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- BARTON, JOHN H., JUDITH L. GOLDSTEIN, TIMOTHY E. JOSLING, AND RICHARD H. STEINBERG, EDS., THE EVOLUTION OF THE TRADE REGIME: POLITICS, LAW, AND ECONOMICS OF THE GATT AND THE WTO (Princeton University Press).
- BORER, TRISTAN ANNE, ED., TELLING THE TRUTHS: TRUTH TELL-ING AND PEACE BUILDING IN POST-CONFLICT SOCIETIES (University of Notre Dame Press).
- Bratspies, Rebecca M. and Russell A. Miller, Eds., Trans-BOUNDARY HARM IN INTERNATIONAL LAW: LESSONS FROM THE TRAIL SMELTER ARBITRATION (Cambridge University Press).
- GIBNEY, MARK, FIVE UNEASY PIECES: AMERICAN ETHICS IN A GLOBALIZED WORLD (Rowman & Littlefield).
- Jackson, John H., Sovereignty, The WTO and Changing Fundamentals of International Law (Cambridge University Press).
- LEBOR, ADAM, "COMPLICITY WITH EVIL": THE UNITED NATIONS IN THE AGE OF MODERN GENOCIDE (Yale University Press).
- ODELL, JOHN S., Ed., NEGOTIATING TRADE: DEVELOPING COUN-TRIES IN THE WTO AND NAFTA (Cambridge University Press).
- POSNER, RICHARD A., NOT A SUICIDE PACT: THE CONSTITUTION IN A TIME OF NATIONAL EMERGENCY (Oxford University Press).
- SMITH, COURTNEY B., POLITICS AND PROCESS AT THE UNITED NA-TIONS: THE GLOBAL DANCE (Lynne Rienner Publishers).

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The Evolution of the Trade Regime: Politics, Law, and Economics of the GATT and the WTO. By John H. Barton, Judith L. Goldstein, Timothy E. Josling, and Richard H. Steinberg. Princeton, New Jersey: Princeton University Press, 2006. Pp. 242. \$29.95 (hardcover).

REVIEWED BY JENNIFER CHEN

The authors bring together their academic and professional backgrounds as lawyers, political scientists, and economists to examine the development of multilateral trade institutions, the General Agreement on Tariffs and Trade (GATT), and the World Trade Organization (WTO). The authors argue that political power concerns have shaped much of the GATT and WTO's development, particularly the evolution of their institutional rules, as traced through various WTO rounds. They observe that recent changes in underlying interests and ideas, expanding membership bases, and the prevalence of preferential trade agreements have brought pressure on the trade regime to better meet political needs. In the chapters that follow, the authors discuss these incremental changes and their significance for the power politics of the GATT/WTO.

The book is divided into eight chapters. The first chapter presents the authors' thesis in greater detail: Since the establishment of the WTO, perceptions of the trade regime have changed from hopeful and largely positive to politically fractured and characterized by discontent along North-South lines. The "authoritative gap," the change in countries' willingness to endorse rules that allow the regime to make authoritative decisions, reflects the regime's inability to recast its rules and norms of behavior in line with the changing interests and power of its members. Specifically, the ambiguity and the underdefined aspects of the trade agreement structure that allowed the regime to craft flexible solutions in its early years is no longer an ideal structure, when the participating nations do not have shared norms to counteract fundamental differences in interests. The chapter goes on to analyze the trade regime from a political perspective, discussing, among other topics, the relationship between state power and international trade institutions, the role of non-state actors in domestic insti-

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tutional design, and approaches to accommodating changes in power.

The second chapter examines the creation of constituencies and rules for open markets. It traces the history of the rationales behind creating trade regimes, the development of the early GATT, the WTO, and the subsequent growth of preferential trade agreements. This chapter lays much of the groundwork for the authors' main argument by looking at the GATT structure's evolution and aspects of it that have survived—namely, the underdefined relationship between states and the secretariat and the underspecificity of particular trade rules. The detailed history of the GATT that the authors provide is well-researched, straightforwardly presented, and illustrates well the continuity in regime rules and norms over time from the GATT to the WTO.

The third chapter then moves on to discuss the politics of the GATT/WTO legal system, specifically its legislative and judicial processes, including legislative rules and dispute settlement, as they are shaped by the transatlantic powers. It focuses on three sets of issues—the evolution of the formal and informal institution, changes in the constitution of the membership, and the changing nature of the problems on the regime agenda—in the legislative and judicial rule context. In laying out the history of their development, the authors conclude that the transatlantic cooperation that has been essential to effective operation of consensus decisionmaking is likely to come under increasing pressure, and judicial lawmaking will likely pose an increased threat to political support for the institution. Their conclusions are well-supported with analyses of the WTO's legislative decisionmaking process as well as its judicial rules, norms, and processes in light of the legislative process.

Chapter Four discusses the Uruguay Round in detail, from the perspective of expanding trade rules and conventions. The GATT's earlier trade rounds focused on reduction of explicit trade barriers for certain products, and they were very successful in doing so. However, the Uruguay Round marked a shift in agenda—the WTO rules go beyond borders, to include policies traditionally thought of as primarily domestic regulatory issues, notably substantive rules for the agriculture and textile sectors. This chapter illustrates nicely the way politics have helped shape perceptions and functioning of the

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WTO—there is little reason why the agriculture and textile sectors should not be subject to the same previously-established GATT trade rules, but because they are, respectively, sensitive sectors for developed and developing countries, there was some difficulty in bargaining to achieve consistency across trade sectors.

Chapter Five discusses extending trade rules to domestic regulations and the development of "behind the border" instruments for the service industry, health sector, agricultural regulations, industrial standards, and intellectual property protection. It focuses on services and intellectual property rights to illustrate the political maneuvering and bargaining that were necessary to expand the scope of the trade regime to encompass these other areas of international commerce.

Chapter Six chronicles the expansion of GATT/WTO membership and the proliferation of regional groups, paying particular attention to GATT/WTO membership conditions, the increasing involvement of developing countries, and responses to the concerns and diverse perspectives of different coalitions and developing nations. This chapter is central to the authors' thesis in that the expansion in membership that they describe has, they argue, led to a fundamental shift in the agenda of the WTO without an accompanying change in the decisionmaking system, which poses a complex challenge to the system's effective operation. Additionally, they suggest that the growth in regional agreements can also be traced to the history of the expansion in the number of regime members and associated changes in underlying power relations.

Chapter Seven discusses the accommodation of non-state actors and the representation of their interests, ideas, and information in a state-centric system. This chapter examines the role of non-state actors, their complaints about process, domestic institutional processes of interest representation and intermediation, and the WTO's legislative and judicial processes. The authors conclude the chapter by arguing that certain procedural reforms could better accommodate the new non-state actors, but because many developing countries oppose those reforms, procedural change needs to be accompanied by substantive reform if the WTO hopes to garner the support of new non-state actors. This chapter looks at one of the main themes of the book—the fracturing and increasing complexity of diverse groups and interests—through the clearly-observed phe-

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nomenon of non-state actor participation, which most readers can intuitively understand. This chapter makes the authors' discussion more accessible to readers; instead of the institution-level, big-picture historical and economic analysis of previous chapters (well-presented as they are), the specific subject matter of this chapter is one to which readers can relate a little more easily. This chapter provides a small and welcome departure from the high-level discussion of previous chapters.

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Chapter Eight presents the authors' conclusions regarding trade politics, the WTO, international bureaucracies, and various measures of success. The authors offer four observations: (1) the organization's ability to get countries to enter into beneficial trade agreements was more a result of power politics than of nations' interest in striking efficient trade deals; (2) the WTO is the result of evolutionary change from the GATT structure, resulting in some unintended effects that make it more difficult to generate cooperative trade agreements than during its GATT days; (3) the WTO has not delegated power to centralized decisionmakers, and its members neither grant the secretariat nor the elected director-general autonomous power, which serves the interests of the WTO's powerful members; (4) the GATT/WTO has been successful in terms of leading to an increase in trade, and making it difficult for nations to "backslide" during hard economic times, thereby creating a predictable market for commerce. Based on these observations, the authors suggest that going forward, the WTO must successfully face three challenges: (1) finding coalitions of supporters within member states; (2) crafting majority support among the membership for new policy initiatives such as antitrust and environmental issues; (3) responding to larger challenges to multilateralism, specifically preferential or regional arrangements.

