BOOK ANNOTATIONS

Avant, Deborah D., Martha Finnemore, and Susan K. Sell, Eds., Who Governs the Globe? Cambridge Studies in International Relations (New York, New York: Cambridge University Press, 2010).

Bowden, Brett, Hilary Charlesworth, and Jeremy Farrall, Eds., The Role of International Law in Rebuilding Societies After Conflict: Great Expectations (New York, New York: Cambridge University Press, 2009).

Carnahan, Burrus M., Lincoln on Trial: Southern Civilians and the Law of War (Lexington, Kentucky: University of Kentucky Press, 2010).

Gross, Michael L., Moral Dilemmas of Modern War: Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict (New York, New York: Cambridge University Press, 2010).

Honigsberg, Peter Jan, Our Nation Unhinged: The Consequences on the War on Terror (Berkeley, California: University of California Press, 2009).

Humbert, Franziska, The Challenge of Child Labor in International Law (New York, New York: Cambridge University Press, 2009).

Kinley, David, Civilising Globalisation: Human Rights and the Global Economy (New York, New York: Cambridge University Press, 2009).

Nolan, Jr., James L., Legal Accents, Legal Borrowing: The International Problem-Solving Court Movement (Princeton, New Jersey: Princeton University Press, 2009).

Roach, Steven C., Ed., Governance, Order, and the International Criminal Court: Between Realpolitik and a

COSMOPOLITAN COURT (NEW YORK, NEW YORK: OXFORD UNIVERSITY PRESS, 2009).

SCHARF, MICHAEL P., AND PAUL R. WILLIAMS, SHAPING FOREIGN POLICY IN TIMES OF CRISIS: THE ROLE OF INTERNATIONAL LAW AND THE STATE DEPARTMENT LEGAL ADVISER (NEW YORK, NEW YORK: CAMBRIDGE UNIVERSITY PRESS, 2010).

WILLS, SIOBHAN, PROTECTING CIVILIANS: THE OBLIGATIONS OF PEACEKEEPERS (NEW YORK, NEW YORK: OXFORD UNIVERSITY PRESS, 2009).

Who Governs the Globe? Cambridge Studies in International Relations. Edited by Deborah D. Avant, Martha Finnemore, and Susan K. Sell. New York, New York: Cambridge University Press, 2010. Pp. xiv, 433. $34.99 (paperback).

REVIEWED BY SAMUEL LITTON

The fact that states are not the sole legal actors on the international stage is hardly news; it is well recognized that international organizations (IOs), nongovernmental organizations (NGOs), multinational corporations, and the occasional private individual are important actors in the international arena. *Who Governs the Globe?*—a collection of papers on global governance edited by Avant, Finnemore, and Sell—suggests a potential blind spot; global actors are not merely aggregations of treaties or legal rules, nor can they be analyzed in purely functionalist or structural modes. Rather, they are inherently political bodies that jockey for influence and authority with other IOs, NGOs, international tribunals, and states. Moreover, they are subject to the same political pressures as domestic administrative agencies. The key to understanding these actors, according to the authors in *Who Governs the Globe?*, lies in the relationships between them.

The editors begin with a broad definition of "global governor." They suggest that a global governor is one who "exercises power across borders for the purpose of affecting policy," which may include creating issues, setting agendas, establishing or implementing rules or programs, and evaluating or adjudicating outcomes. The subsequent essays are divided into two groups. The first addresses how the relationships and in-

teractions between governors alter their authority. The second group examines how those relationships and interactions affect governance outcomes. Put differently, the essays examine first how global governors' conflict or cooperation with states, NGOs, IOs, or private actors may lead to the creation of a new governor or alter the deference a governor commands. Second they look at how the conflict, tensions, or cooperation between governors may affect the outcome of their governance efforts.

Since *Who Governs the Globe?* is a collection of essays, and not a work by a single author, global governance is addressed from a number of perspectives. The authors of the eleven essays discuss issues as disparate as governance within the European Union, small-arms regulation, corporations in conflict zones, and the Millennium Development Goals. They use a number of different theoretical frameworks. For example, Tamar Gutner, in her discussion of the IMF's attempts to aid in the achievement of the Millennium Development Goals, uses principal-agent theory. Aseem Prakash and Matthew Potoski approach the ISO 14001 regime, an organization and management standard aimed at improving a company's impact on the environment, from a club theory perspective. Abraham L. Newman examines delegation to IOs using the trans-governmental theory developed by Robert O. Koehane and Joseph Nye. This diversity of topics and approaches not only reinforces the complexity and number of international regimes, but also demonstrates the flexibility of a relationships-based framework. Of course, the diversity exhibited by the authors may also serve to demonstrate that the authors' "framework" may be more of a "research agenda."

While the authors do not address it specifically, the volume shares much with the Global Administrative Law (GAL) approach to the study of international law, and GAL provides a useful point of comparison. Generally speaking, GAL proposes that an increasingly diverse set of transnational actors engage in regulation that blurs the traditional boundary between national and international. Proponents of GAL argue these actors should be governed according to the principles that govern domestic administrative law. Thus, GAL and the volume's framework mirror each other in their focus on regulation that sometimes transcends borders, their study of non-state actors, and their emphasis on a lack of hierarchy. *Who*

Governs the Globe? serves as a complement to GAL. In the same way that domestic administrative law focuses on the procedures and processes administrative bodies must follow, while the political science literature examines the ways in which actors within the administrative systems interact, GAL focuses on the legal processes and the procedures that international bodies and actors follow, while this volume examines their behavior.

For example, Koehane, Stephen Macedo, and Andrew Moravcsik in their Institute for International Law and Justice (IILJ) Working Paper, "Democracy Enhancing Multilateralism," suggest that global governance may be seen as legitimate because the bodies are not subject to the same danger of capture as domestic administrative agencies. Clifford Bob's "Packing Heat: Pro-Gun Groups and the Governance of Small Arms," however, suggests otherwise. Specifically, the article points out that, during the 2001 U.N. Conference on the Illicit Trade in Small Arms and Light Weapons in all Its Aspects, numerous pro-gun NGOs exercised significant pressure, particularly on the U.S. delegation. This might suggest that the global administrative space and those bodies that work within it are not immune to capture. At the same time, the NGO pressure that Bob outlines reinforces the goal of GAL: to import the procedural checks, notice, comment, and other fairness mechanisms that are present in domestic administrative law.

R. Charli Carpenter's "Governing the Global Agenda: 'Gatekeepers' and 'Issue Adoption' in Transnational Advocacy Networks" is also worth mentioning for its discussion of the powerful "gatekeeping" role that some global governors play. By choosing to endorse or not to endorse an emerging issue, certain governors effectively choose which issues will receive policy attention by states. As an example, Carpenter cites UNICEF's decision not to add "children-born-of-war" to its portfolio of children's rights concerns, effectively burying the issue. In focusing on this area, she accomplishes three things. First, she draws attention to the existence of international "dogs that didn't bark," i.e., issues that, while arguably pressing, have not been endorsed by gatekeeping IOs and NGOs. Second, her description of gatekeeping highlights the interaction between agenda-setting governors. Carpenter points out that, while instrumental accounts cannot fully explain

gatekeeping, there is a level of competition in the practice. Agenda-setting serves an instrumental function for governors, who can gain prestige and reinforce their authority by effectively choosing which issues to endorse. Third, she emphasizes the level of informal power many non-state actors possess—power exercised outside the reins of legal process and procedure. This last point is key; one of this volume's strengths is that, unlike GAL, it tries to account for informal, unofficial behavior that has an impact on governance outcomes.

Newman's "International Organization Control Under Dual Delegation" presents another intersection with Global Administrative Law. As GAL scholars have emphasized, elements of governance increasingly have been shifted from national to supranational actors. Newman ties this phenomenon with the continued delegation by national governments to domestic administrative bodies. Such bodies, he argues, often exist in a state of "dual-delegation" as they are assigned both to monitor the activities of international actors to whom governance functions have been shifted and to carry out functions that have been shifted to international actors. In this situation, the sub-state administrative actors' roles vary significantly depending on their own preferences, as well as those of the state and the international body. Newman draws two conclusions. First, these sub-state bodies may inject under-represented views into the debate as a result of their independent preferences. Second, the alignment of the three sets of preferences may have a significant impact on the dynamics of global governance.

On one hand, this volume is helpful in correcting myopia among those studying the international stage from a traditional or Global Administrative Law standpoint. On the other hand, the book suffers from its own myopia. For the most part, the volume ignores the effect international law has on international actors. Many global governors are creatures of treaty and subject to procedural guidelines and treaty-created constraints that have a real effect on their behavior. Indeed, procedures are often intended to control administrative bodies. Similarly, treaties often constrain international actors deliberately. Relationships between governors matter, but so do the constitutive and governing laws. Even when they are not *created* by treaty, global governors are certainly subject to international and domestic law. They are subject to standing re-

quirements for international courts and tribunals, are excluded from participating in the actual negotiation of treaties, and may have to comply with a number of domestic regulations, all of which will influence their behavior.

Furthermore, as mentioned above, the framework that the volume purports to put forth may be too vague to be an actual framework. The editors, in their introduction and conclusion, describe their framework as focusing on relationships between global governors, how their "tensions and synergies" affect their authority, and their governance outcomes. All of the essays focus on the relationships between governors, but the wide variety of ways in which they do so means that it is not entirely clear, at times, how relationship-based analysis works as an analytical framework. The editors seem aware of this and confess, in the conclusion, that it is "better understood as a problem-solving tool."

Neither of these problems constitutes a serious weakness in the content of the volume, or of the relationships-based perspective on global governance, whether it is regarded as a framework, problem-solving tool, or research project. The volume provides an interesting complement to the Global Administrative Law approach. In some cases it reinforces the normative claims made by GAL that notice, comment, and procedural checks are necessary in global governance. However, by focusing on the informal and political activities in which global actors engage, the volume is able to provide a better descriptive account of some aspects of global governor behavior. This is important. As global institutions increase in number and importance, it will become essential to understand how they function, in addition to understanding how we would like them to function.

The Role of International Law in Rebuilding Societies After Conflict: Great Expectations. Edited by Brett Bowden, Hilary Charlesworth, and Jeremy Farrall. New York, New York: Cambridge University Press, 2009. Pp. xvi, 330. $117.00 (hardcover).

REVIEWED BY ELI CORIN

The Role of International Law in Rebuilding Societies After Conflict: Great Expectations, the result of a conference held in 2007

at the Australian National University, is an important and comprehensive look at the various roles the international community plays in the rehabilitation of post-conflict states. The contributing authors—international law scholars based in Australia, North America, and Europe—address different aspects of international law and draw from experiences with a variety of post-conflict situations. However, a common theme emerges: external actors cannot resolve post-conflict problems by applying principles of international law without understanding local political dynamics and without collaborating with the local community to achieve common goals.

As the editors note in the introduction, outsider-led attempts at "state-building" in post-conflict states have become relatively common. Examples include not only the controversial U.S.-led engagements in Afghanistan and Iraq, but also direct rule by U.N. bodies in Timor-Leste and Kosovo. Outsiders have also played major roles in attempting to reestablish stability and governance in Bosnia-Herzegovina, the Democratic Republic of the Congo, Haiti, Sierra Leone, and the Solomon Islands, among others. According to the editors, however, such external intervention has never been clearly successful. This raises serious questions about the assumption that the international community can resolve conflict in societies by establishing democracy, requiring recognition of human rights, using international tribunals to ensure justice, and enforcing other international norms. The editors point out that, with the exception of the field of transitional justice, the role of international law in rebuilding societies has been neglected. The authors of the eleven chapters and conclusion that follow go far toward filling this gap.

