

BOOK ANNOTATIONS

ALENIKOFF, T. ALEXANDER AND VINCENT CHETAIL, EDs., *MIGRATION AND INTERNATIONAL LEGAL NORMS* (T.M.C. Asser Press).

AZIZ, MIRIAM, *THE IMPACT OF EUROPEAN RIGHTS ON NATIONAL LEGAL CULTURES* (Hart Publishing).

BAZYLER, MICHAEL J., *HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA'S COURTS* (New York University Press).

COOK, REBECCA J., BERNARD M. DICKENS, AND MAHMOUD E. FATHALLA, EDs., *REPRODUCTIVE HEALTH AND HUMAN RIGHTS: INTEGRATING MEDICINE, ETHICS, AND LAW* (Clarendon Press).

GRAHAM JR., THOMAS, *COMMON SENSE ON WEAPONS OF MASS DESTRUCTION* (University of Washington Press).

HEFNER, ROBERT W., ED., *REMAKING MUSLIM POLITICS: PLURALISM, CONTESTATION, DEMOCRATIZATION* (Princeton University Press).

KRASNO, JEAN E., ED., *THE UNITED NATIONS: CONFRONTING THE CHALLENGES OF A GLOBAL SOCIETY* (Lynne Rienner Publishers).

LECKIE, SCOTT., ED., *RETURNING HOME: HOUSING AND PROPERTY RESTITUTION RIGHTS OF REFUGEES AND DISPLACED PERSONS* (Transnational Publishers).

MOWBRAY, ALASTAIR, *THE DEVELOPMENT OF POSITIVE OBLIGATIONS UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS BY THE EUROPEAN COURT OF HUMAN RIGHTS* (Hart Publishing).

NASHERI, HEDIEH, *ECONOMIC ESPIONAGE AND INDUSTRIAL SPYING* (Cambridge University Press).

SCHAFFER, KAY AND SIDONIE SMITH, *HUMAN RIGHTS AND NARRATED LIVES: THE ETHICS OF RECOGNITION* (Palgrave Macmillan).

Migration and International Legal Norms. Edited by T. Alexander Aleinikoff and Vincent Chetail. The Hague, The Netherlands: T.M.C. Asser Press, 2003. Pp. xxviii, 353. \$110.00 (cloth).

REVIEWED BY MARK TICE

Immigration is a hot topic of late, not only in the U.S. but throughout the world. As Americans worry about illegal immigration as a potential means for terrorists to slip into the country, or as Japanese wring their hands over the possibility of admitting more immigrants to supplement the country's shrinking work force, migration policies—decisions about who states want to admit, how governments will treat migrants once they have entered, and when it is appropriate to return migrants to their states of origin, among others—occupy a prominent spot in political and legal debate. The effects of any migration policy are not, however, confined solely to the implementing state. A shift in the U.S. toward more anti-immigrant policies, for example, can have an adverse effect on the flow of migrants from developing states—states that rely heavily on monetary remittances from their citizens who are working in the developed world. States are tied inextricably to each other through the regulated flow of people across their borders.

It is with this global view toward migration policy that T. Alexander Aleinikoff, of the Migration Policy Institute (MPI) in Washington, D.C., and Vincent Chetail, of the Graduate Institute of International Studies (GIIS) in Geneva, edited *Migration and International Legal Norms*. The compilation, a cooperative project of the MPI, the GIIS and the International Organization for Migration, aims to provide policymakers and researchers with an overview of current legal standards for migration policy worldwide. It stems from a project of the Swiss Federal Office for Refugees, which recognized that no one had attempted to spark a broad dialogue among “countries of origin, countries of transit, and countries of destination on the full range of migration issues.”

The book's eighteen chapters cover an impressive array of issues. Following Aleinikoff's useful summary chapter, the book divides the work of contributing legal scholars into six sections. "State Authority and Responsibility," the first section, covers the range of state obligations and prerogatives vis-à-vis migrants, as well as the broader human rights issue of one's right to leave one country and enter another. More specifically, these five chapters address topics such as the legal norms for admission and expulsion of migrants, for determining who is a national or can acquire nationality, and for addressing security concerns related to migration.

The three chapters in the second section, "Forced Migration," address the legal standards for treatment of forced migration and gaps in those standards, the often unclear legal standards for dealing with asylum-seekers or refugees rescued at sea, and the current international instruments pertinent to human smuggling and trafficking.

The third section, "Human Rights of Migrants," provides an overview of the many rights issues that touch international migration, especially the rights of children and families under international migration norms.

"Labor, Trade and Development," the fourth section, examines bilateral, regional and wider international arrangements on the treatment of migrant workers; analyzes the adequacy of the World Trade Organization in addressing the movement of people for purposes of trade; and discusses the question of whether a right to development is part of customary international law and, if it is, the resulting legal obligations vis-à-vis migration.

The two chapters in the fifth section, "Emerging Topics," address quite divergent—but important—problems. Chapter Sixteen discusses the tension between human rights limitations on forced assimilation and states' legitimate need to encourage some degree of integration of migrants. Chapter Seventeen examines the murky legal norms on health issues for migrants, including states' varying health-related bars to immigration and the question of whether states, under prevailing human rights standards, can return sick migrants to countries where they might not receive adequate health care.

The final section, "International Cooperative Efforts," provides an overview of the many kinds of migration arrangements that states have made among themselves.

From a policymaker's standpoint, *Migration and International Legal Norms* does not disappoint. The volume identifies a broad array of legal issues and presents a comprehensive view of the pertinent international law and individual state practices governing those issues. For example, someone requiring a basic understanding of the prevailing norms for expulsion of asylum seekers will find the information here—or, at the very least, will find a good starting point for further research. Most chapters not only identify relevant international agreements or customary law governing the topic at hand (including applicable human rights law), they also note where individual states' policies are at odds with each other and where gaps exist in international consensus. Although the prose is dry, readers will appreciate the contributing authors' painstaking efforts to present an accurate picture of the legal terrain surrounding each issue that the book addresses.

As a resource for researchers, however, the excessive overlap of information from one chapter to the next is disappointing. For example, Chapter Ten, "The Human Rights of Migrants," discusses many of the same issues that arise in other chapters' analyses of pertinent human rights law. A cursory glance at the detailed table of contents indicates that remarks on specific aspects of human rights law appear in almost every chapter. Perhaps the editors decided that, even though Chapter Ten is somewhat redundant (though not entirely), it did not hurt to have additional assessments of several human rights issues collected in one place. If the editors determined that a certain amount of overlap was unavoidable, however, then another criticism emerges: the book does not include cross-references to similar discussions in other chapters. With cross-referencing, the book would be much more user-friendly for a reader who, for example, does not realize that the discussion in Chapter Seven of a person's right to leave his or her country is discussed in a similar way in Chapter Three.

More important, *Migration and International Legal Norms* suffers from a lack of consistency in contributors' approaches to their respective topics. As mentioned above, the authors have researched the issues thoroughly; but while some chapters provide nothing more than the current legal situation in a

clear, organized manner (the discussion of nationality issues in Chapter Five, for instance) other chapters (like Chapter Fifteen in its discussion of a right to development) seem to advocate for particular policy approaches to issues. One format is not necessarily better than the other. However, by allowing the contributors to approach their topics in such fundamentally different ways, the editors have produced a book that, at best, is uneven in its tone. At worst, readers will regard Chapter Fifteen and similar pieces with far more skepticism than the more objective Chapter Five and its kind.

Also, in light of the book's far-reaching coverage of migration issues, its failure to discuss same-sex spouse or partner migration is unfortunate. This reviewer found only three paragraphs in the Chapter Eleven analysis of family unity norms that referred to unmarried partners who migrate. The book contains no mention of legal standards for admission of partners who cannot marry, even though more than 15 countries recognize same-sex partners for immigration purposes. As more and more jurisdictions grant some form of legal recognition to same-sex partners, the need to understand migration policies that pertain to these families grows.

Notwithstanding these criticisms of style, organization and substance, *Migration and International Legal Norms* is an excellent source for policymakers and researchers looking for a review of current approaches to immigration. The sheer volume of useful legal analysis packed into a concise 333 pages is impressive. As a first step in a multinational dialogue on a legal framework for migration, this work more than adequately serves its purpose.

The Impact of European Rights on National Legal Cultures. By Miriam Aziz. Oxford, England and Portland, Oregon: Hart, 2004. Pp. xiii, 206. \$70.00 (cloth).

REVIEWED BY ATUR DESAI

The recent move towards a European Constitution has sparked an ongoing debate as to the effects such change may have on independent member states. Miriam Aziz, in her book, *The Impact of European Rights on National Legal Cultures*, analyzes the impact of European Union law on the national constitutional orders and cultures of member states. Aziz ar-

gues that the doctrine of sovereignty is the appropriate mechanism for analyzing this impact. In endorsing the sovereignty doctrine as the appropriate analytical tool, Aziz challenges both existing law and secondary literature. She argues for a careful selection of terminology, concepts, and tools to assess the impact of European rights on national constitutional orders.

