

## BOOK ANNOTATIONS

- BANERJEE, SIKATA, *MUSCULAR NATIONALISM: GENDER, VIOLENCE, AND EMPIRE IN INDIA AND IRELAND, 1914-2004* (New York, NY: New York University Press, 2012).
- BLOMSMA, JEROEN, MASHA FEDOROVA, CHANA GRIJSEN, MARIANNE HIRSCH BALLIN, MARLOIES VAN NOORLOOS, RENO PIJNEN, EVERT STAMHUIS, CASSANDRA STEER, AND JILL COSTER VAN VOORHOUT, *SHIFTING RESPONSIBILITIES IN CRIMINAL JUSTICE: CRITICAL PORTRAYALS OF THE CHANGING ROLE AND CONTENT OF A FRAGMENTED GLOBALIZING LAW DOMAIN* (The Hague: Eleven International Publishing, 2012).
- BÜTHE, TIM, AND WALTER MATTLI, *THE NEW GLOBAL RULERS: THE PRIVATIZATION OF REGULATION IN THE WORLD ECONOMY* (Princeton, NJ: Princeton University Press, 2011).
- CAFAGGI, FABRIZIO, COLIN SCOTT, AND LINDA SENDEN, EDs., *THE CHALLENGE OF TRANSNATIONAL PRIVATE REGULATION: CONCEPTUAL AND CONSTITUTIONAL DEBATES* (Malden, MA: Wiley-Blackwell, 2011).
- CARROLL, LEAH ANNE, *VIOLENT DEMOCRATIZATION* (Notre Dame, IN: University of Notre Dame Press, 2011).
- GROSHEIDE, WILLEM, ED., *INTELLECTUAL PROPERTY AND HUMAN RIGHTS: A PARADOX* (Northampton, MA: Edward Elgar, 2010).
- JOIREMAN, SANDRA F., *WHERE THERE IS NO GOVERNMENT: ENFORCING PROPERTY RIGHTS IN COMMON LAW AFRICA* (New York, NY: Oxford University Press, 2011).
- KOTISWARAN, PRABHA, *DANGEROUS SEX, INVISIBLE LABOR: SEX WORK AND THE LAW IN INDIA* (Princeton, NJ: Princeton University Press, 2011).

LERNER, HANNA, *MAKING CONSTITUTIONS IN DEEPLY DIVIDED SOCIETIES* (New York, NY: Cambridge University Press, 2011).

MANUEL-NAVARRETE, DAVID, MARK PELLING, AND MICHAEL R. REDCLIFT, *CLIMATE CHANGE AND HUMAN SECURITY: THE CHALLENGE TO LOCAL GOVERNANCE UNDER RAPID COASTAL URBANIZATION* (Northampton, MA: Edward Elgar, 2011).

NALEPA, MONIKA, *SKELETONS IN THE CLOSET: TRANSITIONAL JUSTICE IN POST-COMMUNIST EUROPE* (New York, NY: Cambridge University Press, 2010).

ROACH, KENT, *THE 9/11 EFFECT: COMPARATIVE COUNTER-TERRORISM* (New York, NY: Cambridge University Press, 2011).

*Muscular Nationalism: Gender, Violence, and Empire in India and Ireland, 1914-2004*. By Sikata Banerjee. New York, NY: New York University Press, 2012. Pp. v, 210. \$49.00 (cloth).

REVIEWED BY AMY R. MARVIN

Sikata Banerjee's *Muscular Nationalism: Gender, Violence, and Empire in India and Ireland, 1914-2004* offers an intriguing comparison of two very different nations. Despite the apparent surface differences between India and Ireland, the most notable of which is race, Banerjee is quick to identify the important unifying feature that exists between the two nations: their legacy of British colonial rule. She employs a unique angle for analyzing the similarities between the two nations: a theory which she calls "muscular nationalism," and which she defines as "the intersection of a specific vision of masculinity with the political doctrine of nationalism." This can be understood as a conception of nationalism that embodies masculine traits as the core of its political doctrine. From this concept, Banerjee's analysis develops into an exploration of the interplay between women and muscular nationalism. She observes a "gendered binary" of "martial man versus chaste woman," and she examines historical ways in which women have reacted to this gendered political binary, either through compliance with muscular nationalist norms or by breach of those norms.

The author's parallel analyses of Ireland and India run surprisingly in tandem, given the cultural differences between the nations, until her final chapter, which departs significantly from her parallel analysis structure.

Banerjee opens her introduction with two poems: *Gang Bang, Ulster Style*, by Linda Anderson, and *A Poem for Vijaya Dashami*, anonymous. The poems illustrate the gendered politics of each nation: in the Irish poem, *Gang Bang, Ulster Style*, a woman lies "dumped in a ditch," punished specifically as an unchaste woman ("They cut off your flaxen hair, defiled your lovely breasts") for an act perceived as national betrayal; in the Indian poem, *A Poem for Vijaya Dashami*, a Bengali man is depicted as weak and effeminate, a slave, likely incapable of protecting his own nation. The poems function as an effective hook to pique the reader's interest in Banerjee's exploration of gender and nationalism in each nation.

Despite this compelling opening, the book's introduction is not as well-organized as its subsequent chapters. The author alternates between providing intermittent history on the subject and expanding on her own concepts of "muscular nationalism." For instance, Banerjee identifies other nations that have adopted muscular nationalism, such as Serbia, Australia, Israel, and Palestine, yet does not provide a sufficiently in-depth explanation behind her choice to focus on India and Ireland. For readers who are not well-versed in Irish or Indian history, the introduction might have benefited from a succinct historical backdrop. Similarly, a brief timeline of colonization of each nation and the respective liberation dates might also have helped contextualize the subsequent analysis.

Notwithstanding the seemingly chaotic structure of the introduction, several important points clearly emerge: in addition to articulating a definition of muscular nationalism, Banerjee identifies the role of women in muscular nationalism as "border guards," by which she "mean[s] the notion that the boundaries separating 'we the people' from 'them' are represented by chaste women's bodies," and that "[w]omen's role as border guards requires that their purity be vigilantly guarded." Border guards can be conceptualized by thinking of muscular nationalism as using a woman's body to protect the colonizer from the colonized, as a tool of separation, and as an emblem that must remain pure and chaste. For instance, "martialled men"—a term the author uses frequently to describe

militaristic men—in muscular nationalism often act under the premise of protecting this idealized female border guard. This concept is key to understanding Banerjee's subsequent analysis of the role women play in muscular nationalism, and why each nation has struggled to find space for politicized women within their respective constructions of nationalism.

After the introduction, the volume's chapters trace the development of muscular nationalism chronologically, with sections of each chapter devoted to Ireland and India separately, and a conclusion that compares the two nations for the relevant time period—a structure that coherently and effectively advances Banerjee's argument. The first chapter focuses on hegemonic masculinity and the British Empire, exploring the ways in which the British promulgated a standardized, or hegemonic, notion of imperial masculinity, and then distinguished both Irish and Indian men from the idealized British man. The British man exhibited martial prowess, strength, and discipline. This hegemonic British masculinity was associated with "self," and colonized nations were "other," and to promote this distinction and rationalize the need for colonization, the "others" of Ireland and India were depicted in popular culture and media as weak, effeminate, and in need of a strong dominating power. Banerjee identifies some leading stereotypes from this early period: under the "British gaze," Irish men were "simianized" and Indian men, specifically Bengali, were weak and cowardly.

The author also identifies the ambiguous role played by the notion of whiteness during this initial period of colonization. In India, the image of a white woman easily served as a border guard between the colonized and the colonizers: the hegemonic British male was to protect the chaste white women from the native Bengali. In contrast, despite the image of the Irish as "simianized," they were nevertheless white. It was thus difficult to identify a border guard between the colonized and the colonizers, and despite the similarities between both nations, race remains a prominent dissimilarity between the colonizations of India and Ireland throughout the following chapters.

Banerjee also suggests that muscular nationalism grew as a distinct reaction to British imperialism. In Chapter Two, she identifies the writings of Patrick Pearse in Ireland and Swami Vivekananda in India as the founding proponents of muscular

nationalism in their respective nations, using their work as a platform for her analysis. The respective movements inspired by both leaders called for a change in culture and upbringing; specifically, the change required an increased focus on athleticism, starting with the development of physical strength and athletic traits in school-aged boys. Banerjee argues that this marked the birth of a gendered, muscular nationalism: the nations were perceived as women, whom the newly strengthened men must protect. What then, Banerjee asks, was the role for actual women in these nationalist movements? In both instances, women could be mothers or wives. As such, women imparted to their sons the muscular nationalist rhetoric, or waited dutifully for their sons or husbands to return from battle, often sacrificing them to the greater good of fighting for their nation. The analyses and developments of Ireland and India in this period are strikingly similar, in that both nations seem to have had mirrored responses to British imperial presence.

In Chapter Three, Banerjee examines in greater depth how women reacted to the gendered politics that emerged in each nation, seeking out instances in which women have expressed an affinity for politics and a desire to participate in political activism, and how these women fit within the confines of muscular nationalism, which allows only for a martial male and a chaste woman. Specifically, the chapter focuses on four women activists from each nation from 1914-1932, a symmetrical approach that further strengthens Banerjee's comparison of the two facially dissimilar nations.

The women she discusses challenged the previously prescribed roles of women: as wives and mothers, alternatively instilling in their sons the virtues of nationalism or mourning the heroic losses of their husbands and sons; or as chaste female bodies, representing the glorified nation that the martial men must protect. They "disrupted normative womanhood" and "challenged the use of women's bodies as passive feminized icons of nationalism." Of the four women, one was sentenced to death (later commuted to imprisonment), two dressed as men in order to engage in combat, and one committed suicide. These stories make abundantly clear the extreme challenge women faced when they attempted to enter the realm of muscular nationalism as anything but mother or

wife in each nation, and thus offer a poignant example of the remarkable similarities between both nations.

By the fourth and penultimate chapter, however, the similarities between Ireland and India begin to feel less natural and more imposed by the author. In India, Banerjee focuses on the Naxal movement, inspired by Marxism. In Ireland, she examines the “dirty protest,” which took place in the Armagh prison in Northern Ireland: women political prisoners were denied privileges they had formerly been granted, and they protested by refusing to shower or use toilets. Although the movements themselves are disparate, Banerjee identifies two similarities: (1) women have begun to play an active political role in each movement; and (2) women in each movement repressed their maternal roles, suggesting that politics were still very gendered, and that in order to participate politically, women had to abandon their traditional roles.

Nevertheless, a striking difference between the movements remains. In Naxalism, Indian women participated mainly as asexual women (Banerjee points to a lone example of Naxalist women defending their role as women, when they accused their male counterparts of sexual harassment) whereas in Ireland, the activists’ womanhood was clearly expressed—Irish women revolted uniquely and specifically *as women* by smearing menstrual blood over the walls of their prison cells. Their womanhood was thus an integral part of their protest and their involvement in the movement.

Banerjee acknowledges that Chapter Five strays from the format of her previous chapters; rather than present parallel analyses of political developments, her last chapter examines ways in which the muscular nationalist ideal of the chaste woman’s body has endured in each nation. To illustrate this, she compares the immolation of Roop Kanwar, an eighteen-year-old widow who burned herself to death, in mourning, on her husband’s funeral pyre in 1987, to the 2004 Irish Citizenship Referendums, which restricted Irish citizenship to children born in Ireland who had at least one Irish citizen parent.

In discussing the Irish Citizenship Referendum, Banerjee circles back to the issue of race and whiteness, and questions whether Ireland’s motive is to remain a “pure” and independent nation in light of its colonized history—a suggestion that illustrates a possible resurgence of the need for white women’s

bodies as border guards—this time protecting the Irish from the “other.” The example of Roop Kanwar, rather than implying the continued role of a border guard, illustrates the value of pure, chaste women in India. Moreover, although an eighteen-year-old burning herself in mourning as a symbol of conforming to cultural tradition and the Irish Citizen Referendum are ostensibly unrelated, and seemingly stray from the author’s concept of muscular nationalism, both leave the reader questioning the lasting effects of muscular nationalism. Banerjee has thus very effectively developed a unique angle from which readers can compare two apparently dissimilar nations.