The initial chapters identify and challenge the international community's approaches toward post-conflict societies. Outi Korhonen powerfully argues that the concept of state-building as an answer to conflict is flawed because the "state" as a concept has inherent weaknesses, such as excessive rigidity, formality, and an emphasis on stability that discourages true political dialogue. All of these weaknesses are more likely to reignite conflict than to resolve it. State-builders, limited in time and resources, emphasize "institutional stabilization" over politically sustainable solutions.

Nehal Bhuta attacks the concept of "politics as technology," the assumption that given enough knowledge about a

particular problem in a society, a political solution can be devised. The technological model of politics disregards historical differences between political or social units and justifies imperialist intervention on the basis of expertise. Furthermore, the knowledge used to justify intervention is not objective, but rather reflects historical experiences of the interventionists. Thus, modern Western state-builders define the problems post-conflict societies face not in terms of the particular circumstances, but rather as a general lack of democracy and good governance. They then try to solve the problems by imposing democracy and mandating behavior they equate with good governance.

The authors of the remaining chapters rely on case studies to present consistently sophisticated analyses of various aspects of international law after conflicts. Peter G. Danchin uses the U.S.-led intervention in Iraq to demonstrate two contradictory models of international law: "legal formalism," under which international law facilitates peaceful coexistence among states with different domestic political orders, and "instrumental anti-pluralism," under which international law is a tool to promote international norms. His discussion of *occupatio bellica*, the law of occupation, raises interesting and difficult questions, such as to what extent an occupying power can require human rights be respected within the occupied territory.

William Maley uses the context of politics in Afghanistan to discuss the legitimacy of post-conflict governments, and he notes that the international community's expectations for post-conflict political leaders can clash with the domestic society's governance expectations. For example, democratic elections may be seen as desirable by the international community, but may be counterproductive for a society that needs reconciliation rather than political competition. The contrast between "external legitimacy" and "internal legitimacy" is a common theme in several other chapters, including Helen Durham's chapter on the role of treaty ratification in post-conflict states and Phil Clark's examination of the roles of international criminal tribunals in the Great Lakes region of Africa. Durham argues that while rapid ratification of multilateral treaties can help a post-conflict government earn external legitimacy from international donors, a more measured approach—whereby a government utilizes the ratification process to engage the local community on the principles and obli-

gations of a particular treaty regime—would be more beneficial. Clark's chapter demonstrates that international tribunals are likely to fail in their efforts to bring justice and reconciliation to post-conflict situations if they do not cultivate internal legitimacy by communicating with the local population about the tribunals' role in the post-conflict recovery process.

Several authors criticize particular aspects of the U.N.'s role in post-conflict societies. Jeremy Farrall examines how the U.N. has seized upon an abstract concept—rule of law—but has had limited success transforming it into a blueprint for post-conflict stability. The U.N. example corresponds nicely with Bhuta's warning about the technological model of politics. Annemarie Devereaux raises credible allegations that the U.N. regularly violates human rights—examples include sexual exploitation by U.N. peacekeepers, excessive restrictions in UNHCR refugee camps, and violative decisions made by U.N. transitional administrations in post-conflict territories. She argues that international law does not articulate how the U.N. can be made accountable. Devereaux's argument that the issue needs to be addressed is convincing, and her suggested solutions, including a statement by the U.N. Secretary General binding the organization to specific human rights norms, a mechanism for victims of human rights abuses by U.N. agents to seek remedies, and further development of jurisprudence on international organizations, are sensible approaches.

In her chapter on how international law can ensure women's security in post-conflict societies, Amy Maguire easily expresses the most optimism among the contributors about the potential role of international actors. Maguire argues that post-conflict efforts to rebuild societies should be based on the concept of "human security," measures to ensure quality of life, rather than "state security," an emphasis on state borders, and suppression of violent conflict. This message is consistent with arguments by other contributing authors that the international community should focus on the problems a particular post-conflict community is facing, rather than on institutional state-building. However, Maguire's support for a *transformative* role for international law—that is, promoting international women's rights norms by encouraging domestic political processes that incorporate women's views and discouraging discriminatory domestic processes—contrasts with the more

pessimistic message about the limits of international law that runs throughout the rest of the book.

One important question not addressed in the book is the role of international law and international actors in *ending* conflict. Few of the case studies presented by the editors examine situations where security remains a principal concern, and those that do, including Maley's chapter on Afghanistan and Clark's examination of the International Criminal Court's activities in the Democratic Republic of Congo, do not directly address the ongoing conflicts. The nature of a conflict and the way it is brought to an end can have important implications for the role of external actors in the post-conflict stage. Further, there are a growing number of examples, including Afghanistan, where efforts to develop a stable and responsive government take place *concurrently* with armed conflict. The role of international law in regulating the conflict cannot be separated from its role in preparing for a post-conflict situation on the same territory.

Throughout the book, the editors and contributing authors deliver what the subtitle, "Great Expectations," promises—a sense that international law will usually fail to contribute meaningfully to the difficult process of rehabilitating post-conflict societies. Several authors do make attempts to outline how international law can make positive contributions, notably Durham on the role of IHL treaties and Maguire on using law to ensure women's security in post-conflict societies. Other authors have little more to offer than warnings for international actors who intervene, invited or not, in post-conflict societies. Perhaps the editors could have encouraged contributing authors to suggest more concrete solutions to the identified shortcomings in external actors' efforts in post-conflict societies, or they could have solicited more contributions on areas of international law that show promise in preventing further conflict.

One of the most prominent themes in international law—how to address threats to international peace and security—certainly justifies a role for international law in ending conflicts and assisting post-conflict societies to ensure they do not return to conflict. *The Role of International Law in Rebuilding Societies After Conflict* is an excellent source for understanding this role, its potential contributions, and, especially, its short-

comings. Hopefully this book will serve as a challenge to other scholars to further develop this important field.

Lincoln on Trial: Southern Civilians and the Law of War. By Burrus M. Carnahan. Lexington, Kentucky: University of Kentucky Press, 2010. Pp. 168. $30.00 (hardcover).

Reviewed by Sailaja Paidipaty

In the aftermath of the fall of Saddam Hussein's regime, then U.S. Deputy Defense Secretary Paul Wolfowitz announced that nations who failed to support the United States' war effort in Iraq would be prevented from bidding on contracts for reconstruction projects. When outraged nations, such as France and Germany, argued that this unilateral bar comprised a violation of international law, President George W. Bush notably responded, "International law? I better call my lawyer. He didn't bring that up to me." The Bush administration's "war on terror" has reignited debates over the legitimacy of international law, in light of historical tendencies for "victor's justice" to obscure legal violations by the winning sides of armed conflict. No Allied soldiers were tried at Nuremburg, and to this day prison guards at Abu Ghraib and Guantanamo have not faced international criminal censure.

Historians, however, have been quick to assert that this trend pre-dates modern warfare, taking aim at President Abraham Lincoln. Arguing that Union soldiers during the Civil War violated the laws of armed conflict, these scholars have set their sights on one of the most revered figures in U.S. history to expose an underlying hypocrisy in the ex-post assessment of war crimes. In his latest book, *Lincoln on Trial: Southern Civilians & the Law of War*, Burrus Carnahan comes to Lincoln's defense, contextualizing the debate by exploring a range of decisions faced by Lincoln and illustrating the overall complexity that results from applying international law to a civil war. Concluding that Lincoln did not violate international standards with regard to the treatment of civilians, Carnahan dismisses the rest of Lincoln's actions as done in the name of military necessity—a conclusion some readers may find deserves more in-depth treatment, but which Carnahan supports through citations to the body of law at the time.

As with his first book on the former president, *Act of Justice: Lincoln's Emancipation Proclamation and the Law of War*, Carnahan presents Lincoln as a strategist and realist who used the tools available to champion a greater good. Not fully Machiavellian, Carnahan's depiction of Lincoln presents the former president as a man unwilling to use *any* means to preserve the Union. For example, Lincoln was a staunch opponent of retaliatory killings or property destruction out of pure revenge, but fairly generous in his definition of military necessity, the overriding legal norm in armed conflict at the time. From the outset, Carnahan aptly warns against applying contemporary laws of war and anachronistic standards to the Civil War. He successfully limits the narrative to law as it existed in the 1850s, which he expertly explains. Arranged topically, Carnahan explores the difficulties in applying international law to a domestic civil war, the seizure and destruction of civilian property, retaliatory acts and guerrilla warfare, command responsibility, and personal injury to civilians.

The first chapter of *Lincoln at Trial* lays out two of the overriding themes in Carnahan's assessment: first, the difficulty in applying laws of international armed conflict to an internal affair; and second, once international law was applied, the tension between avoiding unqualified cruelty in the methods of war, and taking actions in the name of military necessity. For Lincoln, applying international war standards meant implicitly recognizing the Confederate South as a sovereign entity, a position in direct conflict with the Union's view that secession was patently illegal. Over time, however, Lincoln realized that he had no choice but to acknowledge certain aspects of international law within the context of the Civil War. For example, to prevent Southern ports from receiving goods from foreign nations to assist the South's war effort, the Union initiated a blockade—an action which required the respect of neutral nations, and therefore admitted the legitimacy of the Confederacy not merely as domestic insurgents, but as belligerents who fell in part under the auspices of international legal protection. Further, as the war raged on, questions arose concerning the treatment of prisoners of war (POWs). Should they be tried for treason as domestic citizens? How should property of the Southern army be treated? If Southerners (even those engaged in combat) were still technically U.S. citizens, then the Union could not take their land without just

compensation as proscribed by the Fifth Amendment. In fact, Carnahan explains that the Supreme Court in *Mitchell v. Harmony* held that private property taken from a Southern citizen could not be confiscated, even during war. In another decision, *United States v. Brown*, the Supreme Court conceded that "war gives to the sovereign full right to take the persons and confiscate the property of the enemy." Once more, then, the underlying question remained—what laws pertained to Southern combatants and Southern citizens? Carnahan readily admits that this remains somewhat unclear. This nebulousness reflects not a fault on the author's part, but is rather an honest depiction of the confusion surrounding the proper applicable law.

Carnahan next moves to an explanation of what will become the guiding doctrine regarding Civil War combat, namely the doctrine of military necessity. In an attempt to provide clear guidance to Union soldiers, Dr. Francis Lieber, a professor at Columbia College at that time, was commissioned to draft a summary of the rules and customs of war at the time. Labeled "the Lieber Code," this document influenced the status of international law for generations, becoming the basis for the 1899 Hague Regulations on Land Warfare. The Code stated that "military necessity does not admit of cruelty . . . [and] suffering for the sake of suffering," but if a rational connection existed between an act of war and the defeat of the enemy, then military necessity justified the action. As the chapters proceed, Carnahan illustrates the application of the Lieber Code to confiscation of civilian property and the devastation of land (an accepted European military strategy of "laying waste to the countryside to impair an enemy's advance"). Nearly anything can be shown to have a reasonable connection to the war effort, from looting civilian homes in search of food for Union soldiers to the shelling of Atlanta during Sherman's infamous "March to the Sea." Carnahan's detailed research successfully shows the malleability of doctrine, and he provides a broad range of decisions that cited military necessity as their justification.