Aziz's primary argument is best summarized in her own words, "[a]n incremental challenge to the sovereignty of the member states is being sustained in day-to-day legal practice in which inter alia political and social rights are being contested in national, supranational and international jurisdictions which sometimes overlap." Aziz's study is also centered on the argument that the implementation of European rights results in a reconfiguration of the legal culture of member states, and, consequently, a challenge to their sovereignty.

Structurally, Aziz's study is broken down into six chapters. The first and last chapters consist of a thorough introduction and conclusion. The second chapter focuses on European rights and sovereignty. Chapters Three and Four present extended case studies in the areas of political and social rights. In Chapter Five, Aziz discusses the implementation of rights and the role played by "elites" in this process.

Aziz begins her argument in Chapter Two by looking at European Rights and sovereignty. She asserts that the doctrine of sovereignty is most often thought of as a debate of competence or supremacy—whose law, the member state's or the European Union's takes precedence? Aziz questions whether it is appropriate to understand sovereignty as a doctrine of supremacy given the multi-faceted, multi-level, and multi-dimensional challenge posed by European rights to the concepts of people, territory, and the state.

Chapters Three and Four use detailed case studies in the areas of political and social rights (respectively) as a vehicle for explaining the impact European rights have on state sovereignty. First, Aziz argues that the impact of European rights on legal cultures occurs across multiple levels of governments and modes of government. Second, she claims that European rights are dependent on elite compliance. Aziz defines elites to include all those that have control over the implementation of policy, not just those in the public sector. Third, she asserts

that there is inherent confusion regarding how European rights are conceptualized, and that this confusion is divided along national and ideological lines. Lastly, she states that “the *sui generis* nature of European rights means that an appropriate analytical framework is needed which is able to come to terms with this confusion.” Although Aziz asserts that these are criteria for her analysis, they appear to be conclusions derived from her analysis.

Chapter Three uses the extended example of political rights to argue that political rights in the European Union have drastically reconfigured classical notions of representative democracy, which is generally linked to citizenship. Additionally, she asserts that citizenship in the Union is an inappropriate basis for analyzing political rights, and therefore the inquiry should be extended to include all potential rights holders.

In Chapter Four, Aziz describes the challenges hindering access to social justice as a result of reconfiguration. According to Aziz, social rights have customarily been thought of as being exclusively within the competence of member states because national resources provide for the funding of such rights. European rights and the European Union have challenged this tradition and have affected state sovereignty.

In her final Chapter, Aziz concludes that the impact of European rights on the legal cultures of the member states is multi-faceted, multi-level, and multi-dimensional. The case studies presented within the book illustrate the complexities and challenges that European law has had on rights. Ultimately, Aziz argues that an analytical framework which is able to account for the impact of European rights on the constitutional legal orders and cultures of the Member States must be carefully developed.

Structurally, although Aziz is careful to constantly provide an effective roadmap of the path the book takes, this reader found the book hard to follow and hindered by several deficiencies. Most detrimental to understanding are typographical errors. Such errors detracted from the overall flow of the arguments. Another serious distraction encountered in reading Aziz’s study was a lack of explanation, in text or footnote, of general background information for cited sources. Such information, though not necessarily required to understand the

relevance of the citation, would have aided readers in quickly achieving a more complex understanding of her arguments. Additionally, on several occasions Aziz directly quotes statutes and other sources in foreign languages but fails to provide a translation. In general, Aziz appears to assume a level of knowledge from readers that they may not possess.

Although the debate that Aziz enters is highly relevant and timely given events taking place in the European Union, the book's meaning is often lost to structural errors. Although the errors may not distract someone well-versed in European law or a more patient reader, the average law student or scholar may find them frustrating, and therefore will be unable to fully understand the author's arguments.

Holocaust Justice: The Battle for Restitution in America's Courts. By Michael J. Bazylar. New York, New York: New York University Press, 2003. Pp. 411. \$40.00 (cloth), \$22.00 (paper).

REVIEWED BY SHANNON SULLIVAN

As Michael J. Bazylar says in the preface to his book *Holocaust Justice*, "The Holocaust was both the greatest murder and the greatest theft in history." Focusing on the ongoing quest for recompense not only for the persecution of European Jewry and other victims of the Nazi regime, but also the actual monetary losses victims suffered, Bazylar traces the history of the Holocaust restitution movement and attempts to explain why the United States was the natural, if not the only, forum where this struggle could have succeeded.

Bazylar, a professor of law at Whittier Law School in Costa Mesa, California, is himself intimately tied to the Holocaust restitution movement, and his style of prose reflects his deeply personal connection with the subject matter. The son of two Holocaust survivors, he grew up in post-war Poland near the site of the infamous Lodz Ghetto. Bazylar's father was the only surviving member of his family and was obsessed with the Holocaust—an obsession he passed on to his son which would eventually lead him to work with and write about the Holocaust restitution movement.

While at times a dense and demanding book, it is a necessary read for international human rights students and those

interested in the aftermath of the Second World War or the intersection of law and war. In telling the “complete story” of the legal campaign for redress for victims of the Holocaust, Bazylar draws on diplomacy, individual pleas by survivors and various Jewish organizations, political machinations, suits in foreign courts, and, finally, the legal struggle for redress in the United States. *Holocaust Justice* can be dry; it sometimes reads like an endless recitation of judges, politicians, organizations, and the like. But it also finds a human voice, using the stories of survivors and their personal struggles to recover stolen art or receive compensation for their relatives’ dormant bank accounts. Bazylar’s voice as the son of survivors, backed by the voices of other survivors and their families, lends a more personal tone to what could otherwise be a technical legal retrospective.

Holocaust Justice traces the fight for restitution in American courts in four different areas: Swiss banks, European insurance companies, slave labor used by private industries, and looted art. Bazylar manages to flow effortlessly between the four main areas using a semi-chronological approach to tie the different areas of litigation into a seamless whole using the Swiss banks litigation as the foundation for the other restitution efforts.

The restitution movement’s roots lie in claims against Switzerland, a neutral country during World War II, for engaging in egregious financial misdeeds. Holocaust survivors brought accusations against the Swiss during and immediately after the war for failure to return funds deposited with private Swiss banks for safekeeping on the eve of the Nazi onslaught. Banks easily rebuffed claims for the dormant accounts by requiring survivors to produce death certificates, which were not issued by the Nazis. With no way to prove the original account holder was actually dead, many survivors simply gave up. Only with the rise of litigation in the United States were survivors given their first viable chance at forcing the Swiss banks to negotiate and ultimately offer some sort of compensation for their misdeeds.

Later, after the relative success of the Swiss bank restitution cases, the first of the slave labor actions were filed in the U.S. seeking restitution for the complicity of German private industry under the Nazi regime in their use of slave labor. Surprisingly, however, the suits were filed against the American

automotive company Ford and its German subsidiary. Savvy American lawyers utilized the American media to launch an advertising campaign designed to shame the German corporations into settlement. The slave labor cases proved to be the first legal defeat for the Holocaust restitution movement. In examining the legal argument against Ford and its subsidiary in Germany, the federal judges did what their counterparts in the Swiss bank litigation declined to do—examined the legal arguments made by both sides and found the case could not be adjudicated in the U.S. due to postwar treaties between Germany and the Allied powers. Following this and a similar ruling, a deal was struck with the German government and participating industries agreeing to pay 10 billion marks (around \$5.2 billion) into a fund accessible by all victims regardless of national origin or religion.

The insurance policy cases would also prove a tough road to settlement, with insurance companies balking at every turn about providing complete lists of the accounts held during the WWII period that were now dormant. The heirs of dormant account holders had difficulties not only with the banks procedurally but also factually. The names of many cities and families had changed, so that often even when a relative was sure that a victim of the holocaust had held a bank account, there was not only no factual record to support it but the name could not be located even if the insurance company took the trouble to search for it. The most prominent case in the Holocaust insurance struggle was that of *Stern v. Generali*. The Stern family made a legal claim on behalf of themselves only, rather than using a class action as in the Swiss bank cases. The Stern action, and other individual state lawsuits, succeeded in forcing settlements from Generali at a time when federal cases in the same area were being stymied. Bazylar postulates that this was due to the unique political climate in California at the time; California politicians lent their weight to the litigation and the state enacted legislation dealing specifically with Holocaust-era insurance litigation.

Finally, the last major area in the Holocaust restitution movement covered by Bazylar is litigation attempting to seek compensation for, or the return of, art looted during the Holocaust. Cases in this area are ongoing. They raise a number of interesting legal and social questions. Unlike the other cases in which those being prosecuted had either perpetuated the

evil or directly benefited from the Holocaust, here many of the art owners facing litigation bought their art in good faith, unaware that pieces in their collection had been snatched from fleeing Jews. Unlike civil law countries, where title can be acquired by the good faith buyer, the United States follows the maxim *nemo dat quod—non habeat* [you cannot give what you do not have]. This maxim has allowed US lawsuits to succeed where European ones would not. Looted art cases have also occasionally been settled outside of the legal system, as was the case when the Dutch government decided to turn over 233 works of art to the Gutmann heirs.