Overall, the authors provide a thorough overview of how the WTO became the institution it is today, with its successes, problems, and future challenges. The chapters are clear and well-organized, and the volume successfully dissects big-picture concepts that would otherwise be difficult to follow. Though the authors provide no specific solutions to the problems facing the WTO today, by outlining its history from an interdisciplinary perspective, the book both contributes to scholarly understanding of today's trade regime and offers some foundation to finding practical solutions to the difficulties it faces.

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Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies. Edited by Tristan Anne Borer. Notre Dame, Indiana: University of Notre Dame Press, 2006. Pp. 316. \$70.00 (hardcover).

REVIEWED BY ALANNA FRANCO

Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies is one of three volumes emerging from the Research Initiative on the Resolution of Ethnic Conflict (RIREC), a three-year research project at the University of Notre Dame. While the series as a whole aims to identify new strategies for building sustainable peace in post-conflict societies, this volume asks, simply: "Will truth bring peace?" The immediate answer, "it depends," might seem unsatisfactory at first. However, by leaving almost no term undefined, no assertion unchallenged, and no difficult question unasked, this interdisciplinary volume addresses past failures and paves the way for future successful scholarship in the area. In fact, while the book does much to answer questions about the role of truth-telling in post conflict societies, its greatest contribution lies in the questions it raises.

The first chapter, written by editor Tristan Anne Borer, begins by explaining that transitional justice literature related to truth telling lacks conceptual clarity and proposes only vague and aspirational models. Many commonly-used terms are repeatedly undefined in existing literature. Borer then points out that as scholars have managed to gloss over the meaning of important terminology, existing literature has also largely failed to prove integral hypotheses. She argues that aspiration has been equated with empiricism. For example, while it is common to read the phrase, "truth commissions provide healing for victims," it is rare to find literature that actually provides factual proof of any such connection.

Telling the Truths seeks to fill in these gaps before asking new questions and advancing new hypotheses. Borer begins this process herself by clarifying terms such as "peace-building," "sustainable peace," "transitional justice," and even "truth." In subsequent chapters, contributors use an interdisciplinary approach to further discuss and define terms and to question whether common assumptions are necessarily true.

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In the second chapter, Charles Villa-Vincencio seeks to understand, rather than define, "reconciliation." Drawing from the Oxford English Dictionary and insights derived from the Holocaust, apartheid in South Africa, and the Rwandan genocide, he makes the following observations concerning reconciliation: Forgiveness is not necessarily an element of reconciliation; reconciliation always involves acknowledgment of the truth; reconciliation is a process rather than a goal; and it requires time and space for anger as well as for healing. Villa-Vincencio comes closest to a definition of reconciliation as he discusses the African philosophy of Ubuntu, which sees reconciliation as the creation of a "context for learning to live together with mutual respect and creative participation." Having developed the concept of "reconciliation," Villa-Vincencio notes that victims rather than perpetrators are generally asked to pay the highest price for it—a theme picked up by other contributors to the compilation as well—and asks if the political result is sufficient to justify that price.

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This question carries into the next chapter where Jennifer I. Llewellyn seeks to discuss the role of truth-telling not merely during a post-conflict society's transitional period, but beyond. Llewellyn notes that there are two ways that transitional justice scholars have attempted to provide justice-based defenses of truth commissions. The first views "transitional justice" as partial justice, or justice to the extent possible—the idea being that in times of transition some justice must be sacrificed to bring sustainable peace. The second views "transitional justice" as a different kind of justice—the idea being that justice requires different things in times of transition than in "normal times." Both approaches, Llewellyn argues, are flawed—restorative justice is neither a partial nor special kind of justice. Rather, periods of transition clarify something that is often unclear in times of peace, that "the restoration of relationships is at the heart of justice." Llewellyn argues that a focus on the restoration of relationships could help truth-telling mechanisms more successfully provide for a sustainable peace that would last far beyond the transitional period.

In the third chapter, Juan E. Méndez continues to try and determine how truth telling mechanisms can best create sustainable peace by offering a brief history of truth-telling in twelve Latin American countries. Through this historical account, Méndez shows that there are varying contributors and

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policymakers in truth-telling, ranging from international organizations like the United Nations to domestic governments and NGOs. He points out that the "right to truth" is an emerging principle of international law. While Méndez offers advice on truth-telling, he argues that truth-telling will not itself end a conflict, but can only create a context in which a conflict can be resolved.

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Continuing the theme of showing the limits on truth-telling as a means to peace building, while offering advice on how best to get around these limitations, Debra L. DeLaet's chapter discusses the role of gender. She argues that because truth commissions tend to focus on political crimes, sex-specific and gender-based violence are often overlooked. But rather than merely criticizing existing understandings, DeLaet argues that gender-sensitive analyses offer three essential contributions to the study of truth-telling and peace. First, it will contribute to more accurate accounts. Second, it will encourage creation of policy that provides equal justice for men and women. Third, it will help solve some of the terminology issues in existing literature. If gender-sensitivity is included when examining truth commissions, perhaps there is a possibility that identified problems can be fixed.

But even if there are ways to address problems posed by truth-telling mechanisms, is it clear that there is any value to them in the first place? In the sixth chapter, Pablo DeGrieff proposes a number of possible ways that truth-telling might help establish the rule of law. Interestingly, DeGrieff points out that truth-telling could have important effects on the promotion of civic trust. He argues that citizens' trust in each other and in institutions is both a consequence and a condition of the rule of law. Having outlined this hypothesis, DeGrieff says that the next step would be to assess the success of truth telling mechanisms in creating civic trust.

Even if it is found that truth-telling mechanisms do create such trust, the question, initially raised by Villa-Vincencio, regarding the extent victims should be expected to sacrifice in the interest of sustainable peace, remains. This question is investigated further in the next two chapters. In Chapter Seven, Brandon Hammer discusses the assertion that speaking out heals victims. He points out that little research has actually been done to show the psychological impact on individuals who uncover the past. He argues for a more victim-centered process that avoids looking at victims as either "damaged" and in need of care or as "vehicles" that can be used for information about past human rights violations.

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Taking this even further, David Becker's subsequent chapter discusses how truth-telling is often about asking victims to stop complaining about the past and allow society to move on. He argues that the "right to truth" and "prosecution of the perpetrators" are not separate routes to justice, but rather complementary aspects of justice. To the extent that truth commissions ask victims to sacrifice prosecution, something needs to be offered to facilitate their healing process.

On a slightly more positive note, Shari Eppel's final chapter shows one way that truth-telling can contribute to a victim's healing. Despite continued conflict in Zimbabwe, Eppel explains that two major NGOs published a report on human rights violations in the country and gave extensive recommendations. While the government failed to implement any of the recommendations, a new NGO, Amani Trust Matabeleland, formed in response to the report. By speaking to people in five communities, Amani realized that their major problem was that murdered family members had been placed in unacceptable graves. Amani worked with these communities to find a mass grave, exhume bodies, and give them proper burials. One year later the NGO found that family members' anger and pain had dissipated. In a society still embroiled in conflict, truth combined with sensitive use of that truth managed to lead to healing for victims.

Telling the Truths refuses to give truth-telling unquestioned praise, but it does not completely discount its value. Rather, it examines both the successes and failures of truth-telling commissions in the past. Most importantly it clarifies concepts related to truth and peace and then asks the questions that become obvious once those concepts are made clear. Telling the Truths sets the stage for a new, more effective investigation into the role of truth-telling in achieving sustainable peace in post-conflict societies.

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Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration. Edited by Rebecca M. Bratspies and Russell A. Miller. New York, New York: Cambridge University Press, 2006. Pp. xxi, 347. \$95.00 (hardcover).

