstate bargaining. However, international adjudication—like adjudication in the domestic setting—is also uncertain, which is why courts' designers will make their design as similar as possible to the state's domestic system; later joiners will support tribunals that are as similar as possible to their domestic systems; and states will be most willing to submit to the jurisdiction of international courts that are similar in structure to their own, placing ever-greater reservations on their commitments as the courts become more dissimilar.

This chapter, exceedingly clear and well-written, represents the heart of the book. It cogently and credibly outlines the authors' thesis and their hypotheses, while clearly paving the way for the rest of the book by expanding on the roadmap set forth in the first chapter. By describing the role of international courts in dispute resolution and the concerns of states as they contemplate creating or joining an international court, the authors clarify the problem and offer the reader a framework with which to analyze how effectively their empirical results explain the phenomena they address.

The fourth through seventh chapters take the argument presented in Chapter Three and support it with empirical evidence. Chapter Four examines the creation of the International Criminal Court, a hybrid of common and civil legal procedures that draws its supporters overwhelmingly from common- and civil-law states. Chapter Five looks at state support

for the International Court of Justice (ICJ) and its predecessor, the Permanent Court of International Justice. As the ICJ's procedures are very similar to procedures typical in civil law countries, the authors find that civil-law countries are more likely to accept compulsory jurisdiction than common or Islamic law countries. Chapter Six, which examines the design of states' commitments to international courts, hypothesizes that civil-law countries have fewer reservations regarding commitment, and that the type of reservations countries make are affected by their respective domestic legal systems. Chapter Seven examines the consequences of states' support for international courts on states' compliance with human rights obligations and successful negotiations with other states. In this chapter, the authors find that ratification of the Rome Statute actually does significantly improve state compliance with human rights obligations, while mere signature has no effect. Similarly, their study of the ICJ demonstrates that states bargaining in the shadow of the ICJ are better able to avoid armed conflict—an effect that is particularly pronounced for civil-law countries, given the parallels between their structure and that of the ICJ.

While Chapters Three through Seven present extensive research and statistical analysis, they will likely be opaque to those who do not have extensive statistics experience. The book's primary audience seems to be political scientists and international lawyers, and it seems unreasonable to assume that every professional the authors hope to reach has a thorough background in statistical interpretation. A few words of in-text explanation of the various tables and figures, and a few moments to define the variables, might have proven extremely valuable, especially since the research and the conclusions they support are very interesting.

A final criticism of this fascinating little book regards the conclusion. The authors sum up their arguments and reiterate the fact that the international realm is inhabited by domestic as well as international law. In their subsequent discussion of the increasing institutionalization of international courts, they mention, almost in passing, the fact that should the proposed Islamic International Court of Justice become a reality, it may allow Islamic countries to more effectively resolve their conflicts, but at the expense of the coherence of international law. This fact—that the inability of international tribunals to effec-

tively accommodate states from disparate legal traditions could eventually lead to a serious problem of fragmentation—deserves much more discussion than the few phrases it receives at the end of the book, and it would have lent additional weight to the importance of the authors' work.

As it stands, despite the fact that Mitchell and Powell neglect to adequately explain their empirical study or sufficiently explain the implications of the problem they describe, the authors have done an excellent job conveying and supporting their thesis with sound logic and extensive research. *Domestic Law Goes Global* is highly recommended for those seeking a well-supported analysis of why international tribunals function the way they do.

Science and Risk Regulation in International Law. By Jacqueline Peel. New York, NY: Cambridge University Press, 2010. Pp. xi, 398. \$110.00 (hardcover).

REVIEWED BY ELSPETH FAIMAN HANS

As the world has become increasingly connected through trade and travel, the need to regulate risks to the environment and public health at a global level has become more pressing. Simultaneously, the impact of national regulatory measures on other countries has become more pronounced. Jacqueline Peel's *Science and Risk Regulation in International Law* contributes to the scholarship on the growing field of international risk regulation by analyzing the role of science in risk assessment and management in international fora.

Through a series of case studies, Peel shows that risk regulation has become heavily "scientized," with regulators relying on experts and looking to science for definitive answers. At the same time, risk regulation continues to require normative policy judgments about how to approach uncertainty and how to weigh different social values, questions that scientific research and analysis alone cannot answer. In response, Peel argues for new institutional structures and mechanisms that provide space for differing normative approaches and policy decisions, particularly for issues where there is little scientific certainty or social consensus.

Science and Risk Regulation is readable, interesting, and well-written, and Peel's point about the need for normative

policy decisions in risk assessment and the insufficiency of scientific analysis alone is important and well-made. Though the point is somewhat over-emphasized throughout the book, making her focus on the issue feel overly narrow, it is nonetheless also worth reading for Peel's detailed analysis of risk regulation in different institutional contexts (particularly the WTO SPS regime) and her helpful overview of many different theories and recommendations about risk regulation. It will be particularly useful to scholars, practitioners and students in the international trade, public health or environmental fields, and it may also interest scholars working more broadly on issues of governance, institutional design, or the role of expert communities in international relations.