*Shifting Responsibilities in Criminal Justice: Critical Portrayals of the Changing Role and Content of a Fragmented Globalizing Law Domain.* By Marianne Hirsch Ballin, Jeroen Blomsma, Masha Fedorova, Chana Grijzen, Marloies van Noorloos, Reno Pijnen, Evert Stamhuis, Cassandra Steer, and Jill Coster van Voorhout. The Hague: Eleven International Publishing, 2012. Pp. vi, 227. \$58.00 (hardcover).

REVIEWED BY DIANA KEARNEY

*Shifting Responsibilities in Criminal Justice* addresses myriad recent changes in criminal law at the national, regional, and international levels. While each article tackles disparate substantive issues, all reflect on recent transformations to the theoretical grounding, goals, and enforcement mechanisms of international criminal law. Two overarching themes emerge. First, as states cede power to international institutions, they are increasingly committed to upholding these organizations’ criminal justice standards and applying these standards to their own domestic spheres. Second, changes in criminal procedure have altered the power of the judicial system vis-à-vis the defendant—often to the detriment of the accused—which forces us to confront the delicate balance between individual liberties and security.

The first segment of the book analyzes the impact of international law upon the Dutch criminal justice system. In Marianne Hirsch Ballin’s “Terrorism Causing a Shifting Responsibility in Criminal Pre-Trial Investigation: From Repression to Prevention,” the author highlights the lowered thresh-

old of suspicion that Dutch police require to investigate potential terrorist threats. Rather than waiting to react to clear criminal conduct, the Dutch interpret Article 2 of the European Convention on Human Rights (ECHR) and international law alike as empowering authorities to combat terrorism proactively with preventative measures. Hirsch Ballin recognizes the importance of this shift for securing the safety of Dutch citizens but urges caution, emphasizing the state's need to respect civil liberties while shielding its citizens from violence. Next, Jill Coster van Voorhout's "Shifting Responsibilities: Duties and Responsibilities of the Criminal Defense Lawyer" constructs a theoretical framework to determine whether Dutch criminal defense lawyers shoulder increasing responsibilities, using rates of counsel's negligence as a barometer. The author also examines a tension inherent in the defendant's right to competent representation: While the accused retains the right to represent himself in court, this may deprive him of competent counsel. The trio of Dutch-focused articles concludes with Chana Grijsen's exploration of the duties that treaties place upon states to enact hate crime legislation. She points out the resultant disconnect between policy and practice: While mandating that officers pursue "bias crimes" technically decreases police discretion, in reality officers continue to exercise their own judgment in determining whether or not to investigate a given case.

The book next turns to European Criminal Justice, beginning with Reno Pijnen's analysis of Counter Terrorism Financial (CTF) policy. EU member states are increasingly freezing the financial assets of suspected terrorist organizations in accordance with U.N. and EU resolutions. However, Pijnen argues that the implementation of CTF does not comport with due process requirements such as proportionality and the right to be heard, and that vague definitions of "terrorist" further complicate effective use of the CTF process. Pijnen's critical tone is a refreshing change of pace in *Shifting Responsibilities*; while the majority of articles focus upon observation, this article offers a pointed thesis argument.

Next, Jeroen Blomsma's article dissects the European Union's attempts at harmonizing criminal law across member states. The European Union crafts general substantive law mandates that members must implement in accordance with their domestic setting. But Blomsma finds that failure to



define basic criminal law terms such as intention, recklessness, attempt, and duress means that execution will inevitably vary across state borders. As with Pijnen, one of Blomsma's strengths is his strong analytic tone. This stands in contrast to the bulk of the scholarship collected in *Shifting Responsibilities*, most of which merely describe a new pattern, explain its foundation in criminal law, and point out potential consequences. Blomsma's analysis of EU legal harmonization, by contrast, elevates the level of discourse with its sharp argumentation and persuasive tone.

The section's final contribution weighs freedom of expression against regulating extremist speech in Europe, and questions the extent to which criminalization actually stems the tide of terrorist activities. Author Marloies van Noorloos explores recent changes in relevant speech law and discusses the responsibilities that legal norm makers such as the European Court of Human Rights (ECHR) and the Council of Europe Convention on the Prevention of Terrorism place upon member states.

The final third of the book broadens its scope to encompass international criminal law. Cassandra Steer reflects on Joint Criminal Enterprise (JCE), a controversial concept that allows international tribunals to hold suspects accountable for human rights violations committed by co-perpetrators. After noting the split between common law jurisdictions' support and civil law jurisdictions' distaste for JCE, Steer ultimately concludes that there is little basis in traditional sources of international law for vicarious criminal liability. She further posits that the principle of *nullem crimen* (a person should not be held liable for an act unless that act violated law at the time it was committed) perhaps even excludes its application. Steer's critical tone mirrors the tenor of Blomsma's and Pijnen's works, rendering it a particularly persuasive article. Masha Fedorova follows this with a discussion of the information disparities between prosecutors, defense attorneys, and judges in International Criminal Court (ICC) cases. The "equality of arms" principle has been forwarded to ensure that prosecutors share relevant evidence they uncover during their investigation with defense attorneys, particularly when such evidence would support the defendant's innocence. Though ICC prosecutors nominally serve as "truth seekers" who search for both exculpatory and inculpatory evidence, in reality

prosecutorial discretion over which pieces of evidence they divulge often leaves the defense at a distinct disadvantage. The book concludes with Evert Stamhuis's account of the current state of international law, in which he argues that new approaches to analyzing lawmaking processes are necessary, given the increased volatility and speed with which international criminal law transforms. Using the Extraordinary Chambers in the Court of Cambodia (ECCC) as a case study, Stamhuis determines that conventional models of studying international law (i.e., "old school comparative law") are inadequate to capture the increasing complexities of our world.

Though generalizing such a diverse collection of essays is in many ways problematic, each author provides incisive observations about changing facets of criminal law. Every article takes pains not only to explain the shifting criminal norms at the center of its analysis, but also to elaborate the possible consequences of these emerging trends. This attention to the *implications* of altered criminal law standards provides a comprehensive understanding of just why each topic matters. Furthermore, in spite of its disparate subject matter, the collection ties itself together with the common threads of international law's impact upon sovereign states' policies and the balance between security and liberty.

Although each work discusses in great depth the impact of changing international criminal laws and globalization upon states, an analysis of the reverse—the impact that states may have upon international criminal law—is noticeably missing. Rather than acknowledging that states themselves are the ones who voluntarily create these laws through participation in international organizations, the book paints states as passive recipients of legal trends, an illustration that is not an entirely fair. It is true that states might at times be constrained by rules they did not propose, or rules that they may even have opposed. More often than not, however, the states are actively engaged in creating these shifting responsibilities in criminal justice. For instance, articles throughout the Dutch and European Law sections depict international law as constricting states, implying that globalization and increased participation in intergovernmental organizations (IGOs) force potentially objectionable consequences onto the domestic sphere. The international law segment echoes this sentiment, warning that ICC criminal procedures may not live up to the procedural

standards that many domestic jurisdictions provide. Yet when the European Union enacts legislation, the new rules form only because the majority of member states support them. When the ICC dictates criminal procedure, it is because signatory states have empowered it to do so. Even the individuals who work in international organizations cannot be seen as independent from the political exigencies of their home states; rather, they serve as representatives of the states' position on any given issue. The states pull the strings by generating the laws that later constrain them. Such an analysis may be beyond the scope of the authors' work, but omitting it may leave the impression that states are simply reactive, rather than proactive, in the genesis of international criminal justice.

Nevertheless, *Shifting Responsibilities* excels in other areas. The articles devote significant attention to the split between the practice and language of international law. The importance of divorcing reality from rhetoric can hardly be overstated if one is to put stock in the conclusions drawn from their observations. As several of the authors rightly point out, many well-intentioned regulations and treaties fail to live up to their potential because of a lack of will or difficulty in implementation. While this strength surfaces throughout the text, Grijzen's piece on the incorporation of international terrorist laws into the Dutch system, Blomsma's critique of attempts to harmonize criminal procedure across Europe, and Fedorova's breakdown of ICC prosecutors' duty to share evidence are particularly careful to separate criminal practice from rhetoric. Finally, the accuracy of the book's two primary themes—that international influence upon domestic law is on the rise, and that states must balance safety with liberty—is reinforced by the fact that these trends emerge across wildly disparate substantive topics. Thus, presenting these themes through a collection of essays, rather than chapters by a single author, seems an especially appropriate method for delivering the overarching messages of *Shifting Responsibilities*.

*The New Global Rulers: The Privatization of Regulation in the World Economy.* By Tim Büthe and Walter Mattli. Princeton, NJ: Princeton University Press, 2011. Pp. xv, 248. \$29.95 (cloth).

REVIEWED BY PAUL MERTENSKOETTER

Who decides on the “right” design for your toaster’s fuse? Some decades ago, the answer to this question depended on where you lived. Your national product standards regulators would deliberate in expert committees about the pros and cons of different fuse designs and ultimately decide on a standard for the “right” toaster fuse. Nowadays, and increasingly so, the International Organization for Standardization (ISO), the international standard-setting body composed of representatives from various national standards organizations, determines the design of your toaster. Does it matter who designed your toaster’s fuse? It does to businesses. For example, having your product design approved by the ISO as the international standard can mean significant profits and cost savings. While other manufacturers scramble to change their method of production, incurring switching costs, your familiarity with the now-standard product design will allow cheap, and hence profitable, production. The lesson to draw from the toaster fuse is that standardization matters, because money is at stake. Winning the standardization competition at the international level becomes important for states’ industries.

Judging from this example, it might seem as if only business students and businessmen should be interested in what Tim Büthe and Walter Mattli have to say in *The New Global Rulers: The Privatization of Regulation in the World Economy*. But the institutional setting in which these business interests play out, and the lessons that can be drawn for global regulation more generally, should interest at least two more professions: political scientists and lawyers. Political scientists find a case in which conflicting interests about the distribution of money can trigger political dynamics and implicate international relations. Lawyers find a case in which a regulatory process of global reach is removed from the reach of administrative law, presenting an interesting counterfactual to the dynamics within the sphere of public law.

Büthe and Mattli's *New Global Rulers* enters the stage with these wider implications in focus. Global standards for product design and accounting practices are negotiated in private governance bodies, the ISO and the International Accounting Standards Board (IASB). The book argues that the adoption process is one in which "timely information and effective representation" result in a "critical advantage" to get those standards adopted that best serve the commercial interests of domestic businesses. As political scientists, Büthe and Mattli are conscious of the importance of institutional design for the acquisition of "timely knowledge" and the actualization of "effective representation." Timely knowledge is to be understood as the acquisition of correct information and analysis early in the regulatory process, which allows parties to react quickly to new trends and to shape the agenda. In the same vein, effective representation allows nations to influence international standard-setting in order to achieve results conducive to their interests. The authors also suggest that such "soft" factors might be more important than a state's political might or a business' financial interest in determining which domestic standardization body prevails on the global stage.

Realizing that institutional design matters is the first step of the argument. Büthe and Mattli's crucial hypothesis is that the most important aspect of the institution's design is complementarity: As domestic private regulatory bodies in Europe and the United States try to influence international standards, their success is determined significantly by the extent to which their internal organization matches that of the international body. The hierarchical structure of the regulatory framework between international and domestic settings leads to the fact that where the domestic regulator is also hierarchical and coordinated in itself, a case of "institutional complementarity" arises. Hierarchies, the authors find, are better at "accommodat[ing] another level of aggregation" than diffuse and potentially competitive institutions.

The book's clear structure reflects the authors' thoughtful argument. It first lays out the context and typology for the theory (Chapters One and Two), followed by the theory itself (Chapter Three). The volume continues with a detailed application and explication of the theory to international accounting standards in Chapters Four and Five, then to product regulation in Chapters Six and Seven. Here the authors show the

effects of complementarity in the product standards and accounting realm, providing convincing examples of the effects of domestic institutional features on the extent of international influence (for interested readers, the appendices provide a more detailed evaluation of the authors' survey results and methodology). Chapter Eight argues for the contributions of the work and complementarity theory in the areas of political science, sociology, law, and economics. Finally, Chapter Nine makes the case for the study of private actors in the broader field of global governance.

