

BOOK ANNOTATIONS

DROBAK, JOHN N., *NORMS AND THE LAW* (New York, New York: Cambridge University Press, 2006).

ELLISON, HERBERT J., *BORIS YELTSIN AND RUSSIA'S DEMOCRATIC TRANSFORMATION* (Seattle, Washington: University of Washington Press, 2006).

INGEBRITSEN, CHRISTINE, IVER NEUMANN, SIEGLINDE GSTÖHL, AND JESSICA BEYER, EDs., *SMALL STATES IN INTERNATIONAL RELATIONS* (Seattle, Washington: University of Washington Press, 2006).

KELLMAN, BARRY, *BIOVIOLENCE: PREVENTING BIOLOGICAL TERROR AND CRIME* (Cambridge, United Kingdom: Cambridge University Press, 2007).

MURPHY, RAY, *UN PEACEKEEPING IN LEBANON, SOMALIA, AND KOSOVO* (Cambridge, United Kingdom: Cambridge University Press, 2007).

NORDSTROM, CAROLYN, *GLOBAL OUTLAWS: CRIME, MONEY, AND POWER IN THE CONTEMPORARY WORLD* (Los Angeles, California: University of California Press, 2007).

SAXON, DAN, *TO SAVE HER LIFE: DISAPPEARANCE, DELIVERANCE, AND THE UNITED STATES IN GUATEMALA* (Berkeley, California: University of California Press, 2007).

VAN HARTEN, GUS, *INVESTMENT TREATY ARBITRATION AND PUBLIC LAW* (Oxford, United Kingdom: Oxford University Press, 2007).

WICKS, ELIZABETH, *HUMAN RIGHTS AND HEALTHCARE* (Portland, Oregon: Hart Publishing, 2007).

Norms and the Law. Edited by John N. Drobak. New York, New York: Cambridge University Press, 2006. Pp. ix, 298. \$75.00 (hardcover), \$29.99 (paperback).

REVIEWED BY CLAY H. KAMINSKY

Although norms, extralegal rules that govern human behavior, have long played a prominent role in sociological scholarship, only recently have they attained a degree of importance in legal analyses. In this burgeoning area of legal inquiry, *Norms and the Law* may prove a valuable catalyst and a roadmap for future research. A collection of essays first presented at the inaugural conference of the Center for Interdisciplinary Studies at the Washington University School of Law, this slim volume brings together theoretical and empirical research by leading scholars in the fields of law, economics, and political science. Although anyone interested in the relationship between law and society will enjoy *Norms and the Law*, those wishing to conduct their own research will find it especially useful, since the essays do more to frame thoughtful questions than to provide complete answers.

The book is divided into four thematic parts. Part one investigates how norms influence the law within the framework of behavioral economics and cognitive science. Part two examines cooperative norms of the commons. Part three is devoted to judicial norms, both institutional and individual. Part four discusses the role of the law in shaping extralegal norms.

In part one, "Rationality and Norms," three essays consider the interplay between individual rationality and societal norms in the context of group decisionmaking. Cass R. Sunstein confronts the problem directly in his essay, "Damages, Norms, and Punishment," which presents evidence from his survey of jury decisionmaking in personal injury cases. Professor Sunstein relates that although individuals rate the cases in substantially similar ways on a numbered scale, there is no agreement on how their assessments should be converted into monetary damages. Professor Sunstein finds that the effect of group discussion is to drive juries to the extremes, decreasing average lower awards and raising higher ones. Analyzing these findings in the context of social norms, Professor Sunstein tentatively suggests that institutional redesign may be needed to

bring a degree of rationalization and standardization to jury awards.

The other two essays in part one challenge the dominant rational-choice model of economics. In his essay, "Cognitive Science and the Study of the 'Rules of the Game' in a World of Uncertainty," Douglass C. North moves beyond the assumption of rationality to examine the problem of uncertainty. Drawing on cognitive science for the proposition that humans' understanding of external reality is internally constructed, Professor North catalogues the problems of constructing theory and policy in a nonergodic world—that is, a world that lacks a fundamental underlying unity that would allow extrapolation to new circumstances. Professor North illustrates his point with the example of the collapse of the Soviet Union and predicts that cognitive science will play an increasingly important role in social and economic theory.

Lynn A. Stout attacks the other assumption of the rational-choice model: that economic actors are motivated purely by self-interest. In her essay, "Social Norms and Other-Regarding Preferences," Professor Stout finds empirical support for what she calls "other-regarding preferences" in three types of experimental games: social-dilemma games, ultimatum games, and dictator games. People will sometimes forego maximizing their own payoff in order to help or harm others, and they behave as though they expect others to exhibit similar other-regarding preferences. Professor Stout suggests that an awareness of other-regarding norms will lead to a deeper understanding of social phenomena.

In part two, "Norms of the Commons," Robert C. Ellickson and Lawrence Lessig use their essays to explore the norms of the commons by focusing, respectively, on a microcosmic commons, the household, and perhaps the largest commons the world has ever known, the internet. Confining his discussion to "liberal households," in which there exists a freedom of exit, Professor Ellickson considers the production and allocation of household surpluses in his essay, "Norms of the Household." Professor Ellickson describes how, since much of the increased utility of cohabitation comes from the low transaction costs associated with trust, informal household norms and consensus govern the household as long as residents expect to continue living together, but external norms and the law gain importance once exit is anticipated. Drawing analogies to cor-

porations, Professor Ellickson demonstrates how residual control rights generally accompany the contribution of at-risk capital in a liberal household.

In his essay, “.commons,” Professor Lessig describes cyberspace as a commons. Although its physical infrastructure is privately owned and much of its content is also privately owned, the internet’s logical level, with its nondiscriminatory end-to-end structure, makes it a commons based on the underlying norm of open source code. Extolling the creativity the internet has enabled, Professor Lessig concludes his essay by cataloguing different types of cyber-enclosure threats.

In the third and final essay of part two, Juan Camilo Cárdenas and Elinor Ostrom bring the lab to the field in order to control for such factors as culture, group identity, and social context. Conducting social experiments in three Columbian villages, the authors elaborate a four-level framework to approach collective-action phenomena in their essay, “How Norms Help Reduce the Tragedy of the Commons: A Multi-Layer Framework for Analyzing Field Experiments.” Their data and analysis shed particular light on the social norm of reciprocity and its influencing factors.

Part three, “Judicial Norms,” consists of three essays and a response, “Judicial Norms: A Judge’s Perspective,” by Judge Harry T. Edwards of the D.C. Circuit Court of Appeals. Both Lawrence M. Friedman and Kathryn Abrams consider the possible effects of social influence on judicial rulings. Professor Friedman addresses the question broadly in his essay, “Judging the Judges: Some Remarks on the Way Judges Think and the Way Judges Act,” concluding that although judges are by and large independent, they are neither truly autonomous nor impartial and that research should focus on the social forces that shape judicial behavior. Judge Edwards disagrees with Professor Friedman’s conclusions and criticizes his logic and assumptions. Although Judge Edwards shares Professor Friedman’s objective that judges remain committed to principled decision-making, he believes that judges remain significantly constrained by discernible legal principles.

In her essay, “Black Judges and Ascriptive Group Identification,” Kathryn Abrams investigates judicial interdependence in light of one powerful social force: racial affinity. Focusing her research on African-American judges, Professor Abrams

considers both empirical studies on the degree to which judicial decisionmaking covaries with the race of the judge and also extended narratives by African-American judges on how race affects their judicial lives. Finding that race is not a reliable determinant of the judicial decisions of African-American judges, with the slight exception of criminal sentencing where a degree of covariance likely indicates not bias but a freedom from bias, Professor Abrams shows that the principal effect of a judge's race is his or her sense of civic responsibility toward an ascriptive community. Judge Edwards, himself an African-American judge, commends Professor Abrams's research and considers the question, "if ascriptive group membership is largely irrelevant in the judicial process, then why worry about racial or sexual diversity on the federal bench?" In response, he suggests that a diversity of personal perspectives enriches judicial deliberations and enhances decisionmaking.

If Professors Friedman and Abrams are concerned primarily with judicial autonomy and impartiality, John Ferejohn and Larry D. Kramer focus instead on judicial independence in their essay, "Judicial Independence in a Democracy: Institutionalizing Judicial Restraint." The authors begin with the proposition that judges are individually insulated from the political process, but the judiciary as an institution is vulnerable to the degree that the political branches could refuse to execute judicial decisions, cut the judiciary's budget, or strip judicial jurisdiction. From this proposition, Professors Ferejohn and Kramer trace out judicial doctrines embodying restraint, including the rules of justiciability, federal-question jurisdiction, and constitutional interpretation. Judge Edwards agrees with the authors' doctrinal conclusions but suggests that potential non-enforcement is the sole threat that truly encourages judicial restraint. Judge Edwards also develops the idea that collegiality is an important component of judicial restraint.

Finally, part four, "The Influence of Law on Norms," is comprised of a sole essay in which Amartya Sen examines the problematic propensity of law to shape social norms. According to Professor Sen in his essay "Normative Evaluation and Legal Analogues," human rights norms have suffered from the analogy between morality and law in at least two distinct ways. First, the analogy may suggest that normative rights not codified into positive law are not as legitimate as legal rights. Sec-

ond, the dominant political analogy of societal organization to a hypothetical legal contract forecloses many other approaches that may be especially valuable in the area of global justice.