Further, while the Lieber Code admonished cruelty for cruelty's sake, it did in stark situations permit retaliatory killings of both civilians and prisoners of war. If the South executed Northern POWs, the Union army would execute an equal number of Confederate POWs. Throughout this analy-

sis of military necessity, Carnahan takes great pains to stress Lincoln's inner turmoil over what he was legally allowed to do, and what he personally felt may be pushing moral limits. Ultimately, Carnahan writes, "To restore the Union, President Lincoln would tolerate strong measures that brought injustice to some white civilians because he was convinced that these measures placed the rebellion on the course of ultimate defeat." Here, Carnahan's defense of Lincoln seems somewhat weak, if not acquiescent, in admitting that Lincoln and the doctrine of military necessity allow for a degree of blatant injustice without addressing alternatives or the lack thereof. Carnahan seems so concerned with showing Lincoln's actions to be technically legal that he does not address the more morally troubling aspects of military necessity. Just because an official *can* take an action does not necessarily mean that they *should*, and inherently such a normative judgment is inescapable when assessing historical figures. This type of analysis could still have been successfully addressed within the context and pressures of the time, and could have resulted in a more robust portrait of Lincoln and the decisions he faced.

Overall, Carnahan presents a well-researched, succinct view of the complexity of international norms during the Civil War. Readers seeking an overview of Lincoln's decisions, and an easy to understand explanation of the laws of war in the 1800s will be well served by reading Carnahan's short analysis. The book, however, does fall short with regard to presenting more than a basic inquiry into Lincoln's decisions and the state of international law at the time. Though Carnahan makes a passing reference to European nations' wartime actions, further comparative analysis would have assisted the reader in making a more thorough assessment of the bounds, or lack thereof, of the doctrine of military necessity. While Carnahan illustrates how flexibly this doctrine was used during the Civil War, he fails to present fully either comparable or contrasting actions taken by other nations, so as to place Lincoln's actions within a greater context.

In addition, the book's succinctness, while one of its strengths, proves also to be a weakness. At times the narrative seems rushed, and the reader is barraged by fact after fact. Furthermore, while the book's topical approach very clearly illustrates the myriad legal questions Lincoln faced, the chronology of the war becomes lost on the reader. One can easily

miss the gradual unfolding of legal doctrine as a result of successive important events through the course of the war.

Lastly, while Carnahan successfully stays within the bounds of the laws of war during the 1800s and remains focused on "the trial of Lincoln," he misses the opportunity to extrapolate broader implications regarding the application of humanitarian law to domestic conflicts, and the position of heads of state. The questions faced by Lincoln in no way were unique to him or to the time period. How was international law dealt with during the American Revolution? Presumably the British were placed in a situation similar to Lincoln and Union forces. The applicability of international law to internal armed conflicts was tested again almost 150 years after the end of the Civil War, during the dissolution of the former Yugoslavia. The question of attacks on civilians now dominates the news with the increasing drone attacks on Afghanistan. Carnahan's defense of Lincoln would be strengthened by illustrating the continued lack of consensus on key issues of international humanitarian law. These debates remain salient in the modern geopolitical sphere, and while Carnahan ensures that Lincoln will not be judged according to modern standards, analogies to the present day would enrich the reader's understanding of the tensions at play.

For anyone desiring a general survey regarding Lincoln's decisions and the state of international law in the 1860's, *Lincoln on Trial* presents a fair, well-researched, and accessible narrative. For those craving a deeper, more nuanced analysis, Carnahan's book serves as a strong first step in understanding the issues, but in and of itself is not a thorough treatment of the topic.

Moral Dilemmas of Modern War: Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict. By Michael L. Gross. New York: Cambridge University Press, 2010. Pp. xi, 321. $27.99 (paperback).

Reviewed by John Senior

Whom do you bomb when you cannot reach military targets? The reflexive answer, and the one espoused by most of the international community, is "no one." After all, the Geneva Conventions are accepted by every state on the planet,

and they are clear on the issue: civilians may not be targeted. Even if we accept that the rule is sometimes broken, we at least know what the rule is—or do we?

Michael Gross poses this question in *Moral Dilemmas of Modern War: Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict*. He analyzes the law of war in different types of asymmetric conflict and discusses technologies and practices that violate traditional norms, but which may, he argues, be contributing to a modern law of asymmetric conflict. Gross does an excellent job of illustrating the difficult choices faced by commanders in the field, and provides a useful survey of areas in which the law of armed conflict comes under pressure in asymmetric war. He ultimately goes beyond describing state practice to advocate a new normative approach to asymmetric armed conflict in which lowered protections for civilians will enhance reciprocity and ensure both sides a "fighting chance."

This disturbing conclusion takes root from Gross's unique moral framework. He analyzes practices in asymmetric war against four standards he considers paramount: necessity, humanitarianism, just cause, and the right to a fighting chance. The principles of necessity and humanitarianism he distills from international humanitarian law. The more novel norms he adds come from quite different sources. Gross's rationale for resurrecting St. Thomas Aquinas's principle of just cause is not entirely clear: he admits that the benefits soldiers enjoy under the contemporary law of armed conflict cannot comport with a theory of just cause, and that objective just cause is nearly impossible to establish. Yet he asserts the applicability of such a norm to asymmetric conflict by convoluted analogy to wars of humanitarian intervention. Gross's final element, the right to a fighting chance, is drawn from the words of the Marxist legal scholar Charles Charmont, in a note appended to the commentary on Article 44 of Additional Protocol I to the Geneva Conventions.

In addition to adding historic—and novel—benchmarks to our contemporary consideration of the morality of force, Gross also proposes that we reconsider the immunity and moral responsibility of civilians. Gross tells us that asymmetric conflict is subject to "creeping criminalization" as forces trade accusations of aggression, genocide, or occupation. Rather than fight this trend, Gross embraces and expands it: since the

lack of uniforms makes civilian/combatant distinctions difficult, Gross suggests that civilians should be considered vulnerable to attack consistent with their level of participation in the war effort. The language he uses in making this suggestion contains shades of moral condemnation: he uses "responsibility," "guilt," and "liability" interchangeably with the more traditional concept of civilian "participation."

Gross leads into his discussion of banned tactics in war by discussing the way in which the motivating principles of humanitarian law play out in relation to the weapons of war. He presents the international community's decisions to ban certain weapons, including chemical weapons, as paradoxes, illustrating how the broader purposes of humanitarian law are not always served by taking weapons off the table. Gross explains how concern over unnecessary harm, unnecessary suffering and permanent disfigurement led nations to ban weapons such as blinding lasers and exploding bullets, even as he makes a humanitarian case for challenging norms that prohibit the deployment of chemical weapons on the battlefield. The decision to treat banned conventional weapons and banned chemical weapons separately seems intuitive, but necessarily leads the author to bundle together weapons that are subject to different levels of legal constraint. Another legal quibble applies to the author's interpretation of the Russian use of calmative gas to thwart a terrorist hostage-taking in 2002. From the lack of uproar over this event—which despite taking place in Moscow, arguably pertained to a Russian-Chechen armed conflict—Gross asserts that the international community has acquiesced to the use of similar gas weapons in war, and that a new treaty codifying this development cannot be far behind. Time will tell whether this prediction comes to pass, but the lack of supporting analysis makes it seem like wishful thinking on the author's part. From the point of view of international law, it is eminently debatable whether the Moscow incident established a precedent that could be stretched to the battlefield.

Gross's treatment of assassination, torture, and blackmail (his word for targeting civilians) is framed as a set of dilemmas in which attempts to follow the law of war lead commanders on both sides of asymmetric conflict to untenable results. Gross outlines patterns of norm violation by states and other parties, and he argues that traditional norms should be re-

laxed in order to restore symmetry to asymmetric war by permitting increased use of targeted killing, torture, and civilian targeting.

Unfortunately, Gross's strongest argument is his case for targeted killing—a practice that is not actually banned by the law of war. Gross strains to make it fit his model—he argues that the law of armed conflict "decries" the practice, even though the Geneva Conventions do not mention it. Ultimately, Gross has to look back 150 years to the Civil War-era Lieber Code to find a prohibition. He focuses on language in Lieber suggesting that assassination criminalizes soldiers, but he ignores the fact that in Lieber's time, anyone close enough to accomplish an assassination would be close enough to capture the target as a prisoner of war, making assassination a *per se* excessive use of force. The same logic does not apply to the modern use of precision weapons in theaters where traditional forces cannot operate, and the reader is not surprised when Gross concludes that the demands of military necessity and avoiding civilian deaths make targeted killing defensible.

Gross's case for interrogational torture faces a much stronger opponent in the legal regime of the Convention Against Torture. His argument here is one of balancing: if enhanced interrogation can yield any information (not necessarily of the ticking time-bomb variety) that will prevent civilian deaths, torture is the lesser evil and should be used. Governments can limit the implications of these exceptions by restricting torture's application to unlawful combatants, Gross tells us, reassuring us that this line "does stand firm in a democracy." Gross arrives at this conclusion despite the contrary implications of his two main examples—the practices of Israel and the United States. In the case of Israel, Gross contradicts himself with respect to categories. Elsewhere in the book, he describes Palestinian forces as privileged belligerents (and potentially war criminals if they violate the laws of war), but he refers to them here as unlawful combatants to justify their torture. Moreover, Gross describes how the Israeli High Court of Justice's well-known opinion on torture has been essentially disregarded by Israeli security services, giving us little hope that democratic processes can effectively police the lines that Gross is advocating. By looping United States practice into his analysis, Gross undersells the extent to which U.S. democratic practice has repudiated torture, from the ballot box to E.O.

13491, and ignores extensive evidence that many in the U.S. government and civil society believed American practices of torture and rendition represented violations of a valid norm rather than building blocks of a new one.

This analysis brings us to the ultimate question: whom do we bomb when we run out of military targets? Gross's arguments culminate in a call for a reassessment of the role of civilians in asymmetric armed conflict: it may be impossible for either side to win an asymmetric conflict, he argues, without targeting civilians. After lengthy analysis, he argues that the only way to restore reciprocity to laws governing asymmetric war, while vindicating each side's right to a fighting chance, is by expanding the range of permissible targets to include civilian targets related to military capabilities (including financial institutions, media, and others). Whether or not one agrees with Gross here may depend largely on the importance one ascribes to the "right to a fighting chance." Gross's application of this norm is certainly open to question. M. Charmont's original reference to an "equal chance" in the commentary to Additional Protocol I must be understood as referring to Article 44 (which recognizes that guerillas may remain combatants despite not always wearing uniforms), and in the context of alternative approaches. To require guerillas in wars of national liberation to wear uniforms would effectively pick a winner by favoring colonial forces. Charmont therefore favored a rule design that limited state power to try guerillas as war criminals for failure to wear a uniform. By avoiding picking a winner, this approach furthered humanitarian ends by encouraging both sides to abide by the laws of war. Gross turns this logic on its head—in his hands, the right to a fighting chance constrains the application of humanitarian norms rather than the use of state power, leaving us with an expanding universe of permissible targets and a shrinking notion of civilian immunity.

Overall, Gross's book would have been far stronger had it limited itself to the identification of moral dilemmas in the Palestinian-Israeli conflict. The book's ambition to achieve worldwide relevance is not matched by the scope of its analysis—it focuses overwhelmingly on Israel's recent wars and practices, with far less analysis paid to the asymmetric conflicts of the United States. Other asymmetric wars—Russia's conflicts in the Caucasus, the Sri Lanka-LTTE conflict, southern

Thailand, the Ogaden, etc.—make only guest appearances, or are not mentioned at all.