Perhaps the greatest strength of *Holocaust Justice* is its focus on the controversies behind the “success story” that was the Holocaust restitution movement—mainly whether or not the restitution movement can correctly be titled a “success” or whether it is a trivialization of a great wrong done to an already persecuted group of persons. Bazylar errs on the optimistic side citing the argument for recognition of wrongs done as the “compensation” for an evil that cannot truly be compensated in the traditional notion of the term. Bazylar also describes the repercussions of the Holocaust restitution movement on other human rights movements such as the African-American reparations movement. He then ends the book with a fascinating discussion of the intersection of the Holocaust restitution movement with the Middle East conflict. Bazylar envisions a time in the near future when the Palestinian right to restitution will be launched against the state of Israel and wonders whether those who supported the Holocaust Restitution would likewise champion the Palestinian right to restitution.

Reproductive Health and Human Rights: Integrating Medicine, Ethics, and Law. By Rebecca J. Cook, Bernard M. Dickens, and Mahmoud E. Fathalla. New York, New York: Clarendon Press, 2003. Pp. xxvii, 554. \$35.00 (paper).

REVIEWED BY CINDY X. LIN

Reproductive Health and Human Rights provides a strong and comprehensive interdisciplinary overview of the contemporary state of international reproductive health by framing its discussion as a development and human rights issue of global

concern. Unlike similar books drawing from legal, ethical, and medical perspectives, this book is more of an anthology of topics rather than a collection of editorials. In fact, the authors suggest in their "Introduction and Overview" that, depending on a reader's particular perspective and interests, she may choose to read only select segments of the text in conjunction with others; each chapter functions as a discrete discussion of a particular topic yet each also contributes to a fuller understanding of the entire field. *Reproductive Health and Human Rights* is divided into three sections to facilitate either type of exploration.

Part I of the book provides a general overview of reproductive and sexual health, health care systems, ethics, human rights principles, and the legal questions surrounding these issues. It begins in Chapter Two by defining the concept of reproductive health and placing it in a political and historical context. The collection draws largely on the definition of reproductive health first published by the World Health Organization (WHO) in 1988, which was later expanded in 1994 at the International Conference on Population and Development (ICPD) in Cairo, and again revised in 1995 at the UN-sponsored International Conference on Women in Beijing. An abridged version of this definition follows: "Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life, and that they have the capability to reproduce and the freedom to decide if, when and how often to do so."

Within Part I, Chapters Five, Six, and Seven are particularly relevant for legal scholars and practitioners, as they focus on the legal origins and principles of reproductive health, human rights principles, and the synthesis of these topics in implementation. The authors begin Chapter Five by discussing a framework of legal approaches to reproductive health, tracing its evolution from morality to democracy, from crime and punishment to health and welfare, and finally to an emphasis on human rights and justice. Specifically, the authors highlight modern international developments as well as draw comparisons between human rights-based legal approaches in different countries. The authors cite the ICPD and Interna-

tional Conference on Women in Beijing decisions in the mid-1990s as international examples of the integration of human rights into the dialogue of reproductive choice. They also reference the constitutional right of individual privacy in United States and European Community law as comparative examples of such integration. The authors are careful to note in Chapter Six, however, that while such examples of human-rights centered approaches provide promise in the area of reproductive health policymaking, many countries still use the criminal law to punish and stigmatize disapproved behaviors. Some solutions are provided in Chapter Seven, including those focused on the role of the individual lawyer, along with legislative approaches, alternative dispute resolution, and, in some countries, those provided by human rights commissions.

Part II presents representative case studies that occur particularly frequently in resource-poor settings, and includes discussions on female genital cutting, involuntary female sterilization, and hymen reconstruction, among others. The authors use a consistently comprehensive and well-organized framework in discussing each example, by addressing its medical, ethical, legal, and human rights aspects, and then providing different approaches to its problems. Chapter Nine, for instance, focuses on HIV drug research and testing. The authors begin by describing the current prevalence of HIV and its manifestations. They then follow by discussing the ethical and legal questions raised by HIV research internationally, including informed consent and the fear of exploitation, or the conflicts that arise when the host country and the researching country have disparate ethical standards of review. These conflicts are informed by baseline standards of human rights which dictate the extent to which even informed consent can drive HIV research efforts. The chapter ends with an even-handed analysis of problem-solving approaches, including a description of both universalist and relativist perspectives on the role of risk analysis in research design. The authors are careful to balance their descriptions and shy away from drawing conclusions on either side of the debate.

The final part of the book, Part III, provides primary documents, including human rights treaty resources and recommendations and comments provided by various human rights treaty committees. Chapter Five contains a particularly comprehensive summary table, providing a somewhat contempo-

rary update (from 2002) on which states are parties to which international human rights treaties.

Reproductive Health and Human Rights is a well-organized reference that is invaluable as a compilation for any number of academics interested in researching this area. The authors of the book write in a clear and authoritative style that is easy to follow and navigate. The focus of the text is refreshingly interdisciplinary, and its emphasis on breadth does not compromise its level of detail. The book is appropriate for a wide audience, and is able to function both as a contemporary update for scholars interested in the field of reproductive health as well as an introduction for students with little experience in it.

Common Sense on Weapons of Mass Destruction. By Thomas Graham, Jr. Seattle, Washington: University of Washington Press, 2004. Pp. x, 206. \$12.95 (paper).

REVIEWED BY JAMES ZHA

Ambassador Thomas Graham, Jr. has a distinguished background as President Clinton's special ambassador for nuclear disarmament issues and as author of a number of scholarly books on the same subject. His newest work, *Common Sense on Weapons of Mass Destruction*, targets a different audience: the general American public whose knowledge of nuclear weapons and other weapons of mass destruction (WMDs) often extends only as far as sound-bites on the evening news. The slim volume includes a chronology and glossary apt for the general interest reader. But the majority of the book is spent elucidating the history of nuclear weapons and WMDs and efforts to disarm and regulate them, coupled with strong advocacy for the United States to cooperate internationally under international law to effect a safer future. By not explaining more of the opposing viewpoints and rationales influencing recent U.S. moves that run in the opposite direction (such as the Bush Administration's election to pull out of the Anti-Ballistic Missile Treaty), the book loses some balance as an objective primer for the uninformed on the subject, becoming more the author's one-sided screed on the obvious "common sense" for disarming WMDs. As former Secretary of Defense Robert McNamara concludes in the Foreword, the book in its totality serves to inform the public, but with a very specific prescrip-

tion for disarmament, relying on multilateralism and depending on important disarmament treaties, including the pivotal Nuclear Non-Proliferation Treaty (NPT).

Graham states in the Introduction his view that in order to discourage nuclear proliferation in more states, current nuclear states must reduce their stockpiles to the lowest levels possible. While acknowledging that this view is not universal, he highlights the disconnect between the American public's professed attitudes in favor of the NPT and the Comprehensive Nuclear-Test-Ban Treaty (CTBT) not being translated into U.S. policy. Graham sees the roots of this disconnect in the complexity of the issues involved and the public's lack of information. Chapter Two, detailing the effects of nuclear weapons, along with descriptions in other chapters (such as the description of deaths due to gas attacks in World War I in Chapter Ten) then can be seen largely as the author's thrust for urgency on the part of the public—the nightmares that have happened to people in the past century should be justification enough to push disarmament efforts to the forefront of the national agenda. This is made explicit in Chapter Eleven, focusing on the precarious security of nuclear materials in Russia, and by Graham's plea for more funding for the Nunn-Lugar program that seeks to reduce the threat of nuclear material and nuclear knowledge in Russia falling into wrong hands.

The main crux of the book, however, describes the history of the problem of nuclear weapon proliferation, tracing a very distinct path that would have led to much more rampant growth in the number of states and the number of weapons were it not for the NPT. Thus, the author frames the later development or potential development of weapons in such countries as North Korea, Pakistan, and Iran not as a failure of the NPT, but rather as evidence that the NPT has performed admirably in inhibiting the nuclear ambitions of other non-nuclear parties. While examined in more detail in later chapters, Graham's basic framework is that the NPT provides an adequate structure to build on in order to remove the nuclear threat from rogue nuclear states who are not party to the Treaty or violate it. But, Graham argues, much of the treaty's power originates in the willingness of the nuclear parties to make sacrifices and commitments for the long-term global good.