The private regulatory bodies examined in this book, despite carrying an air of technicality, rationality, and expertise, are a venue for political processes in which domestic stakeholders hope to gain prominence. This focus on the political is often neglected by lawyers—though under the banner of global administrative law (GAL), legal scholars are now studying the mechanisms by which global governance is executed and controlled. Bütte and Mattli make an important contribution to this growing field by focusing on the influence of purely private actors (ISO and IASB are not controlled by government). Through a historical outline of the U.S. and EU counterparts of these two regulatory bodies, it becomes clear to the reader that private interests are the core constituent in the domestic bodies. Consequently, as these private regulators enter the global arena, the administrative lawyer must consider whether the setting has changed in a way that mandates more legal attention—that is to say, whether GAL “technology” (i.e., transparency, accountability, reasoning, and participation) should be applied to these private regulatory bodies. The question is an important one, in part because the results of private regulatory processes often assume public significance; for example, in addition to determining protectionist measures in the WTO context, product design standards are also prominently used to defeat culpability in tort law negligence claims.

Bütte and Mattli also argue that the application of checks and balances in the spirit of competition comes at a potential cost to one's influence. Where multiple standardization institutions are competing domestically, the non-hierarchical structure will lead to a loss of influence internationally. Domestic competition makes it hard to speak with one united voice, even when interests align. The book's recommendations for

domestic private regulators are thus clear: hierarchical regulators will achieve high institutional complementarity and likely wield more influence at the international stage. Furthermore, since international commercial interaction in many fields is properly characterized by incentives for transnational collaboration on one side, and distributional conflicts on the other side, the book's insights may be translatable to these fields as well.

One aspect that deserves more scrutiny than Bütte and Mattli provide is the frequent exclusion of much of the global South from the sphere of private regulation. States that do not have the time, the resources and, critically, the institutions and experts to participate at the international level have little say in the design of your toaster's fuse. Because the economic stakes are high and it is possible to imagine a situation in which the players currently at the table—chiefly the European Union and United States—do not act in the global interest, the process of private regulation deserves attention and analysis. Both players, for instance, might have an interest in creating complex standards and sophisticated designs in order to erect higher barriers of entry and exclude new producers. Such questions of institutional legitimacy, and the political consequences for the unrepresented, certainly merit further study.

*The Challenge of Transnational Private Regulation: Conceptual and Constitutional Debates.* Edited by Colin Scott, Fabrizio Cafaggi, and Linda Senden. Malden, MA: Wiley-Blackwell, 2011. Pp. iv, 188. \$39.95 (paperback).

REVIEWED BY LUIS ERNESTO FERNÁNDEZ DE LA VARA

In a collection of eight multifaceted works, *The Challenge of Transnational Private Regulation* presents the obstacles inherent in defining and maintaining transnational private regulations (TPRs). When consulting the work, readers should keep in mind that its logical trajectory is not obvious; although the title indicates that the work will deal primarily with constitutional and conceptual challenges to transnational private regulation, as opposed to its more technical aspects, some familiarity with the topic is probably necessary to avoid getting lost in the minutiae.

The four articles in the first half of the book deals with the pressing problem of legitimizing TPRs, a problem that arises because the shift in power from governmental governance bodies to non-governmental governance bodies sits uncomfortably in the constitutional framework of most countries. The other articles supplement this discussion and conclude that when TPRs are followed, it is because the norms that they codify have been embedded and ingrained within some wider set of structures, such that deviation implies punishment—a process defined in this volume as “crystallization.” Norms that are crystallized, the authors argue, are more effective in creating hard incentives for firm action, and thus TPRs whose norms are crystallized through government action may result in more accountable and democratic regulations. This conclusion is exemplified in Chapter Three with Peer Zumbansen’s analysis of the new German Corporate Code of Governance, where the ability to dictate behavior is derived from the hybrid structure and power-sharing of TPRs and governmental regulation. However, the work arguably leaves out a crucial component of crystallization: if government and private interests are controlled by the same individuals, then the private regulation codified as a result of this relationship will probably lead to a result that internalizes only costs and benefits associated with these groups. Such a result, in turn, may exclude the interests of other groups and, by extension, lead to a net loss in democratic accountability.

The second half of the volume applies this conceptual approach to a focused analysis of the prevalence and importance of TPRs within modern regulatory and economic action. In this regard, the clear implication drawn from the articles is that TPRs, when seen in their best light, function as a hybrid quasi-governmental structure, where the lack of legitimacy from the absence of democratic processes is substituted and supplemented by regimes that create popular accountability. These regimes are characterized by an alignment of private parties and government, governed by “meta-regulatory” norms that are optimally aligned with the public interest. At their worst, however, these regimes may also function as a governmental tool that allows a state to conceal extra-legal activity by pushing it into private regulatory mechanisms.

Fiona de Londras’ discussion of Privatized Sovereign Performance illustrates a perfect example of the dangers that



can flow from the exportation of such responsibility. Her article examines extraordinary rendition as a vehicle to exhibit the ease with which states can use TPRs as a shield against democratic accountability. By focusing on the U.S. government's increased use of corporate entities in the performance of extraordinary renditions, the article presents a stark example of a government doing just this. The devolution of renditions to private parties allows the United States to claim ignorance of the violation of torture laws, while simultaneously exporting its illegal activity to private actors.

This scenario raises two questions that lie at the heart of the book: how to deal with the absence of legitimacy and responsiveness inherent in the propagation of TPRs? And is there really a political regime capable of holding these regimes accountable? Part of the volume seems to answer these questions by establishing that lack of democracy can be countered by implementing constitutional, democratic, functional, and performance-based requirements that, in aggregate, help these regimes to approximate democratic functions. Such requirements emphasize fair procedures, due process, consistency, and proportionality through the oversight of TPR action by national courts, in conjunction with a requirement that there be expertise in the standard-setting process. Its prescriptions are distilled to technocratic "meta" oversight into TPR formation and action through the court system to check the reach of these regimes. Yet this analysis falls prey to the same agency capture problem that flows from the technocratic solution, and does not fully explain the political reality that courts may face when countering a system that the other branches created in order to divest themselves of responsibility.

Although the volume ultimately leads to the conclusion that descent into TPRs is inevitable, and that there is a strong risk of losing democratic accountability, the example of cartel regulation provided by Imelda Maher in Chapter Six can point to the existence of plausible alternatives. The discussion of the three categories of cartel arrangements, along with the resulting legal structures, assumes that competition among members of the TPRs amongst themselves, coupled with producers and consumers of other groups governed by or responding to TPRs, can bridge the line of accountability, while providing the lowest cost system. Yet the belief that competition will solve the problems of legitimacy accords too much faith in the

capacity of consumers to overcome informational asymmetry with respect to burdensome and technical regulation, or assumes that there will be some willing governmental mechanism to align these interests (agency capture yet again).

The driving force behind these regimes is the fact that they appear to bridge the gap between information and regulation. This convergence suggests that the industry is the best equipped to regulate itself at the lowest social cost. There is also another lesson to be drawn from articles dealing with TPRs; namely, that the rise of these regulations foreshadows the dilution of the nation-state as the producer of legal norms in conjunction with the changing of democratic legitimacy by the governed. The rise of transnational regimes could create rules that are more legitimate, democratic, and responsive to the needs of individuals. It could represent the rise of the defacing of traditional conceptions of the nation state. Or TPRs could just be another vehicle for the state to facilitate the subjugation of its population.

Ultimately, *The Challenge of Transnational Private Regulation* may simply suffer from a lack of coherence that causes the reader to lose track of the bigger discussion. The collection conveys the fundamentals of the topic, yet the articles themselves are not obviously structured in a way that speaks to a seamless pedagogic or informative path. The sections between articles progress without any attempt at cohesive transitions, and there is even the problem of a missing section, where a work named in the table of contents does not appear in the actual book. This haphazard integration has the effect of slightly diminishing the deeper discussion and dialogue.

Yet in spite of the structural and superficial ambiguities, the work, through the joined efforts of the different writers with different voices and points of view, succeeds in creating a genuine discourse that will suit the uninitiated and conversant alike. This effectiveness is a function of the analytical rigor found within each piece: each article includes both background information and examples regarding their respective topics, and contains enough information that the reader is never left wallowing in ambiguities. In sum, although the lack of thematic coherence leaves a lot to be desired, the series will serve as a valuable (if imperfect) reference to the student or academic that is looking for a comprehensive review on TPRs.

*Violent Democratization*. By Leah Anne Carroll. Notre Dame, IN: University of Notre Dame Press, 2011. Pp. xv, 447. \$45.00 (paperback).

REVIEWED BY ALEX KERCHNER

Colombia, one of Latin America's oldest and most continuous democracies measured by a purely electoral standard, has also suffered from extensive internal violence for the past several decades. Notable parties to Colombia's internal armed conflict have included the Colombian state, nominally Marxist-Leninist guerrilla groups such as the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN), and rightist paramilitary groups such as the Self-Defense Forces of Colombia (AUC) and successor criminal groups (BACRIM). In *Violent Democratization*, independent scholar Leah Anne Carroll has assembled qualitative accounts of political events beginning in the mid-1980s, depicting the interaction between social movements, guerrillas, and elite powerholders in three areas that have experienced notable violence: the Urabá in the department of Antioquia, the lower Caguán in the municipality of Cartagena del Chairá, and the department of Arauca. These localities were lightly populated in the period after World War II; all saw the arrival of a substantial number of refugees fleeing *La Violencia*, Colombia's decade-long civil war, and all have seen a further influx in subsequent decades. While the relatively recent populating of these areas has resulted in some commonalities between the regions, they also exhibit substantial differences, which Carroll argues are grounded largely in the composition of the economic elite in the region.

A notable strength of Carroll's book lies in its extremely detailed accounts of events in each region, from the early 1980s until the late 1990s, based in part on interviews with large numbers of key actors. Colombia's often bewildering political landscape, and the persistent multiplicity of political parties and factions in the country, means that looking at data alone paints an extremely incomplete picture of regional politics. Guerrilla factions, social movements, paramilitaries, and others frequently run their candidate lists under major-party names, the significance of which cannot be decoded without knowledge of the local landscape. Carroll is familiar with the

actors, and the book explains—though not always in the most direct fashion—their identities and the nature of their interactions in the three regions. Carroll has also compiled information regarding the level of violence against social movements, encapsulated in a “repression index,” starkly illustrating the difficult political conditions under which they labored. The ultimate goal, Carroll states, is to identify what was responsible for the “success” or “failure” of social movements to achieve gains in the regions concerned, and the introduction sets out a complex chain of variables that she argues are responsible for those outcomes.

To this end, Carroll structures the center of the book in three sets of two chapters. Each set covers what she refers to as the “reform” and “post-reform” periods in each selected region. The “reform” is the opening of Colombia’s political system in the mid-1980s under President Belisario Betancur, and the “post-reform” refers to the subsequent changing of attitudes at the national level, as well as the foundering of the peace process under Presidents Virgilio Barco and César Gaviria. Carroll moves sequentially through each of the three regions in turn, describing first the “reform” period when social movements with demands—in particular for infrastructure or labor rights—had space to operate, followed by the “post-reform” period in which the pressure from the top closed and local elites were frequently able to reassert their authority through violence.

The “reform” period was characterized by the creation of the Patriotic Union (UP) political party, which brought together social movement figures and guerrillas, as well as different political parties aligned with other leftist factions. The central government, for reasons treated as exogenous, pressured local elites to permit leftist political participation, and the FARC and other guerrillas participated in the political process through the UP. However, Carroll argues that as this top-down opening was gradually closed off, local pacts between Left and elites foundered unless the region’s principal economic actors were financially self-sustaining. In that case, elites found it easier to accede to the Left’s demands while still increasing their own revenues. Subsequently, the “post-reform” period was characterized by the reversal of national attitudes, a renewed military effort to defeat the guerrillas, increased paramilitary

persecution of leftist social actors, and moves by local elites to recapture any lost ground.

According to Carroll's account, the nature of the key economic activity in the region was important to explaining the ultimate outcome for social movements. For instance, Urabá's banana plantations lent themselves to unionization because of the labor-intensive nature of banana growing and, therefore, leftist actors had a greater opportunity to develop cohesive organization and had more leverage. Cattle ranching, the primary economic activity in the Caguán area and Arauca, was more land-intensive, giving the economic elites the upper hand in those zones. In Arauca, Carroll suggests that the development of the oil industry, in combination with leftist control of local government resources made possible by political opening and decentralization, was responsible for the relative strength of leftist politics. Moreover, the presence of international companies meant greater leverage for Araucan social actors seeking to forge alliances with Northern partners, and the continued income from the oil sector made it easier for local elites to stomach greater inclusivity in the distribution of local revenue.