Professor Sen recognizes that laws and norms cannot and should not be coextensive, and he does not suggest that drawing analogies between the two is always harmful. On the contrary, Professor Sen suggests that such analogies may be generally helpful. It is simply critical that more scholarly attention be directed at the nature of the analogies drawn. *Norms and the Law* marks a commendable step in this direction, and its authors do much to suggest where further steps should follow.

Boris Yeltsin and Russia's Democratic Transformation. By Herbert J. Ellison. Seattle, Washington: University of Washington Press, 2006. Pp. xii, 263. \$30.00 (hardcover).

REVIEWED BY NANCY HULL

More theoretical than a biography and less descriptive than a reference book, *Boris Yeltsin and Russia's Democratic Transformation* provides in-depth insight into the Russian transition of the early 1990s. With both new and old problems in Russia making the news every day, the historical developments driving one of the most influential political transformations in the modern world are increasingly relevant. Herbert J. Ellison provides this history through a detailed analysis of the transition's prominent leader: Boris Yeltsin. The book's main objective is to present Yeltsin—who is, in the author's opinion, under-analyzed and under-appreciated in current political literature—as the force behind Russia's democratization. Ellison achieves this goal convincingly.

The book begins with an overview of Yeltsin's political career. The author praises Yeltsin as a career politician who rose quickly through the ranks of the Communist Party only to be expelled from the Politburo for uncensored criticism of his short-sighted colleagues. Yeltsin then built up his own power base within Russia, survived a coup attempt, and led the first independent, non-communist Russian state through a critical phase in history.

Ellison next reviews the tumultuous years preceding Yeltsin's presidency. The book portrays Yeltsin as a major factor in

the growing democratic transformation that provoked a counter-revolutionary coup attempt in August 1991. Yeltsin began as a reformer trying to change the system from within. As an impressive local leader in Sverdlovsk, one of the Soviet Union's most important industrial regions, Yeltsin was quickly promoted within the Communist Party and moved to Moscow. Once in the capital, however, Yeltsin's relations with Gorbachev and other Communist leaders deteriorated. While Gorbachev's mission was reform, Yeltsin eventually became an outspoken critic of Gorbachev's policies as well as the socialist state in general. Finally, Yeltsin lost faith in the possibility of reforming the Party from within and ultimately resigned his post by making a spontaneous speech during a plenary session of the Central Committee that attacked many prestigious members of Soviet government and virtually all of Gorbachev's reform policies. While simultaneously dealing with grave health problems, Yeltsin was then forced to apologize to the Party. Gorbachev responded by naming Yeltsin a USSR minister, thus removing him from all policymaking aspects of government.

Undeterred by these setbacks, Yeltsin entered politics inside the Russian Federation and worked against the Party to overwhelmingly win election to the Congress of People's Deputies and the Supreme Soviet as a representative of the Russian Republic. Yeltsin worked tirelessly for reform in the Russian Republic, stressing economic reform, democracy, and sovereignty. Eventually, Yeltsin completely parted ways with the Communist Party, resigning his membership and focusing solely on democratization in Russia. Once outside of the party system, Yeltsin was able to build up support within the quickly changing Russian Republic and to begin implementing reforms. Yeltsin's first major change was to oversee passage of legislation creating a popularly elected president for Russia. As a popular leader, Yeltsin easily won election to the presidency after the Russian Congress of People's Deputies passed his new legislation. These actions provoked an attempted counter-revolutionary coup that provided Yeltsin the perfect opportunity to rally opposition against conservative politicians and to become the primary nationalist leader in Russia after the coup's failure. As the Russian president, Yeltsin was a crucial figure in the breakdown of the Communist Party as well as the entire Soviet Union.

The second section of the book covers Yeltsin's turbulent presidency in the newly independent Russian state. The first chapter in this section depicts Yeltsin's determined fight for constitutional reform against an increasingly resistant Duma. Despite many challenges, Yeltsin succeeded in implementing a democratic constitution by dissolving the Supreme Soviet and holding elections, as well as a popular referendum on the draft constitution in 1993. This constitution included provisions for a new parliament, the Federal Assembly, consisting of the State Duma and the Council of the Federation. It also provided for extensive restructuring of local and regional government. These successes were, however, hard-won for Yeltsin, who faced vigorous opposition to his every move. Yeltsin struggled throughout his eight years in office against persistent health problems as well as an increasingly uncooperative legislature and endured repeated impeachment attempts. As such, *Boris Yeltsin and Russia's Democratic Transformation* attributes Yeltsin's success in implementing a democratic constitution to his political skill and steadfast commitment to democracy in Russia. Near the end of Yeltsin's presidency, strong political opposition created an impasse that prevented Yeltsin from adequately responding to the escalating economic and social crisis in Russia.

The following chapter focuses on the economic reform that took place during the Russian transition. While Gorbachev was committed to maintaining the Soviet Union's socialist economy, Yeltsin espoused the need for a market economy and reform in private enterprise, land, and agriculture from the beginning of his political tenure. In October 1991, Yeltsin presented his economic plan for Russia to the Russian Supreme Soviet. This plan called for price liberalization, enterprise privatization, and conversion of collective farms to private landownership, but it was rejected as "too liberal" by Gorbachev. Gorbachev's long delays in implementing real economic and agricultural reforms left Yeltsin with a greatly complicated situation when he eventually took control of the Russian state as President. Yeltsin spent his two presidential terms working to remedy these problems with only limited results. Despite the unfinished nature of his reforms, Yeltsin left office having achieved irreversible privatization in both urban and rural economies. Key to this chapter is Ellison's portrayal of Yeltsin's political opposition. The book contends

that the powerful opposition challenging Yeltsin at every corner stalled Yeltsin's reforms and resulted in great hardship and poverty for Russian citizens.

The final section connects Russia's transformation to the rest of the world by looking at Yeltsin's foreign policy with respect to the West, East Asia, and former Soviet Republics. Bolstered by the end of the Cold War under Gorbachev, Yeltsin was left with the task of cultivating new international relationships around the globe. Ellison divides Russia's relationship with foreign states into three phases. The first was the initial move towards partnership with democratic states. The second phase consists of Russia's disappointment with the West's lack of support for its transitional economy and refusal to include Russia in global security systems such as NATO. Finally, Russia began to view the United States as the sole hegemonic superpower rather than as a potential partner. As a result, Russia pursued "strategic partnerships" with China and other states to counteract the U.S. influence in the world.

The book concludes with a brief look at the state of Russia upon Yeltsin's exit from politics. Yeltsin chose his successor, Vladimir Putin, by appointing him prime minister in August 1999. He felt Putin shared his commitment to democracy, a market economy, and peaceful foreign policy with a focus on integration into the world economy. Like Yeltsin, Putin would face many challenges, including strong political opposition. Yeltsin had created a key tool through which Putin could resolve these conflicts, however: democratic parliamentary and presidential elections under the new constitution. Additionally, Yeltsin created a strong institutional legacy of checks and balances in the governmental system that would help Putin continue executing the broad reforms that Yeltsin had worked so hard to install in the newly independent Russia.

As an in-depth study for someone interested in the details of the political restructuring that took place during the first decade of post-Soviet Russia, this book is an invaluable resource. Ellison presents Yeltsin as the primary figure in this transition, an interesting and unique theory in a field that often attributes the beginning of Russia's democratization to Gorbachev. In doing so, however, it often seems that the book's objective tone is lost in favor of a strong pro-Yeltsin bias. The author's high opinion of Yeltsin is overwhelmingly apparent throughout the book and leads one to wonder

whether the limited criticism presented of Yeltsin is lacking in thoroughness. A further weak point for a non-expert reader is the assumption that one is familiar with Russian governmental institutions and political characters. The political background of many government officials and institutions involved in implementing reforms is brushed over in the all-encompassing focus on Yeltsin. Nevertheless, *Boris Yeltsin and Russia's Democratic Transformation* presents a well-informed examination of one of modern history's most important figures as well as a detailed explanation of the processes and events that define Russia's condition today. As such, this book is valuable for understanding the current political context in Russia, and is therefore a worthwhile contribution to current political literature.

Small States in International Relations. Edited by Christine Igebritsen, Iver Neumann, Sieglinde Gstöhl, and Jessica Beyer. Seattle, Washington: University of Washington Press, 2006. Pp. 352. \$30.00 (paperback).

REVIEWED BY RYAN SHANOVICH

Imagine a tiny polity with a population well under 50,000 people—the U.S. Census Bureau's cut-off for "urbanized areas"—that is also an original member of the World Trade Organization, has been admitted as a party to the Statute of the International Court of Justice, and is an active member in the United Nations. What's more, this polity's population consists of well over one-third foreigners. The international acceptance of Liechtenstein's statehood reflects the laudable adaptability and adroitness of small states, as well as our need to study them closely. *Small States in International Relations* is a compilation of essays that challenge the prevailing pedagogical approach to international relations—that of merely studying the superpowers or large states.

In the text's introduction, Iver B. Neumann and Sieglinde Gstöhl, two of the book's four editors, explain the value of studying small states as opposed to focusing on giant powers. Following the Napoleonic War, ideas of state *puissance* divided those states privy to the Congress of Vienna from others that would merely be consulted. Later, "middle powers" would become a classification, as would "small powers," a group later to

be known as “small states.” It is not surprising, the editors tell us, that small states are confused with weak states; however, we are reminded that “the former is a distinction of quantity, the latter of quality.” And though the disparate ways to define “smallness” manifest themselves throughout this collection, the ultimate message is not one of classification but of appropriate analysis. The essays included provide such analysis along definitional, economic, and political lines.