More importantly, Gross's leap from identifying dilemmas to recommending new normative approaches relies on strained analyses and questionable normative goals. In the cases of toxic gas, assassination, and torture, Gross labors to make his evidence fit into a framework of norm violation and new norm formation, despite convincing evidence to the contrary. In these cases, as in the case of civilian targeting, the reader may justly wonder: why? Why, in questionable cases, should we come down on the side of licensing poison gas, of permitting torture, or of elevating the right to fight above the right to protection?

Even if we accept Gross's new norms, he utterly fails to explain how they can be policed. No line is drawn between asymmetric and conventional war, for example. If war were to break out between the United States and Mexico, would that be a conventional war, governed by conventional law? Or would the asymmetry in military capabilities take us down a slippery slope to eroded protections and civilian targeting? Gross offers no answer. What is more, Gross's justification for targeting "associated civilians" who help finance the war effort comes dangerously close to al Qaeda's justification for its attack on the World Trade Center. Gross would deny international terror networks the benefit of his analysis because they lack a "just cause." But as Gross elsewhere suggests, objective analysis of another belligerent's just cause is impossible. In the midst of a book describing moral dilemmas, the use of this anachronistic standard as a limiting device seems arbitrary and simplistic.

Moral Dilemmas of Modern War takes the reader on a long, messy slide down a dangerous slope, and ends with an invitation for the world to rally around Israeli-Palestinian rules as new standards for asymmetric conflict. The rest of the world may be forgiven for thinking it can do better.

Our Nation Unhinged: The Human Consequences of the War on Terror. By Peter Jan Honigsberg. Berkeley, California: University of California Press, 2009. Pp. xix, 311. $27.50 (hardcover)

Reviewed by Valerie Brender

José Padilla is dressed in an orange jumpsuit and is wearing black-out goggles and sound-proof headphones. He is flanked by two guards dressed in riot gear; he appears numb and submissive. José Padilla is en route to the dentist.

Peter Jan Honigsberg's opening image of one of the War on Terror's most notorious detainees clearly captures the mood of his book, *Our Nation Unhinged: The Human Consequences of the War on Terror.* This is a story about people—post 9/11 detainees—and the fight between the Bush administration and the courts to determine the rights and humanity they would be afforded. Honigsberg delicately shifts between the changing legal theories used to justify the administration's actions and the narratives of those subjected to the administration's detention and interrogation techniques. In doing so, he unifies the personal stories of detainees with the lawsuits filed on their behalf to create a concrete image of the costs of circumventing the Constitution and the ideals upon which it was based. Honigsberg alludes to his main thesis throughout the book, and it finally becomes manifest in the final chapter on lawful detention in America: could the Bush administration have waged the War on Terror just as effectively while honoring the Geneva Conventions and the criminal justice system? The stories Honigsberg provides to support this proposition lead the reader to want to answer this question with an unequivocal "yes."

In Part One, Honigsberg launches into the legal framework used to justify the detention and treatment of hundreds of detainees. For those who continue to follow the justifications given for the detention and interrogation tactics used in Guantanamo and Bagram, this story will sound familiar. The Bush administration created a new term—enemy combatant—that conveniently fit nowhere within the Geneva Convention framework. This allowed the administration to hold detainees indefinitely, without a hearing, and escape the Geneva Conventions' mandate that all detainees be treated humanely.

Further supporting the administration's techniques, the Office of Legal Council's torture memos defined torture so narrowly that John Yoo, one of the drafters, claimed torture only constitutes actions resulting in organ failure or death. Even after the memos were withdrawn in 2004, harsh interrogation techniques continued.

Part Two then expounds on one of the central questions surrounding detention in the War on Terror, which also became a central fight in detainee lawsuits: where did the executive-authorized detentions fall on Justice Jackson's *Youngstown Steel* spectrum of presidential power? The Constitution, statutes, and treaties all prohibit cruel treatment and torture. However, the Office of Legal Counsel claimed that under Article II, the President was asserting his power as Commander-in-Chief. Honigsberg believes that under *Youngstown Steel*, the administration was operating at its lowest ebb of sanctioned power. He shows how the administration gradually lost its claims through detainee cases appealed to the Supreme Court. The legal story that ensues is one that has become well known in the legal profession and the popular press. Honigsberg reminds the reader of the tireless fights over legal arguments. He also adds context and anecdotes that will likely surprise even those who have followed the issue closely.

In Part Three of the book, Honigsberg begins to highlight the major detainee cases the Supreme Court has handed down. The first of these cases was *Rasul v. Bush*, which came down in 2004. Here, the Court held that detainees have a *statutory* right to file habeas corpus actions to contest their detention without charges. For Honigsberg, this case was particularly significant in its attempt to humanize the detainees. Honigsberg details the litigation strategy of one attorney who argued the case, Thomas Wilner, and how Wilner poignantly showed that a Cuban iguana had more rights than the detainees. When a Cuban iguana passed from Cuba into Guantanamo, it was protected by the Endangered Species Act. The government, however, claimed that the Guantanamo detainees had no similar U.S. statutory rights, despite being human.

The administration responded to *Rasul* and its sister case, *Hamdi v. Rumsfeld*, with the Combatant Status Review Tribunals (CSRT). Honigsberg highlights the CSRTs as an example of the administration's depressingly ironic attempt to show that they were giving the detainees "due process." The reader

learns that detainees were not permitted to have a lawyer; instead they were assigned a "personal representative" provided by the military. The CSRTs allowed hearsay, information acquired by torture, and classified information that often came from anonymous sources. Detainees were not allowed to rebut classified information since they had no clearance to view it. Honigsberg presents disturbing statistics to underscore the bias of the CSRTs. Of the 558 detainees who went through this process, only thirty-eight were deemed not to be enemy combatants. Those 38 underwent "do-over" proceedings in Washington, D.C., that resulted in a reinstatement of their enemy combatant status. The Detainee Treatment Act (DTA), which was passed in 2005, gave the Court of Appeals for the D.C. Circuit only limited review of the CSRTs. In addition, the DTA attempted to deny detainees their statutory right to *habeas corpus*, which they had won under *Rasul*.

Part Three continues its march through Supreme Court litigation and emphasizes along the way the hypocrisy Honigsberg believes the administration promoted. In 2006, the Supreme Court decided *Hamdan v. Rumsfeld*, which declared that the DTA did not apply retroactively. The administration responded with the Military Commission Act in 2006, which attempted to strip entirely the detainees of their statutory right to habeas corpus, and which reaffirmed detainees had no rights under the Geneva Conventions. The battle for habeas corpus rights reached a crescendo in *Boumediene v. Bush*, where the Supreme Court, in a serious rebuke to the administration, declared that detainees had a constitutional right to *habeas corpus*. *Boumediene* unfolds theatrically as Honigsberg describes the stakes surrounding the case. If the lawyers lost *Boumediene*, detainees' rights to *habeas corpus* might be foreclosed permanently.

Juxtaposed with the energy and tension in the courts is the pain, despair, and hopelessness that detainees endured daily. It is in these narratives that Honisberg's book shines. One such story is that of Majid Khan, who immigrated to the United States from Pakistan when he was sixteen. When he traveled to Pakistan to marry, Pakistani police seized him and turned him over to the CIA. In his CSRT, which included classified information he could not review, he asked his reviewing board a particularly heartfelt question: "I need to ask you. Let's just say someone claims that the Board Members are

themselves al-Qaeda. And if you were—if you were in my shoes, I would like to know how you can prove it, that you yourself are not al-Qaeda? And if you can't, then I can't either."

Despite the book's sobering subject matter, Honisberg manages to highlight the humor and irony that sometimes surrounded otherwise devastating circumstances. For example, he includes an amusing letter exchange between Clive Stafford Smith, an attorney representing Guantanamo detainees in their *habeas* claims, and the Joint Task Force Guantanamo. The Joint Task Force implied that Stafford Smith might have smuggled Under Armor briefs and Speedo swimsuits to his clients. Stafford wryly replied that he had not seen his client in over a year, and he cannot imagine what his client would do with a Speedo swimsuit, since he had no access to large bodies of water—that is, unless the Task Force thought his client was trying to swim in his toilet.

One danger in writing a book that attempts to detail the legal trajectory of a contemporary issue is that it risks becoming immediately dated. Since Honigsberg published his book, the D.C. Circuit decided in *Maqaleh v. Gates* that while the constitutional right to habeas corpus applies to Guantanamo, which is under the de facto control of the United States, it does not reach to Bagram, which is located in an active theater of war. Undoubtedly, other decisions and events will date this book further. However, Honigsberg's goal is to explain the lawsuits clearly and to humanize the battles that blanketed the frontline news as those events had unfolded up to the date of publication. Honigsberg's book, therefore, will remain relevant, despite future developments in the law.

Insomuch as Honigsberg's goal is to situate the lives of the detainees within the appeals surrounding them, he achieves his goal marvelously. Although he occasionally coats the *habeas corpus* attorneys with excessive praise, his narratives leave no doubt that the attorneys involved were obstinate and courageous—characteristics necessary to weather the onslaught from the administration, military, and public. Perhaps more importantly, Honigsberg's book makes the human cost of indefinite detentions and detainee treatment impossible to ignore. The book stands as a sobering reminder that behind the court battles and press, there were people who were tortured—some innocent, others not—whom the United States

and the international legal systems should have protected from the horrors they suffered. *Our Nation Unhinged* is a testament to what happens when these legal systems are explicitly ignored.

The Challenge of Child Labor in International Law. By Franziska Humbert. New York, New York: Cambridge University Press, 2009. Pp. xv, 389. $110.00 (hardcover).

Reviewed by Lauren Major

In *The Challenge of Child Labor in International Law*, Franziska Humbert, a policy advisor on child labor for Oxfam and a research fellow in the field of trade and human rights, describes the myriad problems for international law posed by child labor. She examines the traditional international legal instruments that address the issue, identifies the inherent weaknesses of that system and provides an alternative solution. Humbert succeeds in providing a thorough understanding of both the human rights and trade frameworks, and a detailed and innovative solution for how to combat the human rights violations posed by child labor through trade regulation.

According to Humbert, child labor does not encompass all work done by minors, but only labor that infringes on the rights of children to education or physical and psychological development. Her definition includes hazardous occupations, domestic work, street children, informal work, debt bondage, prostitution, child soldiers, and other illicit activities. There are an estimated 218 million child laborers in the world today, most of whom work because of household poverty, inadequate education, parental pressure, and flaws in the governmental attitude towards child labor, including unwillingness to pass and enforce child labor legislation. Because so many factors contribute to the existence of child labor, Humbert argues that strategies to combat it must also be multi-sectoral and should include legislation, policy intervention, educational reform, and social service programs. Furthermore, because countries with high child labor percentages often lack the resources to take effective national action, international action must be taken. In *The Challenge of Child Labor,* Humbert examines what form of international action would be most effective in combating child labor.

Following her introduction, Hubert describes the numerous United Nations human rights instruments and International Labor Organization (ILO) conventions that have been created to prohibit child labor, as defined above. Such international instruments require states to adopt legislative, administrative, social, and educational measures against exploitive child labor. They also require international cooperation and assistance for widespread solutions. Thus, as states have a duty to take positive action, both state actions and omissions can constitute a breach of their international obligations to eliminate child labor. Child labor obligations have been implemented in the U.N. and the ILO using reporting mechanisms, technical assistance programs, and quasi-judicial proceedings. But Humbert makes a convincing argument that their enforcement power depends primarily on the mobilization of shame, and is therefore severely limited by a lack of ability to levy trade sanctions.