In addition to local factors, national-level variables were central to the final outcomes for social movements in all three regions. The opening of political space to leftist parties in the mid-1980s; the process of decentralization, including the direct election of local and departmental executives; and the sharing of natural resource revenues with lower levels of government were all factors without which, Carroll contends, social movements could not have made the strides they did in furthering their goals. Local, regional, and national actors interacted in important ways: the government in Urabá took a harder-line approach during the counterreform period, for example, in part because of the stance of Antioquia Governor (and future President) Álvaro Uribe. Urabá, earlier on, also contained the ranches of a large number of figures in the coca industry, leading to a greater private paramilitary presence than in other zones. The department of Arauca and Araucan social movements suffered from the surge in conflict, created in part by the national government's decision to escalate its attempts to defeat the guerrillas militarily. In particular, the central government suspended major aspects of decentralization and greatly increased the national military presence; in

2003, the Uribe administration disqualified a large number of leftist candidates for office and arrested them just prior to the elections, accusing them of involvement with guerrillas and enabling a smooth victory for Uribe's partisans. In the lower Caguán, the relative isolation of the region meant a lower paramilitary presence, but the region was affected by its proximity to the demilitarized zone established during the 1998-2002 peace process directed by President Andrés Pastrana (an adjacent municipality, part of the zone, was the site of the notorious kidnapping of Senator Ingrid Betancourt).

*Violent Democratization* is detailed and informative, and Carroll's intricate model suggests a complex chain of causality that aids the richness of the local story. In some cases, it is unclear whether or not social actors could have done anything to influence the situation, or whether exogenous factors alone were determinative, particularly in cases where social movements had their greatest difficulty. In the Caguán, for example, Carroll seems to suggest that social movements were inevitably limited by the FARC's strength on the ground and their resulting difficulty in dissociating themselves from the guerrillas, the resulting high level of conflict with government forces, and the relative lack of international connections in the area. There are some exceptions—for example, the pressure exerted by social movements on the national government through transnational human rights networks. On the other hand, the FARC and ELN's decisions on how to divide territory in their zones of operation, which in turn exerted important effects on the unity of leftist actors in Arauca, are treated as exogenous variables.

The style can be repetitive at times, and non-experts may have trouble tracking all of the peripheral actors as the story progresses and jumps between different threads of events occurring in the same zone. Including more introductory information about Colombia may have been helpful. The book's introduction, while providing a national historical overview, dives into detail and assumes some preexisting knowledge of the Colombian political system and social structure. While some repetition enables each chapter to stand as an individual account, more initial information may have averted some inconsistencies in terminology and translation, made it easier to track developments, and enabled some narrative tightening. It might also have helped to make this analysis, which stands on

a small number of qualitative cases, more universally applicable by more clearly and concisely identifying the key factors that ultimately tipped the balance—as well as how, exactly, success or failure of social movements was defined and appeared in practice. For instance, the book's conclusion refers densely and somewhat confusingly to the work of many other social scientists that, without more description, do not shed as much light as they could on what the real lesson from these cases should be.

Ultimately, *Violent Democratization* provides information about the political history of three zones of Colombia that would be very difficult to obtain elsewhere, in particular for non-Spanish-speaking readers. Carroll makes a strong case for the need for social movements to work together and make connections with transnational networks in order to maximize their success when opportunities arise. On the other hand, it also reemphasizes the somewhat depressing story that there is often not much that social movements can do when their options are limited by guerrilla action, violent repression, and elite intransigence—at least not without examining regional and national-level actors and variables—though it ends hopefully by noting some continued successes in asserting the citizenship rights of residents of these conflict zones. While a tighter narrative may have increased the accessibility of her work to a more general audience, Carroll has produced a valuable book for students of Colombian politics and society that is also a more broadly applicable, interesting story of local politics in conflict areas.

*Intellectual Property and Human Rights: A Paradox*. Edited by Willem Grosheide. Northampton, MA: Edward Elgar, 2010. Pp. v, 317. \$160.00 (hardcover).

REVIEWED BY ERIC W. KOBET

*Intellectual Property and Human Rights: A Paradox*, a collection of fourteen articles addressing the complex interactions between intellectual property (IP) law and human rights (HR) law, presents the outcome of a 2006 conference presented by the Center for Intellectual Property Law at Utrecht University. Each chapter is written by a different author, each of whom brings a distinct voice and viewpoint to the debate, and whose

approaches vary: the chapters range widely in length and depth, with some authors offering a global perspective and others analyzing the law and policy of a single country.

The paradox of the book's title arises from potential conflicts in attempts to protect both IP rights and human rights. As many of its contributors argue, public interests in freedom of speech, participation in culture, and the ability to benefit from scientific innovations may conflict with the private interests of authors and inventors in controlling their creations. As the scope of both IP law and HR law continue to expand, their domains will increasingly collide, necessitating a balance between them.

The book is organized into three parts, with Part I focusing on the existing law and its trends. Editor Willem Grosheide sets the stage in Chapter One, describing the origin, development, and interaction between IP and HR law in international regulation. Particular attention is paid to the relationship between IP and HR in legal literature, providing a concise yet thorough overview of ways in which legal commentators have framed the debate. Cees Flinterman then turns to human rights law in Chapter Two, offering an expansive overview of the major developments, aspects, and monitoring methods of human rights. Madeleine de Cock Buning uses Chapter Three to provide a readable, thought-provoking overview of copyright law, including its origins, development, and current status. Particular attention is paid to the interesting effects that digitalization has had on the flow of information. In Chapter Four, Rochelle Dreyfuss relies on the utilitarian and economic justifications for patent rights to credibly argue that they do not conflict with human rights. Chapters Three and Four also leave the reader with a crucial question: whether IP rights constitute human rights and, if so, how IP human rights compare to non-IP human rights.

Part II of the book explores this question in greater detail, in part by examining the extent to which IP rights are treated in relation to other rights. Following a brief overview of the subject in Chapter Five, Joost Smiers uses a human rights approach to advocate for ambitious copyright law reform in Chapter Six. In the next chapter, Duncan Matthews then discusses several international instruments relating to IP rights and the right to health, recognizing on the one hand the need for states to incentivize innovation to facilitate development,



while acknowledging that everyone has a fundamental, indispensable human right to health. Part II concludes with two chapters that refute the equivalency of patent rights to human rights: in Chapter Eight Jan Brinkhof compares the characteristics of patent rights and human rights, convincingly concluding that these rights are distinct, and Wendy Gordon uses the ninth chapter to caution against equating patent rights to human rights, as she argues that doing so would justify the protection of patent rights at the expense of impoverished people.

Joost Smiers' contribution to *Intellectual Property and Human Rights* is particularly thought-provoking, as he advocates for ambitious changes to existing copyright laws. In his view, such laws face two fundamental challenges: digital piracy has made the modern copyright system unsound, and the current system has become one in which a select few artists are disproportionately rewarded for their contributions, enabling a handful of dominant corporate actors to control a bulk of copyrighted material and thus suppress cultural dialogue. Although Smiers presents several alternatives to current copyright systems, he specifically advocates for one in which all copyrightable material goes into the public domain, giving everyone access to consume and modify creative knowledge.

These ideas have merit, though they are not without their flaws. For example, although placing copyrightable material in the public domain may promote creativity by allowing everyone to exploit creative materials, one might argue that creativity is often inspired more by restriction than by freedom—preventing artists from mimicking copyrighted material could force them to create works that are more original and unique. Smiers' solution may also keep artists from controlling how others use their work: though he argues that the market could be regulated to prevent fraud, plagiarism, and for-profit use by others, many artists would likely balk at providing unlimited freedom for others to adapt their work.

Part III applies a human rights analysis to emerging IP issues, opening with Charlotte Waelde and Abbe Brown's geographically narrow but conceptually thorough analysis of international HR law as a tool for applying U.K. law to a hypothetical international copyright dispute. In Chapter Twelve, Geertrui Van Overwalle uses human rights law to examine how IP law protects rights holders in a variety of emerging contexts,

including genetic manipulation, access to food, and informed consent. In doing so, she deftly uses human rights analysis to constrain overreaching patent rights. In the next chapter, Charles McManis analogizes the moral underpinnings of both IP rights and the rights of “traditional knowledge holders” (referring to knowledge accumulated over generations by people living in close contact with nature). After laying an abstract moral foundation for protecting the rights of these knowledge holders, McManis analyzes several means of executing such protections. Martin Adelman closes the book with a brief counterpoint to McManis’s arguments.

With few exceptions, each author focuses on a specific type of IP law, an approach that suggests that the interaction between IP law and HR law will depend on the type of IP law under question. For example, de Cock Buning suggests that the freedom of communication inherent in traditional copyright law is of a different character than the commercial interests protected by patent law, and Dreyfuss echoes this distinction, finding it easier to see a human rights dimension in copyrights than patents. Dreyfuss also views copyright law as protecting human dignity, whereas patent law serves the more utilitarian purpose of promoting science and innovation.

Furthermore, given the economic character of patent rights, most authors are hesitant to categorize patent rights as human rights. Brinkhof, for instance, explicitly indicates that when patent law and human rights collide, human rights must prevail. Gordon supports this view, arguing that equating patent rights to human rights would allow patent right owners to create a false equivalency, providing ammunition to (among other things) prevent impoverished people from manufacturing and distributing inexpensive generic versions of patented drugs. However, it is not always obvious that this distinction between human rights and lesser rights is so binary—in the introduction to the volume, Grosheide observes that we can distinguish between two categories of human rights, fundamental and non-fundamental. Perhaps human rights can be viewed as a continuum wherein one must examine rights in context. A right to health, for example, may easily outweigh a patent right when the health concern is grave, but if the health concern is minor, it may make more sense to respect patent rights.

Diminishing the equivalency between patent rights and human rights also provides a springboard for advancing ideas to help developing nations meet their non-IP human rights obligations. To balance the interests of incentivizing innovation and protecting the human right to health, Matthews calls upon “all those in a position to assist, to provide international assistance and cooperation” to assist developing nations in fulfilling their human rights obligations. However, the question of how to incentivize this assistance remains unanswered; much like the “tragedy of the commons,” wherein states lack incentives to refrain from exploiting shared natural resources, states might also see little reason not to hoard intellectual resources. More encouragingly, distinguishing patent rights from human rights could help policymakers to think of ways in which patent protection may be modified to advance weightier human rights. For example, one could apply Smiers’ ideas for reforming copyright protection to patent protection, allowing freer access to patentable ideas, at least within the context of developing nations. After all, as Brinkhof notes, many of today’s most powerful European multinational companies were created during “the golden years of the nineteenth century ‘patent-free’ period.” Similarly lax patent protections may allow developing nations to gain economic footholds, increasing human welfare.

Ultimately, the scholarship of *Intellectual Property and Human Rights*, while sometimes dense and abstract, is nonetheless insightful and thought-provoking. Professor Smiers’ views of copyright reform are especially interesting, and readers may find themselves not only looking for more examples of ways in which corporate conglomerates manipulate culture, but also responding more forcefully to criticisms of an expanded public domain. In fact, if given space to develop their ideas more fully, it is easy to imagine many of these chapters becoming books of their own.

*Where There Is No Government: Enforcing Property Rights in Common Law Africa.* By Sandra F. Joireman. New York, NY: Oxford University Press, 2011. Pp. xv, 208. \$59.95 (hardcover).

REVIEWED BY CHRIS DELAUBENFELS

There is an extensive array of scholarship devoted to land policy and development in Sub-Saharan Africa, with a significant amount of that work focusing on the failings of governments to protect land rights and prescriptions for future property policy. In *Where There Is No Government: Enforcing Property Rights in Common Law Africa*, Sandra F. Joireman takes a different approach in identifying existing property rights enforcement regimes and analyzing their effectiveness, by focusing on three Common Law African countries: Ghana, Kenya, and Uganda. She further identifies three major actors in property rights definition and protection—Entrepreneurial Bureaucrats, Nongovernmental Organizations (NGOs), and Specialists in Violence—that supplement absent or insufficient government. In order to measure the effectiveness of these options in protecting property rights, Joireman establishes a five criteria rubric: predictability (clear decision-making process), accessibility (affordable and proximate), equity (serves all community members), effectiveness (provides a final solution to problems), and restraint (no illegal violence).