The book begins with an excerpt from Annette Baker Fox’s text, *The Power of Small States: Diplomacy in World War II*, in which Fox compares the wartime experiences of five European states with a shared purpose: non-participation in hostilities and resistance of belligerents. Fox’s chronology emphasizes that small states—in this instance, Turkey, Finland, Norway, Sweden, and Spain—could put the entirety of their wartime efforts into avoiding hostilities and, through a shifting set of maneuvers, convince the great powers that respecting this neutrality was in their best interest. In so doing, Fox highlights how different circumstances increased the neutrals’ ability to resist pressures. Additionally, small states could play the powers’ interests off of each other. Though the reader is left desirous of concrete examples, the message is clear: small states need not wither to great power demands in even the most exigent circumstances, though many things will be out of their control.

Robert O. Keohane’s chapter, “Lilliputians’ Dilemmas: Small States in International Politics,” navigates the boundaries of defining small states by questioning whether we should prefer David Vital’s arbitrary yet clear definition of small states based on population and economy or search for a definition amenable to manipulative analysis. Keohane posits that we should determine “smallness” by gauging the systemic role of states. This definition balances the systemic power that a state wields with its own perceived role. Keohane’s review ends by contrasting the positions on nuclear proliferation of two scholars, Robert Rothstein and Robert Osgood. Though Keohane does not endorse either position—Rothstein suggests the United States may even *give* nuclear weapons to threatened states to inhibit proliferation (an idea replete with contradiction) and Osgood weighs in on the inefficacy of guarantees—he does find that “restraint-withdrawal-containment should be seriously considered.”

Keohane's piece is followed by the introduction to Vital's 1967 book, *The Inequality of States: A Study of the Small Power in International Relations*, which explains the need to study small states in nonalignment as the only point at which such states are fully dependent upon their own resources and ability. The shellshock of the Cuban missile crisis and the Cold War imbue Vital and Keohane's theoretical underpinnings, but there is much value in comparing today's world with their prognostications.

Highlighting the ineffableness of "statehood," Jorri Duursma's chapter, entitled "Micro-States: The Principality of Liechtenstein," challenges the traditional characteristics of nations through a brief yet comprehensive history of Liechtenstein's unlikely rise to statehood. The background Duursma provides is exhaustive, leading us from the incipient statehood that Napoleon granted the Prince of Liechtenstein in a display of camaraderie to the State's growing twentieth century involvement in international relations. Duursma effectively delineates Liechtenstein's route to statehood, highlighting its break with Austria and subsequent delegation of sovereign powers to Switzerland. The facts surrounding Liechtenstein's creation serve to destroy traditional notions of state creation, as this state is of infinitesimal size, has arguably no autochthonous culture or language, and is composed of large numbers of foreigners. Nevertheless, the international status of Liechtenstein's statehood is indisputable today, a contingency undoubtedly unforeseen by Prince Johann von Liechtenstein, who purchased this part of the ancient Roman province of Rhaetia in a political maneuver three hundred years ago. Though lacking in theory or critical application, this chapter is far and away the most enthralling section of the book. As the reader traces the toddler steps of a micro-state's formation, the ingenuity and vulnerability of Liechtenstein reminds us that in state power it is not the size that counts (62 square miles), nor the population (34,000 and counting), nor the military (what military?), but the state's capacity to create an international persona. Indeed, Duursma's analysis results in state personification, and one cannot help but imagine the nervous care and subsequent anxiety of Liechtenstein during its application to the League of Nations. The application, which it had to hand in through the Swiss Minister in London (the official in charge of Liechtenstein's diplomatic communication), was denied.

With the enormous economic success of oil-rich Middle Eastern states in the closing decades of the Cold War, the world witnessed a paradigm shift in defining smallness. With the prodigious proceeds of the oil trade, a new breed of economically strong but militarily weak states emerged. These new states were capable of what Michael Handel, in an excerpt from his book, *Weak States in the International System*, calls “reverse imperialism.” The apprehension regarding these states is palpable throughout the text. Handel outlines commodity-driven states and suggests that state size has much to do with economic independence and strength. In noting that one-dimensional economies often lead to political dependence, Handel claims there is much to be gained from taking the risk of diversification, as Serbia did in route to bucking its economic subordination to Austria. However, Handel rightfully contrasts Serbia’s success with Cuba’s continued struggle with political independence. The essay ends with quite an apocalyptic tone—not uncommon for a piece written in the Cold War era—as Handel posits that the economic pressure on the Western powers “could lead to an economic disaster or even to the extinction of the industrial civilization.” The point is clear: do not push the West too far, lest you suffer its military might. Handel is clearly referring to “the Arabs,” whose tactics he compares to Germany’s prior to WWII. Overall, Handel falls into the characteristic paranoia of Western states’ dealings with developing countries and the East and overestimates the power of developing countries with commodity-driven economies and no oil.

The subsequent two excerpts must be read in conjunction, as the first, by Peter J. Katzenstein, is followed by a critique by Baldur Thorhallson modifying Katzenstein’s theory on the role of “corporatism” in small states in the European Union. Democratic corporatism becomes the savior of these states, as they slowly lose their comparative advantage in production with the opening of the world market. Democratic corporatism, Katzenstein states, copes with change by using a political mechanism rather than an institutional solution. Far from transmitting perfect social harmony, democratic corporatism offers a procedural mechanism for arriving at a politically agreeable solution to economic hardship in a manner impossible in larger states. In the United States, corporatism leads to political exclusion and protectionism—as manifested

by the growing number of voluntary restraint agreements between large market economies—while small states hop along like resilient amphibians. Thorhallson adds to the discussion by focusing on the maneuverability of small states outside of their domestic contexts. Unconstrained by the rigidities of large hierarchies and preordained policy, the roving administrators of small-state international relations can rely on a stronger political consensus and the manipulation of the European Commission to achieve their principal goals. Thus, Thorhallson aggregates the size and characteristics of small-state administrations to demonstrate their capacity to make economic gains in an increasingly competitive world economy.

The final part of the book, “Small State Capacity in International Relations,” consists of works by Dan Reiter and Christine Ingebritsen. This section shifts the book’s tone from largely a military- and economic-centric discussion to one of learning theory and communitarian undertones. The shift from theory to empiricism underlines Reiter’s study, “Learning, Realism, and Alliances.” Unfortunately, Reiter takes enormous leaps of faith when applying organizational and learning theory to small state alliance decisions from WWI through WWII. Moreover, Reiter even suggests that his findings may apply to great power behavior, since “organization theory and social psychology principles ought to apply to great power decision processes, too.” By using “learning experiences,” Reiter myopically deconstructs state decisionmaking, trumpeting the validity of his hypothesis even as he recognizes its limits. The study compares winners’ decisions to maintain the status quo and losers’ decisions to change their game plan, producing a very unsurprising autocorrelation, as institutional inertia and alliances are hard to crack. This just proves, however, that states behave according to learning theory. Reiter’s conclusions are as hard to swallow as his experiment is falsifiable.

The book does not end on any more satisfying a note. Ingebritsen provides a quick discussion—so quick, in fact, that it seems more fitting for a newspaper article—of Scandinavian states’ “lead” in international norm-creation. Ingebritsen’s work borders on braggadocio, providing an impressive but not overwhelming list of Scandinavian contributions, such as the idea of sustainable development established by the Brundtland Commission. She asserts that the United States has had to repeatedly confront Scandinavian norms but gives no examples,

highlighting the lack of utility the article supplies to the serious international relations scholar.

Overall, *Small States in International Relations* may provide much to the critical reader willing to parse disparate theories through a historical lens. For the reader not vitally connected to European small-states theory, however, this book is certainly not a must-have.

Bioviolence: Preventing Biological Terror and Crime. By Barry Kellman. Cambridge, United Kingdom: Cambridge University Press, 2007. Pp. xxviii, 362. \$28.99 (paperback).

REVIEWED BY KATE RHODES

In the hands of humans, the theory of natural selection stands to become one of the world's most dangerous weapons. Biological pathogens, naturally occurring poisons, and infectious diseases are manipulated by science for waging biological warfare—a battle for which, expert Barry Kellman argues, the United States and the global community are not prepared. While some deem it a limited threat because of the seeming complexity behind the weaponization of pathogens and the small likelihood of wide-reaching effects, Kellman's message is that biological warfare is a serious threat. Written in almost encyclopedic style, *Bioviolence: Preventing Biological Terror and Crime* not only educates the reader on the scientific reality of biological weapons but also offers preventative policy strategies to reduce this threat on a global scale.

Given the near-universal vulnerability of the human species to harmful pathogens, it is not surprising that Kellman structures his policy solutions in global terms. Like natural selection itself, the manipulation of natural influences of disease on the evolution of the human race employs forces over which people are not meant to exert control. Kellman frames his efforts as combating this most dangerous game, finding its participants guilty of "species treason." The first part of the book, "The Bioviolence Condition and How it Came to Be," outlines the threat posed by biological weapons, analyzes the various agents and diseases capable of weaponization, and summarizes the history of past biological warfare participants, including theories regarding which actors are most likely to make use of biological weapons in the future. The second part of the

book, "The Global Strategy for Preventing Bioviolence," is divided into two parts. The first four chapters address general ideas that Kellman believes both states and the international community should adopt, including the criminalization of bioviolence. This section also discusses obstacles surrounding the enforcement of these proposed laws, the regulation of scientific research, and the preparedness of public health authorities. The second part consists of a chapter outlining a plan for international nonproliferation of biological weapons and a chapter detailing Kellman's own vision of the end of the threat of bioviolence: a "Global Covenant" designed under the auspices of the United Nations (UN) to oversee and effectively execute the mission for bioviolence prevention.

