

BOOK ANNOTATIONS

AARONSON, SUSAN ARIEL & JAMIE M. ZIMMERMAN, *TRADE IMBALANCE: THE STRUGGLE TO WEIGH HUMAN RIGHTS CONCERNS IN TRADE POLICYMAKING* (New York, New York: Cambridge University Press, 2008).

BELL, DANIEL A. & JEAN-MARC COICAUD, EDs., *ETHICS IN ACTION: THE ETHICAL CHALLENGES OF INTERNATIONAL HUMAN RIGHTS NONGOVERNMENTAL ORGANIZATIONS* (New York, New York: Cambridge University Press, 2007).

BENTLEY, PHILIP & AUBREY SILBERSTON, *ANTI-DUMPING AND COUNTERVAILING ACTION: LIMITS IMPOSED BY ECONOMIC AND LEGAL THEORY* (Cheltenham, United Kingdom and Northampton, Massachusetts: Edward Elgar Publishing, 2007).

CHESTERMAN, SIMON & CHIA LEHNARDT, EDs., *FROM MERCENARIES TO MARKET: THE RISE AND REGULATION OF PRIVATE MILITARY COMPANIES* (New York, New York: Oxford University Press, 2007).

HILTERMANN, JOOST R., *A POISONOUS AFFAIR: AMERICA, IRAQ, AND THE GASSING OF HALABJA* (New York, New York: Cambridge University Press, 2007).

JACOBS, FRANCIS G., *THE SOVEREIGNTY OF LAW: THE EUROPEAN WAY* (New York, New York: Cambridge University Press, 2007).

MANENT PIERRE, TRANSLATED BY MARC LEPAIN, *A WORLD BEYOND POLITICS?: A DEFENSE OF THE NATION-STATE* (Princeton, New Jersey: Princeton University Press, 2006).

ORAKHELASHVILI, ALEXANDER, *PEREMPTORY NORMS AND INTERNATIONAL LAW* (New York, New York: Oxford University Press, 2006).

PELEG, ILAN, *DEMOCRATIZING THE HEGEMONIC STATE: POLITICAL TRANSFORMATION IN THE AGE OF IDENTITY* (New York, New York: Cambridge University Press, 2007).

Trade Imbalance: The Struggle to Weigh Human Rights Concerns in Trade Policymaking. Susan Ariel Aaronson and Jamie M. Zimmerman. New York, New York: Cambridge University Press, 2008. Pp. 337. \$85.00 (hardcover).

REVIEWED BY RYAN HOOPER

Discussions of free trade tend toward two polarized camps. One side argues that those who question globalization as it is currently proceeding are flat-earthers, while the other declares the death of human rights at the hands of the shadowy World Trade Organization (WTO). Each side believes the other is misinformed or worse. *Trade Imbalance: The Struggle to Weigh Human Rights Concerns in Trade Policymaking* avoids both poles. Susan Ariel Aaronson and Jamie M. Zimmerman have the modest goal of encouraging us to think more deeply about the relationship between international trade and human rights. They argue that we are all underinformed because so little research on this nexus between trade and rights has been performed. The picture the authors present is one of complex relationships between free trade and the protection of human rights. The authors argue that both goals should be considered and pursued in tandem. A stimulating blend of institutional history, memorable anecdotes, economic studies, and original empirical work, Aaronson and Zimmerman's work is an excellent primer for the layperson, scholar, or policymaker on some of the most fundamental questions of our time: What is the best way to battle slavery and extreme poverty? Are free trade and robust human rights incompatible or mutually reinforcing? How do we make globalization both productive and fair?

The authors point out that the protection of human rights and the liberalization of markets were once considered twin goals. After World War II, the International Trade Organization (ITO) was set up to stimulate trade while protecting the sort of human rights symbolized by Roosevelt's four freedoms. But the treaty was never put up for a vote; as the Cold War began, the world was not ready for such an agree-

ment. Instead, the General Agreement on Tariffs and Trade (GATT)—the part of the ITO governing only commercial policy—came to govern international trade. Both GATT and the agreement that succeeded it, the WTO, speak little of human rights.

Indeed, the structure created under the GATT/WTO system is not just silent on human rights, the authors argue: it actively discourages the use of trade measures to pursue human rights goals. The WTO requires that the best trade conditions extended to one country must be extended to every country. This Most Favored Nation rule prevents countries from fine-tuning trade policies with fellow WTO members in accordance with human rights goals and leaves them with only the blunt instrument of sanctions. Also, once a product is imported, the importing state may not subject it to regulations less favorable than those that apply to domestic products. So, as in the case of South Africa, if the government wants to encourage black ownership of corporations it must impose the same requirements upon foreign companies, forcing it to choose between maintaining foreign investment and pursuing reconciliation. There are exceptions to the WTO rules, the nuance of which the authors capture nicely and successfully while arguing that the WTO structure could be used more effectively in the interest of human rights. Yet the overall point remains: The existing structure, which includes not only the WTO but other agreements and the dominant discourse on trade generally, often prevents the tailoring of trade policy for human rights ends.

At the heart of this dilemma is the question of how to view measures taken to protect human rights that also restrict trade. Is indentured servitude a violation of rights, a comparative trade advantage, or both? How can a country balance the protection of human rights with the courting of foreign investors? *Trade Imbalance* is not an attempt to answer these questions definitively. Instead, it is an examination of how contemporary policymakers grapple with such questions (or fail to grapple with them), and an accounting of their successes and failures. The authors forthrightly acknowledge the dearth of systematic research upon which to rely. Their approach is to look at how policymakers approach trade and human rights objectives using five case studies: the WTO itself, Brazil, South Africa, the European Union, and the United States—entities

selected for their varying levels of development and for their differing human rights priorities. The authors tell several stories about each, drawing on interviews, scholarship, and field research.

A paradigmatic example, and a recurring issue at the intersection of trade and human rights, is the relationship between intellectual property protections and public health crises. Across the world, developing countries have faced the choice of either meeting trade obligations under the Trade-Related Intellectual Property Agreement of the WTO (TRIPS) to protect the intellectual property of drug manufacturers or creating generic drugs to battle epidemics. The authors document a victory for the sort of flexible, pragmatic approach they endorse: Brazil and other nations were able to secure a public health exception to the TRIPS agreement by threatening to issue compulsory licenses, marshalling public opinion, and ultimately persuading the members of the WTO at the Doha Round. This success came at a price. Foreign drug makers have reduced their investment in Brazil, resulting in lower employment (though how much employment was created by lifting some of the terrible burden of HIV/AIDS is unknown). But even the negative aspects of this solution reinforce the idea that trade and human rights policies must be considered together because their effects are so deeply intertwined.

Despite superb organization, the authors' case-study method is, by its nature, a little scattershot. Their work's readability partially makes up for its lack of comprehensiveness. Each story—from blood diamonds to child slavery in the chocolate industry—is memorable and accessible. But the accounts (packed into a slim 207 pages of body text) sometimes gloss over important details. In their discussion of Brazil's efforts to provide for benefit-sharing between foreign bio-prospector and indigenous tribes, the authors sometimes conflate traditional knowledge and genetic resources, separate concepts protected in different ways under international law. The offense is forgivable given the breadth of the book, and it hardly affects the authors' argument, but it is one of the perils of such vignettes.

A larger problem is that the book, published in the United States and written by American authors, simultaneously presupposes an audience already sympathetic to international human rights theory and recognizes that many in the United

States do not accept these norms. It offers only a brief defense (a few paragraphs) of the notion of enforceable international human rights norms that ought to be imposed on every nation. While the authors do mostly limit themselves to discussion of widely accepted human rights norms found in the Universal Declaration of Human Rights (UDHR), whether the UDHR should be the basis for domestic policy is still an open question in many circles. Ultimately, the authors could have done more to defend the use of international human rights norms to their—presumably—largely U.S. audience.

The authors come to several conclusions as a result of their work. They find that, from South Africa to India, trade agreements are not the cause of human rights problems, but often exacerbate and thwart the prevention of human rights abuses. Despite these obstacles, motivated policymakers can use the trade regime successfully to reinforce human rights. Perhaps the most useful parts of the book elucidate practical ideas, offered in tables and among the stories, for how to use existing trade law to carry out human rights goals. In addition, the authors make several general recommendations: the coordination of trade and human rights policies incorporating input from human rights groups in trade policymaking; the creation of an appropriate advisory structure to monitor the effects of agreements on human rights; the gathering of a coalition to use the WTO for human rights ends; making corporations fully aware of their human rights responsibilities; and, perhaps most importantly, furthering research on these important issues. On this last aspect, the book is both a call for research and a contribution, two things sorely needed in the globalization debate surrounding the enforcement of human rights norms.