In addition to obligations imposed by international instruments, Humbert explains how trade regulations on child labor also exist and have proven to be effective. Social clauses in trade agreements, for example, serve as a deterrent for companies using child labor and an incentive for governments to improve their child labor standards. Humbert demonstrates the link between trade and social standards, but she focuses on how social clauses should be constructed and implemented in order to be most effective. While unilateral legislation and social clauses in bilateral agreements have been somewhat effective, she argues that they should be incorporated into a multilateral agreement and implemented at the global level. Since economic incentives can lead to a "race to the bottom" effect concerning labor regulations, Humbert contends that a global agreement is necessary to level the playing field and recommends that existing social clauses be replaced or complemented by one multilateral clause. Based on her examination of existing social clauses, she also recommends that this clause be based on international labor standards and use trade incentives as opposed to sanctions.

In the final section of the book, Humbert concludes that trade regulations alone do not provide a comprehensive framework for eliminating child labor. While they can help change societal and governmental attitudes toward child labor, the needs of the children dismissed by employers must

also be considered. Humbert therefore argues that because education has been shown to be key in combating child labor, education and rehabilitation programs must be present with any trade regulations intended to discourage employers from using child laborers. In addition, governments should pass legislation and enforcement mechanisms to complement the private trade agreements. However, developing countries have been reluctant to adopt any sort of social clause, viewing it as a form of protectionism that strips away any advantage gained by low wage costs. Further, the existing human rights framework will still play a role in determining the content and scope of the child labor prohibition. Accordingly, Humbert concludes that a multilateral approach that combines the trade and human rights frameworks would eliminate the weaknesses inherent in each and provide coherence in international law. In addition, such an approach would promote the coordination of different policy goals and allow legitimate interests to be valued equally.

In determining that an institutional legal framework must be used to bring about this connection, Humbert argues that a multilateral social clause should be based on existing ILO and World Trade Organization enforcement regimes, since these organizations are the principal institutions for integrating labor standards into economic policies and for regulating global trade, respectively. Humbert further explains that the model should take into account the fear of protectionism by allowing recourse to the dispute settlement mechanism as a last resort, by limiting unilateral measures, and by providing for financial and technical assistance for implementation in developing countries. She also notes that these countries are obligated to adopt measures against child labor under international law in any case, and that the elimination of child labor can actually provide domestic economic benefits. Finally, Humbert argues that a decision-making body, staffed by trade and labor experts, should be created to oversee the endeavor. Reporting procedures, incentive regimes, labeling initiatives, and a complaint and appeal mechanism should likewise be created.

Humbert acknowledges that one weakness of this mechanism is that only trade-related child labor can be prohibited, thereby ignoring domestic and services labor. Although these country-related forms of child labor could be addressed through countermeasures, Humbert contends that these are

often abused or ineffective. She instead advocates for a policy of nondiscrimination and is skeptical of country-specific measures except in extreme cases. One weakness of this work is that Humbert advocates a system that will not help a significant percentage of child laborers and provides no viable suggestions for how they can be included or assisted through another regulatory system.

The Challenge of Child Labor in International Law is extremely useful as a descriptive tool and provides a comprehensive understanding of the existing mechanisms for regulating child labor. Humbert effectively examines the problem from a human rights and trade framework, and outlines the weaknesses and strengths of each. Further, Humbert draws a strong connection between human rights and shows clearly how trade regulations can be used to implement human rights standards, moving beyond the connection to address the most effective way that trade can be used to enforce human rights. Although the terms of Humbert's proposed solution are left somewhat vague, she provides a strong basis for additional research and proposals in the area of child labor.

Civilising Globalisation: Human Rights and the Global Economy. By David Kinley. New York, New York: Cambridge University Press, 2009. Pp. xv, 256. $37.57 (paperback).

Reviewed by Alana Parker

"[In] what ways does, can and should the global economy support and assist human rights, and in what ways do, can and should human rights support and assist the global economy?" These questions and this fundamental relationship drive the arguments and observations in David Kinley's latest book, *Civilising Globalisation.* While Kinley is open about his priority of advancing the aims of human rights, he manages to balance these two inquiries throughout the book. Rather than presenting one-sided demands, he focuses attention on the interrelatedness of economic and human rights imperatives, and on the potential for greater cooperation between protagonists and stakeholders in the fields of human rights and international business. In this regard, one of the book's strongest points is its inclusion of rich anecdotes and quotes from practitioners to highlight each point.

Corporate Social Responsibility (CSR), now a broad and amorphous concept, has already become an established forum for cooperation between corporations and civil society interests. However, specific legal and quasi-legal regimes for optimizing business activity compliance with human rights obligations have not yet developed. Kinley argues that an exaggerated, "superficial" assumption that business and human rights goals are nearly always at odds has led to a hardening of positions and a lack of creativity from both sides. This book effectively unpacks some of these assumptions while exploring new avenues of cooperation with, and regulation of, business with the overarching goal of furthering the goals of human rights. The reader is often reminded of the familiar argument, shared by Adam Smith, that economic gains are but a means to an end. For Kinley, this end is greater global observance of human rights obligations. It would be interesting to see a parallel treatment from an insider interested in the same relationships, but who favors economic development and traditional market principles.

The book is organized into an introduction, a treatment of the relationship between trade, aid, and commerce with human rights, and a conclusion. Kinley begins with an historical overview of the relationship between human rights and the global economy, highlighting their philosophical underpinnings and simultaneous rise to institutional prominence in the post-World War II period. While acknowledging the view that "markets exert the greatest pressure on governments," he challenges both states and readers to reconcile different economic and human rights concerns, rather than prioritizing one over the other. After an interesting foray into the use of poverty as a proxy for human rights violations (or neglect), the reader is confronted with a necessary assumption underpinning the book: while both human rights and economics are concerned with individual welfare, "the critical difference between them lies in how such welfare is to be secured, with [international human rights law] insisting on it as a presupposition to all else, whereas [international economic law] *assumes* it will be the product of a properly functioning market" (emphasis in original). It is the failure to monitor the realization of this assumption that underlies Kinley's critique of global economic actors throughout the book, especially when those actors are governments or international governmental organizations.

After this introduction, Kinley dives into the complex relationship between trade and human rights. Corporations, the reader is reminded, are the ones doing the trading, not states. This is true even to the extent that corporations often underwrite litigation costs at the World Trade Organization (WTO), even though they may only be represented indirectly by willing states. After a brief summary of the history of the WTO, Kinley introduces an important contextual point: it is economists and diplomats, not lawyers, who make all-important decisions and ultimately shape jurisprudence at the WTO. In light of this, it is difficult for stakeholders to introduce any consistent policy goal into WTO decisions that is not already in line with the political priorities of powerful members. Still, this has not stopped human rights activists from trying to influence policy, especially with regards to trade disputes involving Article XX exceptions and Article XXI imperatives within the General Agreement on Trade and Tariffs (GATT). Kinley takes a refreshingly pragmatic view of this. He admits that jurisprudence supporting human rights exceptions to trade liberalization is often quite a stretch. Furthermore, he states that the trade experts at the Dispute Settlement Body should ideally not be deciding human rights standards unchecked since the interests of the developing world are unlikely to be treated equally in this forum. Soon after, Kinley seems to contradict himself a bit and suggests the WTO should be more flexible and amenable to entertaining trade grievances with non-trade causes, perhaps by expanding the Article XX exceptions. In the end, though, he rightly points out that the policy and diplomatic arenas seem better suited to this end.

In tackling the more traditional field of aid and human rights, Kinley is careful to make a distinction between aid on the one hand, and trade and commerce on the other. He notes that with aid, the human rights gains are often direct, not derivative. Here Kinley goes off on somewhat of a tangent, though an important one, on the narrow capacity and objectives of international human rights law, as opposed to human rights and poverty alleviation generally. He concludes that it would be damaging to frame economic development as primarily a human rights task, and downright ineffective to rely on largely "equivocal" obligations imposed by human rights law to realize development goals. On the other hand, Kinley believes it is imperative to pursue a "human rights based approach to

development," including the alignment of both substantive and procedural protections in development activities as a matter of right. Finally, Kinley rounds out this chapter with a subtle critique of governments and the ways in which development initiatives have traditionally been carried out. While arguing that there has been an over-emphasis on institutions, as opposed to institutional goals, Kinley reiterates that states will continue to bear primary responsibility for advancing development, poverty alleviation, and other human rights goals. If they are to succeed in this endeavor, suggests Kinley, economists and other institutional actors must be willing and able to shift their view of human rights from that of "malign rigidity" to a more nuanced and necessary piece of their mandate. This last point is worth developing more, and a more substantive treatment of rigid postures on both sides could have enriched Kinley's analysis.

It almost goes without saying that the most important trend at the crossroads of globalization and human rights has been the overshadowing of official direct assistance by private investment in development-related initiatives. Perhaps in light of this, Kinley devotes his last substantive chapter to the relationship between commerce and human rights. He argues repeatedly that human rights restrictions are but one of many types of regulations put on businesses, and that the ideal of laissez-faire is more a normative principle than a descriptive accuracy. Kinley makes an earnest case for the power of transnational corporations both to advance and impede the progress of human rights, especially in the developing world. He challenges human rights leaders to be more active and creative in exploiting "the derivative potential of the global economy" for human rights ends. He outlines several possibilities for the development of law toward this end, namely the strengthening of weak regulations in developing states, extensions of extraterritoriality in developed states, transnational codes of business conduct, and regulation under international law. In line with the latter two alternatives, Kinley devotes substantial space to teasing out issues of business and human rights norms, whether developed through internal codes, industry best practices, or at international organizations. In particular, the United Nations has been host to a rather contentious debate revolving around the development of non-binding U.N. Human Rights Norms for Corporations by Professor John Rug-

gie, the Special Representative of the Secretary General (SRSG) on human rights and transnational corporations and other business enterprises. While lauding Ruggie's thoughtful and committed approach to his mission, Kinley criticizes the special representative's concessions toward corporate sensibilities as "lack[ing] boldness, where boldness is called for."

Kinley concludes with an appeal to move away from the views that human rights obligations imposed on corporations are either "burdensome or profligate," or both. Here, he reframes the material covered with the objective of reasserting the interdependence of human rights and the global economy. He assigns responsibility to global economic leaders for "making the economy work for human rights," and of "assessing the wider implications of the success or failure" of his policy prescriptions. A clearer statement of these goals would perhaps have served their purpose better in the introduction, but the new perspectives introduced in the concluding chapter are useful for framing Kinley's arguments in greater context.

In the end, this book is a quick and enjoyable read, and, at 239 pages, does not belabor its arguments. Kinley's intended audience seems to include laypersons and students of international politics, in addition to economists and legal professionals. For all the disclaimers and attempts to balance his arguments in the introduction, however, Kinley could have devoted more time and attention to exploring the possible rewards of human rights compliance from the business and economics perspective. Rather than convince readers of the importance of a more human rights-friendly economy, Kinley seems to assume his audience shares this bias. His style is accessible and entertaining, though he has a penchant for letting others make his points for him: abundant quotes and paraphrasing from such eclectic sources as John Stuart Mill, Dani Rodrik, and Ernest Hemmingway grace the pages. While there is some substantive treatment of international law, one gets the sense that this book is intended as a timely treatment of a rapidly innovating field of human rights, a survey rather than a treatise. This means that it is unlikely to have the shelf life of *Development as Freedom* or some other works cited for their development and human rights principles, but it is nonetheless an excellent source of up-to-date and thoroughly researched insights from an insider within the field of business and human rights.