While first addressing the tools and delivery of biological warfare, Kellman coins the term "bioviolence" to describe "the infliction of harm by the intentional manipulation of living micro-organisms." To him, this constitutes a criminal offense. He urges the reader to worry about bioviolence, which he describes as the employment of a new kind of weapon targeted only at other living things. Biological weapons are largely anonymous and conceivably devastating, both in the delay between the actual attack and their effects and in the widespread panic that can result.

Evaluating the potential harmfulness of several biological agents in turn, Kellman argues that anthrax is among the most effective, as it is easily made and weaponized. As with most pathogens, the obstacle for the would-be user of anthrax is dissemination: it is neither contagious nor easily inhaled in large open areas. There is also a stockpiled vaccine. The book offers a detailed discussion of the most effective means of creating and disseminating anthrax, as well as sixteen other harmful pathogens including small pox, ricin, and mad cow disease. These discussions are detailed and the pathogens compared in comprehensive chart form.

Kellman addresses his publicizing of this potentially dangerous information with the disclaimer that the section is written to be intentionally vague and contains purposeful omissions and that "information about how to conduct bioviolence is widely available." As he notes, "unlikely as it might be that this book would be a reference for a bio-offender, I am hesitant to put such information in print." The neophyte reader, however, is still given a wealth of hypothetical situations to

consider. These methods of bioviolence include both historically-used agents such as the plague, tularemia, q fever, and ricin as well as influenza and hemorrhagic fevers, botulinum in food, and “agroviolence,” the use of diseases that effect livestock and crops. Advancements in technology through the micro-sciences also provide new modifications of old threats, as pathogens can be altered to resist vaccines or an agent’s character can be changed to survive in different environments. Synthetic genomics, the science of creating genomes from synthetic DNA, has produced synthetic viruses, RNA inhibitors, and bioregulators as well as recreated diseases such as polio in labs.

After being immersed in this arsenal, the reader’s attention is then turned to actors who have used biological weapons in the past and those who would likely make use of them given the opportunity. Kellman is critical of those who believe that the use of biological weapons is too “repulsive” a threat to be realized: “To ignore th[e] extensive history [of the use of biological weapons] and presume that today’s villains are not fervent about weaponizing disease is very dangerous.” He canvasses the history of biological warfare, beginning with the ancient world and moving on to the colonization of North America, World War II, the Cold War, the apartheid era, and finally the development of the Iraqi biological weapons program over the last 40 years. The historical overview is not fully complete, however, as Kellman did not have access to classified information on biological weapons development in Egypt or Israel or on current activities in North Korea, Iran, and Syria. Therefore, the section on “current” or “alleged” state programs analyzes the information publicly available on weapons programs in these countries, but the author speculates that there are more programs than those we might name. Such state programs are worrisome not only because of allegations that some states are sympathetic to terrorist organizations, but also because Kellman’s plan of bioviolence prevention requires consensus-based global policies that cannot be realized if some states have biological weapons programs. He anticipates that modern-day state bioviolence is most likely to be deployed against poor, segregated populations.

Finally, the last section analyzes the use of bioviolence by terrorist organizations, giving an overview of Al Qaeda’s activities as well as a chart of attempted acts of bio-terrorism or

hoaxes. While this section is also notably affected by the unavailability of classified materials, Kellman believes the nation's current perception of the threat from terrorist organizations to be skewed: In his opinion, terrorist groups do not lack the intention to use such weapons and "asserting they lack capacity might be well-founded for the moment but offers absolutely no security for tomorrow."

The second part of the book offers "The Global Strategy for Preventing Bioviolence." The first chapter of this section outlines a four point overview of Kellman's prevention strategy: "Prevention = Complication + Resistance + Preparedness + Nonproliferation." Each of the next four chapters addresses a separate factor in this formula, illustrating how states and the global community must adapt to prevent biological warfare. In considering these strategies, Kellman argues that the principles of comprehensive security, distributive justice, and fair participation in the legal process must be at the core of implementation. The final chapter of the book provides various means of adopting the formula on a global scale through the UN.

The first element in Kellman's prevention strategy, complication, simply makes it more difficult for would-be bio-offenders to access the materials necessary to create weapons. This chapter is divided into initiatives: denial tactics and the criminalization of the development of biological weapons. Most significantly, only the actual commission of an attack is criminal, and police lack the authority and ability to track the development and sale of pathogens. This reality calls for new methods of tracking criminal bioscience and increased communication between law enforcement and bioscientists. Kellman believes that complication policies should focus on knowing where sensitive items are located and where they travel and preventing wrongful access and theft while avoiding "monitoring individual bioscientists' activities." Access to harmful pathogens should be controlled by creating census and tracking systems like bar-coding as well as improving security at bio-laboratories to deny access to equipment and materials. In addition, "[t]o effectively interdict [bioviolence]: 1) national law must authorize police to act and 2) law enforcers must have enhanced capabilities for identifying covert bioviolence preparations." For example, the Weapons of Mass Destruction Commission has created comprehensive guidelines for the trans-

port of “biological materials” that should, according to the author, be adopted by every country.

Second, resistance measures pose a “double-edged sword,” as they concern the scientific advancement of vaccines and medication—discoveries whose pursuit may result in political scenarios that are even more dangerous than the alternative. Kellman believes that a large part of preventing bioviolence must come from within the bioscience community itself, by providing better training and whistleblower protection to scientists as well as by creating a “professional certification” program. Of most prominent concern are issues concerning the regulation of bioscience itself and the hindering of scientific discovery. Kellman, however, believes that self-regulation and ethical codes will not be effective without universal standards and participation. With this in mind, he suggests “translucency” as a guide to detection and deterrence policies. After regulation of the community itself, the second side of resistance is the creation of vaccines and medications.

The first element in Kellman’s prevention strategy, preparedness, supports both complication and resistance methods and focuses on an effort to prevent bioviolence and respond when it occurs. With quick response protocols, the complication of perpetuating such an attack is increased as the effects are reduced and resistance is improved in the dissemination of medicines in the aftermath. In terms of prevention strategies, Kellman looks at practical measures to inhibit the spread of disease by guarding likely targets, namely “buildings, airplanes, subways, or sports arenas” with special attention paid to air and water supplies. Once an attack has been detected, various methods of containment can be introduced, such as vaccines for emergency workers and special locations for victim treatment. Quarantines, however, are politically complex, effective only under certain short-lived conditions, and strictly regulated by the World Health Organization.

The fourth element, nonproliferation, stresses that biological weapons must be observed and regulated carefully, as states have both greater access to biological agents and more means with which to execute biowarfare than individual actors. Kellman argues that the Biological Weapons Convention (BWC), signed over thirty-five years ago as the first treaty on biological weapons, is abused and in need of reform. Kellman provides four recommendations on how to improve the Con-

vention, including revising the definition of biological weapons to include nonlethal pathogens, introducing criteria by which states can identify one another's legal biological defense activities to increase trust, dismantling existing stockpiles of biological weapons from the former USSR, and, finally, limiting of the scope of the BWC to address effective biological non-proliferation only and not other political ends. Most controversially, Kellman supports an expansion of biological weapons classification to include nonlethal pathogens, though he anticipates that critics of his proposal will respond by noting that states will have no incentive to create less harmful weapons.

Kellman would put all these strategies to use in the form of a global covenant regulated by the UN. Aware of the economic burden that adopting these strategies would pose for many states, Kellman does not separate the prevention of bioviolence from the general international fight against disease. Instead, he proposes the creation of three new bodies within the UN system: "1) a Commission on Bioscience and Security; 2) a Bioviolence Prevention Office within the United Nations Secretariat; and 3) a Bioviolence Committee of the Security Council." While the Commission would serve as the cornerstone, with the mission of increasing bioscience and defining "its standards of conduct," the Office would assist individual states to develop infrastructure and the Security Council Committee would investigate questionable state activities. According to Kellman, this would effectively bring the problem of bioviolence to the center of the world stage.

Throughout the book, Kellman is surrounded by enemies—terrorists, microbes, unresponsive governments, and negligent scientists—a fact that sets the tone for the entire work. Despite this, his book is well structured, first demonstrating the significant threat of bioviolence and then offering an extraordinarily comprehensive plan featuring numerous strategic approaches for the prevention of biological attacks. Kellman's expertise and research are wide-reaching, and *Bioviolence* reads as a convincing and thoughtful authority on the threat and prevention of biological violence. Kellman's emphasis on the urgent need for the world to acknowledge bioviolence as its most significant and immediate threat, however, is only briefly addressed in light of other global concerns. Unfortunately, the official designation of bioviolence as our most

pressing threat is in the hands of the very governments that Kellman hopes to persuade.

UN Peacekeeping in Lebanon, Somalia, and Kosovo: Operational and Legal Issues in Practice. By Ray Murphy. Cambridge, United Kingdom: Cambridge University Press, 2007. Pp. 275. \$112.00 (hardcover).