As Graham states in Chapter Three, the world is presented with a choice between the law of the jungle, ruled by force, or the rule of law. He places his long-term faith in the rule of law (in this context, international treaties). In his view, the momentum must be maintained (or restarted) from a lineage of treaties that limited nuclear weapons: treaties establishing nuclear-free zones, test ban treaties, bilateral agreements between the U.S. and the U.S.S.R./Russia, and, most of all, the NPT. Concentrating on the NPT in Chapter Four, Graham dissects it as fundamentally a bargain between nuclear states and non-nuclear states: nuclear states promise not to use nuclear weapons against non-nuclear states and to spread peaceful nuclear technology in exchange for non-nuclear states pledging to remain non-nuclear. But this bargain, to Graham, can last only so long as the nuclear states commit themselves to reducing their arsenals and forsaking the first-use of nuclear weapons. Until these sacrifices are made, the mutual obligation of the two parties is incomplete.

In arguing for the strengthening of the NPT, the author admits the problem in those states lying outside the NPT: North Korea, India, Pakistan, and Israel. He falters in suggesting how to bring these very important states to the table in the otherwise clear description of the fundamental bargain of the NPT. One hurdle to nonproliferation is described in Chapter Four as the political value of nuclear weapons. Graham sees the continuing ambiguity of negative security assurances (promises by nuclear states not to attack non-nuclear states with nuclear weapons) as driving a stake in the strength of the NPT. As long as nuclear states continue to wield nuclear weapons as the global big stick, countries will seek to acquire nuclear weapons to gain legitimacy and power.

This warning that the U.S. cannot, in essence, continue to have its cake and eat it too persists throughout the entire book. But Graham's chapters on nuclear tests (Chapter Six) and missile defense (Chapter Seven) offer a much more basic criticism of recent U.S. policy: cost-benefit analysis. With the advances in underground testing and the increased efficacy of detection equipment, he views the Senate refusal to ratify the CTBT banning nuclear tests as especially foolish. He sees tremendous cost in retarding the pace of disarmament and thwarting international consensus against nuclear proliferation with no proportional benefit to the U.S.'s ability to de-

fend itself. For instance, he names India, China, and Israel's reluctance to join as a cost of the U.S.'s refusal to ratify the treaty.

This characterization of the misuse of U.S. political and economic capital is especially strong in the chapter regarding missile defense. Ambassador Graham is certainly not alone in pointing out that new threats are more likely to come from other sources than ballistic missiles from Russia or China. He warns that not only are existing systems not effective, but missile defense is especially damaging because it spurs nuclear proliferation and the development of better offensive weapons. To Graham then, the opportunity cost is too great both from political acts such as pulling out of the Anti-Ballistic Missile (ABM) Treaty with Russia and in the money being thrown down the missile defense well.

On outer space, land mines and small arms, and chemical and biological weapons (Chapters Eight, Nine, and Ten respectively), Graham sounds a hopeful note for multilateral consensus and then action in reducing and ultimately banning these weapons, with some tasks (such as curtailing small arms) much more difficult than others (although the description of Chinese parasite satellites in outer space is especially startling). Regarding chemical and biological weapons, he is very hopeful for the Chemical Weapons Convention. But, Graham notes, the protocol prohibiting biological weapons is much less developed, lacking verification procedures. No matter how valid other U.S. concerns regarding the Biological Weapons Convention may be, Graham presents a most cynical description of U.S. action: stating that the U.S. sabotaged the entire process because U.S. biotech companies objected to a proposed on-site inspection procedure as too intrusive.

In addressing regional issues and the United States' role in the world in the final chapters, Graham comes down strongly in favor of the U.S. following in its legacy of cooperation with the world and creating and enforcing treaty regimes. He sees long-term harm in rejecting treaties agreed to by most of the world community, such as the Kyoto Protocol, and non-sustainability in a unilateral approach emphasizing either the use or threat of force. In Graham's world of international consensus on arms reduction, such unilateral expressions of force destabilize the international consensus required for the world to reduce weapons of mass destruction. Instead, the U.S.

should commit to a world community that, Graham surmises, wants to band together in seeking to combat international terrorism. Only then can the threat of nuclear terrorism be eliminated.

More than a glossary or a litany of facts regarding the history of arms control, Ambassador Graham seeks to take the uninformed public through a fundamental choice the U.S. confronts in addressing nuclear weapons and other weapons of mass destruction. Idealistically, hopefully, and perhaps too simplistically, he chooses the world community, rule of international law, and an existing paradigm of treaties and conventions.

Remaking Muslim Politics: Pluralism, Contestation, Democratization. Edited by Robert W. Hefner. Princeton, New Jersey: Princeton University Press, 2005. Pp. xii, 342. \$65.00 (cloth), \$19.95 (paper).

REVIEWED BY AMY STERNER

September 11 and the events that followed have forced the political battles within Islamic cultures onto the global stage. These struggles set in opposition those Muslims who believe democracy to be antithetical to their religion and those who are in favor of democracy and pluralism. With over one billion followers, this religious struggle within Islam promises to shape the future of democracy in the East. *Remaking Muslim Politics: Pluralism, Contestation, Democratization* is a collection of essays that examines key issues surrounding the origin of Islamic democracy, its future, and its likely consequences in the West. These comparative essays focus on individual countries, and draw upon the experiences of women and religious dissenters to illustrate that Islamic democracy stands apart from Western ideology.

The first essay, by Dale F. Eickelman, examines the effect of new media in Morocco. Increased accessibility of new media, the article asserts, such as television, combined with a recent movement toward mass education is helping to facilitate the growth of civic and plural powers in Islamic society. As people are more able to communicate across boundaries, Eickelman argues, open societies and democracy will develop in Islamic countries. This contention is examined in the context

of Morocco's move to more "transparent" elections in the face of an extensive national press.

In the second essay, Muhammad Qasim Zaman asks whether traditionally educated Muslim religious scholars, the 'ulama, are willing to draw on Islamic law (the Shari'ah) in a way that is favorable to a civil, democratic Islam. Focusing on the 'ulama of Pakistan, Zaman posits that, contrary to the traditional Muslim modernist viewpoint, such an interpretation is possible. He argues that if the state works together with the 'ulama to shape education within Islamic religious schools, the hostility that exists today between the government and traditional scholars will subside as communication opens.

The next essay, on the death of Islamism in Turkey and the rise of a "personalized" Muslimhood, provides an interesting contrast to Zaman's argument. Jenny B. White describes the role of religion in the Turkish Republic, a secular state that is now governed by a "moderate Muslim" party. In examining whether the Turkish model of the secular state, where faith is but a "guide" to party leaders, could travel to other Muslim nations, White recognizes that Turkey suppressed radical Islam through aggressive use of the military by a democratic body, and that Turkish conceptions of Islam differ from those held in parts of the Arab world.

In the fourth essay, Bahman Baktiari explores the stalled reformist movement in Iran, offering various reasons for its slow progress despite former President Mohammed Khatami's clear mandate from voters. The greatest challenge to reform lies in the bifurcated system of executive power, where the popularly elected President conducts domestic and foreign policy but is held in check by an appointed Islamic Supreme Leader who controls the military and has veto power over the President. The government, then, is both Islamic and a republic; Baktiari argues that, currently, the Islamic structure is more powerful. The author believes that the Iranian polity, however, is outpacing the government in moving toward a more secular state and that the government must eventually respond to the evolving cultural reforms.

The next essay provides an overview of Egyptian politics that addresses how the state suppresses dissent, followed by a discussion of the failed attempt to lawfully register a secular political party. Augustus Richard Norton notes that, against

great repression from the Islamic government, the Hizb al-Wasat developed a party platform calling for freedom of belief, democratic participation, and women's rights. Norton sees the experience of the Hizb al-Wasat as an "instructive sample of modern political parties," and speculates that with Western attention now focused on the project of democratic reform in Muslim countries such parties may ultimately be successful.

The following essay by Diane Singerman continues to examine Egyptian politics, doing so through the lens of a new divorce law in that country. In 2000, the Egyptian parliament passed a law that provided women with the right to initiate "no-fault" divorces, ensuring child support for impoverished families and allowing more flexible divorces for unregistered married couples. The passage of this law may be indicative of the slow institutionalization of democracy in the Middle East, and the essay argues that the lawmaking process in this case strengthened the link between parliament and civil society. Like Zaman, Singerman notes the influential choice made by activists here to use Islam as an advantage, rather than an obstacle, in promoting social change.

The next essay looks at the internal context of Saudi Arabian politics, and specifically at the origins and ramifications of Islamist dissent. Gwenn Okruhlik argues that the government can foil radical dissent through acceptance of reformist political expression. He also claims the country is prepared for reform within the context of Islam. However, such change cannot be promulgated without the political empowerment of civil Islam. This should occur, says Okruhlik, through the empowerment of "social carriers" within already empowered institutions, including the clergy, educators and business.