REVIEWED BY LISA GOULDY

The *Trail Smelter* Arbitration's key holding, emphasizing the "duty" of states to "prevent transboundary harm" and invoking the "polluter pays" principle, has become an iconic rallying point for proponents of international environmental protection regimes. Such a legacy is remarkable for a dispute arising some eighty years ago between a Canadian smelter and a group of Washingtonian farmers in the remote Columbia River Valley. The Tribunal's holding was unprecedented at the time and is still widely quoted:

Under principles of international law... no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.

Indeed, *Trail Smelter* represents one of very few cases in which "general principles of international law" were employed to resolve a dispute between sovereign nations over "transboundary damage." However, despite the prominence of this holding in the development of modern international environmental law, few have looked past this quotable holding into the context and intricacies of the conflict. Rebecca M. Bratspies and Russell A. Miller seek to look past the gloss that history has placed on the *Trail Smelter* Arbitration in this compilation of in-depth articles about the historical lessons and modern implications of the landmark decision. These articles are the product of the "2003 Annual Idaho International Law Symposium" and together seek to divine what impact the Tribunal has had on modern international law and discover new lessons from its rich tradition.

This survey of the *Trail Smelter* Arbitration and its legacy is divided into three parts. Part One examines the "legal and historical" foundations of the decision itself and seeks to demystify its holding by revealing its complexities. This exami-

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nation begins with a detailed account of the history surrounding the dispute, describing the important roles of the private parties involved and examining the actions of the state actors in arbitrating the dispute on behalf of those parties. Part One also examines the "jurisprudential legacy" of the decision in an increasingly prevention-focused, regulatory world. The authors of these ten articles examine the foundations of the decision to determine how universally applicable it is to modern disputes. Notably, Trail Smelter's usefulness is limited by the fact that the dispute turned more on the rights of states as "sovereign equal[s]" and less on the undesirability of transboundary pollution. Mickelson's piece summarizes well how the unique context of the arbitration makes its successes difficult to replicate in modern environmental disputes. Unlike the situation in *Trail*, in contemporary disputes the cause of damages is often unclear and the disputing countries often lack a history of cooperation and "reciprocal" interests which counsel them toward cooperation and moderation. John Knox's critique of the *Trail* Arbitration suggests that such an international arbitral mechanism would not be as successful today because "private parties" are better placed to litigate such disputes in domestic courts by applying international law principles (as opposed to states litigating disputes under domestic law in international tribunals).

Drumbl and Anderson, in contrast, note the enduring significance of the "due diligence" obligation created by the Tribunal—the obligation "not to cause serious environmental harm"—which was originally intended to ensure the continuing compliance of the Trail Smelter with pollution-prevention measures. Due diligence, Anderson notes, is recognized by the "Draft Articles on Prevention of Transboundary Harm from Hazardous Activities" as the requisite level of "intent" needed to establish the liability of transboundary polluters. Part One closes with an account of a new dispute over pollution by the Trail Smelter—the United States Environmental Protection Agency (EPA) has recently issued a regulatory order under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) against Cominco relating to pollution of the Columbia River "watershed." An action to enforce the order is now pending in U.S. courts. The regulatory character of this action, and the attempt by the U.S. to directly regulate a foreign entity under a "strict liability" theory 486

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of accountability, demonstrates a drastic break in the character of modern transboundary pollution disputes.

Part Two examines the significance and potential relevance of the Trail Smelter principles to important "contemporary" issues in transboundary environmental harm. The issues surveyed include genetically modified organisms, nuclear energy, "global climate change," hazardous waste transport, "transboundary air pollution," and marine pollution, among others. Okawa's article on "Transboundary Air Pollution" clearly expresses one key theme which differentiates such modern pollution problems from *Trail Smelter*: the difficulty of identifying any particular polluting entity as the single cause of global pollution problems like climate change. As such, the Trail Smelter requirement of "clear and convincing evidence" of "serious" environmental harm makes liability increasingly difficult to establish, and bilateral litigation becomes less effective in solving widespread pollution problems. Rather, Okawa, Jacobson, and Bratspies detail how complex international regulatory regimes have arisen in an attempt to control the spread of such environmental harms. Along the same lines, Miller details how Trail Smelter has left a lasting procedural legacy as "dynamic" international regimes have been established which allow for the gradual evolution of regulations to accord with advances in scientific knowledge, much like the system of continuing research engaged in by the Tribunal. However, states still reign supreme even in such international regulatory regimes, as conventions generally depend upon state cooperation and often are more concerned with preserving the sovereign equality of states than preventing pollution. For example, Parrish explains that in the Basel Convention on the transportation of hazardous waste, the primary concern remains protecting the sovereign equality of states.

One other key theme in Part Two is a recognition of the fact that although Canada voluntarily assumed responsibility for the actions of a private company in the *Trail Smelter* arbitration, such attributions of control are more problematic today. For example, Kaye's article on the "Law of the Sea" demonstrates that while states still have some responsibility in the Law of the Sea, to prevent the migration of pollution into the territory of other states, liability for spills is now placed primarily upon the shipowners themselves. Miller claims, however, that the prominent role of private actors in the *Trail Smelter* arbitra-

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tion presaged the increasing focus on regulation and liability of private actors for environmental harms in recent years.

Part Three innovatively examines the applicability of *Trail* Smelter to non-environmental forms of "transboundary harm" as broadly defined, including terrorism, refugee flows, Internet torts, drug trafficking, and human rights. Generally, such analyses find that *Trail's* lessons are not easily transposed to other sorts of transboundary harm. First, "liability regimes" imposing damages for continuing harms are not always appropriate to remedy non-environmental harms. In the cases of migration of refugees (Peavy-Joanis) and Latin American drug trafficking (Wise and Jensen), for example, forcing the state from which the harm emanated to compensate other states for the harm engendered will not generally resolve the problem because the harms tend to arise from instability, poverty, or weak governments within those states. Not only will those states generally have little money to satisfy any potential judgment, but any such judgment could only serve to further destabilize the state and increase the harm.

In other situations, the intense focus of *Trail Smelter* on theories of sovereign equality makes it less well suited to address harms caused by private actors. For example, with respect to Internet torts (Hestermeyer) or terrorism (Depuy and Hoss), states may not be well placed to prevent the commission of such harms by private actors. In addition, multinational corporations (Zumbansen) often operate across many different states, making it difficult to hold any one state responsible for their harmful actions. Rather, multinational corporations often have better resources and scientific knowledge to regulate their own actions in ways consistent with notions of "corporate social and environmental responsibility" and therefore states must work together with those corporations in that regard. Finally, however, Vennemann posits that *Trail Smelter* remains relevant insofar as it would counsel that states be held responsible for their own extraterritorial actions which result in human rights violations abroad.

In sum, while the lessons of *Trail Smelter* are frequently recalled by modern environmental regulations, the shifts from liability toward prevention and from sovereign equality toward individual accountability have affected the decision's relevance to modern society. Though the "polluter pays" and "no harm" principles are still relevant, their modern applicability is di-

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minished in a changing international realm. As transboundary pollution problems become increasingly complex, it becomes difficult to use such bilateral mechanisms to remedy harms. However, the procedural lessons of *Trail* remain very relevant in modern regulatory regimes, as the requirements of due diligence are commonly used to shape prevention mechanisms. Finally, while the lessons of *Trail Smelter* are not generally applicable to other varieties of transboundary harm, the decision lends some ideas to evolving notions of jurisdiction when the actions of states have clear effects in other territories.

Sovereignty, the WTO and Changing Fundamentals of International Law. By John H. Jackson. Cambridge, United Kingdom: Cambridge University Press, 2006. Pp. 361. \$90.00 (hardcover).