REVIEWED BY BINISH HASAN

United Nations peacekeeping has increased considerably since 1985. Though set against diverse political, historical, and geographic backgrounds and with mandates that vary in breadth, peacekeeping operations often face the same structural, political, and legal issues. In *UN Peacekeeping in Lebanon, Somalia, and Kosovo*, Ray Murphy evaluates challenges posed to these United Nations (UN) operations through three different peacekeeping operations: the United Nations Interim Force in Lebanon (UNIFIL), the United Nations Operation in Somalia (UNOSOM), and the United Nations Mission in Kosovo (UNMIK). Murphy tackles three broad problems with respect to peacekeeping: the unity of command and control, indecision and restraint regarding the use of force, and violations of international humanitarian law.

After touching on some basic issues surrounding peacekeeping in the book's introductory chapter, the author spends chapter two exploring the failures and successes of each case study. He first looks at the UNIFIL operation in Lebanon in 1978, a response to Israel's invasion of southern Lebanon during the Lebanese civil war. The operation was plagued by a lack of clear consensus surrounding the mandate and thus was very conservative in terms of combat and enforcement actions. There was also a lack of strong support from the Security Council, as the Soviet Union abstained from every resolution regarding UNIFIL. On the other hand, the UN's operation in Somalia was a three-tiered mission beginning with UNSOM I, followed by the U.S.-led United Task Force (UNITAF), and ending with UNSOM II. Security Council Resolution 814 authorized a multifunctional operation in UNSOM II as it "demand(ed)" disarmament and "requested" national reconciliation. However, Murphy uses UNSOM to illustrate that a robust mandate is not enough to guarantee the

success of a mission. A robust mandate can also lead to the escalation of tensions, in direct conflict with a peacekeeping mandate. Finally, peacekeeping operations in Kosovo came on the heels of the NATO intervention in the region and worked in conjunction with NATO's Kosovo Force (KFOR). UNMIK's operation was even broader than UNSOM's, comprising civilian administration, facilitation of a political process, and relief and reconstruction. The main problem of the mission was that the Security Council did not give legal sanction to statehood for the Kosovars, leading to tensions with the very group the UN had intervened to aid. UNMIK was successful in aiding demilitarization of the Kosovo Liberation Army (KLA) and in preventing a civil war, but it failed to prevent numerous attacks on Serbian minorities.

Murphy argues in this chapter that legal confusion plagues the command and control structures of peacekeeping operations. Part of the problem derives from the domestic command and control structures of member nations. As a solution to this problem, Murphy advocates a diffusion of command within domestic governments as well as reforms within UN operations. For example, Canada divides command and control of armed forces between different branches of government. In Canada, military forces are also under Parliamentary control, which has flexible authority to place Canadian forces under the control of a UN Force Commander. States with more streamlined command structures that keep forces under executive authority, however, are more problematic. The author uses the example of Ireland, which places military command under the Minister of Defense, which itself has no flexibility to place Irish forces under UN control.

Murphy highlights the need for valid command and control structures and for responsible member nations as well as the UN Secretariat to reach workable solutions to these issues. He cites Canada as a model example. Aside from legal issues, the tendency of peacekeepers to maintain communication with their own countries regarding procedure and action is another widespread problem. This problem was particularly acute in Somalia, where the United States retained full command and control of its forces to the point where there was a parallel U.S. chain of command. This led to a lack of cohesion in the mission overall.

Chapter three is devoted to issues surrounding the question of the use of force. In peacekeeping operations, the use of force is authorized by the UN Security Council to achieve the relevant military mission or mandate and to protect persons or property within the operation. Murphy argues that self-defense is the only justification for peacekeeping operations and that peacekeeping should therefore be distinguished from enforcement operations. He reasons that there is a danger that lack of clarity in the designation of a mission will lead to disputes over legitimate uses of force and could lead to the UN becoming another party to the conflict it hoped to end.

UNIFIL is cited as an example of an operation hindered somewhat by restraint but nonetheless showing sound judgment. UNIFIL was dependent in its deployment on the consent and cooperation of a multitude of forces in Lebanon, including the Lebanese government and the Israeli occupiers. In order to prevent escalation, those in charge took a strict interpretation of the rules of engagement and used force only for self-defense purposes. Thus, while UNIFIL was constrained in its movement and was somewhat ineffective, it remained in Lebanon. In contrast, UNSOM II had a Chapter VII mandate and a position on the use of force that allowed it to act beyond mere self-defense. Resolution 837 authorized force to disarm militia, leading to many UNSOM-sponsored attacks and eventual withdrawal of the authorization after numerous casualties were suffered on both sides. Murphy uses the UNSOM II example to support his argument that robust peacekeeping can cause escalation of tensions.

The two cases above seem to highlight the argument that the UN should refrain from forceful action, because what is necessary to enforce an operation's mandate may be unclear. The situation of Kosovo, however, is an example where force was needed but a consistent policy lacking. UNMIK and NATO forces often capitulated to intimidation and threats of violence and each unit had a different interpretation of when it was appropriate to act. Overall, the forces were ineffective and ill-equipped to handle civil unrest and prevent widespread attacks on minorities. On this basis, Murphy argues that in order for the UN to engage in enforcement action, a "doctrinal basis for robust peacekeeping actions is needed."

Chapter four explores the applicability of international humanitarian and international human rights law to

peacekeeping. The UN is not a state, and thus does not have a clear source of responsibility under these two bodies of law. However, Murphy maintains that this does not mean that UN peacekeeping operations are free from their constraints. States that are home to peacekeeping operations must be relied upon to discipline peacekeepers. In addition, while the UN has expressed a commitment to international legal principles, it is not clear that it is bound by them. It can be confusing which principles apply. For instance, international treaties did not seem to apply to UNSOM forces, as they were not involved in a conflict of an international nature and it was difficult to determine if the label of armed conflict was appropriate. Any legal analysis placing the Somali situation within the parameters of the Geneva Convention seemed to come up short. Likewise, Murphy raises the issue of whether peacekeeping troops are bound to intervene to prevent violations of humanitarian law. For example, UNIFIL essentially became a bystander to humanitarian violations, as their mandate did not allow them to stop Lebanese resistance or Israeli counter-measures against resistance forces. Finally, Murphy evaluates the role of human rights law in peacekeeping situations where there is no effective rule of law through UNMIK and KFOR's experience. In Kosovo, there was no enforcement mechanism that could prosecute egregious violations of human rights on the part of the UN or internal forces. When forces like UNMIK cannot be a party to these instruments, it is unsurprising that international human rights law has not been established as a standard for peacekeeping action.

Murphy cites the urgent need to codify international law in this respect. Such a codification would lead to acknowledgement that UN peacekeepers are bound by these rules and not solely by the criminal jurisdictions of their home states. Murphy also points to the possible solution of incorporating human rights and humanitarian norms into status of force agreements in order to create a legal source of humanitarian law for such operations. He finally reaches the conclusion that, while there is no set of firm guidelines that operations can follow in order to ensure success, there are certain problems endemic to peacekeeping that must be remembered when instituting such operations. The case studies are well chosen, as they represent a broad range of UN actions and shed light on the problems in both narrow and broad man-

dates. The diverse mandates of the relevant operations, however, makes it difficult to use them as a baseline to evaluate successful policies in the general context of peacekeeping.

The work is a good introduction to the myriad different issues associated with peacekeeping operations. The tensions between legality and reality are well presented. The discussion would benefit, however, from a further examination of debate within the Security Council over each operation's mandate. Murphy often cites political constraints and lack of clear mandates as an overarching problem for all missions. An exposition of the discussions between Security Council members and within the Secretary-General's office would aid understanding of this argument.

Finally, while the book is aimed at tackling the three major issues mentioned earlier, it is obvious that many other issues, from the political agendas of major powers to the structures of status of force agreements, play a role in UN peacekeeping. An attempt to give these more discreet issues more attention in their own sections would benefit a reader's overall breadth of understanding of the complex issues associated with peacekeeping.

Global Outlaws: Crime, Money, and Power in the Contemporary World. By Carolyn Nordstrom. Los Angeles, California: University of California Press, 2007. Pp xiii, 234. \$21.95 (paperback).

REVIEWED BY GUNJAN SHARMA

The subways of New York have recently given rise to a new merchant: the counterfeit DVD-seller, who moves from car to car offering the latest movies for a dollar or two. Obviously destitute, these sellers present an ethical dilemma: What good does it do to arrest a person driven by poverty to sell illicit goods? Yet, these shady traders are also the last link in a network of organized and dedicated counterfeiting that reaps great profits for those willing to take the risks of entering into organized crime and that may extend as far away as China. Crime, it seems, has its own international economy.

For those interested in the complex economics and ethics underlying international organized crime, Carolyn Nordstrom's *Global Outlaws* is a compelling read. An anthropologi-

cal-cum-political science text, the book is a description of globalized crime drawn from Nordstrom's extensive research, travels, and interviews. The book concentrates not on the more obvious—and, according to Nordstrom, smaller in scale—crime of narcotics trafficking, but rather on the development of “extra state” economies, namely chains of supply and sale designed to subvert and avoid national laws.

The organization of the work's twenty chapters traces the international criminal economy from the street-vendors selling smuggled cigarettes in Africa through to the citizens of developed nations that encourage or ignore criminal activity. Each chapter features a different subject related to international organized crime, including particular goods (such as fish, diamonds, and pharmaceuticals), individuals (such as shopkeepers, truckers, and women's cooperatives), and more amorphous concepts (such as the culture of criminals and of police officers). While this disjointed approach damages the book's continuity, readers are nevertheless educated on a range of subjects many of them have probably never even considered.