The eighth essay, by Thomas Barfield, deals with the intersection of Islam and politics in Afghanistan. He believes that, unlike other Muslim nations, Afghanistan does not consider Islam an ideology but rather an all-encompassing way of life. Given this, liberalism in Afghanistan is not likely to manifest itself through pluralist Islam but may instead rise through the acceptance of varying forms of Islam in the country.

In the next essay, Michael G. Peletz shifts the focus to Malaysia and the cultural politics of legitimacy and Islam in the aftermath of September 11. Peletz contends that despite external signs suggesting a radicalization of Islam in Malaysia af-

ter September 11 (for example, protests at the American Embassy), most Muslims in that country are moderate and support democracy. Yet, the country is witnessing a direct confrontation between vocal radical minorities and a more subdued mainstream ethos. The main challenges to the state, then, come from competing claims within the Muslim community.

Robert W. Hefner contributes an essay on Muslim democrats and Islamist violence in modern Indonesia. Indonesian progress toward democratic Muslim politics in the 1990s was cut short by recent sectarian violence and the formation of radical Islamist paramilitaries. Hefner explores the obstacles to continued democratic reform, blaming a weak civil society and the tendency of the political elite to neutralize opposition by igniting sectarian zeal. These obstacles may be overcome, however, due to a change in public perception of radicalism following the terrorist bombings in Bali and Jakarta. Still, the potential for democracy and pluralism in Indonesia rests largely on the empowerment of civil society by political parties and institutions.

The penultimate essay examines the political discourse of transnational Islam. Peter Mandaville provides a comparative overview of the subject, analyzing the history, ideology and practices of both radical and moderate movements. He argues, however, that reality of contemporary Islam is one that cannot be categorized within "radical" and "moderate" terms; there is no one form of civil Islam that can be advanced worldwide. To advance Islam globally, then, activists must quench the circumstances that support radicalism while simultaneously promoting Islamic pluralism and civil society.

John R. Bowen, in the final essay, turns to pluralism and normativity in French Islamic reasoning. He explores the new Muslim communities in France, looking at how that country's social and political structures have informed the Islamic way of thinking. Notably, Muslim immigrants in France have adopted norms that agree with French culture and social institutions. Many scholars, however, argue that Islamic norms might also improve French ones. Obviously, recent events have indelibly altered the complex relationship between France and her Muslim citizens. Last year's riots call many of Bowen's conclusions into question.

Remaking Muslim Politics provides a broad assessment of modern Islam and the development of democracy and pluralism within its framework. This assessment is timely given the current global focus on democratic reform in Muslim nations, but the book leaves the reader wanting some thread to tie the experiences of such nations together. As Mandaville points out, however, there may be no global Islam and no such tie may exist.

The United Nations: Confronting the Challenges of a Global Society. Edited by Jean E. Krasno. Boulder, Colorado: Lynne Rienner, 2004. Pp. xii, 443. \$59.95 (cloth), \$24.50 (paper).

REVIEWED BY KENNETH BLAZEJEWSKI

The United Nations: Confronting the Challenges of a Global Society seeks to fill the "vacuum" in popular understanding of the "complex history, evolution, and workings of the United Nations." In doing so, the book provides an exhaustive overview of the structure and function of the United Nations system. Part I, entitled "Out of the Ashes of War," introduces the history and structure of the UN and its role in developing international norms. Part II, "Engaging Human Needs on a Global Scale," focuses on the central functions of the United Nations, from elections monitoring and peacekeeping to promoting human rights and development. Part III, "Processes of Global Burden Sharing," addresses the contributions of member states, from financial support to informal support for UN initiatives through ad hoc coalitions. Overall, the book does a good job of stitching together the many operations and programs that fall under UN auspices. More interestingly, several chapters examine the evolution of the United Nations from the foundation in 1945, through the Cold War, into the Post-Cold War period and to the present day.

Part I, "Out of the Ashes of War," begins with a chapter by Jean Krasno, the editor of the book, which provides a preliminary overview of the principal bodies of the United Nations, the agencies they oversee, and the UN Specialized Agencies. In the second chapter, Krasno discusses the founding of the United Nations in the waning hours of World War II, from preliminary negotiations in Washington to the signing of the

Charter in San Francisco in 1945. She presents the central sticking points in the Charter negotiations on issues such as membership and competency of the Security Council and the General Assembly. Krasno notes that the willingness of the United States to empower the UN to use force to deter aggression went hand-in-hand with its insistence on a veto power for permanent members of the Security Council, assuring that U.S. forces would never be sent into action without U.S. consent. In the final chapter of Part I, Joe Sills discusses the role of the United Nations in establishing global norms and standards. For example, the UN has contributed to the development of international law through the rulings of the International Court of Justice (ICJ), over 500 binding multilateral agreements, the jurisprudence of ad hoc tribunals, and countless pronouncements of "soft law" embodied in the resolutions of the General Assembly and the recommendations of the International Law Commission (ILC). The specialized agencies, such as the International Labor Organization (ILO), and UN global conferences, such as the 1972 Stockholm Conference on the Human Environment, also play a central role in establishing global norms and standards.

Part II, "Engaging Human Needs on a Global Scale," begins with a chapter by Charles Norchi on the UN's role in advancing human rights. Norchi describes the various human rights institutions and mechanisms within the UN such as the Human Rights Commission, the Office of the High Commissioner for Human Rights, the ad hoc tribunals, and, of course, the Universal Declaration of Human Rights and the various Conventions and their respective treaty bodies. Norchi suggests that the UN is continually challenged to develop a human rights strategy that interprets human rights norms with the flexibility and sensitivity necessary to engage in a dialogue with diverse cultures while at the same time maintaining the ability to recognize and act to stop human rights violations when they occur. Chapter Five, by Robin Ludwig, addresses the role of the UN in providing electoral assistance. Ludwig outlines the various forms of assistance the UN has offered, from supervision of elections in Namibia in 1989 to organizing and conducting the 1999 referendum in East Timor. Ludwig notes that the UN increasingly serves to coordinate international observers, rather than directly monitor the election themselves. Chapter Six, by Jacques Fomerand, addresses the

work of the United Nations in development. Fomerand notes the ability of the UN to collect and disseminate economic and social information, applauds the UN's production of alternative policy perspectives, such as in the UNDP's annual Human Development Report, and laments its current lack of economic leadership. The author describes the strong influence that Global Conferences have had in shaping the development agenda in recent years, often advancing broader definitions of development—a move championed by civil society groups. Fomerand also offers an interesting critique of UN humanitarian aid from the perspective of developing countries that are skeptical of the conditionality that often accompanies bilateral humanitarian aid and fear that increased humanitarian aid comes at the cost of less general development aid.

In Chapter Seven, Derek Boothby describes the role of the United Nations in disarmament, an area where progress has been particularly slow coming. The history of UN and international disarmament efforts since the onset of the Cold War testifies to the United Nations' inability to deter the growth and maintenance of large nuclear arsenals. Nuclear states have persistently disregarded their obligations under Article 6 of the Nuclear Nonproliferation Treaty, adopted in 1968, to pursue a treaty on "complete disarmament under strict and effective international control." The U.S. Senate's veto of the Comprehensive Nuclear Test Ban Treaty (CTBT) in 1999 suggests that this trend will not change in the post-Cold War era. The UN has found more success in the prohibition on the use of the anti-personal landmines.

In the final chapter of Part II, Jean Krasno traces the history of UN peacekeeping missions. Krasno highlights some of the central principles of peacekeeping established by Secretary-General Dag Hammarskjöld after the success of the UN peacekeeping mission in the Suez crisis and examines the consequences of deviating from those principles in subsequent missions.

Part III, "Processes of Global Burden Sharing," begins with a chapter by Jeffrey Laurent on the financing of the United Nations. Much of the chapter traces the tortured relationship between the U.S. Congress and the UN, in which Washington has often used nonpayment of assessed contributions to push reform on the UN. The author also notes the vital support provided by voluntary contributions, traditionally

from governments, but increasingly from private sources such as foundations and corporations. In Chapter Ten Jochen Prantl and Jean Krasno discuss the various roles that informal groups and ad hoc coalitions of member states play in the United Nations. The Secretary-General uses ad hoc advisory groups of member states to aid him in negotiating the difficult waters of international politics. Especially in moments of crisis, smaller informal groups of states working with the Secretary-General offer valuable and quick feedback on his decisions and negotiating positions. In addition, consulting with such groups brings increased legitimacy to the Secretary-General's actions. At times such groups have worked along side the Secretary-General, such as in the Suez crisis, and at other times they have been able to accomplish what the UN has failed to attain, such as the Western Contact Group on Namibia's progress in negotiating Namibia's independence from South Africa. Similarly, the Secretary-General has put together a Group of Friends to help negotiate peaceful solutions to specific crises, such as the role of the Group of Friends on El Salvador in negotiating an end to the civil war in that country. The final chapter of the book, written by Edward Luck, describes the history and process of reforming the United Nations. The author describes the process of formal reform through Charter amendments, an event that has only occurred three times—once to enlarge the Security Council, and twice to enlarge the Economic and Social Council. Luck also highlights the major moments of UN restructuring, many of which were directed at remedying the decentralized nature of the UN and “perceptions of institutional disarray and fragmentation” that it engenders.