The introduction sets forth Joireman's central premise: While other research in Africa has assessed the effectiveness of existing property rights laws, *Where There Is No Government* makes no assumptions that enacted laws are actually implemented, searching instead for the systems that are really in place to protect property rights. The volume succeeds in answering two questions set forth in the introduction: "Whose property rights are being enforced? What group or institution is enforcing these property rights?" The breadth of Joireman's research captures how property rights are actually enforced and which actors have been successful. The book is not without its weaknesses. For instance, while Joireman's rubric is useful in comparing property rights protectors and provides a semblance of an empirical approach, a quantitative form of measurement could bolster the rubric. Also, one motivation for the book—"Why is it that countries have been slow to act

in defining property rights and then enforcing them?”—is less satisfactorily addressed. Even if the project falls short in that goal, however, the book is able to consistently compare how different property protection institutions are functioning relative to the governments in Ghana, Kenya, and Uganda, which itself is a contribution to the more common ten thousand foot view of property rights in Africa.

In Chapter Two, Joireman critiques African customary law. Unknown to most outsiders, African customary law is one of the few current examples of a bifurcated legal system. Its institutions and organization are also a product of colonization, as colonizers used customary law as an indirect ruling system by giving power to local chiefs to administer justice, but keeping the chiefs in their pockets. While Joireman notes that the organization of customary courts was “formed to organize and control ethnic groups” by colonizers, she also overlooks some of the nuances behind customary law and neglects to ask why it resolves the majority of legal disputes in Africa. Classifying customary law as a “myth,” for example, leads to a somewhat superficial examination of its weaknesses and strengths. Although Joireman pinpoints the suffering of women and outsiders under customary law, she also overlooks its complexity, particularly its ability to evolve and advance as communities progress. Further, although the book addresses humanitarian and economic concerns with customary law and land tenure systems, it does not address the alternative of formalized property titles that often results in land grabs. The chapter concludes by assessing the customary institutions according to the author’s rubric, finding that they are strongest in accessibility and effectiveness and weakest in terms of equity and predictability.

Chapters Three, Four, and Five address “what happens when the state fails to enforce property rights,” beginning with Joireman’s exploration of the roles of entrepreneurial bureaucrats, NGOs, and specialists in violence in their respective chapters. Chapter Three defines entrepreneurial bureaucrats as “government officials operating outside the limits of their authority,” focusing on the Provincial Administration in Kenya and Local Councils in Uganda. The case studies demonstrate why entrepreneurial bureaucrats exist and how communities perceive them, and interviews with entrepreneurial bureaucrats shine light on why actors enforce property rights outside

their authority, ranging from greed to a simple lack of alternatives. One interviewee said, "You know this is Uganda, this isn't Chicago. We can manage. Under the circumstances we do what we can do." This quote captures a valuable contribution that *Where There Is No Government* provides to the literature on property rights in Sub-Saharan Africa: It assesses what is actually being done. Joireman's evaluation of entrepreneurial bureaucrats recognizes that the services are not the same everywhere, but she attempts to measure the bureaucrats' effectiveness in relation to the states'. She concludes with the observation that these actors are operating in a gray area "between social norms and public law," which generally leads to bureaucratic entrepreneurs being less predictable, equitable, and effective than the state, but more accessible and equally restrained.

In Chapter Four, Joireman examines the role of NGOs, classifying them as "privately ordered solutions to an institutional inadequacy" that generally have no profit incentive. She further divides them into potentially harmful NGOs (ones that encourage the state to withdraw from service provision) and potentially beneficial NGOs (ones that fill gaps where state services are inadequate). Specifically, this section studies two NGOs in Uganda: the International Federation of Women Lawyers (FIDA) (international) and Mifumi Project (local). FIDA is lauded for helping to educate the populace, demonstrate that there is an outside authority holding local actors accountable, and enable women to bring cases to court, while Mifumi's goal is "to equip 'duty-bearers' to respond and enforce laws that exist"—a more modest goal than FIDA, but also more pragmatic and locally tuned. These case studies are informative because they analyze the effectiveness of both large, international NGOs as well as local, grassroots initiatives.

Joireman provides some positive evaluations of NGOs, such as their predictability due to being experts in the law, but she points to troubling areas as well. First, she argues that NGOs may undermine legitimate state authority: "(1) faced with issues they could not solve, government officials referred people to NGOs; and (2) even after a person had begun a formal dispute process in national courts . . . they would be directed . . . to NGOs." However, she does not note that alternative dispute resolution (ADR) is more common in Africa than in Western nations and some statutory laws in fact *require*

certain disputes to be diverted to NGOs. Further, Joireman suggests that NGOs are less accessible than state legal services—an evaluation would have been more helpful if it included empirical data, since some research in Sub-Saharan Africa identifies NGOs as the primary vehicle for access to justice. Joireman also notes that, although ideally the state should be an effective enforcer of property rights, “people living in the areas in which legal NGOs are working are better off.”

Chapter Five delves into actors that are largely detached from the discussion on customary officers, bureaucratic entrepreneurs, and NGOs: specialists in violence. A major problem Joireman highlights is that when the state removes itself from enforcement of property rights, and the private sector fills the gap, “the protection of property rights ceases to be a public good.” In Kenya, for instance, lack of public protection and the inability to afford private security has led citizens to rely on gangs. This section primarily explores so-called “Land Guards” in Accra, Ghana: groups paid by private citizens to protect land and property from encroachment. Major issues with Land Guards are their use of violence and proliferation of illegal weapons, as well as their failure to adequately protect the property rights of the legal owner. Unsurprisingly, specialists in violence score low on Joireman’s rubric except for effectiveness. Although Chapter Five seems discordant with those portions of the book that are more policy and legally oriented, the analysis makes sense when viewed through the prism of the book’s ultimate goal: “to take a different perspective and look at what is happening in communities.”

Chapter Six, a case study of Kibera, a settlement in Nairobi, aims to debunk the assumption that property rights are more enforced in urban areas than rural areas. The selection of Kibera as a focal point is an interesting choice; although it may have been chosen because it presents all three of the enforcement institutions explored in the book, it is not a typical case. Thus Joireman’s claim that she proves the assumption wrong is arguably flawed; although Kibera is an exception, *in general* property rights are protected more in the center of governance than in rural areas. Joireman provides a brief history of the region and the political deals that gave a minority group unofficial title to land, an exceptional circumstance even for Sub-Saharan Africa. Joireman even admits that Kibera is unique. But the case study helps her arrive at her

conclusion: “the appropriate enforcement of property rights . . . has an effect not just on growth, poverty alleviation, or quality of housing, but also on peace and personal security.”

The conclusion to *Where There Is No Government* restates its premise, that “Clearly defined and enforced property rights promote economic development and reduce violence.” The author recognizes that there is no easy fix in enforcing property rights, even remarking that formalizing rights may actually hinder women and children. Here Joireman comes closest to answering the *why* of Africa’s property rights enforcement problems: “because legal pluralism exists. . . Customary Law provides a source of authority that is separate from the state, that is at times viewed as more legitimate.” This statement is not entirely true, as customary law is often incorporated into the state system, and it may have been valuable to address and analyze the arguments in support of customary law.

*Where There Is No Government* touts no agenda—Joireman gives no roadmap for developing enforceable formalized property rights in Sub-Saharan Africa, nor does she follow the common presumption that the government should be the most efficient protector of property rights—but it is founded on the premise that formalized property rights are superior to customary ownership, and that everyone from politicians to farmers are in favor of them. This is the one area where the book falls short, too quickly brushing aside opposing views on these complex issues. If the arguments in favor of customary law, NGOs, and other actors were given a more complete representation, the critique that Joireman provides would ring more true. Overall, the volume’s unique achievement remains its ability to look at property rights in Sub-Saharan Africa from a pragmatic perspective, and to show its readers how property rights are actually enforced in local communities.

*Dangerous Sex, Invisible Labor: Sex Work and the Law in India.* By Prabha Kotiswaran. Princeton, NJ: Princeton University Press, 2011. Pp. xi, 298. \$29.95 (paperback).

REVIEWED BY CAROLIN GUENTERT

A contentious issue pervading feminist discussion is whether prostitution should be characterized as sex work or inherent oppression; in other words, whether selling sex is a



free choice and should be a legal right, or whether prostitution should be outlawed, with a view to abolition. Prabha Kotiswaran's *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* examines this debate in the context of India, where amendments to the Immoral Trafficking Prevention Act of 1956 (ITPA) are being considered. As her title suggests, Kotiswaran takes the view that women in prostitution should be referred to as sex workers, and that as such, they should receive statutory protection and the legal right to perform this work. However, rather than occupying an extreme view concerning prostitution—that is, either the abolitionist or pro-sex work stance—Kotiswaran puts forth a postcolonial materialist feminist theory, arguing that sex work must be treated as labor and as a significant part of the political economy. She roots this theory in the idea that sex workers' experiences in developing countries such as India differ significantly from one another, which is why it is vital to have an informed and realistic understanding of the effect that an amendment partially decriminalizing prostitution would have on diverse groups of sex workers.

To arrive at the conclusion that prostitution should be viewed through a postcolonial materialist feminist lens, Kotiswaran begins with an overview of opposing feminist theories: the radical abolitionist theory, which categorizes women in prostitution as victims who have faced violence and subordination reminiscent of slavery, and the sex work theory, which regards women in prostitution as individuals who are not forced, but who instead choose to engage in prostitution as a legitimate form of labor. Kotiswaran notes that despite “the polarized appearance of these two caricaturized feminist positions, most feminists chart the middle ground between the two camps,” which occurs when feminists critique both extremes, yet themselves fail to assume a position and attempt to “distance themselves from [the debate's] polarizing effects.” Kotiswaran makes an excellent point by explaining that even though the two camps are at odds, assuming a position may be preferable to taking the middle ground. She finds that since it is unlikely that the two sides of the prostitution debate will reconcile, using the middle ground position as a way to escape the debate is therefore ineffective, because neither side will achieve its objectives, and the outcome (such as a law or agree-

ment) might be less robust than one created with a more extreme view in mind.

Moreover, the middle ground is paradoxical in that its supporters tend to oppose sex work and the sex market, yet want to protect sex workers' rights. This problematic and paradoxical nature of the middle ground becomes clearer in Kotiswaran's description of the UN Trafficking Protocol, which she characterizes as somewhat weak and vague, precisely because it sought to take a moderate, conciliatory approach rather than align with either the sex work or abolitionist camp. The result, she points out, left neither side satisfied, and failed to comprehensively define human trafficking, since the Protocol avoids the question of whether voluntary sex work should be criminalized. She fears that using this middle ground approach in drafting and considering amendments to the ITPA will be similarly harmful. This is a legitimate concern, and Kotiswaran's arguments clearly illustrate that pending laws must be considered in light of their underlying theories and the experiences of those whom they will affect.

Opposing both extremes and the middle ground theory, Kotiswaran instead approaches the problem through a postcolonial materialist feminist perspective, which suggests that feminists should "ask of sex work what Marxists and materialists have asked of labor, namely, whether certain conditions of labor should be permissible." This novel theory posits that sex work should be socially and legally recognized, without necessarily promoting the sex industry. It suggests that the sex industry is an enduring reality, and that because abolishing it is impossible, it is preferable to accept the industry's existence and create rights and protections for the workers within it. This realist approach is one of the major strengths of Kotiswaran's work, because it takes into account the experiences of those most affected by the sex industry, and realistically addresses the possibility that despite many feminists' desire for abolition, the market for sex might not be eradicable.

In addition to using this postcolonial materialist feminist theory to frame the idea that India's ITPA must be reformulated, Kotiswaran also inquires into the experiences of sex workers by conducting empirical research in India. She traveled to Tirupati, a pilgrimage city with a significant sex market, and Kolkata's Sonagachi, one of the largest red-light districts in Asia. Through an economic lens, Kotiswaran examines

the institutional settings and organizational modes in which prostitution takes place in these cities, eventually concluding that both cities would benefit from a newly conceptualized prostitution law because the current ITPA harms women in prostitution.

In Tirupati, the institutional settings of prostitution are the street, household, and hospitality industry. Here, prostitution takes the form of bonded labor, employee/contractor mode, or self-employment mode. At play are the tenancy relations at the site of prostitution, labor relations between sex workers and third party managers, and service relations between sex workers and their customers. All of these factors, Kotiswaran argues, are influenced and disrupted by the ITPA, which simply shifts women to different sectors of the sex market, depending on where and how the law is being enforced. For example, if Tirupati police officers target street workers, these women may move to house-based sex work, or eventually become brothel keepers. The author also finds that the law fails to protect women, as it sends a “strong normative signal that sex work is a socially undesirable and harmful criminal activity,” which generates violence against sex workers. Were prostitution legal and conceptualized as a form of labor, Kotiswaran believes that the women would be better able to negotiate tenancy and employment relationships, which would improve both their safety and their economic standing.