Substantively, *Science and Risk Regulation* has three broad sections. Chapters Two through Four set the stage by explaining the context and theory of risk assessment and risk regulation. Chapters Five and Six, the heart of the book, present case studies drawn from the WTO and other international trade and environmental organizations. Chapters Seven and Eight conclude with recommendations for addressing the problems raised in the theory and case study sections.

Peel begins by framing the issues in their theoretical context. She then proceeds, in Chapters Two and Three, to a discussion of the reasons for the predominance of science as a basis for international risk regulation, first noting that globalization has increased pressures for international regulatory convergence to facilitate trade as well as to protect health and the environment. She next highlights the legitimacy challenge faced by international organizations, showing how such organizations have frequently turned to expertise-based legitimacy as a substitute for the democratic legitimacy they lack. Third, she discusses the pervasive culture of scientific rationality and the corresponding emphasis on scientific risk assessment as a basis for regulation, addressing not only the scientific rationality paradigm, but also the challenges this dominant approach faces from constructivism, critical realism, and cultural theory. Finally, Chapter Four describes the two main competing approaches to risk regulation in international law. "Sound science," which is advocated for by the United States and remains the dominant framework in most international regimes, echoes the scientific rationality paradigm and requires that regulations be supported by sufficient scientific evi-

dence. On the other hand, the “precautionary principle,” promoted by the European Union, is less optimistic about the ability of science to resolve uncertainty, and sees regulation as a valid response to situations that involve considerable uncertainty or controversy about potential risks.

These first chapters drive home Peel’s central point about the inadequacy of science as a basis for risk regulation, emphasizing its insensitivities to the problem of uncertainty and to the many non-scientific values a community may hold. However, in the discussion of the challenges to scientific rationalism, as in other parts of the book, Peel’s survey approach is a weakness as well as a strength. While she provides a good sense of the different theoretical perspectives on the issue and offers some opinions about the various alternatives, she fails to develop these assessments into a coherent critique of her own.

In Chapters Five and Six, Peel uses several case studies to offer a detailed look at the use of science in risk regulation in international organizations. The most significant and strongest is a detailed analysis of risk regulation under the WTO in the context of the SPS Agreement, which explicitly bases the WTO compatibility of domestic regulation on sufficient scientific evidence and adequate risk assessment. Peel’s focus is on adjudication of SPS disputes by the WTO’s Dispute Settlement Unit (DSU), and she discusses the *Hormones* and *GMOs* cases in depth, as well as noting several others. Her analysis demonstrates that SPS jurisprudence has come to rely on science to demonstrate whether a measure is necessary, and that the Panel and Appellate Body have predominantly followed the “sound science” approach, requiring evidence of risk (rather than uncertainty about safety) to justify regulations. Not surprisingly, Peel is critical of this approach as both insufficiently protective of valid regulatory goals and insufficiently accepting of precautionary regulation. While certain passages in this section are made unnecessarily confusing by Peel’s failure to note upfront when a Panel holding has been overturned by the Appellate Body, this is nonetheless one of the strongest sections of the book.

In addition to analyzing WTO dispute settlement under the SPS regime, Peel also favorably contrasts dispute settlement in the SPS Committee to adjudication by the DSU, noting that the Committee takes a less adversarial approach based on dialogue between the parties. Most importantly, Peel finds

that the Committee's processes allow parties to express a wider range of values and interests, which makes space for different regulatory approaches and helps them learn from each other and from outside experts and groups. This section introduces important ideas about the link between organizational structure and risk management approaches, though it is underdeveloped in comparison to the section on the DSU. Peel admits as much, pointing to the complexity and importance of the Panel and Appellate Body decisions. However, given that she finds the SPS Committee a more promising mechanism, a more detailed analysis of the resolution of particular disputes or an elaboration of particular interpretations would have been useful, as would a more thorough discussion of the relationship between the Committee and the DSU.

Following her exploration of risk regulation under the SPS Agreement, Peel surveys the role of science and risk assessment in five other international institutions: the General Agreement on Tariffs and Trade (GATT), the Codex Alimentarius Commission, the Cartagena Protocol on Biosafety, the Persistent Organic Pollutants (POPs) Convention and the Intergovernmental Panel on Climate Change (IPCC). Peel's survey of these examples is useful for the sense it gives of alternatives to the "sound science" approach of the SPS (for example, in the GATT or the Biosafety Protocol), as well as of possibilities for better blending of science and policy concerns (such as in the POPs Review Committee). The case studies also show the continuing importance of scientific approaches (with Codex), and the limitations of scientific approaches for developing political consensus (in the case of the IPCC). Like other parts of the book, however, this chapter is somewhat lacking in deeper analysis. Most significantly, Peel does not give sufficient attention to the major differences between the contexts for the use of science in her examples—review of barriers to trade, international standard setting, standards for international trade in an environmental context, and scientific advisory functions both as part of a treaty regime and as an independent body. These are substantially different roles, and the author's analysis would be more compelling if she discussed the significance of these contexts.