REVIEWED BY EMILY SCHARFMAN

Are the traditional concepts of international law still useful for our changing world? How does the Westphalian concept of sovereignty, which is based on the fundamental unit of a single nation-state with distinct borders, influence our contemporary world with its fluid boundaries and increasingly powerful non-state actors? Should we try to rework traditional concepts of sovereignty, and if so how can we replace them to help our understanding of the forces in today's geopolitical sphere? This book is "more about queries than theories." From the outset we are informed that the questions asked in Sovereignty, the WTO, and Changing Fundamentals of International Law will not have easy answers, and in some cases might not have answers at all. John H. Jackson, the University Professor of Law at Georgetown University Law Center, and a member of the World Trade Organization (WTO) Consultative Board, is one of the preeminent scholars of international law, in particular of international economic law. It is hard to conceive of someone more able to answer the questions he poses in his book, but he readily admits that his goal is to stimulate conversation about international law and the WTO rather than provide all of the answers. His project is an expansion of a series of lectures originally delivered at Cambridge University's Lauterpacht Research Center in November 2002, and—like a lec2006]

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ture series—it stimulates additional thought on the part of the reader.

The organization of the book into three discrete sections and smaller subsections helps guide the reader through a complex subject. Jackson provides an outline of each section at its beginning, and a useful summary at the end. This organizational structure makes the book accessible on a per-section basis for a reader who is interested in a smaller subject, like the dispute settlement system of the WTO. His artful description and basic overview of major issues in international law, globalization, and the WTO renders this book accessible for anyone, even those who are unfamiliar with the subjects.

With the rapid changes in the geopolitical sphere that welcomed in the new century (Jackson cites the fall of the Berlin Wall and the terrorist attacks of September 2001 as bookends foreshadowing major transitions in the world), traditional international institutions are coming under increased pressure and criticism. Jackson's goal is to highlight some of the most important criticisms of that order and reflect on it, but he cautions that many of the subjects he deals with generally could be the subject of books in themselves.

Chapter One sets the stage by describing the current geopolitical landscape and identifies three major factors that increase pressure on our traditional international institutions: transport, communication, and new weaponry. Nation-states are directly impacted by these changes because these new technologies erode boundaries between nation-states, making it more difficult to "govern," meaning that it is becoming more difficult to offer policies only at the nation-state level that can deliver benefits to local constituents. As boundaries recede and the world becomes more interdependent, robust international systems should help coordinate cooperation among traditional regions of government. However, these international institutions suffer from systemic problems of their own, including well-known good-governance issues like transparency and democratic deficit.

Chapter Two gives a broad overview of international law, which is particularly useful for those unfamiliar with its general topics and themes. Jackson articulately explains all of the major issues in international law including fragmentation, the incorporation of international law in domestic legal systems,

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state consent, customary international law, and treaty law. For readers with basic knowledge of these issues this chapter is an easy summary to refresh one's memory.

In Chapter Three Jackson introduces the concept of sovereignty. After a brief overview of traditional Westphalianbased theories, he discusses his concept of "sovereignty modern." Discharging with the concept of sovereignty potentially undermines the entire basis for the international system, because logical notions of state-consent and authority stem from that system. In response, Jackson contends that contemporary notions of sovereignty really refer to questions of power allocation. He proffers the following example as illustration: When someone contends that the United States should refuse to ratify a treaty because the act of accession undermines U.S. sovereignty, what the person really worries about is that the decision power created by the treaty should be realized at the nationstate level, not at the international level. In other words, contemporary notions of sovereignty really address whether a decision should be made at the international level, the state level, the municipal level, or somewhere else entirely. These are questions of vertical power allocation. Questions of horizontal power allocation ask about the dynamic and consequences of disaggregating a government entity into its subbranches and units and determining which of those elements is institutionally competent to deal with the governing issue. Horizontal power allocation is thus analogous to the question of separation of powers for those schooled in American government.

Allocating power on the international level can avoid prisoner's dilemma situations that evolve when governments act in their own interest without coordinating with each other, as with environmental regulation that could benefit from international coordination. On the other end of the spectrum are those powers which would be better allocated to local governments under the principle of subsidiarity. Subsidiarity enhances accountability by recognizing that local governments are sometimes more capable of providing goods than governments that are more removed from those affected by their actions. Finally, certain issues support allocating power both to the international sphere and the local government; Jackson discusses leaders who look to international norms as persuasive authority for implementing those norms within their own

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country. Of course, the big question for Jackson is, "how should power be allocated among these different human institutions?"

Chapters Four and Five use the WTO and its dispute settlement system as a case study to develop the tensions between national sovereignty and international legal norms. Chapter Four gives an overview of the WTO including its relationship to international law, its history from the General Agreement on Tariffs and Trade (GATT) to its current incarnation as the WTO, policy objectives to promote the economic benefit of the world, and structure of the treaty and organization of the WTO. He also describes how the WTO rules interact with the domestics laws of the constituent states and the scope of the body's jurisdiction. Chapter Five starts with a history of the Dispute Settlement System (DSS) under GATT, and continues with a description of the changes to that procedure under the WTO. It is within this examination of the DSS where Jackson focuses on five jurisprudential issues that empirically highlight the tensions he raises at the outset of his book. The first issue deals with the relationship between the WTO and its member states, as well as other international entities. By referencing specific cases handed down by the DSS panels Jackson explores general international law, compliance with judgments, standard of review between the panel and the appellate body, and political questions. One key jurisprudential issue that Jackson discusses is treaty interpretation. How should the WTO interpret its enabling treaty? How do certain interpretive methodologies that fill in gaps where a treaty is silent allocate power as between the state and the WTO? Jackson warns that a conservative approach which prevents an organization from "gap-filling" can hinder the viability of that international organ. If an international organization is going to retain relevancy in the changing world, then it must have flexibility in understanding its role according to its enabling treaty. Therefore, an ambiguity or gap in a treaty should be understood as a delegation from treaty members to the dispute settlement system within that organ.

Jackson acknowledges criticisms levied against international institutions in the term "good governance." In other words, international institutions lack, inter alia, "credibility, legitimacy, transparency, [and] fair methods of decision making." Jackson answers this criticism with the idea that interna-

tional institutions should be viewed as "constitutional." That is, they refer to a "human institutional framework" that is substantial and stable and whose purpose is to allow an institution to achieve its tasks over a long period of a time. One major component of good governance is treaty flexibility that allows the institution to change with the vagaries of the times. In part, this comes from rethinking the Vienna Convention on the Law of Treaties and its primarily textual approach to treaty interpretation.

The final chapters of the book try to elaborate on the "sovereignty modern" concept by asking some questions to help guide an ostensible policymaker or lay reader using the example of genetically modified foods (GMO's). The initial question is whether governments should regulate GMO's, or whether they should leave it to non-government actors in the market. True to his opening phrase, Jackson submits a whole series of guiding questions but few answers. Finally Jackson urges international lawyers to become "constitutional lawyers" insofar as they urge good governance in international institutions and try to find ways to expand the enabling treaties of necessary international institutions. He ends the book with two quotes: former U.S. Congressman Tip O'Neill's famous maxim that "all politics is local" and prominent economist Peter Drucker's reformulation that "all economics is international." These two inexorable tensions are left for us to ponder, but Jackson has provided the necessary framework to guide our thoughts.

Five Uneasy Pieces: American Ethics in a Globalized World. By Mark Gibney. Lanham, Maryland: Rowman & Littlefield Publishers, 2005. Pp. 203. \$22.95 (paperback).

REVIEWED BY ALEXANDER DÍAZ MORGAN

What does the office coffee fund have to do with American foreign policy? According to Professor Mark Gibney's newest book, Five Uneasy Pieces, quite a bit. While we Americans routinely fret over the ethical ramifications of day-to-day trivialities, such as being short of change for the office coffee fund, we are woefully unaware and unconcerned with similar ethical dilemmas on the national scale. As Gibney contends, "Americans do talk a lot about ethical issues. However, the eth**BOOK ANNOTATIONS**

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ical issues that we address are invariably the small and the relatively inconsequential—the 'easy' cases. What we run from are ethical issues that are not easy, especially those that address such fundamental questions as our place in the world."

For much of our country's history, ethical blindness with respect to our nation's policies has been the norm, not the exception. As a result of our "narrow" and "self-serving standard of ethics," we could not help but be collectively shocked at the events of 9/11. At that moment, the potential ill-effects of our choices abroad became all too real. Until this point, we had been content "to apply different legal standards depending on the locale, citizenship, and national self-interest." For our own success and that of the world at large, we cannot continue down this self-serving path. To this end, Gibney calls us all to task—the government, multinational corporations, the federal judiciary, and the lone American citizen.

