

BOOK ANNOTATIONS

ARATO, ANDREW, CONSTITUTION MAKING UNDER OCCUPATION: THE POLITICS OF IMPOSED REVOLUTION IN IRAQ (New York, New York: Columbia University Press, 2009).

DOYLE, MICHAEL, STRIKING FIRST: PREEMPTION AND PREVENTION IN INTERNATIONAL CONFLICT (Princeton, New Jersey: Princeton University Press, 2008).

LUTZ, ELLEN L. AND CAITLIN RIEGER, EDS., PROSECUTING HEADS OF STATE (Cambridge, United Kingdom: Cambridge University Press, 2009).

MITCHELL, ANDREW D., LEGAL PRINCIPLES IN WTO DISPUTES (Cambridge, United Kingdom: Cambridge University Press, 2008).

MOGHALU, KINGLEY CHIEDU, GLOBAL JUSTICE: THE POLITICS OF WAR CRIMES TRIBUNALS (Stanford, California: Stanford University Press, 2008).

OSANLOO, ARZOO, THE POLITICS OF WOMEN'S RIGHTS IN IRAN (Princeton, New Jersey: Princeton University Press, 2009).

PAOLI, LETIZIA, VICTORIA A. GREENFIELD, AND PETER REUTER, THE WORLD HEROIN MARKET: CAN SUPPLY BE CUT? (Oxford, United Kingdom: Oxford University Press, 2009).

SULMASY, GLENN, THE NATIONAL SECURITY COURT SYSTEM: A NATURAL EVOLUTION OF JUSTICE IN AN AGE OF TERROR (Oxford, United Kingdom: Oxford University Press, 2009).

THOMAS, CHANTAL AND JOEL P. TRACHTMAN, EDS., DEVELOPING COUNTRIES IN THE WTO LEGAL SYSTEM (Oxford, United Kingdom: Oxford University Press, 2009).

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Constitution Making Under Occupation: The Politics of Imposed Revolution in Iraq. By Andrew Arato. New York, New York: Columbia University Press, 2009. Pp. 264. \$45.00 (hardcover).

REVIEWED BY ZACHARY RYNAR

A team of doctors has attempted an experimental recuperatory method, with remedies rarely before tested. On the right patient, at the right time, the method's results would offer crucial data-points to medical researchers evaluating various recovery techniques. The problem for the researchers: not only did the surgeons botch the initial incision but the patient, for a variety of reasons, never should have been operated on to begin with. Indeed, even the experimental recovery technique in question, it turns out, has not been applied according to instructions.

This is the scholarly predicament that Andrew Arato, an expert on constitution-making with an interest in "post-sovereign" states, confronts in his latest book, *Constitution Making Under Occupation*: the problem of analytical confoundment. How can one evaluate a potentially vital experiment when it was conducted in an environment that would doom even the most well-crafted technique? The patient, in this scenario, is the transitioning state of Iraq, still festering after the fateful 2003 invasion. The experimental method is the attempt to institute a two-stage constitution-making process, the basic model which Arato favors, but which has only been applied, albeit with considerable success, in a few recent cases, beginning with South Africa in the early 1990s. The challenge for Arato is how to evaluate this two-stage model using the vexing case that is Iraq—where although the model was applied, it was implemented in a highly distorted fashion by unskilled practitioners following an invasion and occupation that were not just carelessly conducted, but, as Arato continuously reminds us, illegitimate, illegal, and unwise from the start. Still, for Arato, real-life examples are few and far between and Iraq remains an important empirical case; a highly topical one at

that. Thus, well aware that he is attempting to “redeem the irredeemable,” he ventures to tackle it.

The Preface is essential reading, for it is here that Arato introduces the two-stage process in a way that is comprehensible if incomplete. Fully understanding this process, however, requires the reader to wade deep into the theory of Chapter 1—a long, if informative, exploration of numerous theoretical, historical, and definitional issues, the most important of which can be difficult to pick out from the rest. Essentially, the two-stage model works as follows: the initial stage is designed solely to produce an interim constitution and procedures for crafting the permanent constitution in the second stage. It is characterized by roundtable negotiations, which bring together those who could reasonably be said to represent the various groupings and interests of the transitioning state (Arato makes clear that his focus is limited to “post-sovereign” states rather than instances of true “nation-building”). Behind this procedure is an attempt to combine, and compromise between, two crucial goals: accounting for the extant balance of power so as to avoid breakup or civil war and approximating, to the extent possible in this pre-democratic stage, some representation of the various social, religious, and ethnic groups within a society.

At its heart, the two-staged process is an alternative to “revolutionary constitution-making,” in which the revolutionaries themselves, inherently authoritarian according to an insight Arato draws from Hannah Arendt, inscribe their own unitary control deep into a lasting constitution. The two-stage process is thus designed to confront a basic paradox (a kind of Rawlsian conundrum) of constitution-making: how to craft fair and sustainable rules of democracy out of conditions that are anything but democratic. In other words, how does a country first decide how to elect? (The obvious answer—*have an election*—provokes the same problem: how does one decide what the procedures for that election should be?) By separating the permanent constitution from the initial stage, the two-stage model seeks to limit the ability of dominant groups to engrave protections for their own power, rather than some version of fair democratic principles, into the final Constitution. (It also has the secondary benefit of allowing for “constitutional learning,” that is, improvement from the experience of the interim constitution, in the progression to the final stage.)

It would be a mistake for a reader to give up at Chapter 1. Subsequent chapters are more tractable, describing the numerous large and small decisions made by the Coalition Provisional Authority (CPA) that shaped the Iraqi constitution-making process. The account is fascinating, if sometimes difficult to follow, and combines facts and figures with insight and analysis. Arato's blended knowledge of political theory, international and comparative law, and the still-evolving history of contemporary Iraq shines through in a work that would have floundered without each kind of expertise. Nor does Arato suffer from the lack of balance that has afflicted some of the Bush administration's most zealous critics. To be sure, regarding the invasion itself he is clear in his denunciation—characterizing the decision as “neoimperial,” “revolutionary,” and “illegal” (years into a draining occupation, such words no longer seem grating or polemical, but just obvious). Yet when it comes to the actual decisions of the CPA, even those most oft-maligned, he is anything but quick to pile on the judgment.

Rather, Arato recognizes that the alternative strategies proposed usually had their own drawbacks. When he does, in the end, offer criticism, of, say, the decision to exclude the remnants of the Ba'ath Party in the constitutional negotiations, it is only after having laid out a balanced evaluation of the multiple competing perils. What comes through most of all, therefore, is not the inanity of Paul Bremer and his staff (though Arato does provide plenty of examples of that) but the limited, perhaps even impossible, circumstances in which the CPA found itself—and the perils of trying to impose a constitution on a society, especially without even the modicum of legitimacy that broad international support would have conferred.

Indeed, even for relatively well-versed readers, certain aspects of the constitution-making process will be new and informative, with Arato providing both the history and the analysis. When thinking about the Kurds, for example, autonomy may be one of the first things that come to mind. But few readers will have thought seriously, as Arato does in Chapter 4, about how that autonomy fundamentally altered Kurdish involvement in negotiating the constitution—offering the Kurds the ability to act as a united entity bargaining the terms of their entrance into the loose Iraqi federation. These kinds of discoveries alone make the book worth reading.

But it is a difficult read. Arato does not fully take on the role of a tour guide, even though the intricate series of events, the multiple foreign and domestic actors, and the numerous political and legal issues that are all bundled together in Iraq beg for more guidance, more historical narration, and a thematic thread that is more overtly delineated. Important actors often appear without introduction, the chronology is sometimes difficult to follow, and key historical events reveal themselves within sentences that are fundamentally analytical, forcing the reader to extract the essential story from the analysis. Even the analysis itself sometimes presupposes too much knowledge about academic and legal debates.

To be sure, Arato is not writing a historical account meant for a wide audience, of the kind that journalists such as Thomas Ricks and Rajiv Chandrasekaran turned into bestsellers. Surprisingly, the challenge of “redeeming” some scholarly lessons out of the muddled experiment of constitution-making in Iraq does not, in the end, weigh down Arato. He meets it page after page. Yet what *Constitution Making under Occupation* might not have fully appreciated is the mere challenge—no less daunting, one imagines, for constitutional scholars—of simply understanding what actually happened during Paul Bremer’s attempt to impose a constitution on the nation of Iraq.

Striking First: Preemption and Prevention in International Conflict.

By Michael W. Doyle. Princeton, New Jersey: Princeton University Press, 2008. Pp. 175. \$24.95 (hardcover).

REVIEWED BY JAE IN YOO

“When should states go to war in order to protect themselves?” asks Michael Doyle to begin his treatment of a much-debated, yet entirely unresolved topic in international law: anticipatory self-defense. The traditional international law orthodoxy and the Bush Doctrine collide when it comes to aggressive preventive actions. Customary international law says states must wait for external triggering events before taking military action, providing justification for self-defense and for *preemptive* self-defense only under strict conditions. The Bush Doctrine, the post-September 11 alternative to traditional international law, refuses to wait, instead justifying expansive *pre-*

ventive actions compelled by the risk of inaction. In *Striking First*, the author pronounces both camps inadequate in providing clear and justifiable standards, and sets out to establish “workable and useful criteria” that will guide, constrain, and assess the decision-making process of nations and of the United Nations Security Council.

The author starts by rejecting the conventional options. In the first of his two essays, Doyle argues against both the traditional conception of anticipatory self-defense and the Bush Doctrine, criticizing the latter for being over-inclusive and dangerously subjective. Perhaps equally culpable in the author’s eyes, however, is the traditional international law on preemptive use of force, captured by the *Caroline* doctrine, which requires, among other prerequisites, no choice of means and an imminent threat leaving no moment for deliberation. These limiting standards are under-inclusive and overly restraining, the author warns, especially in the face of the current world’s “new insecurities.” Traditional counterstrategies cannot fully counter the threats posed today by nonstate actors and weapons of mass destruction, making preventive responses increasingly necessary.