Ethics in Action: The Ethical Challenges of International Human Rights Nongovernmental Organizations. Edited by Daniel A. Bell and Jean-Marc Coicaud. New York, New York: Cambridge University Press, 2007. Pp. 320. \$88.00 (hardcover).

REVIEWED BY ERNEST HINMAN

The Mertz Gilmore Foundation halts its funding of international human rights programs citing, among other things,

its doubts about the effectiveness of scattered grants around the world and its internal leadership's desire to focus on issues in the United States. The Association of African Women for Research and Development blasts Western-based international non-governmental organizations (INGOs) in their fight against female genital mutilation for successfully demonizing the practitioners. The Australian Human Rights and Equal Opportunity Commission conducts human rights projects in China with the permission and cooperation of the Chinese government but rarely uses the term "human rights." Human Rights Watch (HRW) officially states that economic, social, and cultural rights (ESCR) have the same standing and integrity as civil and political rights (CPR).

The foregoing paragraph describes just a few recent ethical decisions within the human rights field. Daniel A. Bell and Jean-Marc Coicaud have edited a collection of essays entitled *Ethics in Action: The Ethical Challenges of International Human Rights Nongovernmental Organizations*, compiled after a multi-year international project. The project involved workshops in New York in 2002 and 2005 and one in Hong Kong in 2003, which engaged human rights theorists and human rights practitioners in a dialogue regarding new challenges facing INGOs. The book is divided into three sections: "Northern INGOs and Southern Aid Recipients: The Challenge of Unequal Power"; "INGOs and Governments: The Challenge of Dealing with States that Restrict the Activities of INGOs"; and "INGOs and Economic Rights: The Challenge of Dealing with Global Poverty." The following is a summary of the highlights of each section, omitting significant overlaps in arguments among contributors.

Section I addresses "Northern INGOs and Southern Aid Recipients." "North" refers to wealthy, capitalist, liberal-democratic countries, most of which are in the northern hemisphere, while "South" refers to relatively poor countries largely in the southern hemisphere. The section begins with an essay by Betty Plewes and Ricky Stuart challenging conventional forms of INGO fundraising, which they deem to be "pornographic." Typical advertising that depicts emaciated mothers with their emaciated children has unexpected negative consequences. These portrayals convey a message that Southerners are helpless and dependent and lead a simple life and that the development problems can only be solved by Northern char-

ity. While good reasons exist for using the “pornographic images,” like cost effectiveness and government cutbacks on foreign aid, Plewes and Stuart argue that long-term negative consequences outweigh the benefits and that ads should focus on educating viewers about the global economic structure that causes poverty.

In another essay, Steven Weir describes and analyzes Habitat for Humanity’s housing rights world campaign in which it was forced to make difficult decisions involving trade-offs between human rights and cultural norms. Habitat insisted on at least thirty percent representation by women on housing boards. In some paternalistic communities, imposing foreign concepts of democratic participation in the administration of local housing projects caused the projects to be ineffective. Habitat toed a fine line between providing some housing as opposed to none, while at the same time trying not to legitimate other human rights violations. In his essay for this section, Bonny Ibhawoh explains that an Egypt-based INGO might try to expand into gay and lesbian rights, but then be asked to leave the country. INGOs can either adopt an incrementalist approach or take a hardline approach. The former has the danger of legitimating homophobia, and the latter alienates Egypt from INGO assistance. While local elites have misused local cultural norms in values debates to retain power, INGOs must try to provide a non-Northern justification for proposed human rights norms.

In Section II, Lyal Sunga describes the problems faced by humanitarian INGOs in coalition-occupied Iraq. Prior to the war, many humanitarian organizations vehemently opposed the war. After the war ended, the Bush Administration forced INGOs to operate under the Department of Defense. U.S. soldiers carried out humanitarian tasks, creating the false impression that humanitarian INGOs supported the policies of U.S. government. In addition, the Administration effectually conditioned federal funding upon quiet agreement with U.S. government policies and surrendering of criticism of U.S. policy. Sunga points out that accepting government funding from a belligerent government will usually undermine the independence of an INGO. However, Sunga concludes that a division of labor is preferable among INGOs and that humanitarian organizations should stick to relief and forego criticism

of unjust wars; otherwise, they sacrifice effective assistance on a neutral basis during conflict.

The next three essays in Section II involve INGOs in China. The trio of authors of the first essay suggest looking for “windows of opportunity”—openings in authoritarian patterns. Not all members of authoritarian regimes intentionally violate human rights; some members seek to make change. The “windows” approach involves avoiding politically sensitive issues, sensitive geographic places, and conflicts over specific words used in campaigns, while establishing trusting and lasting relationships with a few partners. However, this approach runs the risk that China might use INGO presence to over-promote its human rights situation. Sophia Woodman adds in her essay that an INGO with a soft stance on China can expect to face resistance from constituents and donors. Also, using formal law as the method to achieve human rights gains in China may not be effective due to the traditional role of vindicating rights through community groups. Sun Zhe notes that the Chinese government has adopted an engagement policy toward INGOs, but it constantly excuses any shortcomings in its rights record as a product of the country’s level of development. China also takes the offensive and issues reports on human rights in other countries. Zhe suggests that the dialogue with China should continue, but Northern INGOs would have more success if they had a broader concept of human rights with a stronger recognition of ESCR. Zhe adds that China is more receptive to the United Nations (UN) than to INGOs and recommends creating a working body through the UN to address human rights in China.

Section III deals with the longstanding debate on the relative status of CPR versus ESCR. The seminal article in this section (and the book), written by Human Rights Watch (HRW) director Kenneth Roth, justifies HRW’s approach to addressing violations of ESCR. Roth, the practitioner, has an intellectual exchange with Neera Chandhoke, the theorist. Roth argues that INGOs are accustomed to “naming and shaming” the violators of human rights norms. In the context of CPR, the violators are often governments and the remedies are clear. While Roth agrees that ESCR have the same standing as CPR, he believes proponents of ESCR fail to appreciate the realities of INGO practitioners. ESCR proponents vaguely claim that violations are occurring and that something ought

to be done. Roth argues that ESCR violations usually come down to arguments over distributive justice—and as a result it is not clear what exactly constitutes a violation, who holds responsibility for it, and what should be the proper remedy. Roth's solution entails addressing ESCR violations that also constitute CPR violations, such as arbitrary or discriminatory government action. For example, if a government were to arbitrarily disperse or withhold stockpiles of food while the nation's citizens starve, HRW could argue that the right to adequate food had been violated. Without arbitrary or discriminatory government action, the INGO properly lacks the credibility to argue over how a foreign government should distribute its resources. Chandroke disagrees with Roth and argues that selective enforcement of ESCR downgrades their importance; ESCR stand on their own grounds, and INGOs like HRW need to expand their agenda and tactics to encompass such rights. Under this viewpoint, INGOs *should* make distributive arguments to governments. Moreover, according to Chandroke, Roth underestimates the influence that INGOs like HRW can have on foreign governments.

The latter part of Section III dives deep into human rights theory. Thomas Pogge takes a strict consequentialist view on how INGOs should choose to spend funds on projects. "Other things being equal, an INGO should choose among candidate projects on the basis of the cost-effectiveness of each project, defined as its moral value divided by its cost." Specifically, INGOs should use funds for the most cost-effective reduction of severe poverty. Concerns about distributive fairness across countries or ethnicities do not constrain application of the principle. The only relevant deontological consideration—favoring action over inaction—is whether INGOs are materially involved in the causation of the injury. However, since Northerners are materially involved in most suffering, such concerns will not be a deciding factor in selections. Joseph H. Carens argues that Pogge has neglected the fact that INGOs are not free to change projects. Donors entrust the funds to INGOs with an understanding of the range of permissible projects. INGOs focused on gay and lesbian rights should not fund projects for starving children in India. According to Carens, although some INGOs projects are "less good" than others, none are morally wrong for being less than optimal. Furthermore, the uncertainty of the costs and benefits of

projects provides greater leeway in the range of choices available to an INGO than Pogge suggests.

Throughout the text, the reader senses the editors' bias towards ESCR and opposition to CPR dominance in human rights theory and practice. Yet if Northerners are truly the cause of the Southern world's poverty (as the book claims), then holding Northerners, instead of foreign governments, legally accountable for ESCR violations would seem a logical solution. But the book does not even flirt with the idea of holding Northerners accountable for ESCR violations felt in the South. Furthermore, none of the essays contains an adequate response to Roth's challenge of how to identify an ESCR violation, violator, and remedy when the INGO's complaint is over a foreign government's distributive policy. The reader is left with the response that "new tools" should be developed to address ESCR, yet the book fails to proffer any specific tools. All in all, *Ethics in Action* is a good read for human rights theorists and practitioners. The book supplies important considerations for donors, human rights entrepreneurs, and INGOs at each step in the process: advertising, donating, strategizing, negotiating with foreign governments, and project selection.