In support of his case, Gibney dedicates Part I of his book, *Five Uneasy Pieces*, to tracing various ethical shortcomings in American foreign policy. One by one, he considers the often unethical double standards of American multinational corporations abroad; application of constitutional rights to non-citizens and outside the U.S.; the Federal judiciary's limited jurisdiction for foreign claims; U.S. refugee policy; and, finally, the myths surrounding America's role in the world.

On the behavior of MNCs abroad, Gibney criticizes corporations' repeated abuse of foreign environments and laborers and the failure of both Congress and the Federal Courts to check such actions. In a rich example of U.S. hypocrisy, Gibney finds that when U.S. law serves to protect corporate interests by way of monopoly, trademark, or securities law, federal courts are quick to intervene, while when confronted with claims of health and safety abuses the same courts refuse to apply relevant laws, citing a lack of requisite congressional "extraterritorial intent." Gibney's analysis in this area is compelling but ignores the paternalism implicit in what he urges. That is, what business does the United States have in interfering with a country's decision to encourage foreign investment at the expense of its own environment? Many would counter that this creates an inevitable "race to the bottom," but consider the alternative: If America were to compel its corporate giants to meet domestic standards across the globe, what incentive would there be to invest abroad? Here Gibney fails to

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consider whether it is ever "ethical" to impose our views—be they political, environmental, or otherwise—on another coun-

Gibney's second uneasy piece challenges the Supreme Court's repeated refusal to extend the application of constitutional protections beyond our own borders and citizens. The question Gibney presents is a simple one: how is it ethical "to treat 'other' people in a manner in which we do not treat ourselves"? With our continuing "War on Terrororism" and the detention of thousands of Muslim men loosely labeled enemy combatants, this question has become increasingly salient. Indeed, such hypocrisy may be one of the very triggers of 9/11 and the subsequent "War on Terror" in the first place. The mistake that Gibney makes is framing a potent ethical argument on the basis of law. For example, while ethical arguments for extending Fourth Amendment protections to seizures carried out abroad are powerful, their legal counterparts—as evinced by the Supreme Court's decisions on the issue—are much more tenuous.

Just as with the use of laws affecting American corporate interests, Gibney's third uneasy piece again criticizes federal courts for questionable application of the law. Where claims alleging foreign abuses are raised, Gibney finds the jurisdiction of American courts to be curiously limited. Courts will hear civil suits alleging abuse, but not criminal ones; courts will allow individuals or groups as named defendants, but seldom countries or regimes; and almost never will the courts entertain foreign claims against U.S. interests. Beyond our own reluctance to police ourselves through the courts, Gibney also rebukes the International Court of Justice for balking at its opportunities to hold the U.S. accountable, most notably over our infamous involvement with Contras in Nicaragua.

American refugee policy is the center of the fourth uneasy piece. Described as "little more than an immigration system" dressed up in humanitarian garb," Gibney notes that we accept immigrants over refugees at a ratio of 10:1. What is more, in the rare instance that we do accept refugees we use overly demanding, often arbitrary standards that may be blind to those most in need. To borrow an example from Gibney, Sale v. Haitians Ctr. Council, Inc. saw the Supreme Court draw distinctions between fleeing Haitians able to make it to American soil and those intercepted in water—granting refugee status only to the 2006]

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former. Believing this to be a cruel and inhumane decision, Gibney takes issue with the Court's willingness to make such arbitrary distinctions. Nonetheless, Gibney concedes that in this context, "the policies of other Western countries are no less objectionable and no less inhumane than the practices of the U.S. government." In addition, he fails to identify any real alternatives to current policy. Between the seeming lack of alternatives and ubiquity of the problem, the reader is left to doubt the existence of an acceptable solution to the current situation.

Gibney's final uneasy piece tackles the "myth" of American foreign aid, environmentalism, and our role as the "good guys." Comparing studies in which respondents estimated American foreign aid to be between fifteen and twenty percent of GDP to the actual figure which is well below one percent, Gibney concludes that Americans have an inflated self-image when it comes to our own generosity. In an attempt to cement his claim, Gibney next reveals that U.S. giving ranks as worst among industrialized nations. However, nowhere in his discussion does Gibney acknowledge the oft-cited fact that Americans donate substantially more to private charitable organizations than our peers. While charitable giving may not completely close the gap in foreign assistance, it certainly narrows it. Inasmuch as this fact is completely ignored, Gibney's analysis appears lacking. Looking to environmentalism, Gibney finds similar results—notwithstanding the fact that we lead the world in per capita greenhouse gas emissions, we commonly describe ourselves as "green." Finally, to cast doubt upon our image as liberators and a bastion of freedom, Gibney compiles a comprehensive list of our alliances with "some of the nastiest and most violent regimes in the world." The alphabetical list, stretching from Angola and Argentina to Uruguay and Zaire, stresses the point that we have often preferred our own interests (e.g. containment of Communism) at the expense of hundreds of thousands of foreign lives.

Part I ends on an undeniably sour note as our complicity in some of history's most violent crimes against humanity is held before our eyes. In stark contrast, Part II, aptly entitled "Coda of Hope," claims that "there are some indications that this blind and arrogant view toward the world could be changing."

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As becomes clear in Part II, the lengthy critiques of Part I were not without purpose. Gibney challenges the American reader to take notice and, moreover, ownership of the myriad American missteps abroad. Upon completing this task, though, Gibney turns to the future and what he believes we can do to rectify the many problems that we have created for ourselves abroad. To this end, Gibney urges continued emphasis on sincere official apologies for our government's mistakes and for the continuation of what he considers an unprecedented trend in humanitarian intervention.

In all, Five Uneasy Pieces is best described as sobering. For those caught up in popularized distinctions of us and them, right and wrong, liberators and terrorists, it is a particularly helpful read. Although the book is unflinching in its criticism of the United States, it is by no means anti-American. Rather, it represents a step back, a look in the mirror, an honest reflection upon how we carry ourselves in the world, and what we might do to return to being the "shining city on the hill" that Massachusetts Bay Colony governor John Winthrop so proudly prophesized us to be.

"Complicity With Evil:" The United Nations in the Age of Modern Genocide. By Adam LeBor. New Haven, Connecticut: Yale University Press, 2006. Pp. 326. \$25.00 (hardcover).

REVIEWED BY CHIRAG BADLANI

Both the recent changing of the guard at the United Nations and increasing public awareness about the situation in Darfur provide a timely backdrop for Adam LeBor's critique of the UN's response, or lack thereof, to the genocides during the Bosnian War from 1992 to 1995, Rwanda in 1994, and 2003 to the present in Darfur. LeBor provides a brief but more than sufficient account of the true evil behind ethnic cleansing and mass killings—an account that makes the complicity of international organizations and actors all the more blameworthy. LeBor points to specific events to support his argument that structural problems within the world body, bureaucratic politics, and individual government inaction resulted in the failure of the United Nations to halt the killings of millions of individuals in these three crises. While acknowledging the success and necessity of many of the humanitarian

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missions carried out by the UN, Complicity With Evil criticizes the unwillingness of the UN's political branches to use force against those who violate the very principles that the UN was founded upon.

LeBor's title comes directly from the text of an August 2000 UN report commissioned by then-Secretary General Kofi Annan, which warned that a policy of impartiality where one party has "clearly and incontrovertibly" violated the terms of the UN Charter "can in the best case result in ineffectiveness and in the worst may amount to complicity with evil." This passage reverberates throughout the narrative, where LeBor stresses that decisions by diplomats and officials to continue with a policy of neutrality in light of mass killings resulted in the very scenarios Annan feared.

In his critique, the author relies primarily on UN documents and extensive interviews with UN and government officials, both those in New York as well as those charged with implementing UN policies on the ground. However, in his introduction, LeBor speaks of his own experience as a journalist covering the conflict in Bosnia in 1992, witnessing on his first day at the Sarajevo airport that the UN soldiers, by illuminating with floodlights those individuals attempting to escape Sarajevo so Serb snipers could open fire, "w[ere] not the solution but part of the problem." After this brief personal account, the author moves to provide a very broad overview of the structure of the UN, focusing on the General Assembly, Security Council, and Secretariat, and also provides a brief description of the origins of the term "genocide" and the development of the term in international law.