Kotiswaran conducts a similar analysis in Sonagachi, the site of a vast brothel industry. She examines the tenancy relationship of sex workers and landlords or brothel keepers, showing how the ITPA and potential law reforms influence tenancy and service relationships. Under a partial decriminalization system, Kotiswaran finds, the demand for properties in Sonagachi rises, which increases rent and impedes sex workers’ independence. While this leads to an overall decrease in the quantity of sex work, self-employed sex workers are worse off because they are forced to do dangerous street-based sex work rather than brothel or house-based work. Conversely, under a model of complete decriminalization or legalization, brothels would continue to exist, but more sex-workers would be able to work independently in self-employment. Harassment and violence against sex workers would decrease, yet rent would likely increase. Kotiswaran even suggests imposing a minimum wage requirement, which would eliminate broth-

els in cutting out the need for keepers (though it would likely be difficult to enforce). In both cities, Kotiswaran also finds that sex workers' experiences differ significantly from one another, which is why the affected women require a law tailored to their needs and influenced by a feminist theory more representative of their multiple realities than the current law.

In reviewing relevant literature and developing a theory in light of Indian sex workers' experiences, Kotiswaran makes a significant and valuable contribution to the prostitution debate. She not only exposes the personal realities of sex workers in India, but she also demonstrates the immediate effects that legal reform has on different individuals and sectors of the sex market. Nevertheless, an economic viewpoint does not always capture issues from a human rights perspective, and at times Kotiswaran relies too heavily on economic analysis and is quick to dismiss the idea that women in prostitution may lack agency and truly free choice. For example, she proposes that a woman performing sex work may not be markedly different from a masseuse or a domestic helper, both of whom sell their bodily services but do not face the same stigmatization as women in prostitution do. She also wonders whether domestic work, typically performed by women, is "any less dependent on women's biology than sex work," and whether egalitarian relationships lacking objectification could exist between sex workers and their customers.

While it may be an appealing argument for legalization that a woman can make an independent, legal choice to engage in prostitution, much like she can choose to work in a factory or learn a profession, it is also somewhat simplistic and undermined by Kotiswaran's own interactions with Indian sex workers. From a purely economic standpoint, prostitution undeniably fills a certain demand and has value, but the idea that legalization is preferable because prostitution is both inevitable and not markedly different from other types of labor evokes criticism. Kotiswaran's postcolonial materialist feminist theory relies on the very idea that sex workers in India face *multiple* realities and that their experiences cannot be summed up by a single theory, which undermines the notion that legalization is desirable for all women in prostitution, or that all of these women would even characterize their experience as sexual labor, rather than subjugation or victimhood. There is an inherent contradiction in Kotiswaran's finding of multiple re-

alities and a uniform characterization of prostitution, evidenced by the “pluralist and heterogeneous” societies of women the author encounters, many of whom do not consider prostitution to be a respectable profession, would rather have a different occupation if they were to be adequately compensated, and had faced significant violence and hardship prior to entering prostitution. Kotiswaran makes a compelling economic argument for legalization but insufficiently considers the fact that, while legalization may be economically and perhaps even socially preferable to criminalization, it may not necessarily be the *right* choice.

Kotiswaran’s analysis of the Indian sex market is both fascinating and instructive, and her legal realist critique of the ITPA and evaluations of possible law reforms shed new light on the prostitution debate, particularly for developing countries. Perhaps most importantly, she makes a persuasive argument that legal reform must occur with a view to those who will be most affected by it: a powerful reminder that the theories underlying legal reform should be closely examined.

*Making Constitutions in Deeply Divided Societies.* By Hanna Lerner. New York, NY: Cambridge University Press, 2011. Pp. ix, 262. \$89.00 (hardcover).

REVIEWED BY BIETA ANDEMARIAM

*Making Constitutions in Deeply Divided Societies* examines the issue of how states with a fragmented population deal with creating a comprehensive constitution that represents all voices. Where a people is not only heterogeneous, but divisive in its ideology, drafting a constitution that honestly represents all citizens of the state is difficult if not impossible. Glossing over the problem of a fractured society would deny the true nature of the people and potentially rupture nations along their fault lines. To avoid this outcome, state-builders adopt the incrementalist approach, whereby they use a variety of tools to defer difficult decisions to a later date in order to “allow conflicted societies to focus on the establishment of democratic institutions, within whose framework future deliberation regarding the foundational issues can take place.” In this way, a constitution may gain popular acceptance in a society that wouldn’t be able to formulate a consensus around any one representation.

In the present volume, Hanna Lerner explores three historical examples of incrementalism: Israel avoided the secular-religious issue by choosing not to draft a constitution at all; in India, ambiguity in the constitution appeased both Hindu and Muslim camps; and in Ireland, drafters adopted an ambivalent approach to the issue of national sovereignty.

Lerner argues with some success that this under-researched phenomenon is an important strategy that can be adopted in other similarly situated countries. Yet while her historical analysis and novel approach to constitution-making is admirable, she fails to clarify the objective of the incrementalist approach until the very end of her book. Only late in the book does she identify a rubric against which to measure a constitution's success: "the initial constitution in a deeply divided society may be more of a stop-gap measure, enabling the achievement of some form of interim accommodation until a later phase when there may be broader support for liberal-democratic norms." Understanding, finally, that Lerner conceives of the incrementalist constitution as valuable chiefly in its ability to hold together a fragile state at its most vulnerable moment, it is possible to reevaluate her examples. This, in turn, raises three questions for Lerner's analysis. First, were the three states successful in preserving their state? Second, was the incrementalist approach necessary to order to do so? Third and finally, is stability the ultimate goal of a constitution, or are other considerations more paramount?

Lerner begins her assessment by looking at "informal consociationalism in Israel." Although Israel's population is fragmented in a number of important ways, the main ideological divide shaping the constitutional debates, according to Lerner, was that between the secular and religious camps. Conservative Jewish groups demanded a constitution based on Jewish religious law, and a secular camp preferred no adoption of religious laws beyond the characterization of Israel as "Jewish." Since a compromise satisfactory to both parties did not exist, the drafters avoided making a constitution altogether; instead, the legislators drafted Basic Laws that functioned as supreme constitutional laws that were meant, in time, to form the constitution. Lerner notes that this had the added effect of focusing the fledgling country's attention on its urgent security needs.

Evaluating Israel's choice against Lerner's rubric of success—the stability of the country—we could count the incrementalist approach a success. As Lerner points out, Israel has functioned as a state for over 60 years, and continues to do so without a constitution, which seemingly provides an affirmative answer to the question of whether the resulting country was stable. As to the second question, whether or not instituting an incrementalist approach was necessary to preserve the state, Lerner does not attempt an answer for any of her three test cases, exploring no examples of states that were deeply divided and tried to implement a liberal democratic constitution to success or failure. Her thesis suffers for this, as it offers no control against which to judge the correctness of the incrementalist approach. For the final question—whether stability is the ultimate goal or whether other issues should take precedence—we must look to what Israel has not achieved. Without a constitution, there is no bill of rights to guarantee the rights of the people, and the Knesset did not enact Basic Laws protecting human rights until 1992. As Lerner points out, Arab minorities and women suffer under laws that adhere to religious practices in dictating rights.

India adopted a strategy of ambiguity in drafting its post-colonial constitution. India is quite possibly the most diverse country on the planet, encompassing innumerable languages, several religions, and over one billion people, which became problematic when its leaders attempted to draft a constitution for a single Indian entity. Lerner describes the major division as being between those who viewed Indian nationalism as “an exclusivist model that regarded national identity as homogeneous and uniform, and an inclusivist model that permitted variety and diversity.” Politically, these fell along the lines of the Hindu Congress Party and the Muslim League respectively. The Hindu parties wanted to treat India uniformly, with an emphasis on Hindu principles, while the Muslims were concerned with being overwhelmed by the majority consensus. These concerns were crystallized in the debate around drafting a civil code and language: Muslims feared that their religious laws would be overruled by a civil code, and that the imposition of Hindi as the official national language would disadvantage them further.

Before this divide could be resolved, the British government, sensing unbridgeable differences, partitioned its former

colony into two states: India and Pakistan. Although this partition suggests that the incrementalist approach failed immediately in preserving the stability of the state, Lerner does not seem to reconcile this. Instead, she applies the incrementalist approach post-partition to the issues of uniform civil code and national language, arguing that the ideational divide over the two topics was temporarily resolved by leaving the constitution purposefully ambiguous. The Constituent Assembly drafted a uniform civil code, but only as a policy recommendation, and despite a consensus that a uniform civil code should eventually be adopted, in sixty years since independence, one has not.

As in Israel, certain segments of the Indian population suffered from this approach, particularly women who could not benefit from a secular civil code and were subject to religious laws that tilted against them. The issue remains contentious to this day. As regards an official language, English (though widely used) was politically unpalatable to post-colonial India, and Hindi was not spoken by a majority, so choosing it as the national language would have favored one section of the population over another. The compromise deferred the choice by selecting Hindi as the “national language of the Union,” with English to be used for official purposes. This compromise, however, was followed by violent riots in the 1960s in non-Hindi speaking states, the further entrenchment of English as the language of business and administration, and the eventual recognition of no less than twenty-two languages in state administration. It is therefore difficult to conclude that the incrementalist approach in India was a success, barring any meaningful indication that things would have turned out worse in the absence of such an approach. The state was partitioned, the uniform civil code failed to be adopted, to the disadvantage of notable parts of the population, and the plan for the national language ultimately failed.

Lerner’s final example is that of Ireland. At the moment of Northern Ireland’s separation from Britain, the fledgling nation-state drafted the Free State constitution in the midst of internal struggles related to British sovereignty. Fault lines fell along those who supported the Anglo-Irish Treaty and accepted Ireland as a “dominion state,” against those who demanded a more radical breakaway from Britain, and a wholly independent republic. Despite this deep divide, the Irish government succeeded in drafting a constitution for the new



state, although Lerner observes that the document was “often contradictory and inconsistent” in its approach to Ireland’s status relative to Britain. It included nominal allegiance to symbols of British power, for instance, but also declarations of Irish sovereignty; the country could either remain under British control or break away from the monarchy entirely. The draft constitution, which entered into effect with only minor amendments, precipitated a hugely bloody civil war.

Was Ireland successful in preserving its state? While the immediate consequence of the initial constitutional draft was civil war, Lerner has a response: “after the civil war ended, the political system and the democratic institutions that were created were able to gain stability . . . [m]any consider this to be the greatest achievement of the Irish Free State government.” Be that as it may, this answer also sidesteps the sticky problems of the incrementalist draft constitution: Not only did it help to incite a civil war, but its enactment did not curb the fighting once it began, nor did it last beyond the first 15 years, when another constitution was drafted. Thus, despite the incrementalist approach, neither the state nor the constitution was stable.

Lerner has written a highly readable, vastly informative, and thorough book about how to bridge deep divides to create a unified polity. The evidence she provides for the incrementalist approach remains important, despite its lack of a concrete metric against which to judge its success. Perhaps the most crucial achievement of the incrementalist approach is not its ability to create stability, but rather the legitimacy it lends to new nations. Despite the presence of civil wars, secessionist movements, and disfavored minorities in the evolution of these three states, Lerner points out that each state also developed a vision of the polity was true to its reality—segmented, fractured, and conflicted. In other words, rather than try to gloss over the inconsistencies, each state made honest assessments and enshrined these assessments in its constitution. It is this result that may be the greatest lesson of the incrementalist approach, as well as its biggest recommendation to other states seeking to do the same. Lerner’s book thus shows that the incrementalist approach, while not a panacea for a nation’s divisions, can still be employed to great effect in reflecting a true picture of a divided society.

*Climate Change and Human Security: The Challenge to Local Governance Under Rapid Coastal Urbanization.* By Michael R. Redclift, David Manuel-Navarrete, and Mark Pelling. Northampton, MA: Edward Elgar, 2011. Pp. v, 176. \$99.00 (hardcover).