What is unsatisfactory about Doyle’s line of reasoning, however, is the perfunctory conclusion that these new insecurities necessitate a shift in the legal paradigm. If traditional counterstrategies cannot aptly deal with the new insecurities, why not consider resorting to new counterstrategies—or new approaches to the traditional counterstrategies—rather than creating an entirely new legal paradigm? Surely technological and other developments favor both those who threaten and those who are threatened. If certain developments arm the former with new advantages in executing and shielding their threats, shouldn’t the same or some other developments provide the latter with new means of countering them? Doyle’s argument seems especially unconvincing considering that such bleak references to new and changing threats were precisely what the supporters of the Bush Doctrine used in justifying their actions. Another weakness of the first essay is a want of moral or legal justification for expanding the restrictive, traditional justification for self-defense in international law. The author does allude to Walzer’s and other scholars’ “persuasive arguments” that serious risk to a state’s territorial integrity or political independence legitimizes anticipatory uses of

force by it, but it is unclear on what moral or legal grounds the author bases his position that the customary international law on anticipatory self-defense should, first, be expanded to include preventive actions but, second, not be expanded to or beyond the Bush Doctrine.

Having argued the need for new standards, Doyle uses his second essay to present (and showcase through case studies) such a set of standards, composed of both procedural and substantive criteria and norms. Baselines for the standards are, procedurally, United Nations Security Council authorization and, substantively, the *Caroline* doctrine; both, the author asserts, must be satisfied before armed force may be employed. The resulting standards can be summarized as “the Four L’s”: lethality, likelihood, legitimacy, and legality. One key feature of Doyle’s proposal is the endorsement of preventive actions without United Nations Security Council sanction. Under the proposed legality standard, resort to the Security Council authority is required, but final acceptance of a Council decision to give its blessing is not necessary. Citing a lack of coherent standards of review within the Council and its sometimes irresponsible behavior, Doyle argues in favor of the possibility of unilateral action after Security Council disapproval, provided that additional accountability mechanisms are in place at the domestic and international levels. Submitting national decisions to other organizations for multilateral deliberation also adds to the legitimacy of actions not sanctioned by the Security Council. For example, Doyle argues, the Kennedy administration’s response during the Cuban Missile Crisis was legitimate and—though illegal because the Soviet shipment of missiles to Cuba was not illegal and missiles themselves were nothing more than a mere threat—“less illegal” because the administration first sought Security Council authorization and, after the Soviet veto essentially eliminated the prospect of UN action, instead pursued the Organization of American States’ endorsement.

Following Doyle’s two essays are comments from scholars in the concerned field. Harold Koh, in the first of the three comments, attacks Doyle’s allowance for unilateral actions without Security Council authorization. Although he welcomes Doyle’s proposal to establish legal standards and case law to channel the Security Council’s discretion in sanctioning preventive war, Koh believes that the same standards,

if applied by states to channel their own unilateral discretion to undertake anticipatory military actions, will not only be of little guiding or limiting value, but will be prone to misuse or ill use. Koh, whose position is largely a reaction to the decisions of the Bush administration and the justifications its officials—not least its lawyers—conjured in support, instead argues for “a per se ban on unilateral anticipatory war making.” Richard Tuck, a realist, similarly attacks Doyle’s legality standard, which, he says, would in effect make each state the judge of her own unilateral actions. According to Tuck, the sanctioning of unilateral actions (which also implies the absence of an authoritative institution whose determination “*eo ipso*” decides the matter) and the lack of agreed and concrete canons of international law together leave too little to constrain or limit varying interpretations and actions by states, whether intentional or not. Doyle responds to these concerns with a mix of realism (establishing norms that mitigate anarchy is “the best we can now do in the world as it is”) and liberalism (these standards “are also designed to reflect deep moral duties and to begin to create the conditions of respect and trust preliminary to a more reliable international order”). To Doyle, the important goals are to reduce the effects of “groupthink” and self-interested interpretation in the decision-making process and to build up, through case law, standards that promote the rule of law. To accomplish the former, continuing the deliberation initially undertaken in the Security Council would be preferable to an absence of such deliberation. For the latter, we first need in place standards, however “preliminary and incomplete,” which will serve as the skeleton upon which the flesh of jurisprudence can build. Jeff McMahan’s comment attempts to add to Doyle’s standards a fifth standard—liability—which introduces what McMahan considers an important constraint on preventive war that Doyle largely overlooks: moral responsibility for a wrong, or a threatened wrong, on the part of the target. Although Doyle agrees in principle with McMahan’s liability requirement, Doyle stands by a more conventional, Walzerian conception of the deterrent consequences facing soldiers (i.e., general liability to being attacked), as opposed to McMahan, who argues for extending legal liability to the level of the individual soldier.

The book—a slim 175 uncrowded pages packing in two essays, three comments, and a response to commentators—is

in no way comprehensive; the author's works on the four standards are brusque at best and the case studies are short and scattershot. The author admits "these standards will call for further specificity beyond what my essays can possibly provide." The purpose of the book appears not to be to lay down the law, but to offer an agenda for the meeting of publicists. The format of the book, in which three distinguished (in both senses of the word) scholars—a liberal internationalist, a Hobbesian political realist, and a moral philosopher—comment on the author's essays and in which the author responds to these comments, reflects this purpose. Though wanting in thoroughness and concreteness, *Striking First* should nonetheless be praised for marking a cogent starting point for the necessary political, legal, and moral discourses on one of the most controversial policy issues of our time.

Prosecuting Heads of State. Edited by Ellen L. Lutz and Caitlin Rieger. Cambridge, United Kingdom: Cambridge University Press, 2009. Pp. 326. \$95.00 (hardcover).

REVIEWED BY CAROLINE BURRELL

Between the media attention and the scholarly scrutiny surrounding the indictment of Omar al-Bashir and the trials of Saddam Hussein and Slobodan Milosevic, it is perhaps easy to forget that only a few decades ago, such legal actions against world leaders were practically unknown. Before the infamous Argentine junta trials in the 1980s, the worries of corrupt leaders may have included potential coups, but never criminal prosecution. Since that time, however, sixty-seven heads of government have been formally charged or indicted with serious criminal offenses, demonstrating that the law has become a sword whose swing can reach even the highest ranks of political power. *Prosecuting Heads of State* by Ellen L. Lutz and Caitlin Rieger is "an effort to understand what changed and why." The book analyzes the political, legal, and societal circumstances leading to the trials of eight state leaders, presenting an objective analysis of the realistic functioning of international prosecutions in the never-ending search for accountability. While its broad scope prevents the editors from delving into a profound study of the enabling factors they identify, the book remains an impressive resource, distinguishing major

trends in the trials and canvassing all sixty-seven prosecutions within the pages of one volume.

Prosecuting Heads of State departs from many scholarly analyses of accountability mechanisms by examining both human rights and corruption prosecutions. The editors consciously chose this approach, stressing the correlation between corruption charges and offenses against humanity—committing and covering up atrocities is an expensive business that leaders may find difficult to include in the national budget—as well as the substitutive role corruption trials may play when human rights trials prove too costly or politically sensitive. The strategy allows the editors to take a much more thorough view of the circumstances leading to the increase in government leader prosecutions, rather than limiting the examination to a small sub-set of cases. The beginning chapters by Lutz and Rieger, respectively, provide an overview of the many European and Latin American prosecutions of heads of state, areas where the prosecution trend is most firmly entrenched. While these sections may serve as an introduction to the main concerns that surround high-profile prosecutions, they unfortunately devolve into an empirical catalog of trials and indictments, with little analysis and an overflow of factual information which can also be found in the instructive appendix at the end of the book.

The majority of the volume, however, involves more in-depth analysis of prosecutions, focusing on eight case studies. A recurring theme in the chosen cases is the influence of international actors on the domestic accountability process—an influence which sometimes facilitates justice, and at other times hinders it. Naomi Roht-Arriaza's examination of the attempts in Spain and Chile to bring Augusto Pinochet to justice is a well-written example. The chapter describes the obstacles to the extradition of Pinochet, as well as the legal arguments used to surmount them. More important, however, is Roht-Arriaza's discussion of how the Spanish attempt at accountability catalyzed the domestic prosecution: "Once the Spanish proceedings were underway, it became a matter of national pride within Chile to argue that Pinochet could be tried at home. Judges took it as an affront that a foreign judge was leading an investigation into events that had occurred in their country: several became much more active in investigations that had been pending for years." While it would have been useful for

Roht-Arriaza to provide a deeper examination of the Spanish proceedings' influence on Chile—especially as we are likely to see similar instances in the future with the rise of universal jurisdiction—the chapter does an excellent job of describing the societal changes within Chile that led to its decision to prosecute a leader who still enjoyed large amounts of popular support.

Another view of such international-domestic interaction is found in one of the most insightful essays in the collection, an examination of the corruption trial of Zambia's Frederick Chiluba, written by Paul Lewis. Lewis' chapter focuses more strongly than any other in the volume on the particular factors that made the trial possible, deftly demonstrating the prosecution's instigation by Zambian civil society and its completion through international assistance. Lewis examines the benefits of a second, civil trial commenced against Chiluba in Britain which mirrored the Zambian case, and concludes that the complementary trial provided the Zambian prosecution with increased political legitimacy and a greater probability of asset recovery. This subsequent international influence, after a "distinctly Zambian" earlier process, is a unique feature of head-of-state prosecution; however, Lewis glosses over the negative consequences such a partnership might bring, stating merely that the influence of a former colonial judiciary "may prove controversial for a country in which memories of imperialism are still ripe." He also ignores the implications of Chiluba's resultant casting of himself as the victim of "colonial interference" and its effect on the Zambian trial's legitimacy in the eyes of the country's citizens. An analysis of these aspects of cooperation could have provided the reader with a more complete understanding of the consequences, negative and positive, of international involvement.