In Part I, the author focuses on the conflict in Bosnia, seeking to describe both the "evil" that took place leading up to and during the July 1995 massacre of 7,500 Bosniaks at Srebrenica, and the complicity with those acts by the United Nations and world leaders. In Chapter I, the author notes those policies that set the UN up for failure in the region, mostly a strict adherence to neutrality, and the refusal to allow UN peacekeepers to use force unless fired upon. In Chapter II, LeBor first points to vague and non-committal language in Security Council resolutions on Bosnia, resolutions establishing "safe areas" in the region, a term he later shows lacked sufficient force to provide much safety. The author again discusses the Security Council itself, examining the role of the

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five permanent members. Finally, he introduces some key ambassadors and government officials, as well as those officials in the Secretariat with the role of carrying out the resolutions passed by the Security Council. One official, Yasushi Akashi, Secretary General Boutros-Ghali's special representative in Yugoslavia, emerges as immensely powerful and especially blameworthy in LeBor's eyes. Throughout the next three chapters, the author points to numerous occasions where Akashi's "continuing obsession with neutrality" prevented UNPROFOR, the United Nations protection force for the former Yugoslavia, the peacekeepers on the ground, and NATO forces from taking action against the Bosnian Serbs as they encroached on the Bosniak population in Srebrenica.

In addition to the individuals who were unwilling to intervene in the events leading to the July 1995 massacre, LeBor points to other factors that contributed to the overall complicity with the ongoing genocide. First, individual governments often prevented strong Security Council resolutions from passing, as a matter of self-interest. Second, these same governments, most notably the United States, did not take the lead role in pushing for military action to halt the killings, mostly due to the failed 1993 mission in Mogadishu. Finally, structural problems within the UN, including the requirement that both the UN and NATO approve air strikes, and the lengthy chain of command from Srebrenica to New York, prevented requests for action by peacekeepers on the ground from being answered in a timely manner, if at all. The author closes Part I with a graphic account of the massacre of Bosniak men at Srebrenica, using testimony from Bosnian Serb soldiers. Finally, the author discusses the quick response by NATO when news of the massacre reached New York and Washington.

In Part II, the author discusses the genocides in Darfur and Rwanda, and the UN response. Rather than go through a chronological narrative as he did in Part I, LeBor shifts between the two African atrocities, making references to similarities to the Bosnia situation. In discussing both African tragedies simultaneously, the author is able to contrast the vows of UN and world leaders to prevent such acts from reoccurring following the conflict in Rwanda, with their inaction leading up to the events in Sudan. Additionally, having established UN and global "complicity" with respect to Bosnia, LeBor is able to make the claim that the government in Khartoum op-

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erates under the assumption that the global community will not take forceful action against acts of genocide.

The author discusses the chain of information from the Rwandan capital to New York, and how, despite specific warnings of a potential slaughter of the Tutsis by Hutu militias, the UN refused permission to leaders on the ground to raid Hutu arms caches and instead planned for the withdrawal of peacekeepers from the area. Moving to the current crisis in Darfur, the author discusses the political factors that have prevented prompt action by the UN and world leaders. First, he discusses the UN's desire to preserve the current peace agreements between the northern and southern regions of Sudan, which might be disturbed if forceful action in Darfur were to be taken. Second, he speaks bluntly about the role of the Chinese government on the Security Council, explaining how China's oil interests in Sudan have caused it to block forceful resolutions from being developed. Next, he points to the failures of the African Union in stemming the killings by the Janjaweed militias and notes that Arab states have not taken a role in pressuring the government of Khartoum to stop supporting the genocide. Finally, LeBor discusses Sudan's role in the "War on Terror," and how preoccupation with the war in Iraq has shifted focus away from the killing fields of the region.

LeBor uses Part II to create a more pointed critique of Kofi Annan, who held high positions in the Secretariat during the Bosnian and Rwandan crises, and served as Secretary General during the events leading to Darfur. Specifically, LeBor expresses frustration with the slow pace of Annan's response, as when, for example, he did not speak publicly about Darfur until December 2003, one year into the crisis.

Perhaps because of the author's role as a journalist covering the events in Bosnia, the narrative in Part II is less vivid than his accounts of Bosnia and Srebrenica. Additionally, while he attempts to focus on the UN's failures in preventing modern genocide, the author often shifts the blame in Part II to individual government policies and inaction, perhaps undermining his general criticism of the notion that the UN is only as strong as its member states.

In his final chapter, LeBor offers suggestions for moving forward: The UN should return to its founding principles, he

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argues, and threaten to expel those nations who violate those principles. He likens his vision of the UN to the European Union, which offers incentives to join and requirements for maintaining membership. Additionally, he argues that structural ironies, such as Sudan and Libya having places on the Commission on Human Rights, must be prevented to avoid making a mockery of the notion of human rights. Finally, the tone throughout the book suggests a more hawkish role for UN forces when needed to prevent mass killings. Despite these suggestions, however, the author does not reconcile the examples he gives of bureaucratic stasis and the inability of 191 nations to agree with his suggested reforms. The reader is left wondering if LeBor's suggestions are in fact realistic, or if the UN, by its terms, is set up to fail in the face of genocide.

Despite this weakness, the book is a compelling and accessible narrative, whose greatest strength is as a warning of how vast and horrifying "evil" can become if left unchecked by the global community.

Negotiating Trade: Developing Countries in the WTO and NAFTA. Edited by John S. Odell. Cambridge, United Kingdom: Cambridge University Press, 2006. Pp. 298. \$34.99 (hardcover).

REVIEWED BY TAMMY SHORANICK

This book is a collection of essays which explore the premise that the content of developing countries' international trade agreements varies with the process of negotiation that produces them, and, in turn, that that process depends partly on the institutions within which the process unfolds. The editor argues that developing countries' decisions on how to negotiate make a material difference to the results. The conclusions in this book are based on three variable aspects of the negotiation process that are likely to affect the outcome: coalition design, strategies used by states and coalitions, and dynamic subjective interactions. This book focuses on one main analytical question: What determines the outcome of a trade negotiation involving developing countries? A brief analysis of each chapter is provided below.

The first substantive chapter of this book is J.P. Singh's "The evolution of national interests: new issues and North-

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South negotiations during the Uruguay Round." The pivotal question to be answered in this chapter is why developing countries make fewer concessions or gain more in some new issue-areas than in others. The chapter presents a structured and focused comparison to explain the difference in outcomes for two Uruguay Round agreements: the General Agreement on Trade in Services (GATS) and the Trade-Related Aspects of Intellectual Property (TRIPS). Developing countries made fewer concessions to the North in the former case than in the latter. To explain these differences, the author closely examines changing sets of national interests regarding services and intellectual property among negotiating parties before and during the negotiation process. In addition, evidence is provided to support the hypothesis that coalitions that include important players, such as major developing or developed countries, are likely to gain more for developing countries than those that do not.

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In Chapter Three, "Reframing the issue: the WTO coalition on intellectual property and public health, 2001," John S. Odell and Susan K. Sell put forth the argument that developing country coalitions seeking to claim value from dominant states will increase their gains if they persuade the mass media in developed countries to reframe the issue using a reference point more favorable to the coalition's position. This conclusion is drawn from a case study of the 2001 adoption of the Declaration on the WTO Agreement on TRIPS and Public Health, an outcome many considered to be a phenomenal achievement for the developing world. The authors argue that negotiation outcomes will vary with reframing attempts; this hypothesis can, it seems, be extended to other issue areas to aid developing countries in their negotiation tactics.