REVIEWED BY CHRISTINE LA ROCHELLE

*Climate Change and Human Security: The Challenge to Local Governance Under Rapid Coastal Urbanization* sets out to examine the relationship between climate change and urban processes in coastal areas. In particular, it analyzes the increased frequency of coastline-striking hurricanes and their impact on human security. Authors Michael R. Redclift, David Manuel-Navarrete, and Mark Pelling lay out the patterns of coastal urbanization and describe the ability of these zones to deal with extreme climatic incidents. The topic is timely; the ever-increasing infrastructure and population concentrations on the beaches of Quintana Roo, the state on the Caribbean edge of Mexico's Yucatan Peninsula, mean that the possibility of hurricane damage has increased exponentially over the past 25 years. Unfortunately, despite its well-chosen subject, the book lacks focus and ultimately fails to present a cohesive explanation of security problems and possible resolutions in coastal areas.

In their exploration of human security in the context of the tourist communities of Quintana Roo, the authors begin by tracing the development of tourism in Cancún and comparing it to two other well-established sites, Tulum and Playa del Carmen. They then proceed to expand the study to Isla Holbox and Mahahual, sites that have more recently been exposed to the tourism industry and can therefore offer a different perspective on development.

Within this geographical context, the authors explore two analytical models for achieving higher security, the "ecological modernization" and "endogenous livelihoods" models. The ecological modernization model is a technocratic, top-down approach to development that encourages the use of infrastructure to combat climate vulnerability, enforcing climate-appropriate building regulations and encouraging the use of protective structures such as sea barriers. The endogenous livelihoods model for achieving higher security works from the

bottom up, encouraging local communities to be self-reliant and to diversify their labor and activities as a way to minimize risks. For instance, a community that depends exclusively on fishing might be devastated by climatological changes disturbing fish populations. The authors are somewhat vague when applying the developmental models; most of the communities seem to have developed on the ecological modernization model, though the authors do little to explore it aside from pointing out transparency problems.

Chapter Two provides a foundation for understanding the environmental strains that coastal cities place on the ecosystem and the increased vulnerability that coastal residents face, particularly poorer inhabitants. The authors present some risks to marginalized coastal populations, including the increased risk of disease from alterations in mosquito habitats and building patterns that force vulnerable populations to live on flood plains. They briefly explore strategies that industries can use to reduce risks, including building to reduce physical exposure to flooding and hurricane winds. Finally, they explore in general terms the types of populations that are most likely to be vulnerable, including the politically marginalized, the poor, the old, and those who are unable through cultural or other barriers to gain the same support as the general public.

Following this generalized account of coastal vulnerability, the next logical step would seem to be a discussion of the actual threats faced by current coastal residents in Quintana Roo. An analysis of which specific risks are present in the region, which populations are particularly jeopardized, and which, if any, of the various vulnerability-reducing strategies available have been implemented, would surely have been helpful. However, the volume does not cohesively explain these threats, or any progress that has been made in reducing population vulnerability in the region. Rather, the reader has to pick out problems—beach erosion in Cancún, or mangrove destruction in Tulum—from different sections of the book. Other pressing risks often directly related to hurricanes and particularly dangerous for tourism-driven areas, such as hurricane damage to coral at dive sites, are not addressed at all. Furthermore, the authors do not adequately explain the impact of these regional changes on vulnerable populations; the impact on communities near mangrove habitat destruction,

for example, including areas of Tulum and fishermen living on Isla Holbox, is left unexplored.

Rather than dealing with the specific vulnerability challenges of the area, *Climate Change and Human Security* instead presents a somewhat sprawling historical background of Quintana Roo that does little to further the understanding of present-day vulnerability to climatic events. Though mass tourism and urbanization began concurrently with the centralized government investment in Cancún in the 20th century, the narrative begins briefly with the Conquest and thereafter traces the development of national and international interests in the 19th and 20th centuries. Although this historical background may help readers to understand the historical pressures on Quintana Roo's environment, as well as the region's differing models of development, the limited examination of current-day investment in Cancún already illustrates these international interests clearly. The space might have been better used to detail the different goals and interests of present-day actors more thoroughly, and to highlight the risks that current developmental visions impose on subsets of the population.

While a great deal of the book is spent on historical and risk-factor generalities, some of the most interesting aspects of the study's methodology, identified in the introduction, do not visibly appear in its pages. For instance, the introduction indicates that "[i]n each study site a local area at risk was selected in consultation with local key informants. Each area includes around 500 households requiring participatory hazard, vulnerability and adaptive capacity appraisal . . . . This methodology uses participatory appraisal methods such as group discussion, transect walks, wealth, and hazard ranking." The results of this appraisal are uncertain, however, as the authors do not indicate which of their narratives are drawn from these vulnerable populations versus stakeholders or general analyses of the political system. Including the input of these residents could have reshaped the exploration to include a broader cross-section of the population, and may also have allowed the authors to contrast, for instance, the goals of powerful government and investment interests with the views and needs of outside groups.

The same can be said of the authors' work with stakeholders in the area. According to their methodology, the authors interviewed a range of individuals and organizations,

presented a summary of their views on climate change and local impacts, and finally held town meetings “to explore vulnerabilities and adaptive capacities between towns.” Though this undoubtedly influenced the structure of the book, it is difficult for a reader to determine which of the author’s assertions are based on theoretical models such as ecological modernization, and which come from this interactive dialogue with local communities.

Fortunately, the studies of Isla Holbox and Mahahual counteract the defects of the previous case studies, offering the most interesting examination of coastal urbanization patterns in the region. In addition to detailing the political and economic background of these communities, the authors provide more information about the inhabitants and involve their individual perspectives. More space is devoted to the factors that allow these communities either to influence development and resist state hegemony or to become more susceptible to outside forces; these factors include property ownership structures, community identity, and collective organizing. In addition, the authors explore various adaptive strategies that can limit vulnerability and compare their use in these two communities.

The study of Mahahual shows that hurricanes can increase vulnerability both in the initial damage from storms and the subsequent rebuilding. The authors see the rebuilding that occurred when Hurricane Dean destroyed parts of Mahahual in 2007 as a means of “defeat[ing] the already weak local resistance to mass tourism.” The hurricane did not cause the vulnerabilities and structural inequalities, but the authors make a credible argument that it exacerbated them. They find that Mahahual’s recent beginnings as a loose fishing community with competing factions, combined with its lack of formal land ownership, were factors in forming this weak resistance base. In addition, a large pier that ushered in cruise ships did little to benefit local populations, and may have increased vulnerability by concentrating tourist activities in the hands of international companies while restricting local access to the pier.

The analysis of Holbox explores the benefits of formal land ownership in promoting communal development. Even after Hurricane Wilma struck in 2005, the authors detail the successful rebuilding of the area without loss in community input. The authors convincingly attribute this successful

rallying to strong community ties as well as a range of adaptive strategies, including well-planned land sales, and altering tourism models to keep local populations relevant. These detailed analyses of Mahahual and Holbox are supported by excerpts from conversations with locals. By involving the populations that the authors identified as being at risk, they provide an analysis of the multiple factors that can influence either the exacerbation or mitigation of vulnerability.

The theme of human security explored in *Climate Change and Human Security* is interesting and timely, and most effective when the authors employ the case-study approach, particularly with the Mahahual and Holbox cases. The structure of the book, however, leaves its broader argument (envisioning diversification as a way to increase human security) difficult to appreciate and ultimately underdeveloped. Though the authors detail several hundred years of regional history, a lack of specificity in describing present patterns prevents the readers from drawing conclusions about a good developmental model. Moreover, the authors are hesitant to offer any solutions to the vulnerability crisis, indicating that these answers need to come from the communities involved. Refusing to impose further paternalistic control over hurricane risk management on marginalized communities makes sense; however, since the authors interviewed many different factions of the local communities, they could have presented these local viewpoints for each of the areas they surveyed and compared them to the general risk-reduction strategies explored earlier in the book.

Ultimately, for readers to truly understand the means of reducing vulnerability to hurricanes, a more specific exploration of the different risks and current local perspectives alive in Quintana Roo is needed. *Climate Change and Human Security* could be useful to those who are wholly unfamiliar with tourism in Mexico and need a basic introduction to ecological development in the area. To anyone with a background in development, however, a more synthesized exploration of the issues and a discussion of solutions or models would be far more helpful.

*Skeletons in the Closet: Transitional Justice in Post-Communist Europe.* By Monika Nalepa. New York, NY: Cambridge University Press, 2010. Pp. xxiii, 300. \$25.99 (paperback).

REVIEWED BY BRITTANY BUCELLATO

One of the most fascinating aspects of the fall of Communism in East Central Europe was that, with the exception of Romania, the transition to democracy occurred peacefully. In *Skeletons in the Closet: Transitional Justice in Post-Communist Europe*, Monika Nalepa offers an explanation for this phenomenon, in the process addressing a neglected question: Why was transitional justice not meted out by the opposition immediately after the democratic transitions, but instead instituted later by the reinvented ex-communists themselves (“post-communists”)? In providing an answer, Nalepa’s study focuses on the transitional justice policy of “lustration,” a truth revelation procedure sanctioning political officeholders for past participation in the communist regime, as applied mainly to the Czech Republic, Hungary, and Poland. *Skeletons in the Closet* demonstrates how existing theories of transitional justice based on voter demand, the character and timing of human rights abuses, and the level of involvement from the international community all fail to account for the delayed timing of lustration in East Central Europe. Nalepa offers a compelling alternative model, focusing on the strategic behavior of elites, that is based on lustration’s potential to implicate both departing communists and newly empowered opposition leaders.

Throughout the book, Nalepa succinctly situates her theory within the existing scholarship on transitional justice and clearly distinguishes her arguments from the theories that precede her. Given this context, her intended audience appears to be academics already familiar with transitional justice who can fully understand and appreciate what she is contributing to the field. In addition to compiling tables of evidence, for instance, she also provides detailed information regarding the interviews she conducted for scholars who want to investigate her model further. However, such meticulousness does not render *Skeletons in the Closet* inaccessible to readers who lack a familiarity with transitional justice scholarship; Nalepa gives the reader all of the necessary information needed to follow

her argument. Thus, *Skeletons in the Closet* has something to offer both academics in the field as well as readers who are looking for a sophisticated introduction to transitional justice in East Central Europe.

Part I examines why the implementation of transitional justice was delayed in most countries in East Central Europe. According to Nalepa, the opposition (whom she refers to throughout the volume as “anticommunists”) was reluctant to enact lustration laws due to the fear of exposing the skeletons in its closet—namely, the highly embarrassing existence of collaboration with the secret police within its own ranks. Since the anticommunists did not have access to the secret police files, they were uncertain about its level of infiltration, and were thus less willing to pursue lustration. This theory also explains why communist leaders stepped down from power peacefully in exchange for promises of amnesty: departing communist leaders could use the threat of exposing opposition collaborators in order to ensure that they would not be subjected to retribution after the anticommunists took over. After presenting this theoretical argument, Nalepa then applies the model to the specific cases of Czechoslovakia, Poland, and Hungary (an effective structural approach that the author uses throughout her book). For example, at Poland’s roundtable negotiations, the outgoing communist representative Aleksander Kwasniewski was remembered to have stated, “Don’t mess with those [secret police] files, let them be—the agents were mostly your own people.” Given the anticommunists’ lack of information regarding their own infiltration, they had no way of knowing how credible this threat was. They could either risk lustration or be held hostage by the threat, and most anticommunist leaders, such as Poland’s Adam Michnik, chose the latter route and opposed lustration. As a result, a thorough lustration law was not passed in Poland until 2007.

The volume’s use of case studies and analytical narratives to illustrate Nalepa’s “skeletons in the closet” model works particularly well. The example of the Czechs, who lustrated early and harshly, is presented as a foil to Poland and Hungary, where the implementation of lustration was delayed until the mid to late 1990s. The difference is accounted for by the fact that, unlike the Poles and Hungarians, the Czech anticommunists included very few collaborators within their ranks, and



they thus had no fear about the effects of lustration on their reputations. Throughout the book, Nalepa also weaves in the history of the communist, anticommunist, and post-communist parties of each respective country, providing a fascinating and nuanced illustration of her model at work. These narratives are so rich that at times *Skeletons in the Closet* feels bogged down by its more technical passages—particularly those in which Nalepa uses game theory to explain her argument, such as a “Transition with Secret Information Game” she uses in discussing the transition of power in Poland. Though their thoroughness ensures that readers unfamiliar with game theory are able to follow and understand her models, such portions of Nalepa’s book lack the flow and readability of the narrative sections, and at times sacrifice style for the sake of clarity.