A second theme running through the studies is the questionable competency of domestic criminal courts to try heads of state, especially for the elaborate and extensive crimes with which they are usually charged. Abby Wood's contribution on the corruption trial of the Philippines' Joseph "Erap" Estrada illustrates this point. Estrada's trial was an almost entirely domestic matter, which the state's antigraft court, the Sandiganbayan, conducted in Manila. This institution was relatively young at the time of the Estrada trial, part of a distrusted judiciary system vulnerable to executive intrusion. Despite the re-

tention of substantial political support by Estrada during his trial, as well as allegations of interference on his behalf by the current President, the Sandiganbayan convicted Estrada. The subsequent weeks dimmed the triumph of judicial independence, however, as the President granted Estrada executive clemency. A reader might wish for a more in-depth analysis of the causes of the judicial independence of the court, which seemed to surprise even the author; however, the Estrada tale serves as a useful reminder that executive interference continues to work as a foil to the exercise of accountability.

The trial of Saddam Hussein was a less successful example of international influence and institutional competency. Miranda Sissons and Marieke Wierda's account shows how different the Hussein trial was from the Chiluba trial. The United States made the decision to prosecute Hussein, but the Iraqi government largely controlled the trial itself. The chapter demonstrates the toll executive interference and institutional incompetence can take on the legitimacy of an ex-leader's trial, even when an overwhelming majority of the country supports the prosecution. The political concerns that dominated the trial led to what many considered an ultimately unsatisfying outcome, despite the unsurprising guilty verdict. While the reader may be tempted to consider the Hussein trial an outlier, an abnormal instance of victor's justice more similar to the Nuremberg trials than the type of prosecution we expect to see today, the authors uphold its normative value in the volume as a cautionary tale; a "missed opportunity." The detailed examination of the trial and its shortcomings, despite the genuine efforts and best intentions of many members of the Iraqi judiciary, provide a mini-manual of what-not-to-do's that should be mandatory reading for future international actors finding themselves in similar situations.

Other chapters include similar analyses of the trials of heads of state in Peru, Rwanda, Liberia, and Serbia. Although none of the book's chapters presents novel arguments regarding either the trials or the prosecution mechanism as an accountability tool, the case studies provide straightforward, comprehensive looks at some of the leading head-of-state prosecutions. They also provide a sufficient basis for the editors to draw out and discuss many of the trends enabling and affecting prosecutions in the concluding chapter. As with much of the book, the editors touch on interesting trends and interac-

tions, yet they also fail to develop them with a great level of scholarly depth. This is not a serious flaw, though, as the book aims for breadth rather than depth. If the reader wishes, he can find a more profound study of each of these trends in a myriad of other scholarly sources; the main contribution of this book lies in its intelligent and inclusive overview of head-of-state prosecutions in one readable volume.

Legal Principles in WTO Disputes. By Andrew D. Mitchell. Cambridge, United Kingdom: Cambridge University Press, 2008. Pp. 368. \$108.00 (hardback).

REVIEWED BY AARON BLOOM

What is, and what should be, the role of legal principles in World Trade Organization (WTO) dispute settlement? These are the fundamental questions that Andrew D. Mitchell sets out to answer in *Legal Principles in WTO Disputes*. WTO tribunals today use legal principles in dispute resolution, but they have not created a framework for when and how such principles should be used. Few authors have examined the WTO's use of legal principles, and none have done so in any systematic way. Mitchell believes that WTO tribunals underutilize legal principles in dispute settlement, and, when the tribunals do use legal principles, they use them arbitrarily and inaccurately. Therefore, Mitchell aims to develop an area of the law that is relatively unexplored, and to create a detailed framework that WTO tribunals can use to determine the application of principles in WTO dispute settlement. His finished product is a dense 273 pages, despite its clear prose. It is heavy on theory and intended for an informed audience. A layperson or a reader unfamiliar with the structure of the WTO or with WTO disputes should read other material before attempting *Legal Principles in WTO Disputes*, as Mitchell's writing assumes this knowledge. However, for a WTO practitioner or a scholar focused on the intersection of public international law and international organizations, *Legal Principles in WTO Disputes* outlines a clear and intelligent approach to the use of legal principles by WTO tribunals.

To begin, Mitchell sensibly argues that the need for outside legal principles within WTO dispute resolution is inevitable given that "the WTO agreements contain some provi-

sions that are ambiguous, contradictory, or silent on particular questions.” The drafters understandably could not, and in some instances purposely did not, foresee and create a rule for every possible dispute. Principles should act as a guide to interpreting the text in situations where the text does not provide a clear answer.

Legal Principles in WTO Disputes defines and examines three categories of legal principles that are relevant for WTO tribunals in their resolution of disputes: (1) principles derived from the WTO agreements; (2) principles derived from customary international law; and (3) general principles of international law (helpfully for readers who are not familiar with international law, Mitchell provides an articulate and concise background on customary international law and the general principles of international law). These three categories are described as neither exhaustive nor rigid. Instead, they are simply meant to be a useful guide to principles that are likely to arise in WTO disputes.

Next, Mitchell explores the various legal bases for using each of the three legal categories described above. Generally, there are two ways that WTO tribunals can use legal principles: (1) in an interpretive approach to clarify the meaning of a WTO rule; or (2) in a substantive approach, as independent rules. WTO tribunals are not clear about which approach they follow, raising legitimate questions about the validity of the tribunals’ use of principles. Mitchell seeks to rectify this situation.

First, he methodically goes through all of the legal bases for using principles of WTO law, principles of customary international law, and general principles of law to interpret a WTO provision. In this section and the next Mitchell does not systematically discuss the present WTO approach, preferring instead to focus on developing his normative framework. Although this decision is certainly justifiable, particularly because WTO tribunals have not addressed some of these issues, the reader may wish for a better sense of how Mitchell’s theory maps on to the present WTO methodology.

Mitchell believes that the key WTO provision guiding WTO tribunals in their interpretation of WTO agreements is Article 3.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). Article 3.2

states that the objectives of the WTO's dispute settlement system are to provide security and predictability to the multilateral trading system and to clarify the existing provisions of the WTO agreements "in accordance with customary rules of interpretation of public international law." The Appellate Body stated in *Japan – Alcohol* that security and predictability means rules that are "reliable, comprehensible, and enforceable". Mitchell believes that this supports principles from all three categories that "provide a coherent framework for interpreting rules, particularly in the face of ambiguity."

Additionally, Mitchell looks to Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT) as the codification of the customary rules of interpretation of public international law. Article 31(1) and (4) provide a legal basis for using principles of WTO law, or customary rules of international law and general principles of law to the extent they are reflected in relevant WTO provisions, to determine the ordinary meaning of WTO terms or any specific meaning the parties intended. Article 31(1), requiring that treaties be interpreted in the light of their object and purpose, again justifies the use of principles of WTO law (such as a principle in the preamble describing the reason, purpose, object, or scope of the WTO Agreements) in interpreting a WTO provision. It also justifies the use of principles of customary international law and general principles of law in interpreting a WTO provision to the extent that the customs or general principles are reflected in provisions of the relevant WTO Agreements. Mitchell limits the use of custom and general principles because 31(1) and 31(4) are about the specific context of the provision and treaty, and he does not believe the use of customs and general principles unrelated to that context is legally justified.

In contrast, Article 31(3)(c) of the VCLT requires that "any relevant rules of international law applicable in the relations between the parties" shall be taken into account when interpreting a treaty. Article 31(3)(c) therefore provides a legal basis for using principles of customary international law and general principles of law in interpretation to the extent they are relevant. Finally, Article 32 allows recourse to the preparatory work of the treaty and circumstances if the conclusion of such analysis is to confirm the interpretation reached under Article 31, or if the meaning reached under Article 31 is

ambiguous, obscure, or manifestly absurd or unreasonable. This provides a legal basis for using principles of WTO law in this supplementary manner.

Next, Mitchell goes through the legal bases for applying each of the three categories of principles substantively as independent rules. The WTO tribunals generally have subject matter jurisdiction over complaints based on the WTO Agreements. This grants the Tribunals subject matter jurisdiction over principles of WTO law, and over customary rules and general principles “to the extent they were incorporated in the WTO agreements.” Mitchell comes to the same conclusion regarding the applicable law that tribunals may apply, again because under a variety of WTO provisions the tribunals are limited to applying WTO law (law based on the WTO agreements). As part of their inherent jurisdiction to resolve procedural matters, WTO tribunals can use all three categories of principles when necessary to maintain and exercise the “tribunal’s subject-matter jurisdiction and judicial function.”

Mitchell’s framework is the combination of all these legal bases. It is both organized and detailed. He spends time carefully scrutinizing each possible legal basis before presenting his conclusion, and his analysis of the possible justifications of each category of legal principles seems correct. The downside of this approach is that there is little flow throughout the chapter describing the framework, causing Mitchell’s framework to appear more a collection of discrete legal justifications for the use of principles in WTO settlement than a cohesive structure. Helpfully, Mitchell provides a table at the end of the chapter summarizing the entire framework.

The rest of *Legal Principles in WTO Disputes* is devoted to an in-depth examination of four principles relevant to dispute settlement: good faith, due process, proportionality, and special and differential treatment. Each of these principles is of major significance to WTO law and WTO disputes, but none has been thoroughly examined in the context of WTO dispute resolution. The strength of these sections is that they provide a substantive examination of how Mitchell’s framework might work in practice. Mitchell explores how each principle fits into each category of principles, how WTO tribunals have used the principle, and how the principle should be used under Mitchell’s framework.

For example, Mitchell thinks good faith is an accepted fundamental norm and may be a general principle of international law and a customary rule of international law. Within the context of WTO disputes, the concept of *pacta sunt servanda* (included within good faith) can be seen as what makes the WTO agreements binding. The obligation to interpret treaties in good faith under Article 31(1) of the VCLT—incorporated by Article 3.2 of the DSU—impacts the interpretation of every WTO provision. Both of these concepts demonstrate that good faith is a principle of WTO law. Good faith is also mentioned explicitly in a number of provisions, most importantly Articles 3.10 and 4.3 of the DSU, mandating that members use good faith to resolve disputes and to enter into consultations.