Chapter Four, "The strict distributive strategy for a bargaining coalition: the Like Minded Group in the World Trade Organization," is authored by Amrita Narlikar and John S. Odell. Here the authors conducted a case study of the "like minded group" in the WTO in order to extrapolate some generalizations regarding developing country bargaining coalitions. Different negotiation strategies were assessed in the context of developing country coalitions. The strict distributive strategy is defined as a set of tactics that are functional only for claiming value from others and defending against such claiming. A mixed strategy includes some distributive

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and integrative tactics, such as offering to exchange concessions that would make each party better off than before. The main generalization made by these authors is that for a developing country coalition, gains from the strict distributive strategy will diminish under two possible conditions. First, gains will be less likely to the extent that other parties regard the groups demand as worse than impasse. Second, gains from this strategy will fail to the extent that the group fragments and loses its credibility.

In Chapter Five, "Learning in multilateral trade negotiations: some results from simulation for developing countries," Cédric Dupont, Cosimo Beverelli, and Stéphanie Pézand note that information exchange is a central feature of international negotiations; however, empirical studies have focused predominantly on the developed world. There is a need to examine developing country negotiations more closely, not only to improve our understanding of how developing countries fare in negotiations but also to understand the impact of limited, or biased, information in international negotiations. Through an analysis of negotiation simulations, the authors showcase new evidence about information processing and its distortions for the case of developing countries and trade.

Chapter Six, by Antonio Ortiz Mena L.N., is entitled "Getting to 'No': Defending against demands in NAFTA energy negotiations." The author observes that in negotiating the NAFTA agreement, Mexico appeared to be at a distinct disadvantage by facing two developed countries, including the only remaining superpower, in negotiations. However, Mexico was able to get through negotiations without granting the United States any rights pertaining to oil explorations, an issue area of great importance to Mexico. This chapter examines the role played by Mexico's strategy choice and the actions it undertook to offset biases and bolster the credibility of its position on oil in the successful defense against distributive strategies by the United States during NAFTA energy negotiations. The author also outlines lessons to be learned from Mexico's experience in negotiating with the United States that may be used by other developing countries facing unwanted demands.

In Chapter Seven, which is entitled "Do WTO rules create a level playing field? Lessons from the experience of Peru and Vietnam," Christina L. Davis notes that developing countries are inherently disadvantaged when negotiating with more

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powerful counterparts: They are vulnerable to discriminatory trade policies adopted by major trade partners without the benefit of credible threats of retaliation. However, despite their apparent lack of bargaining leverage, developing countries have been able to achieve some significant outcomes in some negotiations. This chapter addresses this phenomenon with regard to the negotiation of WTO legal disputes through the use of two developing countries' experiences in the WTO. The author provides four observations for developing countries wishing to bring about positive outcomes through WTO dispute settlement. First, an initial challenge faced by developing countries is getting more powerful trading partners willing to engage in negotiation to find a mutually acceptable solution. Second, in WTO dispute settlement, developing countries should attempt to shape the terms of agreement to conform to common rules of the trade system rather than the will of the more powerful. Third, developing countries that file a complaint with the support of interested developed country members, or as a joint complaint on behalf of many developing countries, will negotiate better outcomes than those that act alone. Finally, the WTO brought compliance by changing the alternative to a negotiated settlement through setting judicial precedents that can have broader impacts; this reality has encouraged early settlement by powerful states in favor of developing countries.

Most studies of international trade bargains focus on the negotiation of original terms of the agreement rather than on the actual compliance with those terms, known as compliance bargaining. The final chapter, "Compliance bargaining in the WTO: Ecuador and the bananas dispute," by James McCall Smith, examines compliance bargaining—discussions regarding ex post compliance with commitments countries make in trade negotiations—in the WTO through a case study of Ecuador's tactics in its challenge against the banana import regime of the European Union (EU). Generalizing from Ecuador's experience, the author emphasizes the ways in which developing country negotiators may be able to utilize certain details of institutional design in the WTO to improve negotiated outcomes in bilateral trade disputes.

Overall, this book provides a comprehensive and insightful study into the world of trade negotiations. It offers indepth analyses of developing countries' negotiating practices

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with practical implications for the conduct of future trade talks, which may aid developing countries in gaining some advantages in the international trade regime.

Not a Suicide Pact: The Constitution in a Time of National Emergency. By Richard A. Posner. New York, New York: Oxford University Press, 2006. Pp. 208. \$18.95 (hardcover).

REVIEWED BY JARROD STUARD

In recent years, for reasons all too apparent, there has been a continuous debate on how far our need for security should impinge on our value of liberty. Within the legal contexts of that debate, the focus inevitably centers on the Constitution, with each side disagreeing on just how far that document allows the government to go in the name of protecting the physical security of its citizens. Richard Posner, a federal judge on the 7th Circuit Court of Appeals, tackles precisely this question and offers his unique perspective in Not a Suicide Pact. This short but content-packed book provides a comprehensive and succinct review of the many constitutional controversies brought to light in past years, from privacy rights to free speech. The book is by no means a neutral explanation of history and law. Judge Posner firmly lays out his proposed method of balancing liberty and security, a method that tilts in the favor of security more often than not. For those unfamiliar with this legal debate, Not a Suicide Pact offers much in the way of history and theory that can bring one up to speed on this ever-changing issue, albeit from Judge Posner's own perspective. For those more versed in the nuances, the book may be a bit of a review, but it is still complemented with the unique analysis by one of America's most respected legal minds.

Posner starts his analysis by laying the groundwork of understanding "rights" and how they are created in the American system. He emphasizes that, contrary to popular belief, most of our rights are indeed not formed by the Constitution itself, but by the many judicial decisions that exploit the vagaries and outdated meanings of constitutional language. He writes, "[b]ecause the Constitution is extremely difficult to amend, the pressure on the Supreme Court to interpret it loosely so as to keep it up to date is acute, in fact irresistible." Posner 2006]

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utilizes this point to show how the Constitution can adapt in times of national crisis and change. Judges generally form the law by balancing pros and cons of their decisions, and thus articulating the dangers of the time is an enormously important task in academic legal dialogue. He postulates that we are currently in an era of crisis, due to the threat of terrorism and weapons of mass destruction. Now is the time to effect change in order to allow more "give" in the law for security concerns. Turning the law in such a direction is "the main task of this book."

The book then makes the logical turn toward evaluating how national security does and should interact with the above liberties. Posner seeks the point at which we should limit each liberty in the face of particular security concerns. Posner writes that we should ask, "whether a particular security measure harms liberty more or less than it promotes safety." According to this test, we should not start our analysis with an abstract placement of value on rights or protections; on the other hand, we should meticulously and honestly predict the effects of any proposed measures and weigh the consequences against both liberty and security. The analysis often concludes that liberty cannot exist without security, and when put to the test, most people will naturally value their physical well being over an abstract right or liberty. Posner admits that such assertions will be met with argument, most notably from those he calls civil libertarians. He shows a bit of his political cloth in his rebuttal to civil libertarians, saying, "[c]ivil libertarians are not always careful about history " Posner then points to particular historical events (e.g., Lincoln's suspension of habeas in order to restore the Union and end slavery) to demonstrate that civil libertarians have been less opposed to limiting liberties when their own security is at stake. This debate, mentioned in the beginning of the book, is one which Posner carries throughout his work. One questions whether Posner gives fair credence to his supposed critics, and it is easy to be left with the impression that there may be more robust arguments on the other side that Posner leaves unaddressed.

With his general theories out of the way, Posner applies his balancing test to a number of different rights that have been at the very core of modern day controversies. The first of these is government detention. Much of this chapter is review to those familiar with the basic line of cases from Quirin

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through Rasul and Hamdi; however, Posner does add to the case law and proceeds to apply his balancing test to specific scenarios. He addresses both the practical arguments around allowing varying types and degrees of detention and the separation of powers issues that inevitably arise when the President pushes the boundaries of his or her power. Posner concludes that there is a real case to be made for the necessity of indefinite detention of suspected terrorists, as long as those individuals have the initial right to challenge their detention in a neutral civilian court. The analysis is coherent and clear, yet one might not be hard pressed to come to different conclusions with an equally cogent application of his balancing test.