Finally, in Chapters Seven and Eight, Peel provides recommendations for the future of global risk governance. She highlights the importance of "democratizing" risk governance

by broadening the spectrum of inputs considered in risk decision-making, and by making normative choices explicit so they can be publicly debated. Peel also discusses proposals by scholars for improving WTO risk governance specifically, including deference to risk determination by national authorities, procedural reform within the DSU, external participation and consideration of public perceptions, and “adaptive governance” in the context of the SPS Committee that emphasizes learning, policy experimentation, feedback, and pluralism. This survey is useful, but not as cohesive as it could be, leaving the reader wishing the author had laid out a more comprehensive vision for what reformed risk governance might look like.

Peel’s voice comes through much more strongly, however, where she urges attention to the “risk situation” for each regulatory decision. In situations of high scientific certainty and high social consensus, she argues, adjudicators could rely primarily on technical scientific assessments, while situations of low certainty and low consensus would require more deference (given the wider range of non-scientific factors) and more emphasis on procedure over substantive review. Between these two extremes, situations of low scientific certainty but high social consensus could be addressed with procedural review and adoption of provisional measures, while situations of high certainty but low consensus could call for deference to national authorities and greater emphasis on non-scientific factors. Despite Peel’s enthusiasm for this framework,¹ it seems to this reader that it would be difficult for reviewing bodies to apply, would lead to intractable disputes about how to characterize the risk situation, and could make it hard for regulators to know in advance by what criteria a regulation will be judged. This is not to deny, however, that the framework is helpful conceptually nor that it could be quite useful for regulators and policymakers in considering how to structure risk assessments.

Science and Risk Regulation provides a useful contribution to the current literature dealing with the international regula-

1. Adapted by Peel from Silvio Funtowicz & Jerome Ravetz, *Three Types of Risk Assessment and the Emergence of Post-Normal Science*, in *SOCIAL THEORIES OF RISK* (Sheldon Krimsky & Dominic Golding, eds., 1992) and David Winickoff et al., *Adjudicating the GM Food Wars: Science, Risk and Democracy in World Trade Law*, 30 *YALE J. INT’L L.* 82 (2005).

tion of health and environmental risks, as well as the interplay between national regulatory regimes and international trade law. Peel's central point about the importance of balancing scientific analysis with normative non-scientific value judgments in risk regulation may not be new to readers and probably does not require the amount of explication it receives. Nonetheless, her case studies should prove interesting to both practitioners and academics, and her survey of possible ways to address the challenges of balancing scientific and non-scientific values in risk regulation should be helpful to regulators and policymakers in thinking about how to design and evaluate risk assessments.

United Nations Justice: Legal and Judicial Reform in Governance Operations. By Calin Trenkov-Wermuth. Tokyo, Japan: United Nations University Press, 2010. Pp. xv, 226. \$36.00 (paperback).

REVIEWED BY REBECCA A. WIRAKESUMA

The end of the Cold War triggered an expansion of the United Nations' involvement and role in inter- and intra-state conflicts. No longer consigned to a limited peacekeeping role by superpower Security Council politics, the United Nations' mandates in conflict-torn areas began to include peace-enforcement and peace-building efforts. This broadening mandate culminated in 1999, when the United Nations became the outright governing institution—with executive, legislative, and judicial powers—in the immediate aftermath of violence in Kosovo and East Timor. In *United Nations Justice*, Calin Trenkov-Wermuth critiques the U.N. approach to legal and judicial reform in East Timor and Kosovo, asserting that the assumptions underlying this approach actually undermined U.N. efforts to build sustainable and legitimate legal systems.

In his introductory chapter, Trenkov-Wermuth traces the evolution of the U.N. mandate through its early legal and judicial reform efforts in Namibia, El Salvador, Cambodia, Somalia, Haiti, Rwanda, and Bosnia. In the process, he posits that the United Nations developed five assumptions from its early unsuccessful experiences: It should apply previously applicable laws, implement human rights standards within the legal framework, establish a regular court structure, prosecute

past authorities, and include locals in the judicial reform process. Trenkov-Wermuth's analysis throughout the rest of the volume discusses how the United Nations implemented these assumptions through the legal and judicial structures it instituted in Kosovo and East Timor, and how and why they hindered its success in building a sustainable legal system. While the author's arguments are sound, he does not thoroughly explain how his prescriptions to fix the United Nations' mistakes would apply across a wide variety of transitional justice situations, each with their own unique challenges, and neither does he explain how reform might have progressed without the United Nations' underlying assumptions—unfortunate omissions that make his causal assertions less convincing. At the end, the reader is left wondering if it is indeed possible to successfully navigate legal and judicial reform without falling prey to the missteps made by the United Nations in each of its different mandates.