Legal Accents, Legal Borrowing: The International Problem-Solving Court Movement. By James L. Nolan, Jr. Princeton, New Jersey: Princeton University Press, 2009. Pp. x, 264. $37.50 (hardcover).

Reviewed by Alexis Tucker

What happens when one nation "borrows" a legal institution from another culture? How does it choose which elements of the practice to ultimately adapt or reject? Additionally, when appropriating these legal institutions, is it ever possible for the importing nation to completely "disentangle" the law from its "cultural roots"?

James L. Nolan, Jr., addresses these questions and other intriguing issues in *Legal Accents, Legal Borrowing: The International Problem-Solving Court Movement* by using the growing international trend of problem-solving courts as a model. First developed in the United States during the 1980s, problem-solving courts are innovative legal institutions formed to address various social problems that plague communities and are often associated with criminal behavior. Through "specialized tribunals" such as drug courts, domestic violence courts, mental health courts, and community courts, judges, counselors, and other trained officials employ creative techniques and treatments in the hopes of solving these problems more effectively than the traditional court system. Since their inception, these specialty courts have not only grown in popularity throughout the U.S., but also among members of the international community who have been inspired to start their own problem-solving courts at home.

Throughout *Legal Accents, Legal Borrowing*, Nolan examines how American problem-solving courts have been borrowed by other nations and then tailored to fit their specific needs and cultures. Unlike other literature on specialty courts, however, this is not an evaluation study. In the Introduction, Nolan warns the reader that the book will not report about "so-called best practices" or "which country is most 'successful' at problem-solving courts." Instead, *Legal Accents* is a unique and interesting ethnographic study of international problem-solving courts that also examines the various cultural implications of legal borrowing. By analyzing the examples of the United States, England, Canada, Australia, Scotland and

Ireland, Nolan explores how various factors such as globalization, the close relationship between law and culture, and international opinions of the United States and American culture all play a role in the legal transplantation of problem-solving courts.

Before closely examining the characteristics of problem-solving courts in these six nations (where Nolan claims that the movement is the most advanced), he spends Chapter 2 exploring general issues that arise in the context of international legal borrowing. One obvious issue is globalization, and Nolan explains how, despite popular ideas that globalization only promotes a "McWorld" (complete homogenization) or, alternatively "Jihad" (heterogenization or local rejection of the dominant local culture), the reality is somewhere in between the two. Rather than leading to one of two extremes, globalization has more often resulted in the hybridization of global and local cultures, which is directly reflected in how the five non-U.S. countries have embraced American problem-solving courts while carefully adapting them to fit their local needs.

Nolan discusses how the process of hybridization and the reciprocal relationship between law and culture often make it difficult to understand the various challenges that come up when legal institutions are exported from one culture to another. While his discussion of finding the perfect metaphor for the adaptation process of legal transplantation is a bit lengthy (it has been symbolized by everything from the mechanical process of tailoring a suit to more organic metaphors such as transplanting an organ into a new body), Nolan successfully shows how and why it is important to think about the kind of metaphors we use to describe this complex process. Legal transplantation involves careful planning, specific adjustments, unexpected side effects, and sometimes, outright rejection. Therefore, these metaphors help us understand how adapting a foreign legal institution to fit another community's needs and culture can be extremely complicated—especially when trying to extract certain legal theories and "accents" that are often engrained in the practice.

In alliterated Chapters 3-5, titled "Anglo-American Alternatives," "Commonwealth Contrasts," and "Devolution and Difference," Nolan compares the evolution of problem-solving courts in three pairs of Anglophone nations: England and the United States, Canada and Australia, and Scotland and Ire-

land, respectively. In the United States, where the problem-solving court movement is seen as aspirational and almost evangelical, judges are often proud to "color outside of the lines" and push the boundaries of what is both expected and allowed. In addition to being more informal with clients (by dressing casually, speaking candidly, and encouraging emotional, interactive discussions in the courtroom), American problem-solving court judges also often attend pre-trial meetings and may impose intermediate sanctions for not complying with treatment (ranging from simple essays to jail time). While some of these features have been adopted into the non-U.S. regions, Nolan explains how many have been either modified or completely rejected because of cultural and structural differences.

One example of how culture plays a role in determining how these courts are operated can be found in the use of therapeutic jurisprudence, a normative legal theory that aims to enhance the therapeutic functions of law. The fact that therapeutic justice is widely accepted in American problem-solving courts is reflective of the relative openness of Americans to therapy and counseling, as opposed to citizens of Scotland and Ireland, who claim to have much more reserved cultures and, therefore, are less enthusiastic about this approach. Therapeutic justice, however, is also very pronounced in Australia and Canada, both in their regular problem-solving courts and in their unique aboriginal specialty courts. Addressing issues in aboriginal communities, these courts combine Western legal traditions with local customs, and are typically presided over by judges of aboriginal descent.

Structural differences have also limited the extent to which foreign specialty courts may exercise the same functions as those in the United States. For example, intermediate sanctions are rarely imposed in English courts due to the fact that they are often presided over by lay magistrates (rather than trained judges) who do not have the authority to award jail time. Increased structural restraint is also present in Australia where specialty courts largely defer to the legislature and targeted legislation, such as the 1998 Drug Court Act, which outlines the specific standards and procedures that must be followed.

Ultimately, after reviewing all of the characteristics and idiosyncrasies of the various nations and their courts, Nolan

places them in two descriptive categories. American culture and its approach to problem-solving courts are characterized by enthusiasm, boldness, and pragmatism, whereas the other five countries are described as having a penchant for moderation, deliberation, and restraint. While much of this is rooted in cultural and structural differences, Nolan also suggests another possible factor—"ambivalent anti-Americanism," an expression that he uses to refer to the love-hate relationship that many countries have with American culture. He explores this concept in more depth in Chapter 7.

Perhaps the most interesting (and amusing) sections of the book are when the reader is exposed to American culture and American problem-solving courts through the lens of the non-U.S. legal figures, particularly with respect to emotional displays. For instance, most of the non-U.S. countries have chosen to leave out much of the pomp and circumstance that occurs in many American problem-solving courts when a defendant has successfully "graduated" from their program. As one Scottish judge explained, "[w]e don't have graduation ceremonies. We don't throw our hats up in the air. We don't tend to discuss our feelings in Scotland. We don't hug each other. It's just not part of our culture." Based on testimonials like this, American readers might have a better understanding of why Scottish citizens might be horrified by the applauding, crying, gift-giving, cartwheels, and hugging that might occur in an American problem-solving court when a judge congratulates an offender for passing a urine test. In fact, the notion of hugging is so offensive in some countries that one Australian judge won $250,000 in a lawsuit when she alleged "malicious defamation" after a journalist wrongly reported that she hugged two defendants to congratulate them for being done with a drug rehabilitation program.

Although reports about the persistent horror displayed toward effusive American behavior do get a little repetitive ("we don't hug" is probably the second most common phrase in the book after "problem-solving courts"), this is just one of many valuable examples of how a nation's culture plays an important role in its approach to problem-solving courts, and vice versa. For example, in a letter to an Irish judge setting up a court in Dublin, an American judge advised him to try to establish their first drug pilot court within six months, reminding him that the mantra of American drug court judges is

"JUST DO IT!" Besides displaying American boldness (and, perhaps, the influence of a consumer culture), this message also highlights the American value of efficiency, which is not always shared by other cultures, as we learn by Ireland's response. Rather than set up their pilot program in six months, the Irish spent three years preparing for the court before it finally opened, evidence of how deliberation and careful planning were more valued by them than speed and efficiency.

While Nolan successfully demonstrates the interconnectedness of law and culture and how this both complicates and enriches the process of legal transplantation, there are questions that the reader is likely to be left asking. For example, when Nolan presents the various justifications for establishing these problem-solving courts, he analyzes empirical data (including several surveys) to show that the common refrain that these courts arise out of "low" or "decreased" confidence in the judicial system has very little support in any of the countries. However, when he provides the justification that these courts *actually work*, there is no support for this besides a single sentence explaining that "[j]ustifications of this sort typically cite evaluation studies showing reduced recidivism rates among participants, reduced costs to the state, and so forth." Although it is clear that it would be difficult to measure the success of one nation's problem-solving courts as compared to another (and Nolan dutifully asserts that this is not the goal of his book), the reader is still curious to learn if each nation's courts have achieved any type of success, at least by their own standards. For instance, if harm reduction for drug users is a standard of success in most non-U.S. courts (as opposed to total abstinence, which is the typical American requirement), have any of these nations experienced greater numbers of harm reduction among offenders appearing in front of their drug courts?

In the end, *Legal Accents, Legal Borrowing* delivers exactly what Nolan set out to accomplish: a fascinating and compelling ethnographic study of problem-solving courts and the interplay of law and culture in the transplantation of legal institutions. However, as Nolan has spent over a decade researching the spread of problem-solving courts around the world and has written other literature on both this subject and the relationship between law and culture, it seems like his "only time will tell" conclusions are almost too safe. With his strong back-

ground and clear expertise on the subject, it would probably be relatively easy for him to provide just a few data points and personal opinions to satisfy the reader (whose curiosity will undoubtedly be piqued). Moreover, it would be interesting to hear some of his predictions on what impact culture will continue to have on these specialty courts in the future and, in turn, what influence they might have on other communities (particularly in non-Anglophone nations) throughout the world.

Governance, Order, and the International Criminal Court: Between Realpolitik and a Cosmopolitan Court. Edited by Steven C. Roach. New York, New York: Oxford University Press. Pp. x, 275. $95.00 (hardcover).

REVIEWED BY KAVERI VAID

Since its establishment, the International Criminal Court has been heralded as the leader in the movement toward collective responsibility for mass atrocities and slammed as a fundamental threat to state sovereignty. Operating as a legal mechanism—pursuing judicial responses (trials) to mass atrocities by imposing individual criminal responsibility on the alleged perpetrators—the ICC still grapples with the tradeoffs and constraints of international politics. The Court's design preserved both the ability to operate independently of the Security Council and the ability to prosecute perpetrators from non-party states. Despite this independence, enshrined in the Rome Statute, the ICC lacks an independent enforcement mechanism, and thus it fully depends on state cooperation to implement its judicial orders and arrest warrants. And despite clear statutory obligations on state parties to cooperate with the Court, in practice states have blatantly thwarted the Court's actions—most recently, when both Chad and Kenya hosted indicted Sudanese President al-Bashir—as of yet, without sanction.

Navigating these enforcement and cooperation challenges in a system where national interests and international politics at times trump international law obligations is the concern of *Governance, Order, and the International Criminal Court: Between Realpolitik and a Cosmopolitan Court.* This book evaluates the design and operation of the ICC in light of rationalist,

constructivist, communicative action, and cosmopolitan theoretical frameworks. These analyses strive to analyze the tension between the Court's virtually global ability to impose individual criminal responsibility—legally removing the ability of the perpetrator's state to mediate or negate the charge or punishment—with its reliance on states in a state-centric system to enforce its orders.