Posner's perspective becomes no less controversial in the following chapters, which take on torture, searches and seizures (think wire tapping and the FISA court), privacy, profiling, and free speech. The book directly confronts the dilemma of the desire to torture an individual with knowledge when many lives may be at stake. He writes, "[i]n such a situation it would be the moral and political duty of the president to authorize torture." In such a case, occasional testing of legal limits is in the best interest of the nation. Likewise, Posner concludes that the wiretapping power is best concentrated within the Executive, free of the constraints that judges—like those on the FISA court—impose. The analysis continues to the point of finding legal justifications for limits on extremist political speech and privacy. Throughout the book, he critiques the civil libertarian point of view, finally criticizing their distrust and disdain for government by asserting that "[t]heir distrust [of government] is excessive and the disparagement [of it] irresponsible."

Not a Suicide Pact is enormously informative, admittedly controversial, and certainly biased in favor of security over liberty. Some readers may dispute the application of his own test to particular rights and scenarios, but this book nevertheless contributes a very articulate legal voice to an ongoing debate in our society.

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Politics and Process at the United Nations: The Global Dance. By Courtney B. Smith. London, United Kingdom: Lynne Rienner Publishers, 2006. Pp. v, 328. \$23.50 (paperback).

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REVIEWED BY AMÉLIE BAUDOT

How does the United Nations really function? How do member states interact with each other and with the Secretariat? Politics and Process at the United Nations: The Global Dance by Courtney B. Smith attempts to explore these and other questions. His text offers a window into the political process of the United Nations. Smith equates the political processes of the UN with a "global dance." His goal is to provide a systematic framework for the study of the United Nations in which he fills in the gaps in international organization theory with insights into the inner workings of the organization, gathered through interviews with UN practitioners. Smith hopes to both address the lack of research on the formal structures and processes of the United Nations and shed light on the private and informal side of the decisionmaking process.

The book is organized much like a typical text on international organization theory. Each chapter begins with a review of the relevant theory, and Smith supplements and applies the theory to a concrete analysis of the actors and processes of the UN. He sets the stage for the dance with a systematic analysis of the principal actors, namely, the member states and delegates, country groups and blocs, the secretariat and the secretary general, and finally, civil society and the private sector. Smith's dance then comes alive with a study of political processes themselves. He discusses the formal structures of the decisionmaking, parliamentary procedures, and informal networking. The two concluding sections bring together the analysis from the preceding chapters in a discussion of power and influence wielded by the actors in the UN, and by tackling the important and heavily debated issue of state compliance.

Smith attempts to unlock some of the mysteries of the UN. Member States and Delegates are the principal actors in Smith's dance because they are the only actors with the capacity to move the organization forward, through the "power of the vote" and the "power of the purse." The chapter begins with an exploration of the factors that affect a Member State's

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desire to wield influence, including its domestic political system, its reputation, and its history within and outside the organization. The parts played by the Member States are not static. They are highly fluid and evolve over time depending on the Member States desire to influence the processes at the UN. The United States is used as an example of a state whose desire to manipulate has yielded tangible change in the organization.

Beyond a desire to wield influence, the influence of each delegation is also dependent on the structure of each mission and delegation and the personal attributes and relative independence of its delegates. Smith argues that a significant portion of the role played by each Member State depends on the latter factor. Smith uses a typology of four different types of delegates—hunters, farmers, traders, and trappers—created by Pakistani delegate, Navid Hanif. Madeleine Albright is classified as the typical hunter with a clear goal in mind and the determination to reach it. Farmers, at the other end of the spectrum, are willing to use a long-term approach to decisionmaking. Traders and trappers rest in the middle of the spectrum. Richard Holbrooke, Albright's replacement, is classified as a trader, a mix between a hunter and a farmer. Traders have a clear goal in mind but their approach to decisionmaking more closely resembles a farmer.

Smith also devotes a portion of his text to an analysis of the coalition-building process within the UN. He outlines the advantages and disadvantages of groups or blocs in the UN decisionmaking process. The advantages of forming coalitions include the opportunity for Member States to have a much greater impact on policy outcomes, since groups facilitate informal discussions in which much of the substantive decisionmaking takes place. Smith also outlines several disadvantages in forming groups, namely, that the Member State loses its individual voice and settles for a lowest-common-denominator or watered-down version of a particular policy. Groups can also distort the international decisionmaking process by allowing smaller states to wield greater amounts of influence. The final drawback, according to Smith, is that groups can also slow down the negotiating process.

After laying out the basic advantages and drawbacks of groups, Smith identifies the types of blocs found at the UN itself, including electoral groups, common interest groups,

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and negotiating groups. The third type of group proves to be indispensable in the resolution of contentious areas of disagreement. Smith spends a large portion of a chapter discussing various strategies for forming a successful negotiating group. He includes examples such as the UN Special General Assembly Session of 1963 on financing peacekeeping. An agreement was finally reached, but it was clear that there were some serious difficulties within some of the negotiating groups. While negotiating groups can present some serious difficulties, Smith argues that they are both ubiquitous and necessary in the UN decisionmaking process.

Other dancers in Smith's global dance are the international civil servants, the Secretariat and the Secretary General (SG). This chapter is designed much like the preceding chapters. Smith begins with a bit of theory and history and then outlines the various roles of the SG and factors that influence that role. He produces a similar analysis of the Secretariat. Perhaps the most interesting aspect of his analysis is the discussion of the challenges facing the Secretariat. These include the need to balance merit with geography; the requirements that many national governments impose on their nations to serve in the Secretariat for fixed term appointments, a requirement that limits their independence; and the need for management and administrative reform, a need that has been partially met by reforms initiated by Kofi Annan in the mid 1990s. Politics and Process also discusses the role played by civil society and the private sector in an increasingly globalized world. NGOs and MNCs are more and more involved in the UN decisionmaking process. Smith not only speculates about why these actors go to such lengths to work with the UN, he also considers why the United Nations is increasingly more receptive to these efforts.

The second portion of Smith's book is devoted to a discussion of the mechanics of the dance. It begins with movements in the formal arenas including the structure of three of the six principal organs identified in the UN Charter: the General Assembly (GA), the Security Council (SC), and the Economic and Social Council (ECOSOC). Smith provides a helpful introduction to these three bodies and the relationships between them. He also goes into a detailed discussion of the subsidiary bodies and specialized agencies.

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Chapter Seven moves from the formal processes to the decisional rules and parliamentary procedures of the UN system. The principal gap that Smith discovers in international organization theory in this area concerns parliamentary procedures and decisional rules that are used to debate and decide between competing proposals for UN action. Procedural rules play a key role in the decisionmaking process. Smith spends the last portion of this chapter analyzing the advantages and disadvantages of using a consensus-based system versus majority rules. There seems to be a growing use of consensus in UN bodies which can lead to relatively watered-down proposals but can also result in a wider understanding of proposals along the way because of the length of the negotiations required to reach a consensus.

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The penultimate portion of *Politics and Process* looks at informal mechanisms and strategies of influence. In this portion of the text, Smith employs interviews with delegates and members of the Secretariat to supplement descriptive accounts of informal UN meetings. He specifically discusses informal consultations in the Security Council and the effect of proposed UN reforms on these mechanisms. The discussion then shifts from movement to strategy. Strategies can be based on positional power, personal attributes, and procedural manipulation. Positional power includes majority-based strategies which are becoming more and more difficult to employ in a culture of growing consensus-based decisionmaking. The stature and substantive goals of individual leaders, argues Smith, can be highly influential in the decisionmaking process. If a delegation employs a strategy of procedural manipulation, it is using the formal and informal procedural rules to its benefit.

After describing the principal actors in the dance and its basic movements, Smith then queries whether any of this has an effect on state compliance. He discusses the fact that most of what is produced through the UN decisionmaking process is not binding, but argues that the process itself has an effect on state behavior regardless of output. The UN's political processes have had an effect on world politics through their near universal participatory nature, the dissemination of information, and because the UN can serve as a forum for socialization for its participants.

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Politics and Process at the United Nations: The Global Dance is a useful contribution to the literature on the United Nations. It can serve as a tool for the student of international organization theory or of the United Nations. Smith's arguments, while they may not provide a complete explanation of how the UN operates, successfully supplement the existing gaps in the literature with a fresh and pragmatic perspective.

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