Anti-Dumping and Countervailing Action: Limits Imposed by Economic and Legal Theory. Philip Bentley and Aubrey Silberston. Cheltenham, United Kingdom and Northampton, Massachusetts: Edward Elgar Publishing, 2007. Pp. viii, 225. \$110.00 (hardcover).

REVIEWED BY JUNYEON PARK

When antidumping or countervailing measures are taken, there are three main factors to be considered. First, there are international rules: Under the Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 and the two World Trade Organization (WTO) agreements on antidumping and countervailing measures, exceptional actions regarding tariffs and Most Favored Nation (MFN) rules are allowed. Second, for each WTO member to take actions, the WTO rule must be transposed into the national and legal and administrative order. From a legal perspective, the third factor—economic principles underlying those measures—can be easily ignored because both international and national laws "freeze"

the economic ideas used in formation of the laws. Philip Bentley, a lawyer, and Aubrey Silberston, an economist, approach the issues surrounding antidumping and countervailing measures by combining perspectives of international and national laws, especially those of the European Union (EU) and the United States, and economics, under the modestly named approach of “reason and common sense.” Though useful for any trade law or economy-related law, an interdisciplinary approach is particularly apposite in the context of antidumping and countervailing measures in international trade. Many WTO rules, the result of negotiating compromises, are open to more than one interpretation. Sometimes the phrases used in the rules are merely exhortative or only acknowledgements of general principles. Even where the rules are relatively clear, each member state decides when to take antidumping and countervailing measures under its own laws regulating dumping and subsidies.

Following the economic principles of “reason and common sense,” the primary question regarding antidumping and countervailing rules becomes one of the extent to which competition is allowed. Generally, unfair competition distinguishes dumping and export subsidies from other legitimate means of competition in international trade. Thus, rationally, we must question what is inherently unfair about dumping or subsidies. While domestic industries might suffer injury from dumping by foreign exporting industries or subsidies granted by foreign governments, domestic consumers might benefit from lower prices at the expense of the consumers or taxpayers of these foreign exporting countries. From the perspective of the importing country’s consumers, if the exporting country wishes to give its exports away, shouldn’t the importing country relax and enjoy the resulting cheap imports? Moreover, in the case of relatively poor countries, low prices are often attributable to low wage levels. Is dumping itself not a competition strategy based on the cheaper factor prices of comparative advantage on which the WTO system itself is based? Answers for such questions are far from clear, as dumping and subsidies adversely affect producers, workers, and consumers in different ways over different time periods. Besides, as a concept, comparative advantage is not static at all. Countries maintaining low import barriers will benefit from the international division of labor, but they must be prepared

for adjustments to their industrial structure as their international comparative advantage changes.

The authors suggest a two-fold solution. First, authorities of the WTO member states should have enough room to consider adverse effects of dumping and subsidies on the broad public interest. While the authors limit their argument to the EU context, the U.S. government also reserves similar discretion under its antidumping and countervailing laws. But a problem in representation arises, in that all the relevant interests do not participate equally in decision-making procedures. Particularly, processing industries that arguably benefit from the dumping and subsidies of the importing country usually fail to register a protest to antidumping or countervailing measures of the EU authorities. Second, the authors suggest limiting antidumping actions to cases of predatory pricing because, under the comparative advantage theory, it is better for the importing country's welfare to take resources out of uncompetitive industries and relocate them to other, more competitive sectors. The formula based on price differences is over-inclusive, categorizing the adjustment process that creates price competitiveness in world trade as dumping. The scope of dumping should therefore be limited to predatory pricing, which does not lead to all-round long-run improvement in welfare. Further, to prove the predatory intent of exporters, we may use the tests employed in antitrust law. Statistical tests with respect to market penetration of imports over a given period can determine the level of injury at which antidumping measures will be taken. The level of import barriers in the exporting country should also be considered because the opportunity to charge high domestic prices—and thereby effectively discriminate between domestic and export markets—will not exist if import barriers are low. But as the authors admit, reaching international agreement regarding these solutions becomes problematic. Even if a workable formula is agreed upon in the international forum, WTO member states would still reserve substantial discretion in transposing those international norms into domestic laws and regulations.

In establishing injury, which is necessary for taking antidumping and countervailing measures, the difficulty of determining the changes in industry due to dumping or subsidies makes assessment, to a large extent, a qualitative exercise. Accordingly, while injuries from dumping or subsidies cannot be

measured in an accurate quantitative sense, at some point the rate for antidumping or countervailing duties must be set. Such duties not only increase the price of imports, they also discourage new imports at higher prices, thus enabling domestic industries to increase output. In the long-term, antidumping duties force domestic industries to bring down costs or improve technology to boost profitability. In this vein, the authors argue that a lower level of duties than that based on price difference would be appropriate, once economies of scale from a higher level of output are taken into account. Nevertheless, there remain the issues of how to reach a consensus and how to administer that consensus at both the international and the domestic levels. The current formula, which uses price differences, is based on the preference for a workable rule rather than a complex mathematical formula that takes into account both short-term and long-term effects of dumping and subsidies.

While the authors raise various substantive issues involving antidumping and countervailing actions through their interdisciplinary approach, combining law and economics, and propose a number of changes to address many of those issues, a fundamental question remains: To which level do they address their recommendations? For example, when they suggest that the EU authorities should fully consider all affected interests before taking antidumping actions, how much rulemaking is necessary to do so in conformity with the WTO Antidumping Agreement? Is it enough that EU authorities consider the public interest, when other member states, including the U.S. government, stick to their traditional approaches? Finally, the economic approaches the book proposes, though as rational and commonsensical as the authors claim, may overlook factors outside of economics. Indeed, rules have to be relatively simple to be administrable, and they should reflect the interests of constituents, whoever they may be. Consider the authors' suggestion of examining the nature of the subsidy in question and the way it is likely to affect the exporter's behavior in order to determine the most appropriate basis of allocation. How can this concern be transformed into a proper rule under the Subsidies and Countervailing Measures Agreement or under national law?

Despite these fundamental remaining questions, the value of the book is especially great as the antidumping and counter-

vailing rules continue to be actively developed. By identifying numerous contradictions defying economic and legal logic found in existing law and practice, the book supplies a great yardstick for evaluating various drafts and suggestions for change in these times of changing rules.

From Mercenaries to Market: The Rise and Regulation of Private Military Companies. Edited by Simon Chesterman and Chia Lehnardt. New York, New York: Oxford University Press, 2007. Pp. v, 287. \$110.00 (hardcover).

REVIEWED BY ALEX M. FELDMAN

From Mercenaries to Market has come out at an auspicious time, and is a valuable guide to scholars, policy makers, and serious readers new to the subject of private military companies (PMCs). The extensive use of private military and security contractors in Iraq by the United States military has focused attention on the manner in which security roles, historically the province of states, are becoming increasingly privatized. The uncertain legal aftermath of the Blackwater guards' shooting of seventeen Iraqi civilians in September 2007 exemplifies the policy and legal problems posed by the widespread use of PMCs. The incident highlighted the many dangers of and concerns about their use: non-uniformed military, some unqualified, wielding lethal force in a sensitive combat zone; lack of oversight; inadequate means for investigation; and a confusing legal landscape—one that even the U.S. State Department admittedly understood poorly—capable of leaving culpable conduct immune from liability.

Editors Simon Chesterman and Chia Lehnardt aim to clarify the murkiness that surrounds PMCs in *From Mercenaries to Markets*. They hope the volume will encourage balanced realistic approaches to regulation of private actors who serve a global need, yet effectively hold no accountability for their actions despite their employment of potentially lethal force. A key premise of the book is that PMCs are here to stay because a number of factors make them indispensable: a "general enthusiasm for the outsourcing of state capacities;" a "growing reluctance on the part of key states to intervene in conflicts that are not of immediate strategic interest;" and a need for protection of non-state actors such as "transnational corpora-

tions and humanitarian organizations operating in fragile states.” The volume aims to discover how a “patchy, insufficient, and inadequately implemented” legal framework can be developed to improve PMC conduct.

The book, a product of the Institute for International Law and Justice at New York University School of Law, presents a variety of perspectives in its thirteen chapters, contributed by fifteen different authors, on the moral, normative, and policy issues. Organized into four sections, the volume has a clear progression, from the basis of concerns about PMCs, to context on the ground, legal norms, and finally market and policy theories. Each contribution sets the foundation for the chapters that follow, forming a clear introduction to this complicated global issue.