In aiming to provide a full picture of the United Nations system, *The United Nations: Confronting the Challenges of a Global Society* sets out on a difficult task and largely succeeds. The reader leaves the book with not only a firmer grasp on the structure and functions of the United Nations, but with an understanding of the political forces, North-South tensions, and institutional challenges facing the UN. At times, however, the book reads like a manual on the structural organization of the UN. It may be that some of these sections are necessarily dry, providing vital background information on the complexities of the UN. Nonetheless, the most interesting chapters are those that more fully integrate the evolution of the United Nations

and the development of global history, demonstrating how the UN was influenced by, responded to, and shaped the course of events. An interesting example is Krasno's chapter on peacekeeping, which carefully traces the history of UN peacekeeping from the early success of the Suez crisis followed by the debacle of the Belgian Congo crisis in the early 1960s. Krasno explains how the experience in Congo and global bipolar politics forced a more cautious approach on UN peacekeeping throughout the Cold War. Not until the late 1980s, as the Cold War drew to a close and UN peacekeeping missions began facilitating the transitions of countries such as Cambodia, Namibia, Mozambique, and El Salvador did the UN begin to play the sort of stabilizing role in international politics that its founders had envisioned. More recently, however, the failures in Somalia, Rwanda, and Bosnia have forced many within the UN to question the role of peacekeeping in violent and ongoing internal conflicts.

Many chapters of the book provide a rich historical perspective on the United Nations. However, the thematic focus of each chapter fragments the book's narrative and prevents the development of an integrated history of the UN. While falling short as a historical account, very little about the book is forward-looking. For example, although the September 11 attacks are referenced in several chapters, there is very little discussion of the role of the UN in addressing security threats from non-state actors. The chapter on disarmament contains scant mention of terrorists or the role of the UN in assuring that weapons of mass destruction do not fall into their hands. Likewise, the chapter on reform details past efforts at change within the UN but dedicates very little time to examining the types of reforms required to improve the effectiveness and efficiency, or at least the image, of the UN today.

The book delivers a thorough account of the tremendous amount of activity that the UN has been engaged in around the globe in the past 60 years. Any tendency to conceive of the United Nations as merely consisting of the Security Council and General Assembly is quickly abolished. The United Nations is dedicated to a daunting array of complex activities—from elections monitoring to setting international standards, from international disarmament to organizing global conferences on pressing social issues. *The United Nations: Confronting the Challenges of Global Society* provides the reader with a strong

2005-2006]

BOOK ANNOTATIONS

399

sense of what a truly tremendous task has been entrusted to this institution.

Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons. Edited by Scott Leckie. Ardsley, New York: Transnational Publishers, 2003. Pp. xx, 433. \$125.00 (cloth).

REVIEWED BY TRISTAN OSTROWSKI

As the executive director for the Centre on Economic Housing Rights and Evictions (COHRE), Scott Leckie has dedicated his career to the enforcement of housing, land, and property rights, particularly in post-conflict settings. In *Returning Home*, Leckie presents the case studies of several authors to illustrate the problems still being faced throughout the world. From these studies and other analyses of ongoing restitution cases, Leckie develops a list of best practices for addressing those problems.

Leckie's introductory chapter, "New Directions in Housing and Property Restitution," briefly charts the historical evolution of housing and property rights for refugees and explores some of the legal and institutional developments that have made enforcement of housing and property restitution for refugees possible. Leckie only briefly mentions the pre-20th century treatment of property restitution, and a slightly more detailed analysis would have helped contextualize some of the later developments, which he discusses in greater detail. Similarly, he gives scant attention to the general concept of restitution on which the approaches presented throughout the volume are based. The many remaining obstacles to property restitution are covered in relative detail, strengthening Leckie's argument that restitution rights still have a long way to go before they are universally enjoyed.

The case studies in the volume's second part elucidate some of Leckie's ideas while adding a good deal to the debate. Beyond Leckie's introductory and concluding chapters, however, they are given no outside context or introduction, and sometimes even their placement appears arbitrary.

In "Musical Chairs: Property Repossession and Return Strategies in Bosnia and Herzegovina," Marcus Cox and Madeline Garlick explore what they describe as "the most dramatic

success of the peace process in Bosnia and Herzegovina.” Pointing out that property laws were used to further the goals of ethnic cleansing during and after the Bosnian war, Cox and Garlick establish the importance of directly addressing the damage brought about by those laws. The piece also examines the different return strategies which comprised the restitution effort, drawing from the situation a group of core principles to be gleaned from the successful return process in Bosnia and Herzegovina—a focus on individual rights, the importance of institutionalized return, and freedom of choice in the mode and timing of return.

Walpurga Englbrecht’s chapter, “Property Rights in Bosnia and Herzegovina: The Contributions of the Human Rights Ombudsperson and the Human Rights Chamber Towards Their Protection,” analyzes the Human Rights Commission established in the Bosnia and Herzegovina peace agreement and the performance of its component bodies, the Human Rights Chamber and Human Rights Ombudsperson, in ensuring the right to restitution embodied in the peace agreement. Special attention is paid to the great difficulties posed by the application of property legislation at the municipal level. Englbrecht notes that even though the two institutions brought relief to very few people, considering the massive backlog of claims, the Chamber played an essential role in developing case law and principles which were later adopted in other contexts.

Jean du Plessis presents his case study, “Slow Start on a Long Journey: Land Restitution Issues in East Timor, 1999-2001,” as a demonstration of how land and housing issues can be incredibly complex and challenging even when they involve a relatively small area. The East Timor situation provides a useful contrast to the other case studies in its level of detail, even though du Plessis’s observations are often very similar to those other studies. Du Plessis is particularly critical of the failure of the East Timorese leadership to implement mechanisms to deal with the land issue, and he proposes that East Timor address these issues by meeting minimum goals such as promoting understanding between competing claimants and providing constitutional guarantees protecting housing and property rights in the future.

Cecilia Bailliet’s “Property Restitution in Guatemala: A Transnational Dilemma” examines the treatment of housing and property rights in a legal system composed of “a plurality

of legal orders.” Her primary concerns are international apathy and a growing trend of national blame-shifting, which have prevented the completion of restitution efforts and created an atmosphere that could devolve Guatemala into a pre-conflict state. In “Giving and Taking Away: The Difference Between Theory and Practice Regarding Property in Rwanda,” Lisa Jones addresses similar problems of government complacency and misconduct, placing particular emphasis on the need for cooperation between the government and Rwanda’s inhabitants in light of the turmoil already wrought by property disputes. Like du Plessis, Jones stresses the need for a deliberate, possibly even slow, process. Jones also discusses Rwanda’s limited monetary resources and the practice of giving land in lieu of monetary compensation and the problems this poses for environmentally protected areas within Rwanda. Alan Dodson and Veijo Heiskanen’s “Housing and Property Restitution in Kosovo,” provides a brief history and overview of the system in Kosovo, commending the legal framework put in place by the United Nations while noting that the goals set out beforehand have not yet been met, largely because of inadequate financial support from the international community.

In, “Land Restitution in South Africa,” Monty J. Roodt provides a relatively detailed analysis of South Africa’s recent history of handling restitution claims. He applauds the overall success of the system in spite of its greatest obstacles—bureaucracy and lack of integration with local government.

Part III of the book concerns “Unresolved Restitution Cases.” Terry Rempel’s chapter, “Housing and Property Restitution: The Palestinian Refugee Case,” confronts a hotly-debated topic also addressed in the book’s dedication. Rempel focuses on the systematic nature of the “displacement and dispossession of the Palestinian people” as the issue’s defining characteristic. The chapter argues strongly for a true effort at addressing the concerns of displaced Palestinians, discussing the failures of the past and the problem of discrimination against Palestinians as an entirely political issue in light of strong legal support for many Palestinian claims. “Housing and Property Restitution in the Republic of Georgia” by Zurab Burduli and Anna Dolidze calls for immediate action to address the problem of restitution throughout Georgia, stressing the need for government actors in the region to place the concerns of Georgia’s residents above their own political con-

cerns. Josh Sugden's "Housing and Property Restitution in Turkey" sees mixed success for villagers attempting to return to their homes in Turkey, and points out that institutional reform, such as the abolition of the village guard system, is necessary in order for return to be feasible. Bret Thiele's "Enforcing the Right to Restitution: Legal Strategies for Indigenous Peoples and the Role of International Law" and Simon Bagshaw's "Property Restitution for Internally Displaced Persons: Developments in the Normative Framework" each generally address unique restitution issues, providing distinct analyses separate from the concerns of the main case studies.