How should good faith be used to interpret WTO law and as a substantive obligation? Mitchell presents many ways WTO tribunals can use good faith, but two are especially illustrative. First, Mitchell argues that Article 3.10's good faith interpretation should be "informed by good faith as a general principle of law and a principle of customary international law." WTO tribunals appear to recognize this in principle, but in individual cases such as *U.S. – Gambling* and *U.S. – FC*, tribunals mix good faith with due process. Mitchell believes that the tribunals should rely on the definitions of good faith provided by customary law and general principles of law, and should not keep due process distinct from good faith. Second, in examining estoppel, a particular application of good faith, WTO tribunals should note that this is a procedural issue and address the claim as part of their inherent jurisdiction, looking to the principle of estoppel in customary international law and general principles of international law to inform their reasoning. WTO tribunals have done this in some instances (*Guatemala – Cement II*), but in other situations have prohibited estoppel because it is not contained within the WTO Agreements (*EC – Export Subsidies on Sugar*).

In his conclusion, Mitchell briefly ties together the book's broader purpose and presents possibilities for additional research. Unfortunately, he spends the majority of the conclusion summarizing the preceding chapters. This might be helpful in an introduction, but in the conclusion it is merely repetitive. The space could have been better used to more comprehensively flesh out Mitchell's framework and to fully

address possible weaknesses in the framework that could benefit from additional research.

These problems with the conclusion reflect the major deficiency in Mitchell's work. *Legal Principles in WTO Disputes* aims to create an effective framework to answer key questions about the use of legal principles in WTO dispute settlement. Although Mitchell uses substantial space to detail how his proposed framework would work, he devotes little time to considering possible flaws in the framework. For example, Mitchell's framework is based on a subdivision of principles into three categories. Mitchell also forthrightly claims that relevant legal principles may not fall into any of the three categories. If that is the case, Mitchell should explain why the categories will not work in certain instances, and also why using only the three categories makes the most sense. A fuller justification for certain basic choices in the proposed framework would strengthen the book.

Nonetheless, *Legal Principles in WTO Disputes* is an excellent read for anyone interested in the interaction of the WTO and public international law. Mitchell tackles a challenging and underdeveloped area of international law in an accessible manner. As Mitchell himself suggests, *Legal Principles in WTO Disputes* is meant to provide guidance to WTO Tribunals in their application of principles and to spur further research. It is a valuable step towards both of these goals.

Global Justice: The Politics of War Crimes Tribunals. By Kingsley Chiedu Moghalu. Stanford, California: Stanford University Press, 2008. Pp. xvi, 220. \$24.95 (paperback).

REVIEWED BY LEE LEVITER

International politics are inseparable from international law. One finds these issues intermingled in topics ranging from the creation of customary law to the settlement of border disputes. Do we expect, then, that international criminal tribunals are a realm free from the power relationships that pervade every other arena of international law and diplomacy? In *Global Justice: The Politics of War Crimes Tribunals*, Kingsley Chiedu Moghalu explores the political conflicts that emerge from these trials. A former legal and policy adviser to the International Criminal Tribunal for Rwanda, Moghalu employs a

panoramic perspective, beginning with the international response to Kaiser Wilhelm II's actions during World War I and ending with Saddam Hussein's 2004 prosecution. He rejects a liberal-legal understanding of war crimes trials, and argues that such a view both misinterprets reality and leads to an unsustainable global criminal law regime.

Global actors creating a war crimes tribunal confront three considerations: the demands of regional and international leaders, the contemporary global power balance, and the effect that a trial will have on a country's people. Moghalu posits that these considerations produce three core tensions. The first tension grows out of differing substantive definitions of crimes and procedural elements of prosecuting crimes. A second is the conflict between justice and stability: prosecuting the leader of a weak country might lead to social upheaval. Lastly, the increasing usage of international tribunals to prosecute war crimes clashes with the norm of state sovereignty.

Global Justice's strategy for exploring these issues is disorienting. An effective text might have assessed war crimes tribunals through a historical and narrative lens, highlighting important thematic elements. Alternatively, Moghalu might have teased out the nuance from each conflict to leave the reader with a theoretical paradigm. Instead, the author attempts both methods: he alternates between exploring an analytical framework and offering accounts of specific trials. Although the instinct is admirable—offering each tribunal and theoretical conflict as a piece of a broader puzzle—Moghalu is unsuccessful, and the result is a work whose whole is less than the sum of its parts.

Moghalu opens his analysis with a discussion of the theoretical and legal tensions that guide his perspective. Grounding his interpretation of war crimes tribunals in the “English School” of world politics, he describes Hedley Bull's views that “international order comprises a society of states that have established institutions of cooperation as a result of shared values, have no overall sovereign, and remain primarily self-interested.” The author rebuts the argument that liberalism is a driving force behind tribunals. Moghalu explains that 1) not only liberal states create and support such trials; 2) Western states often advocate tribunals as a strategic measure; and 3) powerful states are categorically excluded from international justice jurisdiction. The chapter assesses two variations on this

conflict, asking whether international law matters (the answer: yes, but only in the context of global power relations) and framing war crimes justice as Western hegemony.

These pages set up what promises to be a powerful critique, on which Moghalu delivers in the book's early chapters, which are more interesting, more compelling, and easier to follow than the later chapters for two reasons. First, having provided an overview of the underlying theoretical conflicts, *Global Justice* has a simple frame through which to convey the legal and historical conflicts that led up to, and persisted through, the first tribunals. Moghalu begins with the failed prosecution of Kaiser Wilhelm II after World War I. He explains how, though Article 227 of the Treaty of Versailles provided for an international tribunal to vindicate "the solemn obligations of international undertakings and the validity of international morality," the Kaiser fled to the Netherlands after the war, and Dutch authorities refused to turn him over to the Allies. As the Allies sought to gain custody of the Kaiser, they grappled with a central legal dilemma: although war was the prerogative of any nation, and execution of the perpetrators was the prerogative of the victors, it was difficult to construct a legal argument to charge and try the ex-Kaiser. Specifically, it was unclear whether the ex-Kaiser was responsible for the actions of his subordinates, whether the Allies could charge the ex-Kaiser with crimes created for his prosecution, and whether the ex-Kaiser had sovereign immunity from *all* charges.

The second reason for the success of the early chapters is that they reveal that political processes led to legal outcomes from the outset. Moghalu documents the conflicts that arose during the establishment of Nuremburg, but is more interested in its legacy. The author notes that, despite the fact that the trial was "purely the justice of the victor," the Allies established an important legal framework. Examples include codifying both genocide and crimes against humanity as international crimes, establishing individual responsibility for violation of international humanitarian law, and imposing criminal responsibility for the actions of one's subordinates. Offering a counterpoint, *Global Justice* assesses the decision not to prosecute Emperor Hirohito. General MacArthur was convinced that a trial would plunge Japan into chaos because the coun-

try's Emperor was revered as a god. The decision was purely political, and it forcefully supports Moghalu's central thesis.

After documenting these early issues, though, *Global Justice* loses much of its impact because the argument that politics is a pervasive force in war crimes tribunals becomes self-evident, but Moghalu fails to further elucidate the tensions framed in the volume's early pages. The book enters the post cold war world by discussing the trial of Slobodan Milosevic in The Hague, the first tribunal since Nuremburg. The author writes that it was "a bundle of contradictions, a showcase of the tensions between legalism, realism, and the international society perspective." The chapter represents an opportunity for Moghalu to show how the modern age continued the trend of political compromises producing legal outcomes, but the author instead merely discusses the daily politicking that surrounded the administration of justice, framing the experience as a "political-legal synergy." He reviews the political processes leading to the selection of Milosevic's prosecutor, assesses the possibility that the UN would have halted the proceedings in the event of a peace deal, and explores the damaging effects that Milosevic's death had on The Hague Tribunal. Each of these certainly shows that politics affected the procedural elements of Milosevic's tribunal, but none represents the clash of values that Moghalu purports to reveal.

The chapter does hint at a more interesting discussion when it briefly details the charges against Milosevic and his defenses to those charges. Highlighting the conflict between the English School and liberal legalism, this discussion shows that self-interest and shared values determine *substantive* outcomes. Asserting that trials exist in a political environment is a weak criticism; much more biting is the argument that politics guide the administration of law. Unfortunately, the chapter focuses far more on the former than the latter.

Global Justice follows Milosevic's trial with a broad discussion of universal jurisdiction, or the notion that some crimes are so heinous that any nation should have the right to prosecute perpetrators. Here, Moghalu details a number of conflicts between politics and law. For example, he explains that "the Kingdom of Belgium became the epicenter of the doctrine of universal jurisdiction" between 1993 and 2003. During this period, Belgium gave its domestic court system increasingly broad powers to prosecute international crimes.

While Belgian courts successfully prosecuted four Rwandans for crimes committed during the genocide, the judiciary's powers were quickly rescinded after prosecutors indicted American political and military leaders for their actions during the Persian Gulf War. Moghalu then engages in awkward analyses of the legal ramifications of Belgium's actions given the International Court of Justice's (ICJ) decision that conferring universal jurisdiction on domestic courts would "create judicial chaos." This discussion makes for interesting history, but it does little to further the argument that law and politics clash. Much the opposite, the ICJ's position represents these two forces working towards similar ends.

The final three chapters discuss the trial of Charles Taylor, assess the International Criminal Court (ICC), and analyze the United States' motivations for trying Saddam Hussein in a domestic court. These all seem to embody permutations of earlier scenarios. Part of the problem is that Moghalu's goal is simply to show that politics play an important role in war crimes tribunals. After he establishes that the English school is the proper frame by which to understand these trials, his argument plateaus and he lets the facts speak for themselves. Moghalu's narrative does not emphasize the finer points of his thesis. He consistently notes clashes over issues of sovereign immunity and universal jurisdiction, but does little to explore other areas of consistent conflict. The book could have better articulated the interaction between regional organizations and war crimes tribunals, local responses to these trials, and backlashes against the emerging Western hegemony.

Moghalu's book is a frustrating read only because it could have been so much more. While the dissections of the ICC and of Milosevic's, Taylor's, and Hussein's tribunals do not cohere, they are fascinating explorations of every political decision that taints each as a model of legal idealism. Moghalu recognizes that the book is ambitious, and he succeeds in his goal to "avoid accusations of cherry-picking the facts." Nevertheless, the facts are so numerous, and the theories are so intricate, that the subject warrants further exploration—there currently exists only a single textbook regarding the law of international criminal tribunals. Perhaps, then, this book is not the correct length: if it were longer, Moghalu might have more successfully engaged in an academic analysis of the major issues established at the outset; shorter, and he could have used

a single tribunal to analyze the finer points and trace broader themes. As is, *Global Justice* is worthwhile but unsatisfying.