Section I, *Concerns*, provides the context to the debate and the basic underlying reasons why PMCs are found objectionable. It also gives a good introduction to PMCs, including their historical and conceptual linkages to mercenaries, and their profit motives. In the first chapter, Sarah Percy addresses moral concerns regarding private control of lethal force by separating the conduct of the PMCs from the security roles they play. She argues that objections to the status of PMCs as private users of force explain why all types of private force are linked to mercenary work in public eye. She asserts that better regulation may not overcome the moral objections to PMCs. Kevin O’Brien’s piece advocates a balance between “idealized notions of international security and more pragmatic utilitarianism.” He emphasizes that there are many different kinds of PMCs with distinct service offerings, capabilities, and potential impact, and he argues that regulation should target the activities and nature of the actor. Anna Leander’s contribution concerns the risks created by PMCs with state-like powers to use force, which allow them to influence the politics of their home and host nations. Contrasting regulatory frameworks that cover public armed forces with the frameworks that address PMCs, she claims that PMCs are developing values and interests independent of their home states.

Section II, *Challenges*, investigates the realities that retard regulation of PMCs: fragile states in need of military assistance and political cover for military actions by home states. Angela McIntyre and Taya Weiss illustrate how profit-driven security actions often threaten long-term prospects of peace in fragile

states in Africa. The capabilities of PMCs drive African governments to sacrifice long-term well-being for short-term security gains. David Isenberg analyzes the use of PMCs in Iraq as a method for the U.S. government to avoid public accountability. Lack of oversight and accountability due to an overstretched Government Accountability Office leads to atrocities like Abu Ghraib—thirty-seven interrogators were contractors. He argues the current state of affairs benefits no one; increased oversight offers PMCs credibility and increased business opportunity. Elke Krahmhann discusses the structural disadvantages of using PMCs instead of uniformed military for activities such as military training. Essentially, despite efficiency arguments for privatization—including flexibility and lower costs—she explicates how hidden costs often outweigh the benefits of using PMCs.

Section III, *Norms*, addresses the legal norms applicable to PMCs—international humanitarian law and human rights law; the State Responsibility regime; and the domestic laws of home and host states. Louise Doswald-Beck presents a great introduction to how international humanitarian law and customary international law apply to PMCs hired by fragile states. Because humanitarian law has not been updated since the rise of PMCs as major players in international conflict zones, Doswald-Beck argues that the legal status of PMCs is ambiguous. Thus, PMCs are operating under great legal risks even if they are not engaging in combat. Lehnardt emphasizes that, at a minimum, despite other forms of regulation, PMCs operate within the legal framework of State Responsibility. Nonetheless, the State Responsibility regime is hampered by weak enforcement and its status as a state-centered concept that does not endeavor to address actual power relationships between states and non-state actors. Analyzing the problems of attribution and due diligence to find state responsibility for a PMC's actions, she concludes that this regime alone is insufficient, albeit necessary, to emphasize the fundamental role of states in the use of force. Marina Caparini compares domestic regulation under the U.S. and South African models. Caparini finds that effective compliance can only be found through a state's capacity to monitor, investigate, and exact penalties. She pushes for an engaged legislature and resourced executive, reiterating international law's inadequacy to address the issue.

Section IV, *Markets*, looks at the market's role in creating incentives and disincentives for PMC regulation. Deborah Avant posits that intergovernmental legal coordination and international law are unlikely to prove effective, because it is hard for customers to coordinate their influence over PMCs. PMCs' profit-motive represents the first place to stabilize norms; thus, industry self-regulation is the place to start. James Cockayne's analysis of principal-agent economic theory makes a strong case that the diversity of PMCs and home and host state principals creates a diversity of market costs, allowing PMCs to compete with their clients. Laura Dickinson argues that given the diversity in interests, costs, and legal norms, contract law is the most flexible tool for regulating PMCs. Given current regulation's woeful inadequacy, most critics of greater regulation argue that the benefits of PMCs—lower costs, speed, and flexibility—will be sacrificed by a bureaucratized regulatory system. Andrew Bearpark and Sabrina Schulz consider the future of the PMC market, positing that industry self-regulation is the “stepping-stone” toward a comprehensive multi-dimensional regime.

From Mercenaries to Markets is a timely and informative introduction to the market forces driving PMCs and their clients and to the surrounding legal norms. From a policymaker's view, the volume provides background and depth to the legal standards and market concerns warranting further investigation. For example, Doswald-Beck's discussion provides the basic framework of how international humanitarian law and customary law apply generally, and where PMCs fit in, and identifies ambiguities in need of more analysis. Also, between the chapters on the regulatory regimes in the United States, South Africa, and Britain, the reader receives an introduction to the domestic regulatory frameworks of the main PMC home countries. Further, a number of chapters introduce the reader to the most problematic issues for host countries.

As a resource, *From Mercenaries to Market* serves only as starting point, but a very good one. At only 256 pages, and covering many different topics relating to PMCs, it is impressive that the contributors provide so much useful analysis and information. Every contribution is well cited, and chapters are complimented by a select bibliography that makes taking the next step easy for inquisitive readers. As a whole, the volume gives the clear impression that PMCs can serve positive roles,

even more so if regulated properly (one even wonders what could have been when reading in the conclusion that Kofi Annan chose not to hire PMCs to secure a Rwandan refugee camp because he feared “the world may not be ready to privatize peace”).

Few additions would improve the volume, but a comparison between how PMCs are regulated differently from other multinational corporations would more clearly delineate why PMCs are especially difficult to regulate. In its discussion of the International Criminal Court, the conclusion alludes to more general international efforts at regulating multinational corporations. Specifically, the negotiations leading to the Court’s creation struggled with the concept of criminal liability for corporations exerting state-like powers (e.g., Exxon Mobil). Dickinson’s discussion of contracts with private prisons and healthcare providers in the United States is extremely helpful in demystifying the costs and benefits of regulation and enforcement of PMCs; yet the volume does not make it clear whether the PMC industry is regulated any differently than other international industries. In addition, greater attention to the obstacles for invoking State Responsibility by injured states would provide a more complete account of the utility of that regime in influencing how states use PMCs.

Notwithstanding these concerns, I strongly agree with James O. Jonah, former Finance Minister of Sierra Leone, that *From Mercenaries to Markets* offers “exceedingly important analyses to enhance a better understanding of PMCs” and “should greatly benefit the general discourse on the subject.” As a major step towards clarity of the global problem of unregulated PMC action, this work succeeds in its mission.

A Poisonous Affair: America, Iraq, and the Gassing of Halabja.
Joost R. Hiltermann. New York, New York: Cambridge University Press, 2007. Pp. vii, 314. \$29.00 (hardcover).

REVIEWED BY JULIA ELIZABETH BARRY

In the midst of the atrocities committed throughout the Iran-Iraq war, March of 1988 brought with it a new kind of horror and an egregious violation of the existing international legal framework: a deliberate chemical attack on Kurdish civilians. Designed to weaken the morale of Saddam Hussein’s op-

ponents, the attack was a strategic success: With a death toll of several thousand, the gassing of Halabja cemented the use of poisonous gas as an effective force multiplier, provoking fear and flight in civilians and soldiers alike. Subsequent analysis by war experts noted the profound psychological impact of the attack, a blow from which Iranian forces and the Kurdish insurgency ultimately could not recover. The question of culpability, however, has remained controversial and, despite the iconic images of scattered corpses and sudden death, the gassing of Halabja has been largely forgotten by the Western world.

In *A Poisonous Affair: America, Iraq, and the Gassing of Halabja*, Joost R. Hiltermann undertakes an in-depth analysis of the unprecedented event, demonstrating the attack's continuing ramifications as he attempts to correctly allocate the blame. Today, extensive investigation by independent experts has revealed that Iraq was almost certainly the sole perpetrator in unleashing poisonous gas upon the citizens of Halabja, but the lack of response by the international community may have constituted an equally grave violation of international law. Arguing that the international community had a moral and potentially legal obligation to intervene and, simultaneously, a strong security interest in preventing the proliferation and development of additional deadly weapons, Hiltermann demonstrates how this silence, in conjunction with the Reagan administration's wartime collusion with Iraq, allowed for the genocide in Iraqi Kurdistan, proliferation of weapons of mass destruction (WMDs) in the Gulf, and, ultimately, Iraq's invasion of Kuwait and the ensuing threat to Western oil access.