In the book's third chapter, Caroline Fehl analyzes a rationalist paradox of the Court's design: the fact that the United States, one of the most important potential members of the ICC, was unable to achieve its desired concessions. Here, Fehl notes a persuasive rationalist counterargument: "if too much tribute was paid to sovereignty and support by the powerful, the ICC would fail to solve the problem of impunity that it was meant to address." An additional rationalist counterargument is that other states, while individually less powerful, would be collectively less likely to ratify the Rome Statute and cede sovereignty if significant concessions were made to shield nationals of powerful states (for example, by requiring Security Council authorization for initiation of an investigation or prosecution, which would greatly advantage the veto-holding members of the Security Council).

Fehl also notes constructivist explanations for the Court's design, grounded in increasingly broad acceptance of human rights norms and the value placed "in having a workable, effective treaty that lacks the support of some important countries [over] a bad, inefficient regime with universal support." When examining the Court's design in the context of a world reeling from blatant failures to prevent or protect against mass atrocities in the former Yugoslavia and Rwanda, such a concern with efficacy is highly plausible. Moreover, given the significant imposition on sovereignty of individual states by the Court's ability to reach into a state and prosecute an individual for an international crime, legitimacy had to be a paramount concern. Placing all state parties on legally equal footing, with each state's nationals equally vulnerable to the Court's jurisdiction, persuasively demonstrates against the Court's being discriminatory in design. However, design can only go so far in establishing legitimacy, especially in the face of practice. Today, the ICC's narrow range of prosecutions has challenged its theoretically equal jurisdiction. As Jason Ralph notes in chapter five, similar legitimacy criticisms of selective justice have been

made against international ad hoc tribunals, particularly noting the absence of tribunals for Palestine, Tibet, Colombia, Chechnya, and Northern Ireland. The primary response of the ICC—that the conflicts it is prosecuting are arguably the most severe, affecting huge numbers of victims and broad swaths of countries, and that with limited resources, choices on what to prosecute must be made—is valid. Yet it seems at least plausible that the Court considers the geopolitical ramifications of potential new investigations when it evaluates new situations where violations of the Rome Statute are taking place.

The sixth chapter evaluates the ICC in the context of cosmopolitan realism, or the view that states will respond to an increasingly interdependent world facing transnational threats by supporting collective and transnational responses, not out of "altruism or moral idealism but [driven] by the interest in maximizing one's power position." This analysis is persuasive, especially considering the recent incidents of active noncompliance by Chad and Kenya during the visits by indicted Sudanese President al-Bashir, suggesting that even a country like Kenya that actively cooperates with the Court's investigation in its own territory requires additional incentives to cooperate in other situations. As signatories to the Rome Statute, Kenya and Chad should theoretically subscribe to the ideals of the ICC, and as an active ongoing participant in an ICC investigation, Kenya in particular should be supportive of the Court's implementation of those ideals. Yet such idealistic support was clearly insufficient for compliance. Rather, given active opposition by the African Union to the al-Bashir indictment, it is possible that Kenya and Chad foresaw negative regional consequences for their respective positions of power if they actively cooperated with the ICC in this case.

In the eighth chapter, Amy Eckert analyzes the Court's efficacy and limits in the context of Darfur. Eckert notes the dependence of the Court on state cooperation for enforcement and, ultimately, success. In contrasting American support for the Court's involvement in Darfur with opposition to any indictment of U.S. nationals, Eckert notes that the mechanism for exerting jurisdiction over Sudanese nationals—the Security Council Chapter VII authorization—is virtually impossible in the case of U.S. nationals, given the veto power. Eckert further criticizes the relative degree of international inac-

tion on Darfur since the Security Council authorization of ICC action. She contends that the Security Council authorization essentially functions as an excuse for the international community not to take further, more costly, action, noting that "the Security Council could have [invoked the] responsibility to protect to authorize more aggressive actions." Given the general reluctance in the international community to intervene, Eckert's argument here is plausible: voicing support for the Court to effectively handle the situation in Darfur provides a singular and definite answer to the demand for an international response. If the Court were able to independently enforce its arrest warrants and thus initiate prosecutions for atrocities in Darfur, this response may well have been seen as sufficient. However, this has unfortunately not been the case.

Eckert's challenge to the lack of compliance on Darfur became even more salient after the book's publication. Since then, as previously mentioned, indicted Sudanese President al-Bashir has traveled with seeming impunity to Chad and Kenya, both of which are parties to the Rome Statute and thus obliged to enforce ICC orders, including arrest warrants. It seems increasingly clear that the international community's lack of response to violations of its orders under Security Council Chapter VII belies individual states' and the collective international community's commitment to Darfur. Eckert's analysis of the structural limits to the Court's reach foreshadows the current problem: "noncooperation of the Sudanese government and the unwillingness of the Security Council to compel cooperation suggest the limits of the potential" for states to cooperate around the goal of implementing international justice.

In the book's conclusion, Roach highlights two causal factors for the Court to be effective in the future: "sitting state leaders must convince themselves that their power no longer entitles them to special privileges; and would-be perpetrators must begin to rationalize the costs of ICC prosecution and punishment against the perceived, short-term benefits of committing abuses for the sake of promoting stability and preserving their own power." To successfully implement these factors, however, the Court must be seen first as a credible and effective mechanism of individual prosecution, able to surmount the limits of international politics and achieve state compliance with orders and obligations. Yet, perhaps with the exception of the chapter on discursive legitimacy, the book es-

sentially poses but does not answer the question of what exactly the Court can do in the face of blatant disregard by states of their Rome Statute obligations. Moreover, even the conclusion begins by conceding that the Court has no coercive power; however, such a concession seems perhaps too simplistic. True, the Court does not have an independent enforcement mechanism, an army, or a vote in the Security Council. Yet it does have the power of leveraging existing avenues for enforcement, including the Security Council itself, to enforce compliance and sanction noncompliance, as it requested for Chad and Kenya following al-Bashir's visit. The book is an interesting application of international relations theories to the establishment and design of the Court; yet, in the end, it leaves the more challenging and highly relevant practical question of how the ICC can leverage international actors and instruments to enforce legal obligations unanswered.

Shaping Foreign Policy in Times of Crisis: The Role of International Law and the State Department Legal Adviser. By Michael P. Scharf and Paul R. Williams. New York, New York: Cambridge University Press, 2010. Pp. ix, 305. $85.00 (hardcover).

REVIEWED BY LISA SWEAT

"International law is not law," declared John Bolton, the ambassador who formerly represented the United States at the United Nations. It is to this very institution that countless international law scholars and practitioners look to determine what universally held norms do or should constrain the state units that monopolize the use of force within the Westphalian international system. Michael P. Scharf and Paul R. Williams unequivocally disagree with Bolton's belief, but in their new book they do not simply rehash the debate on what evidence of customary international law, *opinio juris*, state practice, etc., constitutes binding international law. Instead, *Shaping Foreign Policy in Times of Crisis: The Role of International Law and the State Department Legal Adviser* looks at one state—the United States, with its dominant military capacity and widely influential international economic position—and explores what its top legal experts on foreign policy believe has impacted the United States' degree of international law compliance.

Shaping Foreign Policy offers an insightful and unique approach to answering just how and whether international law determines state foreign policy. Instead of the common presidential administration-centered analysis, the book draws from the minds of those who have held the highest legal position in the governmental department created to advise the president on foreign policy. Scharf and Williams, law professors who both served in the Office of the Legal Adviser, convened a series of meetings and roundtable conversations with all ten living former legal advisers. This book is the product of that engagement, and it teases out the legal advisers' opinions on the compliance debate. While one may contend that it is in fact the Commander in Chief and not a State Department lawyer who ultimately decides the United States' course of action (tempered more or less of course by the separation of powers), that argument is well addressed elsewhere in the literature. The president may completely ignore the adviser's legal opinions and arguments, but it is precisely this point which Scharf and Williams' approach illuminates: what does it say about international law that the position of the legal adviser exists, that it is sometimes given deference, and that it is at other times not even consulted on matters clearly within its sphere of foreign policy?

Framing the discussion with a concise history and overview of the scholarly debate on state compliance with international law, the authors succinctly highlight the arguments of the main schools of thought and their shifts over time. Scharf and Williams then take the time to introduce the reader to the position of the legal adviser and to each adviser individually through his own words. Each adviser speaks openly about two or three major foreign policy crises during his tenure and additionally contributes to the question and answer format. For those who are less familiar with American foreign policy events from the Jimmy Carter through the George W. Bush administrations, there is a thirty-four-page glossary which supplies the basics. Through this structure the book achieves its stated goal of providing the reader with the context in which to see the "nuance" in the advisers' personally related perspectives on how and when international law is binding on states as well as how the presidents they served viewed the same questions. While the authors posit a few conclusions, they primarily pro-

vide a window into the American foreign policy process so that the readers can analyze it for themselves.

What serves this purpose exceptionally well is the coinciding exploration of what the adviser's role should be. Should the legal adviser be the disinterested, even-handed lawyer upholding principles of international law as the "moral conscience of American foreign policy?" Or should he or she be a promoter of the chosen foreign policy option? Is the legal adviser's client the president, the secretary of state, the people, or someone else? As with the numerous discerning questions the authors ask throughout the book, these trigger conflicting answers from the former advisers. Because there is no definitive answer, even for those very people who filled the role, the discussion emphasizes how international law's role varies with the personalities and situations of the time.

Through a question-and-answer chapter dedicated to a foreign legal advisers roundtable discussion, Scharf and Williams offer a comparative perspective against which to contrast the American experience. This is a particularly apt angle considering the United States' reduced deference to international law in the post-9/11 era and the resulting alienation and tension with its allies. While the United States has not always pursued policies grounded in compliance, this comparative section shows that other states have similarly struggled to accommodate international legal norms within domestic and diplomatic constraints. The former United Kingdom legal adviser, for example, points to the deliberate exclusion of one of his predecessors during the 1956 Suez invasion; however, he cites this as a lesson learned which led to the current requirement that all policy submissions involve legal analysis or consultation with the adviser or his staff. A diverse range of states is included in this roundtable, including the United Kingdom, Russia, China, India, and Ethiopia.

Throughout, the authors do not shy away from defending international law. A recurring theme is the "suppleness" of international law, which emphasizes that states can protect their national security while remaining within bounds of international legal principles. According to the advisers, there is a balance to be achieved between compliance and national interests. The International Court of Justice, for instance, received little support from the advisers that mentioned it, despite those advisers' belief in international law. None rejects

the court outright, but several advocate limited American engagement with it. Davis Robinson finds the ICJ prejudiced and thus felt that the United States should have withdrawn its agreement to compulsory jurisdiction long before it was invoked. To Edwin Williamson, the ICJ is dangerous because its decisions cause problems with national security and use of force. Abraham Sofaer specifically curbs his belief in international law to exclude being bound by the ICJ, and he rejects the ICJ's interpretation of self-defense.

Each legal adviser believes in his own way that international law is binding. Their words reveal that situations in which the policymakers were subsequently most criticized for violating international law were situations in which they prematurely forced a justification backed by tenuous legal reasoning. The advisers' conversations identify times when the government did listen to the legal adviser's assertion of international law, such as when addressing Libyan state-sponsored terrorism in the 1980s, and to times when the legal adviser was denied the proverbial "seat at the table." A persistent conclusion (in both the American and foreign contexts) is that consulting the legal adviser from the onset of the policymaking process actually limits diplomatic and security fiascos while granting sufficient leeway to achieve effective policies.