The Politics of Women's Rights in Iran. By Arzoo Osanloo. Princeton, New Jersey: Princeton University Press, 2009. Pp. ix, 258. \$22.95 (paperback).

REVIEWED BY MEREDITH HINES

Too often, scholarship pertaining to women's rights in Muslim countries characterizes the struggle in binary ideological terms—Western liberalism, replete with notions of freedom and individual expression, versus Islamic traditionalism, viewed as “backward” and contradictory to modern Western values. In *The Politics of Women's Rights in Iran*, Arzoo Osanloo broadens this discourse of rights beyond an over-simplified dichotomy between East and West by exploring how women's rights have reemerged in Iran's unique post-revolutionary system of Islamico-civil law.

Osanloo emphasizes the dramatic shift from the government's condemnation of individuated liberal rights as tools of Western imperialist forces immediately following the revolution in 1979, to the contemporary widespread acceptance of women's rights, with such rights now viewed as sanctioned by Islamic values and encouraged by even the most hard-line state officials and agencies. Osanloo's illuminating ethnographic study provides an in-depth, personal, and at times surprising glimpse into the ways in which women have directly participated in reshaping, rearticulating, and reclaiming their rights from a hybrid legal system that draws on both liberal republican and traditional Islamic ideals.

The book is divided into chapters that focus on different “sites” within Iranian society where discourses on women's rights have emerged in the post-revolutionary era. Osanloo begins by explaining her methodology and providing a succinct genealogy of women's rights in Iran, from the original constitutional revolution (1906-1911), to the modernizing reforms of the Pahlavi Period (1925-1979), during which women were forbidden to wear the veil, to the post-1979 era of Islamic republicanism and the imposition of heavy social regulations. In analyzing how women have come to understand and articulate their rights in this post-revolutionary period, Osanloo fo-

cuses her study on women with similar demographic characteristics as those who most adamantly protested the revolution in 1979: urban middle class women willing to express an opinion about religion, most with at least a high school education, many working outside the home in professional or nonprofessional capacities. Such women, Osanloo argues, were the primary targets of the revolution's attempt to expel all Western influences and those most affected by the newly imposed social regulations. By observing the same type of women in the post-revolutionary period, Osanloo effectively sets the stage for explaining why rights discourses initiated by similarly situated women were so heavily criticized at the time of the revolution, yet have reemerged as both politically legitimate and sanctioned by Islamic ideals in contemporary society.

Chapter Two provides the necessary background on the newly-formed Islamic republican form of government and details the ways in which modern Iranian women discuss and participate in politics. Selecting Tehran's first city council elections in February 1999 as her starting point, Osanloo creatively interweaves a story about her middle-aged female landlord, the landlord's 20-year-old daughter, and their individual viewpoints on participating in the upcoming election to demonstrate how various women from different generations and contextual backgrounds actively participate in and discuss politics and political rights. This personal perspective—replicated throughout the book—not only provides for a more interesting story, but also illustrates the subjective nature and variety of viewpoints, concerns, thoughts, and desires of different women in a range of contexts. Osanloo proceeds to detail the shaky emergence of the republican form of government following the revolution and the problems and confusion associated with forming a modern bureaucratic state based on Islamic law. Despite initial opposition by the government to the creation of centralized state institutions and the need for man-made law other than shari'a law, Osanloo argues that the eventual codification of Islamico-civil legal codes and the mass consumption that has resulted from the rationalization of Islamic law in post-revolutionary Iran has led to greater individuation and participation in government. Women, like their male counterparts, actively participate in dialogue and debate regarding their place in society, drawing on both republican ideals of individual liberties and Islamic values in identifying and

challenging their status, roles, and rights. In demonstrating where such discourses take place, Osanloo proceeds to explore four distinct dialogical “sites” in post-revolutionary Iran: Qur’anic meetings, Tehran’s Family Court, lawyers’ offices, and the Islamic Human Rights Commission.

Chapter Three journeys into the realm of Qur’anic meetings—the spiritual gatherings in which women congregate, typically at the home of a female participant, to explore and discuss the scriptural lessons contained in the Qur’an. Having attended and observed a number of such meetings herself, Osanloo analyzes how women’s Qur’anic gatherings have undergone significant changes in post-revolutionary society as a result of the broader national changes happening within the country. Providing examples of the types of discussions occurring at the meetings, Osanloo illustrates how women address issues collectively and invoke concepts of rights derived from notions of the sovereign individual and personal responsibility contained in both the Qur’an and the Iranian constitution. This melding of liberal values with scriptural lessons has permitted women to become agents in their daily lives and to seize control over socio-religious resources typically produced and exclusively maintained by the patriarchal government. Such meetings likewise provide an arena in which women can discuss present-day issues such as divorce and the marriage contract. Osanloo concludes that women’s perceptions of their status and rights are influenced by the constant discourse in settings like Qur’anic meetings, where women actively engage in determining the practical meanings and applications of the rights provided in both Islam and the republican government.

Osanloo next moves on to the Tehran Family Court to demonstrate how women in post-revolutionary Iran understand themselves to be autonomous self-possessed bearers of rights. Again emphasizing the crucial juncture that has resulted from the convergence of Islam and republican government in Iran, Osanloo maintains that the hybrid Islamic-civil court contains principles central to both Islam and republican state practices. A female litigant who seeks to vindicate some right in court evokes the subjectivity of an individuated liberal subject of the civil legal system, while still maintaining her status as a female Muslim. Noting the strict changes made to the Family Protection Law immediately following the revolution

that drastically reduced women's ability to seek remedies for grievances in court, Osanloo credits women's increased knowledge of the positive law and participation in court proceedings in post-revolutionary Iran with the modern-day shift back to many of the liberal provisions of the original act. As such, Osanloo concludes that the Islamico-civil system that emerged after the revolution has permitted greater accessibility by women who, as autonomous rights-bearing citizens under Islam and the republican constitution, are better able to make claims, discuss grievances, and seek redress within the Family Court.

Chapter Five details Osanloo's perhaps most captivating "site," providing an in-depth look into the law office of a well-known female attorney in Tehran and the variety of women-clients seeking legal counsel, most often in the course of divorce proceedings. Not only does this chapter provide a pertinent example of a successful and renowned female attorney in Iran, but it also illustrates the range of resources and laws available for women in a variety of legal contexts. As Osanloo clearly portrays, however, too few women are fully informed of their rights, and many are afraid of getting into trouble for seeking redress. Furthermore, perhaps the greatest obstacle in achieving equality with men under the law is the social stigma that often attaches to women who seek to vindicate their rights—particularly the right to initiate divorce. Although women have the ability to sue in court and are often encouraged to do so by family members and legal counsel alike, women who make use of legal apparatuses to initiate divorce risk losing social capital, honor, and dignity within their families and communities due to the perceived loss of their innocence and status as gentlewomen.

The final chapter of the book appraises the politics surrounding the status of human rights in Iran, based on discussions with Iranian state actors. Noting Iran's deep distrust of the UN and international scrutiny of its human rights practices, Osanloo illustrates how the establishment of the Islamic Human Rights Commission—a national monitoring body of human rights within the country—was intended by the Iranian government to send a message to both Iranian citizens and Western proponents of international human rights that Iran has a qualified arbiter to determine the status of human rights within the nation. Osanloo further reveals the political ten-

sions underlying human rights discourses in Iran—namely, that state actors seek to advance beliefs in international human rights, which in a globalized world are indicative of a nation's civility and legitimacy, but qualify them by reiterating that human rights are both native and culturally authentic within Islam. In light of international concerns about women's rights in particular in Iran, Osanloo concludes by demonstrating how the Iranian government has paid particular attention to women's rights practices and treaties in its attempt to bolster its legitimacy in the international community.

The Politics of Women's Rights in Iran is not without flaws. Fortunately, most criticisms pertain to style rather than substance—at times Osanloo reiterates her argument to the point of repetition, and some subsections within chapters appear out of place sequentially. However, the book's illuminating content and original argument, particularly in light of widespread, over-simplified dichotomies between Western liberalism and Islamic traditionalism, compensates for any such stylistic flaws. Osanloo concludes her legal anthropology by addressing Western misconceptions of women's and human rights in Iran in post-9/11 society. As Osanloo bluntly points out, if the Western world believes that certain societies are "backward" and lacking in basic universal liberal rights, it becomes easier to justify an intentional redrawing of the Middle East without regard to the laws of nation-states, in the name of civilization. Osanloo's examination of the emergence of women's rights from the unique hybrid Islamico-civil system in post-revolutionary Iran, and the numerous and various contexts in which women have rediscovered, rearticulated, and reclaimed such rights in Iranian society, is therefore all the more important in its contribution to contemporary Middle East gender studies and global debates about human rights in this era of terrorism and war.

The World Heroin Market: Can Supply Be Cut? By Letizia Paoli, Victoria A. Greenfield, and Peter Reuter. Oxford, United Kingdom: Oxford University Press, 2009. Pp. 374. \$35.00 (hardcover).

REVIEWED BY PETER ROSS

Analyzing the global heroin market is an inherently difficult enterprise, bedeviled by uncertain and sketchy data. Suppliers, consumers, and middlemen take great pains to conceal their actions from law enforcement, and consequently scholars must often rely on indirect indicators: seizures, government estimates, and second-hand accounts. Rising to prominence in the 1960s and 1970s, the global heroin market currently supplies 16 million illegal heroin users and has brought crime, disease, and addiction to countries around the world. With the advent of needle injections, heroin use has become a significant factor in the worldwide spread of AIDS, making heroin widely regarded as the most socially harmful narcotic in the world. Yet study of the heroin trade has often been piecemeal and anecdotal, focusing on problems in specific countries or the trafficking activities of certain criminal cartels. Drug market research outside of Western countries has been limited and, even in the U.S. and Europe, has rarely been carried out in a systematic fashion.