Hiltermann begins by providing the requisite background on the Iran-Iraq war, focusing on the factors that precipitated Iraq's need for a new weapon and its consequent proliferation of a chemical arsenal. Despite Hussein's claims of self-defense vis-à-vis Iranian provocation, Hiltermann explains that Iraq was the initial aggressor; the turmoil that ensued in the aftermath of Ayatollah Khomeini's victory afforded a unique opportunity for Hussein to make "border corrections" in striking against a hegemonic military power. Hussein, however, may have underestimated the devotion and indoctrination of Khomeini's young zealots, eager to sacrifice themselves for their nation and revolution. Beginning with the Iranian offensive on July 13, 1982, untrained and unarmed Iranians charged toward

Iraqi defenses in "human wave" assaults in staggering numbers, incurring massive Iranian casualties but affording a strong and surprising psychological blow to Iraqi forces. Iraq needed something to overcome Iran's psychological edge that would not only inflict mass casualties, but instill terror amidst the Iranian ranks. That weapon was gas.

Though U.S. support for Iraq in the 1980s was never wholehearted, Iran's ouster of the Shah, seizure of the American embassy, and the resulting hostage crisis precipitated a growing tilt toward Iraq. The Reagan administration, therefore, was reluctant to acknowledge Iraq's use of gas. In 1982, the administration removed Iraq from its list of countries that it regarded as supporting "international terrorism," began passing intelligence via Arab countries to Iraqi officials, and provided Iraq with major economic aid. A visit by Donald Rumsfeld to Baghdad followed in 1983 and culminated in an agreement to re-establish diplomatic relations; this, according to Hiltermann, constituted both a failure by U.S. officials to raise the issue of chemical weapons with the Iraqi leadership and a signal that the United States would acquiesce to their use. In March of 1984, the State Department finally bowed to media pressure and acknowledged that Iraq had resorted to chemical weapons use. In response to the infuriated Iraqi leadership and in an attempt to save face in the international community, the Reagan administration adopted a two-prong damage control policy that was later characterized as "setting the volume control." First, it attempted to appease the Iraqis by sending Rumsfeld back to Baghdad and limiting public criticism of Iraq by actively discouraging discussion of the chemical weapons (CW) question at international forums. Second, it adopted a ban on the export of key chemicals to both Iran and Iraq. Overall, the policy was a success: On November 26, formal diplomatic relations between Iraq and the United States were restored. U.S. diplomacy and export limitations, however, did little to combat Iraq's use of poisonous gas: Iraq once again unleashed chemical weapons in response to the Iranian offensive in 1985, this time on a much greater scale, with increasing use of nerve agents. Following the failure to arm Iran in the Iran-Contra affair, Hiltermann argues that enhanced U.S. support of Iraq with "no questions asked" led to further Iraqi excesses, and greater U.S. tolerance.

Despite repeated Iranian complaints that Iraq's chemical weapons use constituted a breach of the 1925 Geneva Protocol, the United Nations (UN) was equally reluctant to investigate and condemn Iraq's actions. Prompted by statements from the International Committee of the Red Cross (ICRC) attesting to the use of chemical weapons by Iraqi troops, the UN finally did undertake an investigation in March of 1984. The UN's request for permission to visit Iraq was denied, limiting the investigation to Iran and the Iranian version of events. Though the Secretary-General's report concluded that Iranian troops had been injured by air-delivered tabun and mustard gas, it prompted only a weak consensus statement by the Security Council President, strongly condemning the use of chemical weapons, but refraining from naming Iraq as the culprit. Rather than condemning the use of chemical weapons outright, concerns were buried in generalized statements calling for an end to the war. This, Hiltermann argues, sent a clear signal to the Iraqis that the Security Council supported its efforts to contain Iran. In a later presidential statement in March of 1985, as a response to the increased use of gas and the proliferation of nerve agents, the Council was finally explicit in expressing concern over the use of chemical weapons by Iraqi forces against Iranian forces. The statement, however, lacked the binding legal authority of a Security Council resolution, and was further diluted by portions that lauded Iraq's earlier acceptance of a ceasefire and called upon "both sides" to respect the territorial integrity of all States.

While Hiltermann acknowledges that both Iran and Iraq committed war crimes by targeting civilians in violation of the Geneva Conventions of 1949, he argues that the use of poisonous gas against civilians was exclusively an Iraqi tactic. Predominantly targeting Kurds both in Iran and Iraq, Iraq first unleashed chemical weapons on innocent civilians in 1987. Once again, the UN response was feeble, with the Security Council condemning both sides for "repeated use of chemical weapons" and the "prolongation of the conflict." This paved the way for an unprecedented number of civilian deaths at Halabja. While the role that Iranian forces played in the town's invasion remains a hotly contested issue, Kurdish commanders agree that only Iraq used chemical weapons. The Reagan administration, however, was quick to insist that Iran was also to blame. In an attempt to shield the Iraqi leadership

from international scrutiny, the State Department insisted that both Iran and Iraq had used chemical weapons in Halabja and, thanks to U.S. pressure, UN Resolution 612 urged “both sides” to refrain from future chemical weapons use. Hiltermann argues that the “demonstration effect” of the chemical attack and the international community’s subsequent silence was profound, decimating the Kurdish insurgency with the overpowering fear of further gas attacks. The use of gas then became a critical component of Hussein’s Anfal campaign to annihilate the Kurds. Iraqi troops subsequently fired gas shells or dropped bombs containing poisonous gases on the first day of each stage of Anfal, causing a panicked exodus to the countryside where Kurds could be easily gathered for internment or execution.

According to Hiltermann, in mishandling the chemical weapons issue and incorrectly distributing the blame between the warring States, the UN severely damaged its reputation as a human rights champion at a time when the concept could have been brought to the forefront of the international agenda. Simultaneously, this loss of legitimacy severely undermined the authority of the rules and principles of international humanitarian law, stripping the Geneva Protocol and other instruments of any potential significance. Ultimately, Hiltermann concludes that it is highly unlikely that Iran employed the use of any chemical weapons whatsoever; the only evidence for the “convenient claim” that Iran used chemical weapons during the war comes from the mouths of U.S. officials. This failure to condemn the true perpetrator, Hiltermann suggests, is a mistake that the United States will come to regret. Badly burned by the U.S. and the international community, Iran has emerged with a profound distrust of all multilateral agreements and a resolve to shield itself from vulnerability, a stance that has contributed to the currently deficient state of multilateral arms control. Additionally, Iraq’s use of wartime gas has given new life to the proliferation of WMDs in the Middle East, having proven effective in staving off an opponent that lacks the superior deterrent of nuclear weapons.

Ultimately, Hiltermann casts a wide net of blame, suggesting that a “more robust international response to the war” could have compelled negotiations early on, ending the conflict under conditions that both Iran and Iraq might have ac-

cepted before either side resorted to chemical weapons use. This, he argues, would have involved “laying down the rules” by ensuring the implementation of the 1949 Geneva Convention and related humanitarian agreements. In moving forward, he calls for a renewed commitment to the conventions and the values that they embody.

While Hiltermann’s conclusions may be trite, the current “War on Terror” lends his observations and analyses an additional component of contemporary relevancy. In undertaking a comprehensive survey of a variety of primary sources—from formerly classified State Department memoranda to chemical analysis reports—he has constructed a complete, if somewhat lopsided account of the historical and political factors that precipitated the tragedy of Halabja, as well as a clear overview of its continuing ramifications. Analytically, however, the book is lacking. Though Hiltermann does give some consideration to counterarguments, it is often buried within the zealous rhetoric of a seasoned human rights activist. Overall, the work foregoes analysis in favor of description, a tactic that leaves the reader at times disoriented and often bored. Sweeping statements are made without adequate support, terminology is introduced without being explained, and the book’s circular organization renders its arguments redundant. Still, despite the predictable conclusions and structural deficiencies, Hiltermann’s subject matter is both timely and interesting, and the average reader can easily comprehend his arguments.

The Sovereignty of Law: The European Way. Francis G. Jacobs. New York, New York: Cambridge University Press, 2007. Pp. v, 163. \$28.99 (paperback).

REVIEWED BY SARAH LEVITT

Prior to the modern era of judicial review, a single sovereign ruler made choices regarding policy and fundamental values. More recently, courts have become involved in the process, assuming the role of balancing competing fundamental values. In *The Sovereignty of Law: The European Way*, Francis Jacobs examines this new function of the courts from a European perspective. While not forming his own definite conclusions on these issues, Jacobs strives to provoke thought and

debate around the concepts of sovereignty, the rule of law, and the European model.

The book begins by defining basic terms which will serve as conceptual frameworks for the reader throughout the book. The first major concept is sovereignty. In the international arena, sovereignty involves the right of states to determine their own internal law free of burdens from others; however, as international laws and norms have become more influential and, in some cases, binding, this concept has begun to disappear. In the domestic arena, sovereignty relates to a single ruler who establishes and executes the law throughout the nation. This too is no longer valid, as the concept of "separation of powers" has moved policymaking from the hands of one person to the hands of many. The second major concept is the rule of law, according to which a fundamental and basic law underlies the positive law created by the government. Any positive laws that violate this basic law should be invalidated. This book explores the development of the rule of law in both Europe and the United Kingdom (as a member of the European Union), especially with respect to fundamental rights and economic freedoms.