Returning Home is not a volume for those with a passing interest in the issues surrounding restitution rights for refugees. Its chapters all contain meticulously researched analyses which lend great support for Leckie's proposition that "[t]he restitution story . . . is far from over," but there is a much greater focus on case-specific legal and procedural issues and the lessons to be drawn from these cases than on providing a broad survey of the issue, or even its background principles. The volume is not intended to give a complete picture of all sides of the issues addressed, either. This is particularly apparent in the book's handling of the Palestinian situation.

Leckie concludes the volume by providing a list of twenty-one best practices that could prove useful in future situations. He certainly succeeds in providing readers with a sense of land restitution today and where, based on past experiences, it should be headed.

The Development of Positive Obligations Under the European Convention on Human Rights by the European Court of Human Rights.
By Alastair Mowbray. Portland, Oregon: Hart Publishing, 2004. Pp. xvi, 239. \$60.00 (cloth).

REVIEWED BY JESSICA CHAN

In the midst of much recent debate on the efficacy of international conventions and agreements in aligning the legal structures of states under their jurisdiction, Alastair Mowbray, a professor of public law at the University of Nottingham, embarks on a detailed survey of the positive obligations embodied within the European Convention of Human Rights, as interpreted by the European Court of Human Rights (ECHR or the

Court). His book chronicles numerous ECHR decisions and their contributions to the shaping of the scope of obligations imposed upon states by various provisions in the Convention. By the end of the book, Mowbray seeks to demonstrate that there has been a trend away from a basic policy of non-interference with states and towards extending and broadening positive duties of states in order to ensure individual rights are protected.

Mowbray first discusses the right to life as protected under article 2 and its requirement that states not only refrain from the intentional taking of life but also safeguard the lives of those within their jurisdiction. Such duties include not only the substantive obligations to ensure that threats to physical safety are met with a proportionate police response and to provide medical services when needed and requested, but also the procedural obligation to supervise effective investigation of murders. Mowbray then discusses, in the next chapter, the demands of article 3 on states to ensure the prohibition of torture. While most of the safeguards obligations are under article 2, article 3 also extends protection to prisoners who are forced to live in inadequate living conditions.

The third chapter surveys cases which have been brought to the ECHR's attention based on breaches of article 5, which guarantees the right to liberty and security. Mowbray indicates that a broad range of cases demonstrate that states have express obligations to ensure procedural guidelines are enforced such as informing detainees of the reasons for their arrest, the prompt adjudication of claims by a judge, and the provision of a speedy determination of the lawfulness of the person's detention. Article 5 also includes more substantive obligations including the duty of the state to account for all detainees, to take measures to protect them from disappearance while in state custody, and to undertake effective investigation if a disappearance occurs. The next chapter, which delineates the boundaries of article 6 and the right to a fair trial, discusses the extension of the procedural obligations first outlined under article 5. Article 6 protects not only the right to a speedy trial under subsection 1 and the necessity of the state to inform prisoners of the reasons for their arrest under subsection 3(a), but also imposes upon states a requirement to provide free legal (subsection 3(c)) and interpretation assistance (subsection 3(e)).

Mowbray navigates the complex reaches of article 8 and the right to respect private and family life, devoting a lengthy and detailed chapter to an analysis of court cases relating to protections against sexual abuse, recognition of transsexuals, acceptance of choice of names, access to official information, establishment of paternity, provision of facilities for the disabled, legal recognition of family relationships, custody of children, immigration decisions affecting family relationships, facilitation of the lifestyles of minorities, provision of welfare payments, and protection from pollution, among others. Mowbray suggests that the ECHR has progressed from accord-ing states wide latitude in the provision of these rights to the utilization of a fair balance test for determining the existence of individual positive obligations and state compliance with positive obligations. The cases chosen by Mowbray also indicate that the Court has been reluctant to find the existence of positive obligations in many areas deserving of article 8 protection, including the provision of social facilities and welfare benefits and the recognition of transsexuals.

Mowbray then continues by summarizing case law arising under articles 9, 10, 11 and 14, which protect the freedom of thought, conscience and religion (article 9), freedom of expression (article 10), freedom of assembly and association (article 11), and prohibition of discrimination (article 14). While most states that have ratified the Convention already subscribe to these principles, the Convention also extends the positive obligations under article 10 to protect media organizations from unlawful violence and under article 14 to pay particular regard for individuals with distinct characteristics when applying Convention rights.

The final substantive chapter discusses duties under article 13 and the right to an effective remedy, focusing on the requirement that states provide effective domestic remedies where duties have been breached. These duties include the provision of remedies when unreasonable delays occur in civil and criminal proceedings. Much emphasis is placed on differentiating the obligations under this section from the duties under article 2, 3 and 5, which also ensure that procedural obligations are met.

Mowbray concludes by offering insights into his analysis of the Convention and its case law. He notes that, under the Convention, passive non-interference by states is no longer suf-

ficient to ensure that the rights are protected—states are required to actively guarantee these rights. He also endorses the view of Professor Henry Shue, who debunks the negative rights/positive rights dichotomy by emphasizing the need to view rights as encompassing of three types of duties—to avoid depriving, to protect from deprivation, and to aid the deprived. Thus, those duties imposed upon the state to protect persons from violations of their Convention rights by others and positive obligations regarding a state's treatment of detainees are classified as duties to protect. The duty to perform effective investigations under articles 2, 3, 5 and 13, however, are classified under duty to aid.

Mowbray also comments on the progress of the development of positive obligations by the ECHR. He notes that the Court began by imposing relatively uncontroversial obligations such as the duty to ensure a speedy trial, or to provide free interpretation assistance. By the 1970s, however, the Court began to elaborate a sphere of protection based upon "respect," found in article 8(1). These included legal recognition of family relationships and the obligation to protect homes from environmental pollution. By the mid-1990s, the Court had begun to build the positive obligation of investigation, through its widening of the scope of articles 2, 3 and 5.

Mowbray's book is perfect for those who have little knowledge of the European Convention of Human Rights and would like an in-depth, yet easy-to-understand, survey of the separate rights that arise under the Convention. However, this is all the book offers. The book gives little insight for those who desire more intensive involvement and analysis into what the trends suggested by Mowbray mean. Topics which are noted in passing in Mowbray's book include the extent to which the ECHR has given wide latitude to states to develop jurisprudence under the Convention through the "margin of appreciation" rationale, and the effects that the rise in the number of cases involving significant violations of the right to life and prohibition of torture by Turkish security forces has had on the development of positive obligations under articles 2 and 3. Those who are interested in these subjects and other forces behind the development of these positive obligations will unfortunately not be able to find those answers in this book.

Economic Espionage and Industrial Spying. By Hedieh Nasheri. New York, New York: Cambridge University Press, 2005. Pp. xvi, 270. \$24.99 (paper).

REVIEWED BY DOUGLAS J. BROWN

In 1997, a retired Eastman Kodak manager pleaded guilty to selling trade secrets to undercover Kodak officials posing as Chinese agents. In 1999, a Taiwanese national was convicted for conspiracy to commit trade secret theft for his role in a plot to obtain confidential information on how to make an anti-cancer drug manufactured by Bristol-Myers Squibb Company. In 2003, federal officials charged two former Boeing Company managers with conspiring to steal trade secrets pertaining to a U.S. Air Force rocket program from Lockheed Martin. Hedieh Nasheri's *Economic Espionage and Industrial Spying* reports on these and other episodes to expose the threat of economic espionage in today's society.

Nasheri reveals both the current practice of economic espionage and describes the primary forces responsible for this state of affairs. She begins with a brief account of trade secret theft in general and the distinctions between economic espionage and industrial espionage (the former refers more specifically to a government's efforts to acquire information). The book subsequently describes how the convergence of the end of the Cold War, the transition to an information society, and the corresponding increased interconnections between nations dramatically magnified the pressure to criminalize economic espionage. The third and fourth chapters discuss international dimensions of economic competition and the sometimes subtle differences between legal information gathering and that which rises to the level of economic crime. Chapter Five explores the inherent tradeoff between security on the one hand and openness in the global information infrastructure on the other. Nasheri concludes the book with an examination of the Economic Espionage Act (EEA), the U.S. federal government's effort to control trade secret theft through criminalization, and the potential ramifications of this legal approach.

Nasheri's book clarifies an elusive subject that criminologists and legal scholars have been slow to address. She adequately deconstructs technical details that often render the

study of computer crime difficult for legal scholars and policy-makers. This enables her to differentiate various techniques of trade secret theft through the use of information technology and the corresponding consequences they entail. Nasheri analyzes business pressures that result in the severe underreporting of economic and industrial espionage to law enforcement and the resultant miscomprehension of its pervasiveness. Most valuably, Nasheri presents the results of several surveys designed to more accurately grasp the true extent of contemporary economic espionage activity and the collection methods that are most commonly used to misappropriate trade secrets. The data is fairly numbing: approximately 90% of survey respondents in 2001 experienced computer security breaches; fewer than one in five acknowledged that it would report a security breach to government authorities; and an estimated seventy foreign governments have active economic espionage programs that target American industry.