Into this fray comes *The World Heroin Market: Can Supply Be Cut?*, an ambitious, multi-disciplinary analysis of the global heroin market in its entirety, representing the culmination of five years of painstaking research. Combining economics, history, sociology, and policy analysis, the authors seek to define the contours of the heroin trade: its size and location, the elasticity of supply and demand, and the success of anti-trafficking efforts by various governments. The result is a bird's-eye view of the current heroin market in all of its fascinating complexity.

The comprehensive nature of this project, however, is also one of its greatest drawbacks. The authors focus most of their attention on surveying and compiling information about the trade rather than elucidating its importance. Often the book reads like a survey of data and can feel thematically scattershot as the chapters bounce from one topic and country to the next. Far from being a polemic, the book is overly descriptive,

more focused on splitting the hairs of various empirical studies than searching for a silver bullet solution. Still, the sheer amount of information stands as a unique contribution, though the full importance and implications of this mound of facts may only be revealed by further scholarship.

The genesis of this project can be traced to July 2000, when Mullah Muhammad Umar, the Taliban's supreme leader, instituted a ban on opium production in Afghanistan, which then, as now, accounted for the vast majority of global production. To the shock of many in the counternarcotics community, the policy was effectively enforced. Within 12 months, the world's illicit opium production was reduced by 65% percent. (Several years later, with the Taliban ousted, opium production resumed and surpassed record-breaking levels.) Similar efforts by insurgent groups in northern Myanmar, in the heart of the Golden Triangle, have also achieved drastic reductions in opium cultivation—upwards of 80% in some regions. The unlikely success of these efforts prompted the authors to take a fresh look at the potential for supply control that has proved an elusive goal for many governments in the past 50 years.

Heroin, a derivative of opium, was first synthesized in 1874 and created an epidemic at the beginning of the twentieth century, as doctors began to routinely proscribe the drug for all sorts of ailments. While opium is harvested directly from the flower of the opium poppy, *Papaver somniferum*, once collected, refiners can easily transform the substance into heroin through a series of simple chemical processes. Discovery of the drug's harmful effects and changes in medical practices, as well as a nascent prohibition movement, successfully curbed the heroin trade in the 1920s and 1930s. But the advent of the international drug-control regime in the first half of the twentieth century then increased the popularity of heroin, since its potent and odorless qualities made it easier and more profitable to transport illegally. Drug policies also precipitated the emergence of illicit multi-national drug networks, which made drug control significantly more difficult. In fact, early 20th century heroin control efforts were so successful in part because of the fact that the producers were mostly legitimate pharmaceutical companies who were sensitive to negative publicity and government pressure.

The book is divided into three parts: the structure of the market, case studies of five specific countries, and policy implications. Given the paucity of direct data, the authors spend ten of the eleven chapters describing this immensely complicated and nebulous market in breathtaking detail. In the process, the lay reader learns a plethora of interesting facts about the opiate market. For instance, Afghanistan and Burma alone were responsible for 97 percent of the world heroin market in 2006. Due in part to its large population, Asia dominates not just production, but consumption as well, accounting for over half of the world's heroin users.

In terms of retail revenues, however, Europe and North America make up over 70 percent of the expenditures. Not surprisingly, this is mainly due to the extreme difference in heroin prices between rich and poor countries. A gram of heroin in Tajikistan in 2003 cost anywhere from \$1.30 to \$2.60, compared to about \$116 in the US. Very little of this revenue is earned by the producing poppy farmers. For instance, current estimates hold that Afghanistan farmers, who are responsible for about \$50 billion worth of global heroin, received less than \$1 billion. The other \$49 billion goes to drug traffickers, bribed officials, and various other actors along the supply chain.

One of the more interesting characteristics of the global heroin market is its "segmentation." Far from being globally integrated, producers in one specific country or region serve consumers in another via a small number of particular routes. The international drug control regime increases the importance of relational capital by creating high costs of entering new markets or shifting supply chains. The result is that a policy shift in one region can have disproportionate effects in another region.

The authors integrate this information into an "effective illegality" model, labeling countries as having either strict, lax, or non-enforcement. They conclude that policy, socio-economic and cultural factors, and geography vary in their determinacy for countries that produce, traffic, and consume opium and its derivatives. For instance, the role of government all but determines the locations of opium poppy cultivation, explaining in part why only of a handful countries are responsible for the bulk of this practice worldwide. Conversely, socio-economic and cultural factors coupled with ge-

ography make some countries “destined” to become trafficking countries. Since the 1980s, the Iranian government has had one of the strictest drug-enforcement regimes. Despite having over a quarter of all heroin seizures in the world, Iran’s strategic location and its economic and cultural ties with Afghanistan still make it the primary route for heroin traveling from Asia to Europe. Tajikistan’s proximity to Afghanistan and ethnic diaspora in the growing Russian market also explain its recent rise as a trafficking route. Albanian and Turkish trafficking networks predominate in Europe where those ethnic diaspora groups are located. As data from the U.S. and Sweden demonstrates, government policies of consuming countries, i.e., the last step in the heroin supply chain, have had limited success in curbing heroin use.

So, to ask the question in the title, can supply be cut? The short answer is yes, but at great cost. The Taliban in Afghanistan and the Wa authorities in Myanmar achieved great reductions in poppy cultivation, but employed extremely coercive means that imposed tremendous hardship on the local populace. Democratic societies may not tolerate such draconian measures, and as such must take a long-term strategic view, with a heavy emphasis on institutional development and local community empowerment. Thailand is the poster child for such an approach; despite sharing a border with Burma, it has managed to all but end opium cultivation within its borders over the last thirty years. This success has been attributed to the country’s broader democratization and economic development, which has provided realistic alternatives for opium-growing peasants.

The authors ultimately conclude that supply-oriented policies have only a limited influence on the market and see little reason to predict success within the current international drug regime. The authors instead argue for a regulatory approach focused on mitigating the harmful social effects of the heroin trade: violence, addiction, and corruption. Success in these areas, they assert, rather than reduction in poppy fields, should be the appropriate metric. From a policy standpoint, one wishes that the authors would have devoted more space to the local success stories of Thailand and Turkey, if only to highlight the failures of the international regime. In keeping with the observation-heavy, prescription-light structure, the authors note the correlation of economic development with opium

eradication, but do not go so far as to suggest that supply-side policies are treating a symptom, rather than the root cause, of the problem.

Towards the end of the book, the authors evaluate several unorthodox prescriptions floating around the policy world. They are ambivalent about the idea of simply buying the entire Afghan crop for a relatively cheap \$250 million; it would most surely cost more in practice to do so, as drug dealers would seek to outbid the government. As the title connotes, the book's research is confined to the supply side of the market. One of the drawbacks of such a focus is that many of the most controversial and innovative drug policies, including legalization and the rehabilitation of addicts, are centered on reducing demand. Still, the book stands as an incredibly comprehensive look at the world heroin market and a remarkable contribution to scholarship in the field. Despite the academic orientation and the abundance of graphs and charts, the book is quite accessible to the average reader wondering what the global heroin market looks like through the eyes of an economist. Given the acrimony surrounding the drug policy debate, an added dose of knowledge about how the market actually functions could very well lead to healthier policies and politics.

The National Security Court System: A Natural Evolution of Justice in an Age of Terror. By Glenn Sulmasy. Oxford, United Kingdom: Oxford University Press, 2009. Pp. ix, 237. \$29.95 (hardcover).

REVIEWED BY PETER HUGHES

After the Bush administration's failed use of the military commission system to bring al Qaeda terrorists held at the U.S. Naval Station at Guantanamo Bay to justice, how should the United States proceed in detaining, charging, and trying captured terrorists? Since September 11, 2001, this has been, and continues to be, a vociferously debated question. In his book *The National Security Court System*, Glenn Sulmasy grapples with the complex historical, legal, and policy issues surrounding the use of military commissions to bring enemy combatants to justice. Given the unique nature of the ongoing international conflict with al Qaeda and the ambiguous status of terrorists still held at Guantanamo Bay, Sulmasy concludes that neither

of the traditional options available—military commissions or civilian courts—meets the pressing needs of national security while simultaneously “balancing the scales of justice.” Instead, he proposes a new alternative to bring al Qaeda terrorists to justice: a national security court that combines elements of both military commissions and civilian courts. Sulmasy argues that only such a specialized court can provide an effective balancing of national security interests, human rights obligations, and due process guarantees, and he presents a clear, pragmatic, and organized analysis in support of this proposal.

Sulmasy begins the book by tracing the history and evolution of the law of armed conflict and the military justice system in the United States, specifically focusing on the use and original intent of military commissions. This is a helpful and informative discussion for those readers who do not have a background in U.S. military jurisprudence, the courts-martial system and its procedure, or the Uniform Code of Military Justice (UCMJ). Sulmasy, a Captain, Judge Advocate, and professor of law at the U.S. Coast Guard Academy, explains how the armed services have always had a unique system of justice, which has included the use of military commissions. In Sulmasy’s opinion, military commissions have historically functioned properly as tools of military justice and “creatures of [executive] command” during battlefield prosecutions, effectively adjudicating and severely punishing illegal belligerents.

Setting the stage for his discussion of the current debate surrounding the use of military commissions, Sulmasy examines specific instances of the use of military commissions throughout U.S. history by military commanders in the field or by the commander in chief during times of armed conflict—for example, by Andrew Jackson as a military commander during the War of 1812, by Abraham Lincoln as President during the Civil War, and by Franklin Roosevelt as President during World War II. In this section of the book, Sulmasy skillfully intertwines historical and legal analysis into his chronological factual narrative. He documents the potential for abuse by military commissions, describing, for instance, Andrew Jackson’s imprisonment of a civilian reporter and judge during the War of 1812. But he also argues that civilian oversight, a necessary component of military commissions, has acted as a check on such past abuses, such as when President Lincoln

reversed many of the death sentences rendered by a military commission against Sioux Indians.