The next section provides background information on the two European systems used throughout the book in order to explore the major concepts put forth. The first system is the European Convention on Human Rights created by the Council of Europe in 1950. Jacobs notes that this Convention is extremely important as, for the first time in international law, it created an enforcement system, the European Court of Human Rights, located in Strasbourg, France. Through this system, "[s]tates [are] subject to the jurisdiction of an international court for the protection of the human rights of their subjects and of all those subject to their jurisdiction." Moreover, subsequent Optional Protocols created means by which individuals could bring an action in the European Court of Human Rights. Jacobs then examines the history of the interaction between the United Kingdom and the European Court. Originally, the United Kingdom was reluctant to codify the Convention as part of domestic law. The national courts used this omission to avoid referring to the Convention in their rulings. However, in 1998 Parliament passed the Human Rights Act, which codified the majority of the Convention into domestic law. Jacobs argues that this measure reinforced the

rule of law. According to the Act, the Court can make a “declaration of incompatibility” to label laws that do not comport with the Convention. The Parliament is then required to amend the law so that it is consistent with the “basic or fundamental law.”

The second system is the European Union (EU) and its court, the European Court of Justice (ECJ). While the treaty creating the ECJ merely states that “the Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed,” the Court has given itself broad jurisdiction. Jacobs argues that this broad interpretation has helped to solidify the rule of law. The ECJ has given itself the power “to challenge *all* measures, whatever their nature or form, which are intended to have legal effects,” including measures of the European Parliament. By providing a mechanism to ensure that all measures comport with the basic principles of the treaty, the Court guarantees the maintenance of the rule of law throughout the EU. Additionally, a major source of European Union law is “general principles of law” derived from the legal systems of the EU member states—again reinforcing the idea that EU positive law has made efforts to reflect the underlying fundamental law. Finally, the ECJ has also referenced other sources of international law, including Security Council Resolutions, international treaties, and judgments by the European Court of Human Rights. All of this once more illustrates efforts to achieve the fundamental values and laws which underscore society as a whole.

The following chapter examines the European approach to fundamental values using the rule of law and sovereignty. Jacobs first examines the concept of religious freedom, which involves balancing the fundamental freedoms of thought and religion with the freedom of expression. The European Court of Human Rights has dealt with numerous conflicts between these two freedoms including the recent case of *Leyla Sahin*, in which the Court held that “it was ‘understandable’ that the authorities should consider it contrary to such values to allow religious attire of the kind in issue [the headscarf] to be worn on university premises.” Jacobs also discusses issues of equality, the death penalty, and medical ethics. For each of these issues, Jacobs illustrates how the European system has been able to derive fundamental principles and unify positive laws throughout the EU while providing some room for individual

state action, either through judicial deference or through voluntary Optional Protocols. Jacobs asserts that there are numerous advantages to the European system: It provides a wider perspective; it brings experience from other systems; it allows for more dispassionate and objective judgments; and it creates solidarity.

The next chapter explains the role of the courts, specifically the ECJ, in balancing the promotion of free markets with human rights, the environment, and government social programs. The ECJ is a strong court that “has had the inescapable task of balancing the interests of free trade against other public interests and values.” For example, in the *Schmidberger* case, the Austrian government allowed a protest that blocked a motorway in violation of the European Community Treaty guarantee of the free movement of goods between states. The ECJ had to find “a fair balance” between the interests in free trade and the fundamental freedom of expression. Eventually, the Court gave deference to the state action. The ECJ has also had to balance economic freedoms with environmental regulations. Overall, Jacobs contends that the ECJ has been more relaxed and tolerant with regard to environmental justifications for laws that affect free markets. Finally, Jacobs proposes a potential link between free markets and democracy, and he theorizes that the liberalization of markets in other contexts (e.g. China) will eventually lead to greater political freedom.

The final two chapters discuss the achievements of and problems with the European Union. The desire to become an EU member state assisted in the development of democracy and the spread of the rule of law across the European continent. Additionally, the EU has served as a model for other regional organizations throughout the world. Jacobs argues that this demonstrates “the growing universal appeal of a particular set of values, of particular interest for our theme: the resolution of disputes by law, by legal process and above all by independent judiciary.” Nations see the EU’s success and want to emulate the model, ultimately leading to improvements in the rule of law.

There have been numerous critiques of the EU system. Some point to the loss of state sovereignty through the development of a regional and supreme organization. Jacobs counters this critique by arguing that the concept of sovereignty is outdated and that regional organizations allow states to share

powers for the greater good. Another critique of the EU is that excessive regulations have inhibited efficiency. Jacobs counters this critique by observing that many domestic regulations are also burdensome, and that the creation of a single market improves efficiency, which in turn benefits, rather than burdens, individuals. A final critique is that the EU is overly ambitious, and that leaders have created numerous plans which are too broad and unworkable. Jacobs replies that leaders have begun to reprioritize values and issues and, as a result, effective change can be achieved.

While the subjects and themes covered in *The Sovereignty of Law* are extremely interesting and topical, the book is hindered by numerous problems. Often Jacobs only cursorily examines an issue, mentioning a single case or merely providing assertions about the state of the law. The book rarely includes citations, and those citations that do exist merely give the reader the formal names of the discussed cases. The lack of foundation and evidentiary richness leave the reader unsure of the validity of Jacobs's arguments. Furthermore, while the book attempts to spark debate by articulating numerous themes and issues, the reader is left unfulfilled. Perhaps Jacobs should have discussed fewer issues in greater depth. Finally, the book is overly positive in regards to the European system. Even in the section of the book entitled "The European Union today: some problems," Jacobs actually uses the "problems" to illustrate positive aspects of the EU. Nonetheless, *The Sovereignty of Law* provides the reader with numerous interesting topics of discussion and exploration and is sure to spark debate among those interested in concepts of sovereignty and the rule of law.

A World Beyond Politics?: A Defense of the Nation-State. Pierre Manent, translated by Marc LePain. Princeton, New Jersey: Princeton University Press, 2006. Pp. ix, 216. \$35.00 (hardcover).

REVIEWED BY SCOTT PEARSALL

In the preface to the American edition of *A World Beyond Politics?: A Defense of the Nation-State*, Pierre Manent states that the purpose of his book is to give readers an "overview of the political order—or disorder—of today's world." Manent ad-

mirably fulfills his purpose by synthesizing the works of a wide array of political philosophers and applying their insights to the modern Western political order.

Each chapter of *A World Beyond Politics?* examines a different aspect of the Western political structure, beginning with the “organization of separations” that Manent believes to be a fundamental aspect of modern democracy. Manent describes six such separations, with a particular focus on two of them: the separation of powers and the separation of the represented and the representative (i.e. between civil society and government). Manent looks to Montesquieu to describe these two separations and to support Manent’s assertion that the separations serve as the bedrock of liberty in the modern democratic state.

After laying out the basic framework of the organization of separations, Manent moves on to a discussion of the modern nation-state, a political form that Manent claims has “fallen into disrepute.” Manent believes there is a general trend among democratic citizens to view oneself not as a member of a nation, but as a “citizen of the world,” and to view humanity as a gradually unifying whole. In such a context, the idea of a nation “seems painfully archaic, vaguely ridiculous, probably immoral, in any case destined to fade away.” There is danger in this conception, Manent argues, because without the nation there is no viable political order that will maintain liberty. Channeling Rousseau, Manent writes: “Men can live decently only in a community instituted within certain limits.”

Once he asserts the importance of the nation, Manent proceeds to interrogate the modern concept of the nation. In order to define what constitutes a nation, Manent describes three forms of self-sufficiency that are constantly eroding in the face of globalization: economic self-sufficiency, diplomatic and strategic self-sufficiency, and affective self-sufficiency (i.e., a people’s feeling that a nation exists vis-à-vis other nations). However, Manent finds an inherent tension between nationalism and liberal democracy. Citizens in a democracy have liberty, but if they engage as citizens of a nation, their liberty is constrained. Different nations have adopted different conceptions of the nation to negotiate this tension—the French conception of the nation is that of a “daily plebiscite,” while the German notion is one grounded in a community of language and race. Manent sees truth in both these ideas, writing that

“the nation is always the difficult amalgam of birth and liberty.”