The scope of *United Nations Justice* is highly ambitious, touching upon a wide range of judicial and legal reform issues. Each of Trenkov-Wermuth's five assumptions represents a significant body of scholarship in itself, and it would be impossible for him to fully address each assumption in one short book. The breadth of analysis, however, is useful in giving the reader an overview of the United Nations' legal and judicial institution-building approach over many issues, ranging from lawmaking, personnel, institutional legitimacy, and local ownership, to the role of human rights in post-conflict societies. Moreover, in using the United Nations' assumptions as the book's focal point, Trenkov-Wermuth illuminates how important it is to assess the normative assumptions of the United Nations (or, for that matter, any entity involved in judicial and legal reforms): How they come about, and whether they are desirable, sufficiently transparent, and flexible over a wide range of diverse circumstances.

Yet the fact that the author starts with these assumptions, discusses the cases through the lens of these assumptions, and critiques the United Nations' approach in light of these assumptions means that other possible reasons for U.N. failures or weaknesses are mentioned very briefly, if at all. Unless the reader is familiar with current debates regarding the propriety or acceptability of Western legal norms, for instance, or the effect of politics on the allocation of resources to transitioning

societies, he or she may come away from *United Nations Justice* with a lopsided view of what can be feasibly expected from United Nations-driven legal and judicial institution-building reforms, given the United Nations' ideology and its structural and political limitations. Therefore, the volume may be more useful to readers with a background in transitional justice who can take the author's causal assertions into perspective, alongside the inherent difficulties and growing pains of moving from a dictatorship, an occupation, or ethnic violence to a more democratic and egalitarian system. Academics or legal practitioners in the fields of judicial reform and rule of law will find Trenkov-Wermuth's thesis and theoretical framework particularly interesting, and perhaps even applicable to their own work.

For such readers, Trenkov-Wermuth's structured and rigorous approach, using consistent methodology to dissect the U.N. peace-building initiative in Kosovo and East Timor, will prove informative and thought-provoking. The author briefly describes the Kosovo and East Timor conflicts, the legal and judicial reforms instituted in both cases, and the extent to which those reforms reflect the five U.N. assumptions. He then launches into a discussion of how the U.N. missions over-prioritized these assumptions and incorporated them too quickly and absolutely into the new legal and judicial institutions they built, arguing that this approach ultimately undermined the stability, acceptability, and legitimacy of the burgeoning Kosovar and East Timorese legal systems. Such weaknesses are detrimental to a legal system's sustainability, which is critical, Trenkov-Wermuth claims, to prevent a return to conflict.

The chapters discussing the case studies are meticulously researched, as the author scours a variety of sources for indicators of what motivated and influenced the U.N. missions' decisions in both cases. Most of his conclusions here are sound. For example, the missions in both Kosovo and East Timor promulgated regulations that allowed detentions of dubious legality and for longer periods than human rights norms allow. Trenkov-Wermuth suggests that this problem could have been avoided by not insisting that the law immediately incorporate all international human rights norms while the security and political situation was still in flux—an argument that is logical and straightforward. In addition, he proposes alternatives to

avoid the problem: applying a standard emergency law or a more limited set of non-derogable human rights norms during the transition period.

Some conclusions, however, are based on questionable causal assertions. Contrast the previous example with the author's claim that allowing the East Timorese jurists more input in their legal system would avoid the clarity, acceptability, and consistent application problems of the code actually installed, which was based on the Indonesian code subject to coherence with international human rights standards. Trenkov-Wermuth also alerts his reader to the scarcity of East Timorese legal professionals, their Indonesian training, their lack of prosecutorial or judicial experience, and the limited resources the United Nations allocated for providing qualified international trainers or mentors. In light of those practical limitations, it is hard to accept the author's conclusion that input by these jurists would have alleviated the code's problems. Some of his inferences are inevitable consequences of maintaining a manageable scope of inquiry. However, others seem to be due to Trenkov-Wermuth's insistence on attributing East Timor's transitional problems to his underlying assumptions, ignoring other political, cultural, ethnic, and practical realities. Evaluating the feasibility of a solution without taking such context-specific variables into account is questionable, and while the author's inferences and suggestions are all plausible, readers may want to take them with a grain of salt.