The first chapter introduces the reader to a street child Nordstrom has named Okidi (the book is obsessed with anonymity). An Angolan war orphan about nine years old, Okidi, like the counterfeit DVD-seller in New York, is a petty street soldier in a larger criminal network: He spends his day selling pre-colonial coins to UN peacekeepers and smuggled cigarettes to anyone who will buy them. Okidi and his friends are presented in two lights: first, as businessmen who have learned market skills in order to survive; and second, as innocent children who can still be naïve. In one moment, the children show Nordstrom—a complete stranger—the stash of pre-colonial coins that constitutes their livelihood. Apparently, according to Nordstrom, the children still have that naïve innocence that allows them to trust total strangers. Years after their meeting, Nordstrom attempts to find Okidi again. She is unsuccessful, leaving her readers with a pit in the bottom of their stomachs.

The next few chapters trace a possible route that supplies Okidi with the smuggled cigarettes he sells: from a broken-down store (chapter two) through to the Angolan military (chapter five) and the “robber barons” who control them (chapter seven). Along the way, the reader is also introduced

to the courageous story of a cooperative of women who have been injured by landmines. Among the various ingenious devices the women use is a form of banking. Each woman gives a set amount to the collective every month, and the total money collected is then given to each woman in turn to be used as seed money for a small business venture. We are also introduced to the most blood-boiling story throughout the book: a warlord named Gov'nor who uses the military to force villagers from their homes "for their own safety." The villagers are given new land, which they work hard to develop. As soon as the land is developed, however, the villagers are forced off again, and Gov'nor seizes the now-developed property for himself. According to Nordstrom, men like the Gov'nor are responsible for most of Africa's resource wars. With war, these men can title property and assets to themselves, and then when they end the war, those property and assets make the men extremely rich.

Nordstrom continues her journey through international organized crime by investigating the supply routes that are used to supply Angolans with illicit food, drugs, clothes, and alcohol. We are introduced to both a booming border town and its truckers (chapter eight) and the individuals who defy the export laws of neighboring countries by operating the businesses that run the trucks (chapter nine and ten). In this section, Nordstrom introduces the process of cognitive dissonance that envelops the criminal underworld: Neither Okidi, nor the businessmen, nor the truckers, nor even the heartless military warlords actually believe they are doing wrong. Most believe that they are developing their country.

Having explored the dynamics of organized crime within Africa, Nordstrom next turns her attention to issues on a more global scale. She begins by identifying the major smuggled goods in the international criminal world, none of which, surprisingly, are narcotics. Instead, the reader discovers the value of smuggled fish (chapter eleven) and learns that counterfeit and substandard pharmaceuticals are as profitable as the narcotics trade and take many more lives (chapter twelve). And, also surprisingly, counterfeit pharmaceuticals are not the only source of dangerous or substandard medicine. Lethal substandard pharmaceuticals, which are secretly disbursed across the Third World, are often made by licensed manufacturers. Yet, according to Nordstrom, political pressure from pharmaceuti-

cal companies and the industrialized world means that the World Health Organization does little to address or study the issue.

From the goods that define international smuggling and crime, Nordstrom moves into the culture of its participants, both criminal (chapter fourteen) and law enforcement (chapter fifteen). Using her background in anthropology, Nordstrom identifies a series of trust-based norms that govern the behavior of criminals. At the same time, she demonstrates the frustration felt by law enforcement officials who are told to fight the narcotics trade while they know other trades are just as devastating. She then goes on to discuss in-depth the money-laundering schemes that constitute \$5 trillion, or 10% of the global economy—apparently, it is relatively simple to buy a foreign bank, make deposits into it, and then have the bank loan you money (chapter seventeen). Nordstrom then takes a moment to consider the issue of human trafficking (chapter eighteen) and describes how she herself boarded a cargo vessel to be trafficked into Europe. Throughout this section, there is a strong emphasis on the role of global shipping and how its concern for speed and correspondingly inferior security procedures allow organized crime to flourish.

The conclusion of the book is two-fold. First, there is a chapter on the sloppiness of American port security (chapter nineteen). Nordstrom then proceeds to interject some theory (chapter twenty), arguing that the development of significant levels of international organized crime indicates the formation of new power structures in international relations beyond the state-based system created by the Enlightenment. Given the concurrent rise of transnational military actors like Al Qaeda, her argument has a certain resonance. However, as with most post-statist arguments, one wonders whether the state will actually be displaced by new power structures, as Nordstrom argues, or rather will simply be the most powerful entity in a world where it will not have a monopoly on human behavior.

Nordstrom is an accomplished scholar, but those looking for a thorough academic analysis of the subject matter will be disappointed. Instead, this book is a powerful introduction to an often-ignored part of the global economy. It describes a world most do not even consider—a world of war orphans, land mine amputees, warlords, and multinational corporations. Nordstrom's book does not create a framework to ad-

dress the study of international organized crime, but it is a powerful call for the creation of such a framework. Nordstrom's experience in anthropological fieldwork is by far her greatest strength as a writer: The stories she tells remain with the reader well after the last chapter has been read. Nordstrom's work is also a stunning indictment of the political elites of the West, who, because they profit from smuggling or illicit trade, either ignore its existence or actively partake in it. In one instance, a customs agent complains that whenever he catches a large American company under-declaring goods at the border, a Congressman calls to end the investigation.

In the end, global organized crime is, according to Nordstrom, driven by the Western consumer: The middle-class consumer who, believing it really does no harm, pays for smuggled cigarettes or accepts the dubious provenance of diamonds, thereby driving the demand for global organized crime. After reading this book, I would not buy a counterfeit DVD on the subway.

To Save Her Life: Disappearance, Deliverance, and the United States in Guatemala. By Dan Saxon. Berkeley, California: University of California Press, 2007. Pp. 306. \$19.95 (paperback).

REVIEWED BY ANDREA GITTLEMAN

International politics is nuanced in a way that often does not provide the best protection to populations and individuals suffering at the hands of violent groups or governments. From Darfur to Burma, international responses to gross human rights abuses are limited by actors' political interests. Objectives such as securing natural resources or curtailing drug trafficking hamper a nation's ability to effectively respond to human rights violations. In his recent work, *To Save Her Life*, Dan Saxon uses this frustrating context to frame his analysis of the international community's response to disappearances in Guatemala. The goal of the book, according to Saxon, is to encourage governments and international organizations to provide more support to victims of human rights violations. He shows that the international community's varied responses to violence may be a reflection of the human inability to unequivocally fight for human rights. Using the

experience of a previously “disappeared” woman now his wife, Saxon asks for more effective intervention on behalf of torture victims.

Saxon begins the book by providing introductory information for readers interested in Guatemalan politics and the larger field of humanitarian responses to political violence. He recounts the ordeal of Maritza Urrutia, a woman kidnapped by anti-Communist military officials, and the political dealings surrounding her eventual release and immigration to the United States. The book carefully details the events surrounding Maritza’s two weeks in captivity; at the same time, however, it sheds light on a wide breadth of the conflict in Guatemala and the ensuing international response. Saxon begins by describing Maritza’s family’s experience during the Guatemalan revolution in 1944 and quickly moves to July 23, 1992, the day members of the Guatemalan army kidnapped Maritza as she was dropping her son off at school. In this book, part mystery novel and part historical analysis, Saxon does a good job of intertwining stories with explanation of the relevant political context. For instance, passages on Maritza’s abduction and torture are followed by chapters detailing the history of the involvement of the Catholic Church in political affairs and the intricate process of obtaining a United States visa.

Saxon explains in the preface that he has learned that humanitarianism *is* politics. He details the “quiet negotiations” between the Guatemalan and U.S. governments concerning how humanitarian responses would alter their respective roles in narcotics trafficking in the region. When Carlos Castillo Armas took power in Guatemala, the Central Intelligence Agency (CIA) drafted a list of “top flight Communists” who were considered dangerous threats and who could be arrested and detained indefinitely without trial. The murky history of U.S. involvement in Guatemalan politics explains its hesitation to come to Maritza’s assistance several decades after the fall of the Communist leadership.

One of the author’s main points is that international responses to human rights violations are rife with political maneuvers and indecision that do injustice to the victims themselves. Although the author recognizes the moral ambiguity in responses to human rights violations, he paints Guatemala’s political history as a world of binary opposites—the differences

between the Communist supporters of Jacobo Arbenz and the CIA and its sympathizers become models of peace against violence and good against evil. Contrary to this depiction, international relations are not founded on clear-cut associations, and external assistance is based on carefully negotiated and tenuous relationships. Saxon tends to assume that there is a clear distinction between peaceful and violent actors, thereby oversimplifying the nature of international politics and humanitarianism. The author rightly implicates the United States in bringing about the fall of Arbenz and installing a sympathetic figure in his place, yet he also criticizes its failure to take a more active role in countering the government that supported the kidnapping of Maritza. Using Saxon's argument that international dealings are highly complex, it is hard to then argue that observers can easily decide when and what variety of international action is required. Although the author stays true to his intention of demonstrating the moral ambiguity of politics and humanitarian aid on the international level, he does not thoroughly analyze that same ambiguity in Guatemala's national history.