From this concept of the nation, Manent expands his lens to examine whether “Europe” can exist as a body politic. Manent describes two competing visions of Europe, one consisting of the depolitization and denationalization of the continent and the other consisting of one large nation akin to a “United States of Europe.” Manent clearly favors the latter, but not without some regrets about the loss of the individual national characters that are gradually being subsumed into an integrated Europe. He suggests that national rivalries gave Europe its character, and the loss of these rivalries will “drain Europe of the age-old wellspring of its vitality.” Regardless, Manent seems to recognize that European integration is an unstoppable force, but he believes that Europe must answer some fundamental questions about itself in order to integrate successfully. First, and most importantly, Europe must establish its boundaries and define itself. Manent does not suggest where these boundaries should be drawn—he makes no judgment on the inclusion of Turkey or former Soviet states—but he believes that these boundaries need to be settled in order for a true European political system to emerge. Europe also needs to define its relationship with the United States. The nature of this relationship will be central to determining Europe’s future, and the process of determining that relationship will be an immensely important political question. In order to adequately classify this relationship, Europe will need a mature political process, and the future of the European community remains uncertain if such a process cannot be developed.

At this point in *A World Without Politics?*, Manent turns his attention to the forces that seem to drive the modern distaste for the nation-state. First, he examines the impact of the wars of the twentieth century, which led to both an outcry against the nationalism that supposedly sparked the wars and a more general feeling of a unified “humanity” (exemplified by the “crimes against humanity” that were prosecuted at the end of the World War II). Next, Manent examines the forces of trade and commerce. Political philosophers such as Montesquieu, Rousseau, Saint-Simon, and Marx have all attributed a certain historical determinism to such forces. Commerce was thought to be the great rationale for peace that would end the need for all wars and, eventually, all nations. But, Manent does not see

a separation between commerce and politics. Commerce, Manent asserts by quoting Carl Schmitt, is simply a political instrument. The principles of free economic competition are “employed by certain countries (most notably the English-speaking nations), to increase their power and influence.” Manent acknowledges that international commerce is spreading a type of universality throughout the world, but he believes that something important is lost in the broadening and flattening of the world. Borrowing from Nietzsche, Manent fears that without distinct cultures and languages—with an “unlimited horizon”—humanity will lose the creativity required to sustain international commerce.

Manent further sees democratic political life slipping in regard to society’s view of the law as “the sole regulator of social life.” He fears that the modern state, devoted to the protection of rights, risks surrendering its very sovereignty to the law, such that “we have gone from the sovereign who is judge to the judge who is sovereign.” Intrinsic in the movement towards judicial sovereignty is an erosion of the separations that Manent feels are the bedrock of democratic society. Manent worries that people are increasingly willing to trust that “material and moral interests of political communities either are in a natural harmony or can be harmonized by implementing common rules that do not impose any unacceptable sacrifice on anyone.” This trust is founded on a certain frustration with the slowness of the political process and a “desire to recognize and achieve humanity *immediately*.” Manent sees this desire for immediacy as the ultimate cause for the rejection of politics. Modern democracies, Manent believes, are anxious to assert their common humanity and are not willing to allow political “mediations” to temper that spirit. But, this commendable humanitarian sensibility will be futile if “we do not know how to delineate the political framework in which it will be able to produce real and lasting effects.”

Manent’s worry that these democracies are somehow leaving politics behind in order to achieve a common humanity seems overly anxious. Manent notes several times Aristotle’s famous aphorism that “man is a political animal,” and man’s nature is unlikely to change in a globalized world. Even if Europeans are abandoning the traditional role of the nation-state, they are not abandoning politics altogether, simply the fora in which the politics take place. Democratic societies may

be exhibiting a distaste for politics, but this distaste does not equal a desire to leave politics behind. A loosely defined Europe with ever-expanding boundaries still requires political processes and decisions. The nation is not a prerequisite for democratic politics, but it is the easiest and best-known forum in which democratic politics can take place. This observation should not detract from Manent's overall work. He states at the outset that his intent is to describe the Western political order, and in that task he succeeds.

Ultimately, if Manent is guilty of anything, it is of adopting a title that is overly ambitious. His "defense of the nation-state" is never an explicit, full-throated defense; rather, Manent allows it to permeate his arguments, and he relies on the presumption that nation-states are required for democratic politics to take place. By ably describing the modern democratic political world, *A World Beyond Politics?* is an effective defense, not of the nation-state, but of democratic politics itself.

Peremptory Norms and International Law. Alexander Orakhelashvili. New York, New York: Oxford University Press, 2006. 672. \$99.96 (hardcover).

REVIEWED BY ZACHARY GOLDMAN

Alexander Orakhelashvili has written a masterful and thoroughly rich study of peremptory norms (*jus cogens*) in international law, differentiating his work from the rest of the field by focusing primarily on the effects that peremptory norms have on various spheres of national and international legal action. Throughout the text, he emphasizes the "hierarchical superiority" and "normative superiority" of *jus cogens* norms and justifies his focus on their effects by stressing that their superiority "becomes most crucially relevant after a specific peremptory norm is breached." The book is written for the specialist in international law—one who is already familiar with the sources of international law, with the operation of the international legal system, and also with the seminal international legal cases. Orakhelashvili refers to these cases throughout the book without explaining their factual matrices in any great detail. The result is a focused and in-depth treatment of a very important topic; however, Orakhelashvili's highly princi-

pled stance on the issue of normative hierarchy—the cornerstone of his analysis—may come at the price of the unwillingness of some to embrace his sometimes categorical positions.

Though his focus is on the effects of peremptory norms, instead of the perhaps more common focus on their sources, Orakhelashvili begins the book by defining what makes a norm *peremptory*. He begins by introducing the concept of public policy, familiar to all legal systems, and analogizes peremptory norms to international public policy, describing them as norms that safeguard “certain higher interests” and the “substantive values and principles” that are fundamentally important to the international community. That peremptory norms embody the interests of the international community as a whole and thus cannot be reduced to “bilateral” obligations constitutes the most important element of his definition. The concept that *jus cogens* norms serve the interest of the community has important implications throughout his work, particularly when he discusses concepts like waiver of breaches and recognition, and relating to his ideas about who has “standing” to bring a claim.

After Orakhelashvili defines a *jus cogens* norm as essentially one that safeguards the interests of the international community, also reflecting its highest norms and values, he goes on to speak about the sources of the norms and how one can go about identifying them. As this topic is the subject of great dispute and debate within the academic community, and is not the focus of his work, Orakhelashvili rather quickly disposes of the traditional sources of international law—custom, treaty, and general principles of law—as direct sources of *jus cogens* norms. Eventually, he differentiates standard international legal rules (*jus dispositivum*) from peremptory norms by arguing that while the former have no “inherent justification” other than that the norms respond to states’ interests, the latter link together considerations of “morality and humanity” to reflect transcendent community interests. Ultimately, Orakhelashvili argues that accurately identifying the specific sources of *jus cogens* norms is only of “accessory” importance; one can recognize *jus cogens* by examining the “consistent application of certain peremptory norms by tribunals” without conclusive analysis of their sources.

After defining peremptory norms, Orakhelashvili moves on to the main objective of his work—to show how the norms

operate in various spheres of international law. First, Orakhelashvili applies the concept of peremptory norms that he has developed to its most traditional field: the law of treaties. In his first example of the operation of peremptory norms, he shows, through an exhaustive evaluation of the relevant literature and judicial practice, that any treaty derogating from peremptory norms is “null and void.” He applies the same principles to acts committed by states in violation of peremptory norms, arguing that while *jus cogens* may not be able to prevent the violations themselves, no legitimate legal rights, duties, or commitments can be invoked by a state violating a *jus cogens* norm as a result of its illegal action. Orakhelashvili also maintains that one of the most basic features of the operation of *jus cogens* is the attendant obligation that no state recognize the validity of actions that violate a peremptory norm.

Orakhelashvili goes further than non-recognition, however, referencing universal jurisdiction and the obligations to prosecute enshrined in a number of different human rights and humanitarian treaties. He argues that “duties under humanitarian conventions to prosecute *jus cogens* crimes can qualify as *jus cogens*” themselves, and endorses the exercise of universal jurisdiction in line with the obligations of states to prosecute under those treaties. However, at various times throughout the work he appears to go further, separating the obligation to prosecute from the accession by a state to any specific treaty and endorsing a more expansive vision of universal jurisdiction. This evolution seems natural given his earlier assertion that treaties cannot be the true *source* of *jus cogens* norms (as they just codify them). However, Orakhelashvili backpedals slightly from the claim that the assertion of universal jurisdiction for *jus cogens* violations is itself a *jus cogens* obligation, citing the fact that “[State] practice arguably does not yet affirm that States are under a duty to prosecute serious international crimes.” But if customary international law is not a source of *jus cogens*, as he argues in the first section of his book, then it is not clear that state practice adverse to consistent application of universal jurisdiction should matter to the *jus cogens* status of the obligation to prosecute. If peremptory norms themselves are not grounded in state practice and *opinio juris*, it is unclear why the modes of prosecution for the norms should be.