Additionally, though the case-study chapters are stocked with information and insight about the U.N. missions' legal and judicial reform-building process, at times the book's organization is redundant and lacks clarity. Trenkov-Wermuth devises a set of ten criteria based on Lon Fuller's *Principles of Legality* to assess the viability of legal systems put in place. "Total failure" to follow one of those criteria would indicate a legal system "that was not simply bad law, but not law at all." In analyzing the case studies, Trenkov-Wermuth's discussion begins with the situation on the ground, then proceeds to how the United Nations implemented its five assumptions in practice, the developments that occurred as a byproduct of its approach, and finally how the assumptions as implemented violated Fuller's *Principles of Legality*. This rigid four-step structure leads to some facts being reiterated and explained four times, with profuse cross-referencing between sub-sections—a

structural pattern that dilutes the analysis and muddles the argument's progression. Trenkov-Wermuth also finds that the U.N. approach in Kosovo and East Timor violated many of Fuller's principles, but that none amounted to a "total violation," leading the reader to wonder what a "total violation" looks like, and on the other hand, what kind of a system, if any, the United Nations should be looking to as an ideal example.

One of the book's underlying themes is that the U.N. missions in East Timor and Kosovo failed to balance the tensions in their mandate: that of the missions' need to balance order and security with justice and rights, to govern on a high standard while empowering the community to take ownership of institutional processes, and to bring perpetrators of crimes to justice within a framework of human rights. In Chapter Five, "Legal and Judicial Reform Reconsidered," Trenkov-Wermuth looks at the major problems associated with the five U.N. assumptions in both cases, and discusses alternative approaches proposed by legal academics and practitioners. This chapter may have been better placed before the case studies, so that the author could have alluded to these alternatives throughout his analysis and used counterfactuals to consider how they may have fared in balancing the tensions inherent in transitional reform. Such an approach might also allow the reader to judge for herself whether viable alternatives existed to the U.N. approach in Kosovo and East Timor.

Nevertheless, *United Nations Justice* remains a thorough, in-depth evaluation of the United Nations' transitional legal and judicial reform efforts in Kosovo and East Timor. While readers may not completely agree with Trenkov-Wermuth's conclusions or take issue with some of his inferences, he raises important questions about how the assumptions underlying the United Nations' approach have affected the legitimacy and sustainability of the institutions it tried to establish. The United Nations is unlikely to undertake such a broad mandate again, considering its light-footprint philosophy toward Afghanistan. But with the continued flourishing of pro-democracy movements, most notably the Arab Spring, we are arguably in a new era of post-authoritarian and post-conflict transitions. Hopefully, the analysis of prior experiences in works such as *United Nations Justice* will inform and contribute to future institution-building efforts in transitioning societies.

Land, Memory, Reconstruction, and Justice: Perspectives on Land Claims in South Africa. Edited by Cherryl Walker, Anna Bohlin, Ruth Hall, and Thembela Kepe. Athens, OH: Ohio University Press, 2010. Pp. xiv, 335. \$28.95 (paperback).

REVIEWED BY LISANDRA DEL CARMEN FERNÁNDEZ

Land, Memory, Reconstruction, and Justice: Perspectives on Land Claims in South Africa is a collection of seventeen articles that aim to assess the complexities of land restitution in South Africa under the Restitution of Land Rights Act of 1994, particularly redressing injustices, providing tenure security, redistributing land, and contributing to rural development. The Act “was the first piece of ‘transformation’ legislation . . . after democratic elections had ushered in the post-apartheid era.” The in-depth assessment that *Land, Memory, Reconstruction, and Justice* offers is uniquely multifaceted and timely, given the South African government’s recently signaled intention to conclude the restitution program as speedily as possible. The government’s goal is in conflict with a recurring theme throughout the book: “[R]estitution is best understood as a process” that, given its “complex social, political, and developmental aspects,” cannot conclude with a one-time settlement transaction.

The book’s articles are divided into four parts, comprising both thematic overviews and case studies. Whereas much of the restitution discourse in South Africa has been around rural land issues and quantitative data, the major strengths of the collection include its nuanced treatment of urban restitution issues, as well as its detailed assessments of the quality of settlement outcomes.

In the introduction, the editors provide a brief background on land claims in South Africa. Approximately 80,000 claims have been lodged, of which 80 percent are urban and the balance rural. According to the state, over 90 percent of claims have been settled, the bulk of which have involved financial compensation in urban cases. The introduction includes a chapter overview that highlights the main themes: assessing restitution as a process as well as settlement outcomes over time, the challenges of reconstituting communities and the effect of the restitution process on identity, and the ten-

sions between the often conflicting goals of the restitution program. Although the individual chapters are sometimes hard to square with each other and transitions can be somewhat jarring, the authors do frequently cite other articles in the book, making thematic connections clearer.

Part I paints the big picture, giving the reader background on the relevant history, contested parameters, and legal issues. In Chapter One, Ruth Hall begins with a cursory history of the loss of black land rights and a brief overview of the constitutional compromise between political parties that framed the restitution program in the early 1990s. A reader without background knowledge would benefit from a more comprehensive treatment. Nevertheless, the chapter is a helpful starting point that provides the contested parameters of restitution that the rest of the volume's articles elaborate upon: Who is eligible to apply? What should claimants get? Who pays the awarded restitution?