The prose that Nasheri uses to present this background is unencumbered and efficient. Most of the factual accounts in the book are described in a detached fashion that gives the book an air of impartiality and reflects its origins: Nasheri obtained much of her material through a detailed review of the records of EEA prosecutions and history surrounding the legislation's enactment. Her collaboration with federal officials and investigators is also evident both from the perspectives the book provides on prosecutorial strategies and from its predominant focus on U.S. policy.

The book's dispassion is commendable during the presentation of background material and factual examples, but its failure to delve into potentially contentious policy issues is disappointing. For example, Nasheri assumes a Lockean vision of intellectual property rights and a policy perspective focused around maximizing efficiency in such a regime, but does not grapple with the difficulties involved in reckoning with states that do not adhere to such a system. Nasheri repeatedly stresses the necessity of international cooperation in order to combat transnational espionage, but only hints at the inevitable resistance to be encountered when soliciting assistance on an issue that disproportionately impacts American interests. She also readily accepts the deterrence-based criminalization scheme that the U.S. government has adopted without analyzing alternative strategies utilizing existing civil remedies or di-

plomacy. Furthermore, Nasheri gives short thrift to the potential ramifications that increased criminal investigations of espionage may eventually entail on both the future development of information technology and on civil liberties.

Although *Economic Espionage and Industrial Spying* reserves many complicated issues such as these for further study, Nasheri's silence on these matters does not detract from the book's overarching message that economic espionage is an unavoidable reality demanding policy action on both domestic and international levels. This conclusion is neither revolutionary nor complex. The fact-intensive presentation that Nasheri provides as support is a significant contribution to an emerging field of study, and is valuable for its objectivity and extreme relevance to business, criminal jurisprudence, and international relations in the Information Age.

Human Rights and Narrated Lives: The Ethics of Recognition. By Kay Schaffer and Sidonie Smith. New York, New York: Palgrave Macmillan, 2004. Pp. xii, 303. \$79.95 (cloth), \$26.95 (paper).

REVIEWED BY CONOR FRENCH

Stroll through New York City on a weekend afternoon and you will see sidewalks and street corners teeming with signs and literature denouncing the Chinese persecution of the Falun Gong or the atrocities committed against Iraqi prisoners or the wrongful imprisonment of people like Leonard Peltier and Mumia Abu Jamal. Stop by the New York University School of Law and examine the classroom blackboards or the flyers scattered around the academic halls and you may fill your whole next week with scheduled lectures, speeches, presentations, and discussions on a host of human rights topics ranging from the Yugoslavian criminal tribunal to the denial of adequate educational opportunities to disadvantaged youth.

What is striking about the prevalence of these everyday encounters with issues of human rights is just how comfortable today's society has become with the language of human rights. Indeed, notions of human rights increasingly function as a moral compass that guides and divides the contemporary geopolitical consciousness. Such moral transgressions as female

genital mutilation or systematic prisoner torture now engender worldwide indignation and may often precipitate calls for intervention on behalf of powerless victims. Yet, amidst this move toward an international landscape demarcated by a constellation of moral values, few question what events or trends lurk behind such a paradigm shift. In *Human Rights and Narrated Lives*, co-authors Schaffer and Smith approach this question through the lens of personal narratives. Specifically, Schaffer and Smith probe how storytelling relates to the genesis and augmentation of the growing fluency in the language of human rights.

The launching point for Schaffer and Smith's analysis is Michael Ignatieff's assertion that the language of "human rights has become the dominant moral vocabulary in foreign affairs." From there, they embark on a journey that is part historical and part socio-cultural, and which ultimately ties the recognition of personal stories to the expansion of human rights dialogue around the globe.

Schaffer and Smith trace global relevance of an individual's human rights experience back to the Holocaust memoirs penned in the aftermath of the Second World War. Through the voices of Elie Wiesel, Primo Levi, and many others, the Holocaust transcended its particular cultural, geographic, and religious contexts and became a "unique and unprecedented 'world' experience." Rooted in the concept of human rights as a "world experience," the greater part of *Human Rights and Narrated Lives* is devoted to five case studies of storytelling that emerged from an event or period of human rights violations: apartheid in South Africa; the "stolen generation" in Australia; "comfort women" in Japan; high incarceration rates in the United States; and the Tiananmen Square massacre in China.

The first case study, storytelling stemming from the years of apartheid in South Africa, opens with Nelson Mandela, exonerated and beloved by the world, striding out of Victor Verster Prison and instilling hope within a long-suffering nation. Through this highly memorable image, Schaffer and Smith instantly lock us into how influential human rights struggles have become in shaping our understanding of the world.

Of the five case studies, the study of personal narratives from prisoners in the United States criminal justice system is by far the most daring in pushing the boundaries of the

human rights dialogue. First, its inclusion tacitly admonishes an acknowledged leader in the quest to enforce universal human rights, the United States, for unresolved domestic conditions. Second, it recasts the issue of race and incarceration, traditionally located in the domain of civil rights struggles and their progeny, as a worldwide issue of human rights. Third, it subverts the relevance of absolute reliance on a distinction between an innocent victim and a guilty perpetrator by re-positioning the hardened and culpable convict as vulnerable in an unjust system of criminal punishment.

Nevertheless, despite the provocative insights that crop up in the United States prison case study and in a few other places in the book, much of *Human Rights and Narrated Lives* often does little more than invite further and perhaps more compelling questions and concerns. Time and again Schaffer and Smith eschew judgment not only on the viability of the language of human rights, but also on the flaws and complications presented by certain forums for storytelling. Many attendant concerns regarding effectiveness, authenticity, and reliability languish largely unexplored. In general, Schaffer and Smith seem content to extol almost any recognition of personal narratives as a genuine opportunity to galvanize and extend ideals of social justice, democracy, and freedom.

The valuation of official storytelling reveals these limits to Schaffer and Smith's work. In both the case study on apartheid and on the "stolen generation," Schaffer and Smith tackle experimental attempts at official recognition of human rights violations. Through studies of the Truth and Reconciliation Commission (TRC) in South Africa and the Royal Commission to Investigate Aboriginal Deaths in Custody (RCADIC), Schaffer and Smith deconstruct the seeming paradox in dredging up horror stories of past rights violations as a road to national unification. For Schaffer and Smith, the official acknowledgement of personal stories is instrumental in both healing past wounds and in fostering a sense of belonging for victims and like-situated citizens in the future.

Yet, in so doing, Schaffer and Smith never truly delve into how and why developed nations might have used the language of human rights as an indirect method of promoting their own interests and agendas. For instance, they decline to fully investigate the distinction between official and unofficial storytelling, never really fleshing out how a country's eagerness to

redress past wrongs might correspond to an overwhelming desire to gain legitimacy in the world's eyes. This omission means that additional problems also get overlooked. Examples of such questions might be how a nation's motivation for commissioning official storytelling might impact the victim storytellers or, more abstractly, what a nation's powerful desire to ingratiate itself to the world community says about the possibility of a globe-splitting dichotomy between legitimate nations—human rights abiders—and illegitimate nations—wayward human rights violators.

Similarly, in their theoretical applications, Schaffer and Smith often over-compartmentalize the causes and effects of storytelling and the recognition of human rights violations. Schaffer and Smith consistently focus on three variables within the human rights personal narrative equation—production, circulation, and reception. For all three variables, the mode, timing, and influence of the storytelling depends upon many factors such as states of censorship, levels of education, availability of resources within groups subject to human rights violations, and cultural tendencies towards silence or conformity.

But, production, circulation, and reception do not exist in isolation from one another. Given that even the market for human rights stories is largely consumer-driven, all three are intertwined vis-à-vis what is readily salable. On the issue of how and why certain human rights violations garner international notoriety, Schaffer and Smith leave the reader wanting for more analysis. While they readily point out that the highly individualized conception of human rights is itself indicative of a western cultural hegemony, they never reach conclusions about how the western free markets fundamentally alter the production and consumption of personal narratives. Nor do they address the ominous possibility that the consumer market for such narratives has actually allowed the West, through its Tibetan freedom concerts and Sun City albums, to self-select which human rights causes are worthy of outrage and action.

As a text dedicated to “activists and witnesses in human rights struggles around the world,” *Human Rights and Narrated Lives* succeeds in describing and assessing how storytelling is related to the creation of human rights responsibilities that may cabin the discretion of a nation in its treatment of its citizenry. Schaffer and Smith argue convincingly for why personal narratives retain the capacity to draw an ever-growing

population under the protection of a global human rights campaign. Where the book seems to fall short, however, is in its steadfast intent to peddle human rights recognition itself as an end. By sidestepping many issues inextricably linked to the language of human rights as an occurrence and a phenomenon, the book never fills the grandiose canvass that its dedication and scope seem to merit.