However, Sulmasy's argument that civilian oversight has acted as an effective check on military commissions is potentially a tenuous position. Oftentimes, it appears that these historical commissions have been biased, impassioned tribunals with little or no regard for due process and basic rights, and have been used solely to guarantee a conviction. Sulmasy does mention this criticism, noting the claim that commissions were often decided on emotion over reason, "not in the spirit of justice, but rather with vengeance." However, he gives this criticism short shrift and does not investigate it further, focusing instead on the historical legal foundations of the commissions. Therefore, although the military commissions have been used historically and upheld as constitutional, modern standards of evidence and justice beg the reader to consider whether the historical uses described in this section would be acceptable today.

Sulmasy further develops his review of the historical context of military commissions with an analysis of the Supreme Court's decision in *Ex Parte Quirin*, which he uses to segue into a discussion of the legal foundations for the Bush administration's decision to use military commissions to detain and adjudicate al Qaeda terrorists following 9/11. In *Quirin*, the Supreme Court upheld the jurisdiction of the military commissions President Roosevelt used to try eight alleged illegal German belligerents who had entered the U.S. during World War II, were not wearing uniforms, and were plotting terrorist acts on U.S. soil. As Sulmasy notes, in many ways the issues confronting the Roosevelt administration were virtually identical to those confronting the Bush administration, with one key difference. Roosevelt wanted quick adjudication and rapid justice with fewer constitutional protections than civilian courts would afford. The Bush administration, on the other hand, wanted to use the commissions for preventive detention as well as adjudication.

Identifying several other relevant distinctions between the Roosevelt and Bush military commissions, such as their uses in fundamentally different types of conflict and against different types of combatants, Sulmasy concludes that "[i]t appears the Bush administration unintentionally stretched the lawfulness of the commissions into uncomfortable regions and thereby

suffered the consequences.” Indeed, in the next section of the book Sulmasy analyzes the evolution of the Bush administration’s military commissions policy as it sought to respond to criticisms lodged by the public and Congress and to correct the constitutional deficiencies found by the Supreme Court in *Hamdan* and *Boumediene*.

Sulmasy provides a detailed legal analysis of the Court’s reasoning in *Hamdan* and *Boumediene*, and he is very critical of the role of the Court and its decisions, characterizing them as “nibbling away at the edges of the military commissions” and as “burdensome and confusing for policy makers.” Indeed, he believes military jurisprudence needs to be debated and developed by the political branches and not by an “overly ambitious, results oriented, judicial branch.” However, he takes a practical approach to the state of the law after *Boumediene*, viewing that decision as a catalyst and opportunity to truly reform how the U.S. moves forward to secure both due process and national security when trying al Qaeda terrorists. Ultimately, although Sulmasy argues the Bush military commissions were lawful and should remain a tool of military law, he acknowledges that they are not the right forum for trying detainees. In Sulmasy’s view, the Bush military commissions were unsuccessful as a matter of policy and implementation because they had been tainted not only by scandals of alleged torture and abuse at Guantanamo, but also by the fact that almost seven years after President Bush’s first order establishing the military commissions, the government had not successfully prosecuted a single Guantanamo detainee. This is an interesting argument and Sulmasy develops it well. However, as mentioned before, the historical uses of military commissions demonstrate great potential for abuse. Sulmasy should give more weight to the fact that perhaps the same reasons why the Guantanamo policy was publicly unacceptable to many are also evidence that historical legal justifications are no longer acceptable today given modern standards of human rights, due process, and justice.

For Sulmasy, it is clear that responding to the threat of al Qaeda has been an evolutionary process that has revealed that the war against al Qaeda is a new type of war that “mixes law enforcement and warfare and does not fit neatly in either category.” Therefore, in order to best handle this new type of hybrid detainee in this new type of hybrid warfare, Sulmasy pro-

poses a new hybrid national security court system as a logical way to proceed in detaining and adjudicating enemy combatants. Since 2002, several policy makers have offered national security court system proposals that have some similarities but also vary greatly. Sulmasy discusses the strengths and weaknesses of four of them before presenting his own system. In contrast with some of the ideas in other proposals, it is critical to Sulmasy that the adjudication process move quickly and not be used solely for detention. Sulmasy proposes a number of well thought out, novel ideas in an effort to accommodate the many competing legal and policy interests. He aims to answer the criticisms of Guantanamo by proposing a system that 1) has civilian oversight, 2) requires detention and trials on U.S. soil, on military bases located within the continental U.S., 3) is adjudicatory in nature, 4) has a set period of time in which a person must be tried, 5) guarantees international human rights and respects other nations' concerns about the death penalty, 6) is a separate system from Article III federal courts and military courts, 7) provides more traditional habeas corpus rights to detainees, 8) prohibits indefinite detention and requires detainees to be tried within one year of capture, 9) creates new Article III judges experienced in the law of armed conflict, intelligence law, and national security law, 10) creates a more effective and efficient appellate process, 11) prohibits torture during interrogations, and 12) promotes the rule of law while ensuring the accused are held accountable for alleged "war crimes."

Sulmasy believes that in this hybrid war against this hybrid enemy, only a hybrid national security court blending criminal and military law can uphold the rule of law, guarantee adequate due process, recognize fundamental human rights, protect the security of the country, and ensure the military's ability to wage effective war against terrorists. The United States can, and must, achieve this goal in order to regain its positive image as a just and judicious country. This is a powerful, interesting, and unique solution that addresses criticisms of both civilian courts and military commissions as fora for judging al Qaeda terrorists. However, it is not evident that such a novel approach is absolutely necessary. Although there are some national security dangers in using federal civilian courts (which Sulmasy discusses), it also seems possible that it might be best to first give the civilian court system a chance. It already pro-

vides a reliable, stable system that affords due process, and utilizing this system should help restore the tarnished image of the U.S. worldwide.

The events surrounding the publication of *The National Security Court System* make it timely. As Sulmasy notes, the topic is a continuously moving target. President Barack Obama's administration has recently decided not to adopt a national security court system. Instead, it will use both civilian courts and military commissions to try 9/11 and other al Qaeda terrorists. With so much on its agenda, such as health care reform, a recovering economy, withdrawing troops from Iraq, and fighting back a rising insurgency in Afghanistan, the Obama administration most likely does not have the political capital necessary to engage in the extensive debate that would be required to establish a new national security court system. Indeed, this is one of the drawbacks of Sulmasy's proposal. As Neal Katyal, the current Principal Deputy Solicitor General and former Hamdan attorney, commented before the 2008 presidential elections, "Every aspect of the system is up for grabs . . . the point is that there are literally hundreds of different models from which to choose." This is an area where Sulmasy's book could have been more helpful. He spends much of the book discussing the legal historical context and use of military commissions and does not delve more in depth into his own security court system proposal. Indeed, Sulmasy devotes only a quarter of his book to a discussion of his proposal. However, as he acknowledges, the book is not designed to propose all of the answers to the criticisms of current policies. Rather it is a call to recognize that in this long war that may last a generation, the country is now in a unique position to create a viable, long-term legal solution to the many problems associated with the Guantanamo military commissions. In the final analysis, Sulmasy's pragmatic, nonpartisan, and results-focused study of the legal history of military commissions and their use, and his proposal for a national security court system, is a valuable addition to the debate surrounding these complex issues.

Developing Countries in the WTO Legal System. Edited by Chantal Thomas and Joel P. Trachtman. Oxford, United Kingdom: Oxford University Press, 2009. Pp. 523. \$95.00 (hardcover).

REVIEWED BY JUDAH ARIEL

In 1987, Robert Hudec, the esteemed legal scholar, trade negotiator, and GATT dispute-settlement panelist, published *Developing Countries in the GATT Legal System*. Hudec's book was one of the first to go beyond legal or economic analyses of the international trade regime by looking to political economics, institutional dynamics, and public choice theory to explain international trade negotiations and their policy outcomes. Within the GATT regime, Hudec argued that developing countries could best advance their interests by advocating for across-the-board liberalization of trade in goods, strengthening the most favored nation (MFN) principle, and shifting away from their traditional focus on expanding special and differential treatment. Special and differential treatment, by the mid-1980s, had developed three prongs: nonreciprocity for developing countries, greater flexibility for developing countries to use measures such as tariffs and subsidies to promote the development of industry, and increased market access for developing country exports in developed country markets.

Though Hudec recognized that trade-focused industrial policy *could* provide economic benefits to developing countries, he was highly skeptical that any government, including developing country governments, had the ability to accurately select the industries for which the benefits of protection would provide the marginal advantage necessary to become globally competitive. Instead, he felt that developing country governments were more likely to achieve economic benefits by using international legal obligations to resist calls for protection from globally hopeless industries. Similarly, Hudec's analysis of trade policymakers' motivations and behavior led him to expect that preferential access to developed country markets for developing country products would prove unsustainable over time and subject to increasing conditionality, undermining the potential of preferences to lure foreign direct investment, and rendering them ineffective as a development tool. Instead, he suggested that by accepting the idea of reciprocity in trade ob-

ligations and working to strengthen MFN principles, developing countries could achieve greater market access and avoid the negative effects of conditional or discriminatory market access.

Twenty years later, growing out of a 2007 conference at the University of Minnesota Law School (where Hudec taught from 1972 to 2000), *Developing Countries in the WTO Legal System* seeks to consider the continuing relevance of Hudec's substantive and methodological insights as well as assess the current position of developing countries within the international trade regime. The collection begins with a bird's-eye view introduction, from editors Chantal Thomas and Joel P. Trachtman, to the issues facing developing countries in the WTO today. The remaining essays are divided into three broad parts: Part One focuses on systemic perspectives on the WTO and developing countries that grow out of Hudec's work; Part Two looks at institutional arrangements and dispute settlement procedures at the WTO; and Part Three addresses the substantive issues that have emerged in trade law beginning with the Uruguay Round. The eighteen wide-ranging contributions neither explore one central argument nor promote a particular viewpoint on international trade law or scholarship. The chapters that most directly engage with Hudec's views or methods are the most enlightening, and differentiate this collection from the frequently encountered and tired back-and-forth of the trade policy debate.