Offering a comparative perspective in Chapter Two, Derick Fay and Deborah James present restitution programs across the world as temporal processes with certain characteristic moments that are useful to assess. While an interesting read, the article does not contribute much to the book, which is otherwise focused solely on South Africa. Mentions of other restitution programs read as uncontextualized blips within a book that is already tackling quite a number of issues. Chapter Three, on the other hand, enhances the reader's understanding of the different legal issues that claimants must grapple with in the case studies that follow. Hanri Mostert reviews relevant constitutional, statutory, and case law, focusing on how the courts have interpreted "land," "community," "discrimination," and "dispossession" expansively. He presents a novel argument that "judicial activism around the parameters of restitution can be more forceful than policy revision"—an area of scholarship that has previously received little attention.

Part II delves into five restitution case studies that allow the voices of the selected communities to come to the fore. Uma Dhupelia-Mesthrie makes an important contribution in Chapter Four, assessing financial settlements of urban claims through several deeply personal and powerful individual narratives from the Black River community. She argues that restitution characterized by delays and small cash amounts does not lead to justice or poverty alleviation; instead, "the loss has

become more real.” Her argument is particularly effective because it is supported by extensive community fieldwork over a period of ten years. She incorporates primary source material from her many interviews with community members to present a compelling picture of the non-material issues that are central to the restitution debate, not only in her own words, but also in the words of the community. These interviews provide the reader with a rich account of family histories, livelihoods, concerns, and personal dynamics—and importantly, personal assessments of what the restitution process has meant at different stages over the past decade.

In Chapter Six, Anna Bohlin takes a different angle, looking at how excessive delays, lack of results, and uncertainty led to a shift in the Kalk Bay and Knysna communities from preferring land restoration to opting for financial compensation, even though economically attractive land was available. These cases illustrate that “formal alternatives available in the restitution program [are] not always experienced as offering a real choice.” Bohlin also points to an issue that future parties to restitution will have to grapple with: because “cash does not reflect what was lost in any immediate or tangible manner,” the fairness of the amounts paid out is likely to be revisited by claimants and descendants. Departing from the theme of Part II, Chapter Five presents an interesting study by Marc Wegerif of how illegal land occupation in the face of claim settlement delays has led to favorable production and leadership within the rural Mahlahluvani community. The chapter is difficult to situate within the book’s assessment project, given that Wegerif begins with the assertion that land restitution is failing and devotes the entire chapter to evaluating and advocating for this alternative occupation approach.

Part III comprises five case studies highlighting the challenges of reconstituting communities. This closer look at different communities and group identities is a valuable contribution to existing scholarship, offering novel insight into how “community” and identities are confirmed, reconstructed, or energized through the restitution process. While this idea is developed throughout the chapters, it is challenging to draw it out across different case studies and the writing styles of various authors; it could make for a valuable, more focused thematic piece.

In Chapter Eight, Christian Beyers argues effectively that the “success of restitution-related urban development [in present-day South Africa] requires establishing restitution as a priority vis-à-vis other kinds of urban development,” which depends on the ability of claimants to gain leverage with respect to local government and business. He substantiates his claim with a detailed history of Cape Town’s local politics and the dynamics between the famous District Six claimants, local officials, and business leaders. Beyers disentangles the complex political conflicts over land development priorities and different ideas of justice in a very clear manner.

The Khomani San case discussed in Chapter Ten involves a rural conservation area. William Ellis assesses the outcome of the settlement, which the original claimant group finds unsatisfactory due to lack of control over natural resources—the initial motivator for the claim. An “authentic San identity” has been central to this group’s vision throughout pre- and post-settlement processes, influencing the restitution package, post-settlement livelihood, and claimant community. Ellis argues that deploying identity in this exclusionary way has backfired on the “traditional San” group (largely the original claimants), supporting the argument through a novel, in-depth look at the power relations between the different sub-groupings that joined the claimant group over time—for political reasons as the settlement was negotiated—and their conflicting motivations and expectations for “San” development.

Concluding Part III, Chizuko Sato argues in Chapter Twelve that land reform in the rural Roosboom did not meet expectations, despite strong community leadership and NGO support, because of tensions among former landowners, within landowner households, and in the landowner-tenant relationships. The complex dynamics in this case point to the need for post-settlement community support and development planning regional support from the state.

The book closes with Part IV, unpacking the different aspects of “development” and the tensions that arise from the land restitution program’s multiple goals. In Chapter Thirteen, for instance, Thembele Kepe argues, drawing on his extensive fieldwork on the Mkambati Nature Reserve case, that the co-management model encouraged by the state cannot meet restitution and conservation goals because conservation agencies charged with managing post-settlement negotiations

are not equipped to balance the land rights of claimants with protecting biodiversity. A reader without background knowledge may struggle to understand Kepe's examples, as he often refers to his own previous work without providing much summary.