Readers should not approach this book expecting a calculated and precise recapitulation of the recent history of Guatemala but rather a personal narrative of a torture victim entangled in a network of uncoordinated individuals, states, and organizations. The attention the author calls to disappearances and human rights violations in Guatemala serves a greater purpose than that of a balanced portrayal of political events—the book draws upon Maritza's experience in order to highlight the frustrations of the politics of humanitarianism. Saxon's view of the relatedness of aid and politics is not groundbreaking, but the book still makes a valuable contribution through its intersection of the personal and the political. The text alternates between the perspectives of the “disappeared,” international organizations, religious groups, guerrilla units, members of the military, and government officials. This technique works well to show the intricate nature of responses to human rights violations, though it also creates a disjointed narrative perhaps analogous to the emotions of those personally affected by these violations.

One of the international organizations Saxon highlights is Amnesty International, a group that, like Saxon, highlights individual victims of human rights abuses in order to bring

about political action. Focusing on one individual with a general political analysis can be an effective advocacy tool, but it has its drawbacks. Although readers may rally behind Maritza and her experience, they may also see the Guatemalan conflict in a more limited manner if they equate a general struggle with that of a single person. Focusing on the trauma of one victim can limit the audience's perception of the extent of political violence. Even though Maritza was granted asylum in the United States, the recent violence surrounding the elections in Guatemala shows that the more general political conflict has not yet subsided.

Although Saxon's running theme is that politics determine a given state's involvement in conflict areas, he fails to put forth solutions about how to overcome this problem and provide more effective assistance to those affected by human rights abuses. Saxon describes the lack of communication between government officials and the myriad organizations in Guatemala and the United States that were working to save Maritza, but does not provide workable solutions to this lack of coordination. The reader is left with frustration regarding the slow-moving reactions of governments and international organizations but without ways to encourage prompt and dedicated responses.

Readers should use *To Save Her Life* not as a resource for international lawmakers, but as a tool to increase awareness of government-sponsored torture and of the complexities surrounding foreign intervention in general. Saxon may not provide solutions to humanitarian responses, but his treatment of disappearance and torture resonates in current U.S. endeavors in its "war on terror." He argues that the outrage that followed the publicity about United States-sanctioned torture should also extend to the torture used by other governments. It is his hope that an increased awareness of state-sanctioned torture will allow the international community to more effectively protect the rights of those suffering from human rights violations.

Investment Treaty Arbitration and Public Law. By Gus Van Harten. Oxford, United Kingdom: Oxford University Press, 2007. Pp. xxxii, 214. \$110.00 (hardcover).

REVIEWED BY PAMILA GUDKOV

International arbitration is not a new legal phenomenon. Rather, it has been utilized for settling contract disputes and disputes between states for decades. Until the mid 1990s, however, investment treaty arbitration—claims made by investors against sovereign states—remained a relatively small segment of arbitration not well known to those outside the field. In the past decade, claims brought under NAFTA and bilateral investment treaties have hit the mainstream media. Gus Van Harten's recent book, *Investment Treaty Arbitration and Public Law*, the latest addition to the Oxford Monographs in International Law series, presents an introduction to this growing field. Van Harten provides a background on the history of investment treaty arbitration and explains what distinguishes investment treaty arbitration from other forms of international arbitration as well as critiquing the current system and making suggestions for reform.

Van Harten introduces his critique of the current system with the case of Argentina, a timely and particularly dramatic example of how powerful—and possibly misguided—investment treaty arbitration decisions can be. Following Argentina's severe economic decline in 2001, foreign investors brought dozens of legal claims against the floundering nation amounting to more than \$17 billion in claimed compensation, nearly the entire annual budget of the national government. The suits potentially ask arbitrators to decide whether investing companies or regulating governments should bear the risk and responsibility for government actions. While many of these claims remain undecided, an important standard was set in 2005, when a panel of arbitrators put the responsibility on the government and ordered Argentina to pay \$133 million to a U.S.-based investor in *CMS v. Argentina*. The panel's decision raises many policy questions: Should private arbitrators have comprehensive jurisdiction to rule sovereign regulatory acts illegal? Can these decisions be delegated away from public courts? Should investors be able to recover for taking what amounts to an economic risk? Van Harten touches on these

issues but focuses less on the policy ramifications of specific arbitration decisions and more on fleshing out the system as a whole and discussing why it is a revolutionary development in international adjudication.

Chapter one presents an overview to Van Harten's argument that investment treaty arbitration is a revolutionary development in international adjudication. Unlike any other form of international arbitration, investment treaty arbitration is a method of public law adjudication, meaning that it is used to resolve regulatory disputes between private parties (usually corporations) and states. This is as opposed to the traditional international law model, which only looked at disputes between states. The system's unique use of private arbitration in the regulatory sphere conflicts with the cherished principles of governmental accountability and judicial independence in democratic societies; in effect, it taints the integrity of the legal system by contracting out of the judicial function in public law and holding governments fiscally hostage for what may be necessary measures.

Chapter two examines the historical and political background leading up to international arbitration's current prominent status. The system has its roots as a less costly (and more peaceful) alternative to the use of force to settle economic disputes. Van Harten asserts that the growth in cross-border capital flow since the 1980s and the mobile nature of foreign investment have led to the conclusion of many bilateral investment treaties, as capital-exporting countries attempt to protect nationals making foreign investments and capital-importing countries scramble to keep investors from moving capital elsewhere. Van Harten also begins bringing out negative implications of the system. Since the bilateral investment treaties are typically concluded between exclusively capital-importing and exclusively capital-exporting countries, the capital-importing state takes on major liabilities to multi-national forums without securing any real advantage under the treaty for its own nationals.

Chapter three presents Van Harten's central argument: Investment treaty arbitration should be seen as a form of public law adjudication, because the system is established by a sovereign act of state (the signing of an investment treaty) and is predominantly used to resolve disputes arising from state regulation. Van Harten distinguishes investment treaty arbitration

from other forms of arbitration because unlike conventional international disputes (which occurred only between states) or commercial disputes (between private parties), the two parties in investment arbitration are not equally capable of possessing legal rights and obligations. There is no reciprocity between the investors who make claims and the states that give general consent to pay remedies if the claim is successful, making the system more closely resemble the public domestic law model of a an individual making a claim against a state than that of a private party suing another private party for breach of contract. If, as Van Harten argues, investment treaty arbitration is more akin to constitutional or administrative law than to private law, there is a serious question of whether privately contracted arbitrators using private law rules should be resolving these issues.

Chapter four deals with the scope and standards of review in investment treaty arbitration. Van Harten first draws out the range of activity that is subject to control by private adjudicators and is therefore removed from the domain of domestic courts. He argues that broad interpretations of key terms like “investment” and “goods” allow arbitration to encompass an extremely broad range of economic activity, well beyond the more narrowly tailored definitions of those same terms found in customary international law. This makes a host state’s monetary policy reviewable by arbitrators and potentially subject to an order to compensate affected foreign capital. The scope of arbitral review typically guarantees investors national treatment, fair and equitable treatment according to international legal minimums, and compensation for expropriation. Van Harten examines and criticizes each of these in turn, arguing that because investors have no need to protect a future interest in defending against a similar claim, and because they are not burdened by the state’s general welfare, they are free to make arguments to broaden the scope of review solely in their own interest. Though arbitrators may not always accept these arguments, they are steadily moving toward a broader view of investors’ rights that leaves states unable to reliably estimate the cost of government measures.

Chapter five presents the argument that the emergence of investment treaty arbitration is a revolutionary transformation in international adjudication. The system, in Van Harten’s view, “uniquely combines various innovative features of inter-

national adjudication to form a singularly far-reaching and potent system that uses arbitration to review and control states.” Van Harten identifies these “innovative features” as the ability of investors to make claims in the context of regulatory disputes; the prospective consent of states to be subject to a claim (unlike claims tribunals, where foreign nationals can bring claims only after retrospective consent); the main remedy of state liability in public law; the liberal approach to forum shopping and removal of the requirement to exhaust local remedies; and the broad enforcement of awards with minimal possibility for judicial review.

In chapter six, Van Harten classifies approaches and interpretations of arbitration jurisprudence into four categories. He criticizes the first two—the analogy to either commercial arbitration or public international law—because each of these represent a reciprocal framework, which, as he argues in chapter three, investment treaty arbitration lacks. The third approach described by Van Harten is an analogy to human rights law. Some scholars have taken the view that investment treaties, like human rights instruments, create fundamental rights for investors. Although Van Harten gives this approach credence, he views it as wrong-headed because, taken to its logical conclusion, it prioritizes the norm of investor protection above the overall welfare of the state in governmental decisionmaking. The final approach, and the one which Van Harten looks on most favorably, is the public law framework. This approach, he believes, will promote predictability for governments and investors and balance the rights of investors against the regulatory interest of the state.

The final chapter takes on two tasks, first identifying flaws in investment treaty arbitration and then offering suggestions for reforming the system. Van Harten suggests that to have an effective system of public law adjudication (which, as he argues in chapter six, is the only appropriate approach to investment treaty arbitration), there must be accountability, openness, coherence, and independence—four criteria the current system lacks. In order to better incorporate these characteristics, Van Harten suggests allowing domestic courts some oversight of arbitral tribunals as well as creating of an international investment court. His suggestions for reform are sweeping: The flaws identified above can only be remedied, he argues, by a structural overhaul moving arbitration closer to a public court

model and allowing greater domestic review that can overrule errors of law made by arbitral tribunals. Van Harten is optimistic that this sort of reform might come to pass. He points out that many capital-exporting states have called for an international court on previous occasions, and that it can only be to the benefit of capital-importing states to move to a system in which their interests will be better represented.