Orakhelashvili also spends a good deal of time explicating the relationship between peremptory norms and national legislation, and then addresses the interaction between *jus cogens* norms and national law consistent with his understanding of the “normative hierarchy” in international law. Two paradigmatic areas in which he addresses the relationship between the two spheres of law in particular depth are the national law of sovereign immunity and the relationship between *jus cogens* norms and amnesty or immunity programs in countries emerging from violent conflict. In treating the former area, Orakhelashvili points out that there is no international customary law of sovereign immunity, and consequently, that immunity is always a product of national legislation. He then reviews relevant cases from a number of different jurisdictions, including cases like *Pinochet*. He concludes that while states might sometimes be reluctant to override immunity statutes in certain instances, they should move in favor of implementing the concept of normative hierarchy and recognize the international community’s paramount interest in the prosecution of those accused of violations of peremptory norms, regardless of their presumptive immunity.

With regard to amnesty programs in countries emerging from violent conflict, Orakhelashvili maintains his consistent and progressive attitude towards the hierarchical nature of peremptory norms. But in describing what he sees to be the optimal relationship between peremptory norms and national amnesty programs, he arguably treads on more controversial territory. Here he emphasizes that the duty of states to prosecute violations of *jus cogens* is an inseparable aspect of the norms themselves, as norms in isolation without the ability to prosecute their violators would be meaningless. Put simply, immunity, in Orakhelashvili’s view, very quickly becomes impunity, and the international community will be unable to safeguard its most important interests. Orakhelashvili applies this line of reasoning to South Africa’s Truth and Reconciliation Committee (TRC), arguing that by excusing the horrible crimes of the apartheid era, including torture, abductions, and other gross human rights violations, the standing of the TRC is “doubtful under international law.”

While Orakhelashvili’s position may be correct as a dogmatic application of the principles he develops, *Peremptory Norms and International Law* may be an instance where the au-

thor “proves too much” in the development of his argument. In effectively adopting the maxim *fiat justitia ruat caelum*, Orakhelashvili may undermine the chances that his otherwise beautifully constructed argument will be widely accepted. Ultimately, in a horizontal legal system, the validity and operation of any particular idea depends on its widespread acceptance by the actors whom the system is meant to serve. If those actors—particularly those actors who are emerging from long-standing situations of violent and traumatic conflict—do not find the requisite degree of flexibility in the norms of the international system, the legitimacy and, ultimately, the efficacy of those norms will suffer.

Orakhelashvili has made an incredible contribution to the understanding of how peremptory norms do and may function in the international system. Where the system goes is out of his hands, but his work will surely have a marked influence on the debate.

Democratizing the Hegemonic State: Political Transformation in the Age of Identity. Ilan Peleg. New York, New York: Cambridge University Press, 2007. Pp. 256. \$75.00 (hardcover).

REVIEWED BY AARON S. GOLDBERG

Nation-states with deeply divided societies are facing intensifying pressure to transform into more democratic and inclusive regimes. At the same time, globalization and the end of the Cold War have invigorated, not diminished, ethnic identity. Ilan Peleg, Editor-in-Chief of *Israel Studies Forum* and an expert in ethnic relations and Middle East Politics, analyzes majority-minority relations in states around the world. As Peleg notes, most contemporary conflicts are internal and most involve hegemonies. His book, *Democratizing the Hegemonic State*, provides extensive insight into an important academic area: the political transformation of hegemonic states.

Peleg challenges the common perception that the establishment of a democratic regime alone in ethnically mixed society will mend social divisions. Through a series of empirical cases from around the world, he convincingly argues that granting equal rights to individuals is a necessary but insufficient condition. Even in a democracy, social divisions may still

prevail. A successful transformation also requires an appropriate group rights regime in order to respond effectively to the needs of all ethnic groups in deeply divided societies. The study focuses on intergroup conflict within democratic or at least semidemocratic systems; Peleg inspects various group rights systems available to hegemonic states including consociationalism, federalism, cantonization, and autonomy.

In the first half of the book, Peleg explains the theoretical underpinnings of his study. It begins with a governmental model called the Ethnic Constitutional Order (ECO), a regime type developed in Peleg's previous writings. ECO is a political system in which a single ethnic or national group dominates; this controlling group is fixated upon maintaining its dominance and resists pressures to democratize. Even where such regimes appear democratic, the regime manipulates the state as an instrument to maintain or even enhance its control.

Peleg next defines the essential concepts to his analytical framework. Most notable is a concept he refers to as the "Crucial Triangle," which describes the relationship between democracy, statehood, and hegemony. In his analysis, Peleg describes the requirements of a modern democratic system and the dangers of the hegemonic state. The analysis concludes that the possibility for transforming a hegemonic state depends upon the ability of majority group leaders to convince the majority to democratize and change their attitudes toward the subordinate group.

The study then classifies multinational states based upon their political system. At the most general level, Peleg distinguishes exclusivist regimes, in which one group's dominance over all others is formally institutionalized, from accommodationist regimes. The study further examines a variety of accommodationist approaches, which are broadly classified as either group rights or individual rights regimes. Peleg is careful to distinguish an accommodationist approach to easing ethnic tensions, which might include a degree of minority autonomy or a power-sharing arrangement, from an assimilationist approach aiming to integrate the minority group.

These first chapters are ambitious in scope, describing the relationship between key theoretical concepts and various systems of political organization. However, Peleg's elaborate

writing style makes portions of these chapters overwhelming, if not confusing. Due to the breadth of terminology introduced, readers would benefit by first flipping ahead to Chapter Three where Peleg has developed an impressive flowchart classifying and organizing political systems in deeply divided societies. The chart assists the reader in understanding the interplay among the various regime types and power structures discussed earlier in the book.

Later chapters depart from the theoretical foundations and delve into examples of transformative experiences in various states. Peleg begins with four case examples of relatively mild transformation from the developed and democratic world—explaining the gradual transformation of hegemonic systems in Spain, Canada, the United Kingdom, and Switzerland. These historical examples depict unique routes to improving relations between majority and minority groups through democratic, peaceful means.

The next set of case studies demonstrates more radical, “megaconstitutional” transformation in which the political system itself becomes redefined. In some instances, the transformation results from physical territorial division, a relatively peaceful process in the case of Czechoslovakia and a more violent experience in the case of Cyprus. Meanwhile, Northern Ireland illustrates transformation through dramatic constitutional reform. South Africa also depicts fundamental political reform from an atypical form of hegemonism characterized by minority group control. These examples illustrate that radical transformation is possible but unfortunately, violence is likely to play a role.

Through these cases of gradual and dramatic transformation, Peleg eloquently details unique pathways to democratization. However, his analysis would benefit from a smoother integration between case examples and the broader applicability of nation-state experiences in other contexts. Under what circumstances are certain policies and strategies for transformation more effective than others? Moreover, since these studies are heavily descriptive, the theoretical concepts discussed in the first section of the book could be tied together to the empirical analysis in a more cohesive manner. Peleg’s analysis then examines the flipside: Later case examples illustrate, regrettably, that neither gradual nor radical accommodation of minority groups is inevitable. Some hegemonic polities have,

in fact, followed a reverse trend. Sri Lanka has transitioned from a liberal democracy toward radical hegemonism alongside escalating ethnic tensions. An even more extreme instance, the Rwandan genocide of 1994, illustrates the devastating violence that can result from sustained efforts to entrench ethnic dominance further.

The potential for such violence highlights the need for finding solutions to the current intensification of intergroup conflicts. Peleg's study focuses on potential solutions at the state level. He maintains that the process of transforming a hegemonic system will come mainly from within the majority group. However, given the dangers of the reverse trend away from democratization, Peleg's study would benefit from a greater discussion of the role of both the international community and subordinate groups themselves in promoting group-based rights. Although Peleg does identify international pressure as one of the factors affecting the dynamics of regime change, the study does not explore in detail what tools the international community, regional organizations, and NGOs should employ in order to advance group-based rights in deeply divided societies. At the state level, it would be useful to analyze how minority or subordinate groups can most effectively encourage power sharing and accommodation over further exclusivity by the dominant group.

These issues may be considered in future scholarship. For now, Peleg introduces a new theoretical space for examining interethnic conflicts. While at times the intricacies of his theoretical concepts overshadow his primary arguments, the study ultimately makes a compelling case that democratization is essential to prevent further political or even physical elimination of the minority group. Through empirical analysis, Peleg supports his argument that group rights along with individual rights must be constitutionally recognized for a transformation to be successful. The book offers a number of pathways for transforming deeply divided societies, giving hope that ethnic rivalry is not inevitable and creative solutions are possible.