Cherryl Walker argues in the next chapter that seemingly irreconcilable tensions between returning land to the dispossessed Cato Manor claimants and addressing the housing crisis in the city of Durban can be attributed to design flaws in the restitution program. She explains that the restitution program was drafted primarily as part of the rural portfolio of the minister of Land and Agricultural Affairs, and was therefore unprepared for the eventual deluge and nature of urban claims. At the same time, restitution proceeded in isolation from the Truth and Reconciliation Commission process, which, according to Walker, limited possible responses to urban claims concerning primarily "violations of human dignity or loss of community rather than . . . loss of land or land-based livelihood."

This is one of the very few places in the book where transitional justice ideas of reparation are substantively, albeit briefly, discussed (they are also in the background in Chapters Four and Six). The book is written by a wide array of academics, activists and practitioners in the fields of development, land reform, agrarian studies, social anthropology, sociology, history, politics and law—but the transitional justice field is conspicuously absent from this list. Important transitional justice questions should have been addressed in *Land, Memory, Reconstruction, and Justice*, as they are central to a complete assessment of the restitution program, given that redressing injustice is one of the main programmatic goals. For example, the state seems to sanction general land reform as the proper means to repair historical dispossessions (specific injustices) as well as the legacy of apartheid's ownership and occupation restrictions (systemic injustices), but has the state struck the right balance between corrective justice and distributive justice?²

Through four case studies in Chapter Sixteen, Michael Aliber, Themba Maluleke, Mpfariseni Thagwana and Tshililo Manenzhe focus on tensions within claimant groups regarding

2. See JUSTICE AND RECONCILIATION IN POST-APARTHEID SOUTH AFRICA 136–43 (François du Bois & Antje du Bois-Pedain, eds., 2008).

land use and desire to resettle land—which in turn affect preferences for commercial versus sustenance farming. The authors stress the need to accommodate both, discussing food security at the national and household level. Finally, in Chapter Seventeen, Bill Derman, Edward Lahiff, and Espen Sjaastad take up questions that will remain critically important in assessing new state policy, turning from land access to focus on agricultural productivity that favors a strategic partnership model between commercial farm operators and claimant communities.

Land, Memory, Reconstruction, and Justice is worthwhile reading material for scholars and students of land reform. It is also recommended to land restitution activists as a comprehensive yet digestible assessment of the South African restitution program to date, one that takes stock of the program's progress while still emphasizing areas in need of greater scrutiny.

Internet Jurisdiction and Choice of Law: Legal Practices in the EU, US and China. By Faye Fangfei Wang. New York, NY: Cambridge University Press, 2010. xiv, 276. \$118.00 (hardcover).

REVIEWED BY SHERWIN SALAR

Advances in computers, the Internet, and information technology have resulted in the birth of a new form of commerce: electronic commerce. The growing phenomenon of electronic commerce has reached every level of commerce as we know it. Whether it is the initial search for goods or the final payment and delivery, the commerce of the future has electronic means embedded throughout. Electronic commerce allows for more efficient transactions, lowers business entry costs, and has extended the reach of commerce to unprecedented lengths.

However, with new opportunities come new challenges. Or, as Faye Fangfei Wang explains in her recent volume *Internet Jurisdiction and Choice of Law*, “[i]nformation technology (IT) brings the benefits of cross-border commercial transactions but challenges the essence of traditional laws and the knowledge and technique of traditional law makers and practitioners.” Having put forward her thesis, Wang seeks to explain a few of the challenges posed by electronic commercial trans-

actions to existing private international law. Specifically, she focuses on comparing the rules of Internet jurisdiction, choice of law, and online dispute resolution (ODR), for both business to business (B2B) and business to consumer (B2C) contracts in the European Union, the United States, and China. After taking the reader through a discussion of existing private international law and how it could be modernized, Wang discusses the need to harmonize the legal frameworks in these countries, while suggesting various approaches to accomplish this goal.

Wang's introduction describes the discussion surrounding private international law as focused on three major topics: jurisdiction, choice of law, and recognition and enforcement of judgments. This creates a logical outline for the organization of the book. The introduction then begins to describe private international law as it exists in the three regimes under question, so that it can be analyzed through the lens of each individual topic later.

Here the reader also begins to understand that, as of December 2009, private international law in the European Union has been governed by the "Rome I Regulation." In general, the Rome I regulation furthers the principle of party autonomy in jurisdiction and choice of law, but it also provides rules that cater to information technology in the absence of a choice of law by the parties. Conversely, the United States has no national codification of private international law. Instead, the Second Restatement of Conflict of Laws and the Uniform Commercial Code (UCC) have general rules. The United States also employs several approaches that are discussed in judicial judgments, approaches that Wang argues we should look to in formulating our approach towards Internet jurisdiction. These include "minimum contacts," "a sliding scale," and "targeting." Much like the United States, China has no codification of private international law; in its place, national laws provide the general conflict-of-law rules. An important feature of the national laws governing cross-border commerce in China is that disputes and contracts with Hong Kong and Macao are considered to be contracts with foreign elements, even though both are part of China. Nonetheless, arrangements concerning the recognition and enforcement of the decisions of civil and commercial cases have been made between mainland China and Hong Kong, as well as between mainland

China and Macao. Therefore, the goal of maintaining consumer confidence in electronic commerce has not been stifled.