While this book might have little to offer to those already intimately familiar with international investment arbitration, it is a clear and comprehensive introduction for those who are new to the field. Though it suffers from some overlap and redundancy, the work is remarkably clear, concise, and comprehensive while covering an expansive and complex area of international law.

Human Rights and Healthcare. By Elizabeth Wicks. Portland, Oregon: Hart Publishing, 2007. Pp. xxi, 291. \$56.00 (paperback).

REVIEWED BY DANIELLE POLEBAUM

In her recent work, *Human Rights and Healthcare*, Elizabeth Wicks presents a survey of many current and controversial medico-legal issues through a human rights perspective, with a focus on the English legal system. Each chapter presents a distinct legal issue for which the author discusses the relevant law in England, presents the human rights perspective, offers criticism or praise to the status quo, and occasionally weaves in proposals or solutions. She concludes each chapter with a concise summary and “Recommended Further Reading” for those who want to explore a particular issue in depth.

The fundamental premise of the book, and the broadest argument made by its author, is that the human rights perspective should be an essential consideration in analyzing and reforming English medical law. The human rights perspective makes the rights of the individual patient the essential inquiry, establishing a presumption that her rights are the most important while still allowing interference with these rights when necessary within a democratic society.

In the first chapter, the author introduces the role of human rights in health care. She outlines the important

sources of human rights law for the purposes of this book: international human rights treaties, the British Constitution and common law rights, and the Human Rights Act of 1998, which sought to incorporate the European Convention on Human Rights (ECHR) into domestic English law. Next, Wicks outlines the human rights that are relevant to medical law: privacy-related rights, the right to life, the right to dignity, including the prohibition of inhuman or degrading treatment, and the right to reproductive autonomy.

Chapter two addresses the threshold issue of whether there is a right to receive medical treatment within the United Kingdom. This right would impose a positive duty on the state to take steps to preserve life. The European Court of Human Rights (ECtHR) has recognized that such a right exists under article 2 of the ECHR (which provides for the right to life) but that a duty to take positive steps is only invoked where there is a “real and immediate risk to life” and that the duty cannot impose a “disproportionate burden on the authorities.” This proportionality requirement has significance in England, because the reality of limited resources in the British health care system means that some patients will be denied medical treatment that they need. Wicks argues that an absolute right to receive all necessary treatment is not realistic; nevertheless, patients have a limited right to some form of treatment. Specifically, each patient is entitled to “equal consideration with other patients in the same position,” to not be refused treatment on a discriminatory basis, and “to have his request for treatment assessed on the basis of individual need.” Additionally, Wicks interprets the case law as suggesting that a patient who wishes to remain alive has a legal entitlement to receive basic life-sustaining treatment in the form of artificial nutrition and hydration.

Chapter three turns to the issue of quality of treatment. Wicks outlines English case law, which imposes a minimum standard of care through the law of torts, arguing that the legal requirements of negligence are inadequate for asserting patient rights. Wicks’ concern with negligence as the primary cause of action is that it focuses on doctors’ duties more than on patients’ rights. For example, if a doctor acts with due care but a patient suffers injury, the patient has no remedy. When a doctor acts negligently, the patient still must prove causation. Wicks argues that strict application of this requirement

can result in injustice, emphasizing that the courts have more recently construed the requirements in a way that increasingly vindicates patients rights—a positive step. She then addresses no-fault alternatives as a way to promote both doctor and patient rights but concludes that this solution still does not “address the issue of patients’ rights in a convincing manner.”

Chapter four focuses on autonomy and patient consent to medical treatment, a fundamental issue because autonomy provides the theoretical foundation for human rights. Wicks broadly introduces the concept of autonomy from an ethical standpoint and as a key legal principle in international human rights law. She then outlines the need for actual, voluntary, competent, and informed consent under English common law and the problems these requirements can pose for autonomy. She argues that these requirements should be read narrowly so that as many patients as possible can make their own decisions. The chapter provides several examples of British courts tending to respect a patient’s decision to say yes to a particular treatment more than his or her decision to say no. According to Wicks, a patient must have the right to make an irrational decision in regards to treatment.

Chapter five considers the treatment of patients from whom informed consent cannot be obtained—namely, those who lack consciousness, mental capacity, or maturity. Wicks emphasizes the principle of beneficence—a moral obligation to act for the benefit of others—as important to the human rights approach where autonomy cannot provide the answer. Several human rights are particularly pertinent to the issue: the right to physical integrity, the right to be free from degrading treatment, and the right to life. Wicks stresses that a best-interests test, often used to make treatment determinations for incompetent patients, should focus solely on the patient’s rights and criticizes decisions that consider the interests of third parties such as family members.

Chapter six is about medical confidentiality and the right to privacy, an issue that the author considers “one of the most obvious candidates [in medical law] for a human rights conceptualization.” Unsurprisingly, she considers the right to privacy to be of the utmost importance and is concerned that patients’ privacy rights in England are being threatened from many angles. She cites as examples of alarming trends the release of personal information to an entire health care team,

regulations allowing public authorities to gather confidential information about patients, and plans for a centralized database of medical records. According to Wicks, the right to privacy must be considered a right which can be restricted only in narrow circumstances.

Chapter seven treats the issue of whether a patient has property rights in his or her body. After examining the contentious history of the issue, the chapter introduces the U.S. case *Moore v. Regents of the University of California*, which Wicks considers “an extremely unsatisfactory decision.” Wicks argues for a limited property right and right of possession over our bodies, reasoning that the protection of human dignity and the right of autonomy can be combined with such rights to provide a basis from which to allow the owner some control over what happens to his or her body without granting an absolute right to sell the body. She argues fairly convincingly that “a restriction on commercial use does not preclude self-ownership.” Additionally, self-ownership may provide patients with the ability to choose how their bodies are disposed of after death, although Wicks allows that few human rights are engaged once a person is dead.

Chapter eight questions whether there is a right to reproduce and focuses on the issue of medically assisted conception. Wicks argues that there should be a right to reproduce which is supported by the right to respect for family life and the right to respect for private life, and which, in essence, amounts to a freedom to make reproductive choice without interference from the state. In the context of assisted conceptions (e.g., surrogacy), the right to reproduce will be subject to and must be balanced against the interest of other parties to the reproductive process. In addition, the right to reproduce does not include a right to publicly funded treatment because, according to Wicks, this is not “an economically viable possibility.”

Chapters nine and ten cover issues of reproductive choice. The human rights approach provides “few definitive answers” to the issue of abortion. This is largely because there is not a clear consensus on whether a fetus has a right to life and, if so, at what stage of development. The ECtHR avoided giving an opinion on this issue in the 2005 case of *Vo v. France*. Wicks reminds us that abortion is even more complicated than a conflict between the mother and fetus, since the father’s and

state's interests may also be engaged. She maintains, however, that the woman should ultimately be the one who decides whether to undergo the procedure or not. A woman's freedom of choice, according to Wicks, includes a freedom to act in a way harmful to the fetus, which may include declining to undergo a particular medical treatment (e.g., a Caesarean section), or taking drugs or drinking alcohol during pregnancy. Wicks makes the interesting point that if we are to start blaming a mother for fetal harm resulting from such behavior, what about poor nutrition resulting from poverty, or defect from living in an apartment with lead paint? Responsibility for fetal harm may be shared with many, including the father and broader society, and Wicks concludes that a pregnant woman's right to make autonomous choices must apply to all choices. Her examination of English case law establishes that although the court clearly declares the principle of a pregnant woman's autonomous choice, the court will in certain situations question a woman's competence, which in turn has the effect of undermining her autonomy.

The final issue the author grapples with is whether there is a right to end life. She concludes that there does not exist a "right to die" under the ECHR or English law. There should, however, be a limited exception to the criminal prohibition on assisted suicide "where a doctor follows strict guidelines to ensure a voluntary and well considered autonomous request by a patient enduring unbearable suffering and unable to commit suicide unaided."

Human Rights and Healthcare is a helpful overview of pertinent medical-legal issues viewed from a human rights perspective. The book is not an in-depth treatise on a particular human right or medical issue, but the author capably touches on many important and controversial topics. The work is well organized, clear, and not overly complex—it can be read by someone with little to no expertise in either human rights or medical law. Because the book is more of an overview, some of the issues or arguments are glossed over and may leave the reader wanting a slightly deeper analysis from the author. (This is probably an inevitable critique for any legal analysis that is kept somewhat brief.) The book weaves between being descriptive and being critical. As a result, the author offers her opinion on many decisions, doctrines, and issues but not on all, and there were instances where a description seemed

lacking the requisite critique. Similarly, the author occasionally made proposals for ways to address problems or change the law; other times, she did not. Again, the reader may be, as I was, occasionally left wondering if she had a proposed solution.

It appears from the author's critiques that in many ways the human rights perspective is very focused on process. Of course, there are important substantive goals encompassed in human rights treaties, but sometimes the author was as critical of a judge's reasoning (or a judge's inattention to a particular way of looking at the case) as she was of the decision. Human rights is often about balancing countervailing rights, and one of the main critiques that popped up again and again was that the judge did not balance or give enough consideration to a particular right, or that the court needed to consider the issue from an angle which they missed. Thus, sometimes the correct (or best) decision was debatable, but it was imperative that a patient's rights be considered as primary. Such procedural changes should, in many situations, lead to different outcomes, but it is noteworthy that the human rights movement seems concerned not only with the ends but very much with the means that are used to get there.

Overall, the book is an interesting and well-written work that prods the reader to think of medical issues in new ways and particularly to focus on the human rights implications for medical law.