One thread running through multiple essays is the application of empirical methods to questions raised by Hudec's original work. Building on Hudec's heavily theory-based inquiry into the usefulness of preferential market access schemes, Jeffrey Dunoff surveys the econometric literature on whether preferences have worked as a development tool, finding that preference programs have been underinclusive and underutilized, that their benefits have been limited and narrowly focused, and that they have done "disappointingly little to promote economic development in beneficiary states." He then goes on to propose a further research agenda that would apply econometric methods to questions raised by Hudec's "dark vision of politics," namely (i) whether preferences have contributed to the proliferation of bilateral or regional trade agreements (and whether such agreements have been beneficial to developing countries), (ii) whether preferences have

promoted protectionism in developing countries, and if so, whether refinements to preference programs could avoid that result, and (iii) whether the demand for and debate over preferences have served as a distraction from potentially more effective pro-development trade policies.

Looking at the ability of developing countries to make use of the WTO dispute settlement system, Bernard Hoekman, Henrik Horn, and Petros C. Mavroidis analyze a recent World Bank dataset of WTO disputes to show that, conditional on a case being brought (which they recognize may be constrained by developing country capacity issues), developing countries have achieved comparable rates of success to industrialized countries. In a fascinating counterpart essay, however, Marc L. Busch and Eric Reinhardt build on their earlier work showing that developing countries' lower likelihood of negotiating early settlements of their trade complaints is the primary explanation for developed countries' greater success in achieving trade liberalization through the WTO dispute process. The reason, they explain, is that countries that settle their complaints early win more concessions than countries which see the complaints through the full adversarial adjudication process. Busch and Reinhardt use empirical data to show that the greater involvement of third parties in developing country complaints is the most important influence on the differing rates of early settlement. Additionally, they show that the differentiated rates of third party involvement are structural in nature; as the strongest predictor of how many other countries will attempt to intervene in a dispute is the size of third parties' share of the disputed market for the product at issue. In taking aim at the conventional wisdom that third party involvement on the side of developing countries advances developing country interests, Busch and Reinhardt suggest reconsidering proposals by some developing countries which would increase such involvement.

As demonstrated, though not necessarily discussed in the above essays, another theme that brings together multiple chapters is the recognition of developing countries' failure to achieve effective pro-development policy outcomes at either the GATT or WTO. Broadly speaking, the commitment to a regime of special and differential treatment has yielded a pattern whereby developing countries manage to resist extensive commitments demanded by developed countries (though a

look at both the Uruguay and Doha Rounds raises questions about the continued possibility of such resistance). At the same time, though, developing countries have repeatedly failed to establish binding obligations on developed countries, settling instead for less-consequential hortatory or “enabling” provisions. This end result has meant that, without the lure of reciprocal commitments, developed countries have felt free to give only lip service to developing country demands while retaining nearly complete discretion over whether to implement pro-development policies (and, once implemented, whether and under what conditions to continue such policies). Examples of these hollow victories are addressed in a number of chapters, including those dealing with implementation assistance and trade facilitation (J. Michael Finger), preferences (Dunoff and Trachtman, respectively), intellectual property (Daniel J. Gervais), services (Hoeckman), and movement of natural persons (Sungjoon Cho).

Developing Countries in the WTO Legal System provides a broad overview of the current trade law and policy issues facing developing countries, and it showcases some particularly interesting and useful new scholarship. As a whole, the collection faces a trade-off between providing a broad survey of the issues and offering pointed, normative critiques of the trade regime. Therefore, the book is most interesting and effective where there are multiple essays on a single topic, as is the case with dispute settlement (though one might wish for more interaction between the ideas of separate contributors writing on the same subject). Additionally, the result of this trade-off makes a prior familiarity with the contours of trade debates useful in differentiating between collective wisdom and genuinely novel arguments.

A number of chapters, however, such as Tracey D. Epps and Michael J. Trebilcock on trade in agricultural goods, stand out for cutting through this tension by giving full consideration to the institutional dynamics, motivations, and influences that determine the how and what of trade negotiations, as Hudec has been recognized for pioneering in his work twenty years ago. The continued relevance of this methodology for students of trade law—whether scholars, practitioners, activists, or diplomats—is ably demonstrated by providing the reader a deeper and more realistic appreciation of the debates and challenges, the potential compromises, the need for sec-

ond-best solutions, and the likelihood of different outcomes across the wide range of international trade policy issues.

International Law, Museums and the Return of Cultural Objects. By Ana Filipa Vrdoljak. Cambridge, United Kingdom: Cambridge University Press, 2008. Pp. 382. \$47.99 (paperback).

REVIEWED BY RYAN GHISELLI

By no means a new controversy, the restitution of cultural objects taken from occupied peoples during previous centuries remains hotly contested. Ana Filipa Vrdoljak's *International Law, Museums and the Return of Cultural Objects* frames the debate as one involving two basic parties: those who wish to see cultural heritage restored, and those who wish to remain in possession of taken objects. Although the arguments may appear simple at first, Vrdoljak paints the issue as one involving complex and evolving cultural narratives which both sides employ. She proposes a framework of three rationales to justify restitution: that objects are sacred property to a community; that restitution "rights" international wrongs committed during colonization and wartime; and that the emergent international norms of self-determination and reconciliation highlight the importance of allowing a people to effectively contribute to the "cultural heritage of all humankind." The majority of the book traces the development of important historical events and concepts which have employed one or more of the three rationales (examples include the creation of international legal instruments such as the 1970 UNESCO Convention and the early 20th-century ascendance of the "State"). In addition, Vrdoljak discusses major areas of law which do not directly address restitution of cultural objects but which nevertheless inform our understanding of prevailing attitudes and set a context for each step of the restitution debate. By weaving such themes together, Vrdoljak provides a comprehensive historical perspective which supports effective restitution of cultural objects for the benefit of mankind.

The book is divided into three parts, each of which covers a particular time period to explain that era's contribution to an ongoing process. Part One describes how, from 1815 to shortly after World War I, the growth of the "State" set a foun-

dation for accepting the significance of group heritage and the need to protect items within a territory. Vrdoljak develops the first rationale of “sacred” property by arguing that, to a colonial occupier, indigenous cultural objects became central to a collective imagining of its role as an imperial power. Thus, the museums of conquering states were filled with objects designed to tell a selective story of “savage” indigenous identity and emphasize colonial dominance. To the colonized, such objects became symbols of dispossessed identity and autonomy. Furthermore, international instruments demonstrated that cultural Darwinism effectively governed policy towards the collection of cultural objects; other colonial powers had rights to restitution, but colonies and minority states did not. Colonized communities were thus subject to a “dual mandate” under which imperial powers focused on protecting, while “elevating,” the cultural heritage of the colonized.

Part Two covers the mid-20th century, focusing on the changing dynamic of Anglo-American colonialism and world perception of cultural objects following the Second World War. The confiscation and destruction of cultural objects during World War II contributed to a subsequent change in international attitudes. States began to appreciate the contribution of all peoples “to the cultural heritage of all mankind.” Thus, the second rationale of righting international wrongs committed both during colonization and wartime emerged as a global trend. However, Vrdoljak is quick to point out that powerful states were still exhibiting an unwillingness to establish a precedent of unconditional restitution. The author then turns to a discussion of the relationship between the United States government and Native Americans to demonstrate how using cultural objects to unify all peoples within one territory was replicated in the United States even following the end of colonialism. The use of these items as “fine art” had the same effect as attempting to “elevate” Native Americans by assimilation, effectively disregarding the awful truth of past relations with the government and the current experiences of indigenous communities. Thus the national imagining of the dominant state still conflicted with the community imaginings of the minority group, even after the end of international colonialism.

The final part of the book deals with a modern resurgence in the efforts pursued by previously colonized states and

indigenous populations to achieve self-determination through restitution of cultural objects from imperial collections. By providing a case study on Australian museums, Vrdoljak demonstrates that these efforts have contributed to changing relationships between indigenous peoples and museums. She argues that Australian museums have transitioned from the old integration policies of the post-war period to a “self-determination era,” and that cooperation between indigenous communities and museums has assisted this transition. Employing indigenous people in positions of responsibility within existing national museums with the intent of reshaping the cultural perspectives of museum collections is an example of such recent cooperation. But even with growing recognition of the significant cultural losses suffered by indigenous peoples and the primacy of indigenous interests in their cultural heritage, the author notes that fundamental problems persist which prevent actual restitution to indigenous communities. She concludes by advocating a series of international instruments which would promote rights of self-determination, cultural sustainability, and indigenous legal ownership and control of cultural heritage.

Despite the comprehensiveness of *International Law, Museums and the Return of Cultural Objects*, the author’s work is often vague and difficult to comprehend. Many segments of the book at first appear to repeat previous points, but readers must look closer to notice nuanced distinctions which prove important to fully understanding each chapter. In addition, a reader with little knowledge of the myriad international instruments mentioned in the book will be challenged to understand many segments referring to such mechanisms. Vrdoljak could have provided brief descriptions of international instruments cited to in the book in order to orient less well-versed readers prior to each section.

Vrdoljak’s book fails to discuss some important questions that are central to the debate over the return of cultural objects. Will advocacy for international policy instruments to provide restitution be able to transcend political economic forces against restitution? Frequently, the conflict over restitution pits one powerful party that possesses an object of value against a second, much weaker party that claims an interest in that object. Readers will have to answer this question for themselves, as Vrdoljak does not do enough to incorporate

this issue into her advocacy for stronger international protocols in support of restitution. One may posit that the cultural narratives on both sides of the debate help create political and economic incentives to seek or deny restitution by defining an object's importance; however, the author leaves the connection between these forces largely unresolved. Instead, Vrdoljak's advocacy relies on the strength of international instruments to accomplish restitution without focusing significantly on the possibility of new and strong political or economic shifts which would alter contextual dynamics and remove incentives for states and museums to continue to hold on to cultural objects. While this complaint is not hugely detrimental to the book (the book is already analytically expansive), it would be a fruitful topic for the book to address.

Overall, the breadth of this book is impressive and outweighs the mild criticisms against it. The sheer number of citations and the table of instruments alone are indicative of the complexity of the subject matter and the remarkable ability of the author to provide a thorough description of the debate. Simply reading the book for a history of object restitution will provide most any reader with a substantial foundation for further study.