In Part II, Nalepa builds on her conclusions in Part I, asking why the promises of amnesty were eventually broken and lustration finally adopted. She begins by looking at voter demand for lustration, but ultimately finds that this theory fails to explain the timing of lustration, concluding that “transitional justice is not an issue over which electoral battles are fought.” Voters in the Czech Republic, Hungary, and Poland cast their votes not based on transitional justice but on more salient issues such as economic and education reform or joining NATO, a focus that makes sense considering that the mechanisms of transitional justice are complicated and rarely have a direct impact on the lives of regular citizens. Nalepa comes to these conclusions mainly through a survey based on 3,057 face-to-face interviews she conducted, as well as surveys prepared by other scholars.

This portion on the book illustrates another of its strengths: Nalepa’s extensive explanations and evaluations of the research methods that she employs. The reader is never left wondering why the author fashioned her survey in a certain way, why she relied on one method over another, or the role of a particular interview in her analysis. Nalepa is also candid about any weaknesses she finds in a certain study. For example, in Chapter Four she assesses potential problems with using elite interviews to illustrate the uncertainty regarding the effects of lustration, explaining that although the results of these interviews cannot be treated as direct evidence, they are used to provide nuance and help the reader evaluate the nar-

ratives. In case the reader still feels unsatisfied after these explanations of the research methods, the appendices at the end of the book provide additional information about the interviews and surveys used in her argument.

Nalepa posits that contrary to existing theories, transitional justice occurred not as a result of electoral demand, but instead because of incentives on the side of the elites. She hypothesizes that the post-communists “self-lustrated” by passing lustration laws themselves when they feared they would lose power to the anticommunists, doing so in order to preempt the harsh legislation they expected would be passed by their victorious opponents. The success of this preemptive lustration legislation depended on the post-communists’ ability to predict the new median parliamentary position. When the post-communists failed to do this successfully, as in Poland, the newly elected anticommunists proposed a harsher lustration bill.

Chapter Six focuses on this strategic behavior of elites in implementing lustration and provides a convincing answer to the question of why, contrary to expectations, lustration came in East Central Europe after public support for it had already dwindled. Here Nalepa argues that the political benefits that could be gained from lustration—for example, depriving former collaborators of political office opens more seats for politicians not implicated by collaboration—create incentives on the supply-side to implement lustration laws. In this chapter, Nalepa also looks closely at the organization and origins of parties in dissident movements, examining how this can explain their levels of infiltration by secret police informers, and thus their willingness to lustrate. In Poland, the resistance groups that operated openly, such as Solidarity, were easier to join and thus more likely to be infiltrated than those that operated clandestinely. Thus, clandestine anticommunist parties, who had little to fear and much to gain from lustration, supported it. Like many of the arguments in the book, her supply-side theory of lustration is clear and makes intuitive sense.

*Skeletons in the Closet* goes beyond providing a satisfying and novel explanation for the peaceful nature of the transitions to democracy in East Central Europe and for the delayed timing of lustration. In Chapter 8, Nalepa demonstrates how her “skeletons in the closet” model need not be confined to post-communist transitions in East Central Europe: It can be

applied, she argues, to any transition from an authoritarian regime to democracy so long as the authoritarian regime lasted long enough to have replaced force with a professional secret police and was succeeded by a democracy with political parties. Thus Nalepa provides not only a workable model for understanding democratic transitions and lustration, but also a captivating account of the anticommunist and post-communist parties in East Central Europe. As such, *Skeletons in the Closet* is a compelling read for anyone interested in transitional justice or the recent history of East Central Europe.

*The 9/11 Effect: Comparative Counter-Terrorism.* By Kent Roach. New York, NY: Cambridge University Press, 2011. Pp. xiii, 477. \$32.99 (paperback).

REVIEWED BY ALYSON ZUREICK

In the wake of the attack on the United States on September 11, 2001, countries around the world responded by enacting new laws and policies to prevent future attacks. Responses included the creation or expansion of preventive detention regimes, the incorporation of terrorist financing provisions into money laundering statutes, and the increased use of immigration law as anti-terror law. These trends and others are comprehensively reviewed in *The 9/11 Effect: Comparative Counter-Terrorism*, by Canadian criminal and constitutional law scholar Kent Roach. Covering nine countries and a full range of domestic and foreign policy responses, *The 9/11 Effect* is arguably the definitive volume on comparative legal approaches to counter-terrorism, effectively illustrating how many states have grappled with the same anti-terror issues in different ways. At the same time, the book's breadth is both its strength and its weakness, since despite the detailed case studies, it is not always clear what this comparative perspective tells us about how states should move forward to ensure that anti-terror policies do not undermine human rights protections.

*The 9/11 Effect* employs a comparative case study method to explore the ways in which international and domestic anti-terror policies have developed in the wake of 9/11. Roach divides his analysis between "countries that did not immediately respond" to 9/11 with significant domestic legal changes—namely, Egypt, Indonesia, Israel, Singapore, and Syria—and

established democracies that did, including Australia, Canada, the United Kingdom, and the United States. Roach's decision to review the policies of non-Western countries is particularly revealing: His analysis demonstrates that Western nations' reliance on harsh anti-terrorism measures such as military detentions in the wake of 9/11 mirrored longstanding practices in other countries, such as Egypt under Hosni Mubarak and Indonesia under Suharto.

At the same time, Roach also highlights positive lessons that Western nations may learn from these countries, such as the successful use of rehabilitation strategies for detainees in Singapore and judicial review of administrative detention in Israel. Additionally, the Indonesia case study notably highlights civil society's resistance to a sweeping new anti-terror law post-9/11 that would have brought back some of the repressive policies of the Suharto regime. While Roach suggests that Indonesia may be a counterpoint to the harsh policies adopted by Egypt and Syria, he does admit that the state's security policies took a more authoritarian turn after the Bali bombings of 2002, one of the deadliest acts of terrorism in Indonesian history.

The heart of the volume lies in the four chapters analyzing the responses of the United States, United Kingdom, Australia, and Canada to 9/11. This section provides an exhaustive review of anti-terror policies in these countries, and Roach's historical case-study model is helpful for understanding how these measures have evolved in the past decade. It is not always clear, however, how well the lessons from one country's experience can be applied to solving problems related to anti-terror policies elsewhere. For example, Roach argues that the United Kingdom's extensive use of legislation to authorize various anti-terror programs has yielded a more coherent set of policies than the approach of the United States, which relied heavily on executive action. Yet he does not make a convincing argument that these different approaches have actually led to more coherent *results*. Indeed, a review of detention policies in both countries suggests that perceived conflicts between human rights and security priorities may have led to fragmentation and confusion within these regimes, regardless of whether they initially arose from executive or legislative action.

In the United States, the author highlights the fact that the detention regime at Guantanamo Bay was established through executive rather than legislative action, and that the responses to early Supreme Court rulings mandating greater due process protections for Guantanamo detainees initially came from the executive as well. However, the Supreme Court's *Hamdan* decision sparked a legislative response, with Congress basically putting its stamp of approval on executive policies with the Detainee Treatment Act of 2005. The policy of denying the writ of habeas corpus to Guantanamo detainees continued to face court challenges and was ultimately struck down by the Supreme Court in the *Boumediene* case. Instead of enumerating the due process protections owed to detainees, however, the Supreme Court left the question open on remand, a decision that has arguably served to further confuse rather than clarify the protections owed to Guantanamo detainees.

In the United Kingdom, on the other hand, Parliament established a detention regime through an expansive 2001 anti-terror law, but challenges to this system have led the British government to undertake policies that seem no more coherent or effective than those in the United States. For instance, the 2001 law provided for the indeterminate detention of noncitizens suspected of involvement in terrorism who could not legally be deported because they faced the possibility of torture in their home countries. This provision required the United Kingdom to derogate from Article 5(1)(f) of the European Convention on Human Rights, which limits detention of noncitizens to situations where there is a "view to deportation." In the 2004 *Belmarsh* case (*A and Others v. Secretary of State for the Home Department*), the House of Lords struck down this derogation and the indeterminate detention regime it supported, finding it discriminatory and disproportionate. This ruling prompted the British government to replace detentions to some extent with other policies that commentators, including Roach, suggest are questionably effective in enhancing security and still infringe on human rights. These include a 2005 law that authorized the use of restrictive control orders, sometimes issued after the dismissal of a criminal charge against someone suspected of terrorist involvement, as well as the negotiation of deportation agreements with countries like Algeria, Libya, and Jordan that, despite their spotty human

rights records, had given the British government assurances that they would not torture detainees.

*The 9/11 Effect* recognizes the complexity of these legal and policy developments in both the United States and the United Kingdom and provides extensive commentary on them. Yet it does not sufficiently explain just how the distinction between executive and legislative action has led to different policy results. In both countries, the initial detention regimes faced prolonged legal challenges that have reached each country's highest court, despite their differing origins. Furthermore, subsequent efforts to reform the regimes to comply with at least some human rights standards have resulted in new policies and procedures that skirt human rights obligations in different ways, while possibly still failing to meet important security goals. Neither is it clear that more aggressive congressional action would have led to any more coherent results in the United States. In the end, Roach's analysis of the United States and the United Kingdom is useful for understanding the evolution of detention policies in each country, but it is less helpful in clarifying which policymaking model—legislative or executive—would better promote coherent and stable security policies in different national contexts.

Apart from its country case studies, *The 9/11 Effect* also makes a useful contribution by highlighting the ways in which the United Nations has influenced domestic legislation around the world, particularly through Security Council resolutions. As with his case studies, Roach also demonstrates the ways in which measures promoted by the United Nations have often been ineffective in promoting security while also undermining human rights protections. For example, under its Chapter VII powers, the Security Council adopted resolutions both before and after 9/11 (Resolutions 1267 and 1373, respectively) that required states to take steps to prevent financing of terrorist activity. Many countries responded by revising their money laundering laws to include terrorist financing provisions. Roach argues that these programs have done very little to prevent acts of terrorism: Indeed, they failed to prevent 9/11, the most expensive act of terrorism in history. Subsequent terrorist attacks have been mounted with much less financing than 9/11, and a number of experts, including the 9/11 Commission, have expressed concern that terrorism financing laws may be not able to respond effectively to the de-

centralization and evolving funding practices of Al-Qaeda and related terrorist groups. Furthermore, the author warns that these laws may also undermine human rights—for example, through listing programs that use secret intelligence to compile the names of suspected terrorists without providing meaningful judicial review of the designation.

Roach repeatedly faults the United Nations for not adequately emphasizing the protection of human rights in its response to 9/11. He is especially critical of the UN Counter-Terrorism Committee (CTC), created to monitor the implementation of Resolution 1373, for its failure to incorporate human rights considerations into its review of state reports. Roach contrasts the work of the CTC with the General Assembly's 2006 Counter-Terrorism Strategy, which emphasized the need to address the underlying causes of terrorism and to protect human rights. While the author has a positive view of the General Assembly's strategy, he fails to address whether and to what extent the strategy has actually been implemented, though he does note that it seems to have had little practical influence on the work of the Security Council or the CTC.

The author's analysis is descriptively rich and notable for its comprehensiveness, both in terms of its geographic sweep and the range of legal areas it covers, from criminal law to immigration law to the laws of war. At the same time, Roach's attempt to provide a complete picture of the 9/11 response often prevents him from fully developing several of his more interesting observations. For example, he notes that many countries, including the United States, have attempted to avoid the application of criminal law to terrorism suspects and have instead relied on military, administrative, and immigration detentions. This trend has resulted in the blending of war, crime, and immigration models in response to terrorism with, Roach suggests, possibly serious ramifications for the operations of the criminal justice system in many countries. Given the breadth of the book, the author is only able to briefly discuss this idea with regard to each country he covers. A more detailed comparative analysis of how responses to terrorism have impacted the functioning of different criminal justice systems would be instructive.

Overall, *The 9/11 Effect* is an extremely useful primer for those seeking to better understand how a variety of countries, as well as the international community as a whole, have re-

sponded to the threat of terrorism in the past decade. The book is notable not only for its comprehensive examination of policies within major Western powers like the United States and the United Kingdom, but also for its examination of responses from countries such as Indonesia, Egypt, and Singapore that already had strong anti-terrorism laws and policies in place long before 9/11. While the book occasionally sacrifices depth of analysis for breadth, it is an ambitious work that provides a helpful starting point for those looking to better understand comparative responses to 9/11.