In Part II, Wang analyzes the jurisdictional rules in electronic contracts. First, she tackles the merits and shortcomings of a multilateral treaty, the 2005 Hague Convention on Choice of Court Agreements, and its importance to the harmonization of private international law. Wang lauds the treaty's promotion of the "party autonomy" principle in B2B contracts, as well as the resulting promotion of "international trade and investment." Part II then advocates for the ratification, signing, and implementation of the treaty by all major economic players. Wang tempers her recommendations by explaining that implementation of the treaty can take a long time, and that it may not fit every country's specific cultural and economic needs—though unfortunately the book does not speak at length as to what these cultural and economic needs may be. Furthermore, Wang also tackles issues crucial to the determination of jurisdiction that have been rendered unclear by the advent of electronic commerce, including such issues as what constitutes a place of business, place of receipt, or place of dispatch.

In practice, it is very difficult to ensure that a chosen court will hear a case, even if a choice of court clause is included in the contract, and businesses often have trouble enforcing domestic judgments by the courts of foreign nations. The Choice of Court Convention Agreement, if adopted by the major economic players, aims to alleviate these issues. On January 19, 2009, the United States became the Choice of Court Convention's first signatory, under pressure from the ABA to help increase certainty in cross-border commercial transactions. Less than three months later, on April 1, the European Union also became a signatory. In signing the treaty, the European Community had goals not unlike those of the United States; it particularly hoped that signing the convention would "make a valuable contribution to promoting party autonomy in international commercial transactions and increasing the predictability of judicial solutions in such transactions."

However, as Wang astutely observes, since the European Union has codified its private international law in the form of the Brussels I regulations followed by the Rome I regulations, the interaction between regional law and the global treaty is of

paramount importance. China has not yet become a signatory, though it has formulated various bodies to assess the appropriateness of doing so—a development that Wang believes would be consistent with current Chinese private international law policy on most major fronts. Moreover, she points out, China could take advantage of the treaty’s “exemption clause (Article 21 of the Choice of Court Convention), declaring the exclusion of clauses that are not fit for its individual judicial culture or rules and including special clauses that help to protect the rights of citizens and promote the development of its economy.” Although many readers will already be aware of the economic and cultural differences China might look to protect via the exemption clause, those approaching this topic with less knowledge may be left wondering what these differences are.

In what may be Wang’s most accomplished analysis, Part III of the volume focuses on the choice-of-law rules for electronic contracts, analyzing the validity of choice-of-law clauses and the rules in the absence of a choice-of-law clause for both B2B and B2C contracts. With minor differences between the European Union, United States, and China, B2C party autonomy is slightly curbed in order to cater to the weaker party: the consumer. Wang first illustrates the similarities in the private international law of the three regimes. After establishing that each regime’s main determinative factor for which choice of law prevails, in the absence of an actual contractual choice, is a “connection” or “significant relationship,” Wang goes on to meticulously discuss what these “connections” and “relationships” mean (and, crucially, what they ought to mean) in an age of servers, internet service providers, and domain names.

Part IV discusses ODR, which Wang argues is the most suitable and efficient channel to remove some of the obstacles of Internet jurisdiction and choice of law. ODR could increase certainty and confidence in doing business, while simultaneously making the adjudicative process exponentially more efficient. The author frames ODR as the natural choice for disputes in electronic commerce disputes, pointing out that not only is a majority of the evidence in electronic commerce disputes already maintained in digital form, but that the dispute itself often involves some electronic element. Yet beyond ODR’s natural place in electronic commerce disputes, there are numerous barriers hindering the widespread adoption of

ODR—primarily the lack of a cohesive standard for ODR globally, and the different cultural norms associated with its enforceability across borders. Wang mentions a few of these cultural norms, but she does not analyze or assign a normative value to any of them, perhaps preferring to let the reader make her own judgments.

On the whole, Wang's volume gives a highly organized and detailed analysis of the current state of private international law in the European Union, the United States, and China, with particular focus on Internet jurisdiction, choice of law, and ODR. The reader may be left wondering about the unstated assumptions of Wang's model—in particular, that promoting trade and increasing the widespread arm of commerce should be a normative goal—and the discussion of positive law and comparative law is often intermingled in a fashion that is difficult to untangle. Yet Wang's "solutions to obstacles" approach should be applauded; it is thoughtful, tempered, and supported with exhaustive research. Moreover, the volume provides an excellent bird's-eye view of the challenges that countries across the globe still face in tailoring private international law to meet the growing legal demands of electronic commerce.