In a culminating finale, Scharf and Williams' case study on the treatment of detainees in the war on terror hammers home the contemporary significance of the compliance debate and the role of international law. Through a succinct timeline and overview of the Bush and Obama administrations' policies in this arena, the narrative points to the initial exclusion of the legal adviser in the detainee debate. It cites John Yoo's frank statement that the State Department was excluded from the program's development because of its view that international law was binding on the president. The authors present the arguments of the different agencies but do not engage in a debate over the degree of American compliance with international law. Instead, they reveal the complicated multiplicity of voices and institutions—including, among others, the Supreme Court, White House, Department of Justice, Department of Defense, Central Intelligence Agency, and State Department—that combine and clash in American foreign policy formation and divulge the significance and consequences of

excluding the Office of the Legal Adviser entirely from the discussion.

All in all, *Shaping Foreign Policy in Times of Crisis* raises more questions than answers. But it provides the key tools and a superb framework for the reader's own pursuit of a position in the debate. The striking accessibility and insider sense of candid discussion strengthen the book's contribution to the literature. However, the authors' structure has the unfortunate flaw that many sections are limited to cursory overview with limited depth. The advisers' answers to the authors' questions, presented through conversation and necessarily limited by time, space, and the nature of spontaneity, reveal more about the collegial personalities of the men than give great insight into the questions' nuances. Still, aspiring legal advisers or aspiring career lawyers for the State Department's Office of the Legal Counsel, as well as those wanting to understand the people who advise on United States foreign policy, will benefit from Scharf and Williams' insight. The legal adviser's voice is only one among many within the black box of government that develops foreign policy, but theirs certainly colors the analysis of international law's binding force and practical impact or lack thereof.

Protecting Civilians: The Obligations of Peacekeepers. By Siobhan Wills. New York, New York: Oxford University Press, 2009. Pp. v, 296. $104 (hardcover).

REVIEWED BY MERCY IMAHIYEROBO

Theoretically, the mission of peacekeepers is to protect civilians from harm. History has taught us, however, that in practice ideological lines become blurred, and the extent of troops' obligations to provide protection to civilians is context-dependent and unpredictable. Now, more than any other time in history, there are troops engaged in peacekeeping activities throughout the world. Although the United Nations has always accepted that peacekeepers are bound by the spirit and principles of International Humanitarian Law (hereinafter IHL), the extent of troops' obligations is less clear. Does IHL extend to positive obligations of protection, or is it limited to troops' own conduct? In *Protecting Civilians: The Obligations of Peacekeepers*, author Siobhan Wills carefully analyzes the

tension that can arise between national interests, humanitarian concerns, and international law. The main theme of the book, however, is that the moral and political imperative to protect civilians ought to be a legal duty if the principles of the Geneva Conventions and general spirit of international law are to mean anything. Wills attempts to deliver this message by exploring the legal responsibilities of troop-contributing nations and addressing the impact that human rights law ought to have on the conduct and accountability of states and troops.

This text, which consists of five substantive chapters, begins with the assertion that a present and continuing challenge of international conflict is the implementation of peacekeeping mandates. In order to better understand these challenges, Wills provides a historical review of civilian protection by U.N. peacekeepers in Chapter One. She chronologically describes past peacekeeping operations and explicates the extent to which these operations have attempted to provide civilian protection. Wills very effectively shows how successes and failures of earlier peacekeeping missions affected the level of involvement of peacekeepers engaged in the missions that followed. In the aftermath of Rwanda, people around the world were confused and enraged. They felt as though peacekeepers stood by and did nothing as hundreds of thousands of innocent civilians were slaughtered. Wills helps the reader to understand that the hands-off approach of peacekeepers in this conflict did not arise out of thin air. In order to explain the source of such non-interventionism, Wills describes the evolution that has occurred in the realm of peacekeeping, beginning with operations in Central Africa in the 1960s.

By authorizing the United Nations Operation in the Congo (ONUC) to take "all appropriate measures," the United Nations Security Council facilitated peacekeepers' success in reducing violent attacks against civilians. The ONUC went on to expand the definition of "self-defense" such that peacekeeping activity was virtually indistinguishable from robust enforcement action. It is clear that in the early 1960s the Security Council was willing to stretch definitions in an expansionist trend, as demonstrated by the broader definition of self-defense and additional examples provided by the author. For example, Wills discusses how the history of the U.N. Interim Forces in Lebanon represents the willingness of the Security Council to expand the mandate of a peacekeeping force

when it believes that doing so will ensure the protection of civilian life. In accordance with this sentiment, the early 1990s featured greatly increased interventionism, exemplified by Operation Provide Comfort, a U.S.-led military intervention on behalf of the Iraqi Kurds, and the corresponding groundbreaking Resolution 688. The U.N. Transitional Authority in Cambodia operation is also consistent with this trend, given that it too proceeded despite not having a resolution adopted under Chapter VII authorizing the mission.

Peacekeeping efforts during the 1994 Rwandan genocide, however, represent a major curtailment in civilian protection as compared to the previously described operations. However, Wills effectively shows that such non-involvement was a direct product of unsuccessful peacekeeping operations that occurred in Somalia in the early 1990s. The chapter closes by arguing that a norm has emerged from efforts of the secretary general to resolve the potential conflict between respect for state sovereignty and the responsibility to protect. Since this emerging norm of the responsibility to protect remains extremely influential today, it is a logical end to the chapter. In this way, Wills effectively demonstrates the patterns and evolution—from decreased to increased protection—that have occurred within the context of peacekeeping, and gives the reader an idea of where the international law of peacekeeping currently stands.

Chapter Two of the text explores the extent to which humanitarian and human rights law require peacekeepers to protect civilians from serious violations of protected rights. Wills examines the extent to which IHL may be applicable to peacekeeping forces and may encompass positive obligations that would require troops to protect the local population if necessary. The author reaches the conclusion that in practice, the U.N. treats IHL as a political issue rather than a legal obligation. This view is in direct contention with the author's thesis, but she attempts to provide the reader with an understanding of the U.N.'s perspective on the matter by tracing its source. Wills explains that there is a genuine lack of clarity with regard to how IHL would even affect the peacekeepers in the context of article 1 of the Geneva Conventions. This uncertainty, and a high level of subjectivity, has likely contributed to the inconsistencies in the approach of peacekeepers that may be observed over time. Nevertheless, in the subsequent

chapter, Wills attempts to shed some light on this unsettled issue by stating what the current consensus is with regard to the applicability of human rights law during armed conflict.

The high level of uncertainty concerning peacekeepers' general responsibility to protect civilians is captured in Chapter Three of the book. Prior to discussing the international community's position on the applicability of human rights law during armed conflict, the author very clearly discusses the difference between IHL and human rights law, and the interaction between the two. Since the primary purpose of IHL is to minimize the infliction of human suffering and harm in the course of waging war, it does not operate in the same way human rights law operates. The principal purpose of human rights law is to protect individuals from abuses perpetrated against them by their own governments. Human rights law is conceived of in terms of specific exercisable rights of individuals, encompassing both positive and negative obligations, whereas IHL is conceived of in terms of the obligations required of actual parties to a conflict.

Since the 1960s there have been efforts in the international community to assert that the protection of human rights remains relevant during armed conflict. One of the author's strengths is her effectiveness in emphasizing that notwithstanding those efforts, there remain "gray areas" of international law that leave many questions related to the extent of peacekeepers' responsibilities unanswered. For example, should the human rights that apply during armed conflict be limited only to the protections that arise out of the humanitarian provisions of IHL, or should further protections be afforded to civilians? Wills reminds the reader that there are many influential underlying components that are of particular significance to this debate: the status of the parties is important as well as the nature of the conflict itself. Wills concludes by suggesting, however, that given the jurisprudence of the International Court of Justice (ICJ), the observations and comments of U.N. human rights committee bodies, and formal statements of the International Committee of the Red Cross, there is ample support for the conclusion that human rights law is indeed applicable during armed conflicts, and that jurisdiction may apply extraterritorially in some cases. This view is consistent with many of the provisions of the Protocol II Addi-

tional to the Geneva Conventions, which is now considered to reflect customary international law.

Having already addressed the applicability of IHL and human rights law to peacekeeping operations, Wills embarks upon the same analysis within the context of occupation law. This is an effective transition within the text, considering that a description of the ICJ's ruling on Uganda for its acts and omissions while occupying the Ituri region of the Congo was provided in the previous chapter. Wills relies on the example provided by an Australian mission to demonstrate that the success of a mission may depend on the existence of a legal framework in which to carry out a particular task. This view is a reiteration of an assertion provided in the text's foreword, in which Wills briefly touches upon the tension that arises when mandates are ill thought out or lack political commitment. Chapter Four provides further support for that view by carefully discussing the difficulties giving rise to uncertainty as to when and if occupation law applies. Wills uses the example of Operation Provide Comfort to emphasize how a lack of clarity as to what legal regime governs the relationship between troops and the local population can lead to long term instability in a region.

Overall, *Protecting Civilians: The Obligations of Peacekeepers* provides a probing analysis of the array of factors relevant to the discussion of the obligations of peacekeepers and the successes and failures of peacekeeping missions. Stylistically speaking, Wills demonstrates consistency throughout the text. In addressing a particular question or unsettled debate within the international law, Wills begins by presenting what the current state of a particular doctrine or line of thinking is. If that view represents a shift in approach or thinking, Wills explains the origins of the doctrine as it formerly stood, and then reveals the potential motivating factors that account for the shift.

Notwithstanding the tremendous value of Wills' analysis, *Protecting Civilians: The Obligations of Peacekeepers* text suffers from two major flaws. One flaw is that Wills makes several controversial claims without providing much support for her views or giving the matter the appropriate level of attention. Early in Chapter One, Wills discusses peacekeeping efforts between 1992 and 1995 in Somalia. Wills states that *serious* human rights violations were committed by U.N. forces during

peacekeeping operations in Somalia, provides a footnote source, and changes the subject immediately thereafter. The abrupt manner in which Wills transitions away from this undeniably tragic and important issue gives the reader the impression that she is attempting to dodge it. When the issue is revisited in the final chapter, Wills limits herself to categorically listing abuses committed by peacekeepers, mentioning the subsequent exculpation of the members involved, and then summarily stating that such abuses would not occur today. It is possible that the types of abuses so briefly described by Wills would not occur today, but the lack of evidence supporting that assertion does not give the reader much confidence. There are also subtle undertones of anti-Western sentiment incorporated by Wills throughout the text. For example, Wills claims that in 1991 U.S. propaganda directly caused the Kurds in northern Iraq to rebel. In addition, throughout the text she tends to criticize some notions simply by labeling them "Westphalian." The lack of detail and support for the claims stated in both these areas is likely to have the unintended consequence of alienating readers, and thus stands out as a weakness.

More fatal to the overall success of this text, however, is the overly idealistic nature of one of Wills' central arguments. Wills implies that if Common Article 1 of the Geneva Conventions and the spirit of international law are to have any meaning, then the moral and political imperative therein—to protect civilians—ought to be a legal duty. Although international pressure has been influential during past armed conflicts, the reality of international law is that there simply is no enforcement body with the ability to compel compliance with such a legal duty. Is Wills then suggesting that the principles of international law mean nothing? Lack of enforcement ability is a recurring and unsettled issue in international law. It is unrealistic to suggest that civilian protection must become an enforceable legal duty before the principles of international law can serve any real purpose or have any true meaning. Notwithstanding these flaws, however, the depth of Wills' analysis in other areas of the text, in addition to her consistency in style, makes this book cohesive and engaging. The reader comes away with a better understanding of the nature of peacekeeping as it stands today, and is left wondering what the next phase of its evolution will be.