

BOOK ANNOTATIONS

BEJARANO, ANA MARÍA, *PRECARIOUS DEMOCRACIES: UNDERSTANDING REGIME STABILITY AND CHANGE IN COLOMBIA AND VENEZUELA* (Notre Dame, IN: University of Notre Dame Press, 2011).

BRENNER, SUSAN W., *CYBERCRIME AND THE LAW: CHALLENGES, ISSUES, AND OUTCOMES* (Boston, MA: Northeastern University Press, 2012).

CALDER, KENT E., *THE NEW CONTINENTALISM: ENERGY AND TWENTY-FIRST-CENTURY EURASIAN GEOPOLITICS* (New Haven, CT: Yale University Press, 2012).

COOTER, ROBERT D., AND HANS-BERND SCHÄFER, *SOLOMON'S KNOT: HOW LAW CAN END THE POVERTY OF NATIONS* (Princeton, NJ: Princeton University Press, 2012).

FRANCIONI, FRANCESCO, AND NATALINO RONZITTI, EDs., *WAR BY CONTRACT: HUMAN RIGHTS, HUMANITARIAN LAW, AND PRIVATE CONTRACTORS* (Oxford, UK: Oxford University Press, 2011).

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GENSER, JARED, AND IRWIN COTLER, EDs., *THE RESPONSIBILITY TO PROTECT: THE PROMISE OF STOPPING MASS ATROCITIES IN OUR TIME* (New York, NY: Oxford University Press, 2011).

LIJPHART, AREND, *PATTERNS OF DEMOCRACY: GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES* (New Haven, CT: Yale University Press, 2012).

MARSH, PETER, *THE NEW INDUSTRIAL REVOLUTION: GLOBALIZATION AND THE END OF MASS PRODUCTION* (New Haven, CT: Yale University Press, 2012).

MCGONAGLE, TARLACH, MINORITY RIGHTS, FREEDOM OF EXPRESSION AND OF THE MEDIA: DYNAMICS AND DILEMMAS (Cambridge, UK: Intersentia, 2011).

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SHAWCROSS, WILLIAM, JUSTICE AND THE ENEMY: NUREMBERG, 9/11, AND THE TRIAL OF KHALID SHEIKH MOHAMMED (New York, NY: PublicAffairs, 2011).

STARR, AMORY, LUIS FERNANDEZ, AND CHRISTIAN SCHOLL, SHUTTING DOWN THE STREETS: POLITICAL VIOLENCE AND SOCIAL CONTROL IN THE GLOBAL ERA (New York, NY: New York University Press, 2011).

Precarious Democracies: Understanding Regime Stability and Change in Colombia and Venezuela. By Ana María Bejarano. Notre Dame, IN: University of Notre Dame Press, 2011. Pp. xi, 350. \$40.00 (paperback).

REVIEWED BY CHRISTINA M. SKALIKS

For years, scholars have struggled to explain and predict Colombia's and Venezuela's democratic trajectories. As long-lasting yet highly problematic democracies, Colombia and Venezuela have challenged the sustained belief of observers of Latin American politics that the countries were destined for one of two fates: both would either consolidate into an inclusive and stable democracy, or fail and revert back to authoritarian rule. While the other Latin American democracies that emerged during the second wave of democratization experienced a period of authoritarian regression in the 1960s and the 1970s, the Colombian and Venezuelan democracies endured. Thus, for decades, the two countries were grouped together, mentioned in passing as examples of successful democratization without further exploration. While the two regimes have withstood the test of time, recent political crises have led scholars to call their stability and overall democratic quality into question, and to group the regimes together again, this time in a more negative light.

Despite the tendency to pair the countries in the discussion of democratization in Latin America, few scholars have engaged in a comparative, in-depth analysis of the regimes and their evolution. In *Precarious Democracies: Understanding Regime Stability and Change in Colombia and Venezuela*, Ana María Bejarano seeks to rectify this dearth. Resisting the trend to classify Colombia and Venezuela as outliers or as the same subtype of Latin American semi-democracy, Bejarano seeks to identify the variations in the countries' democracies and to explain why, despite the countries' outward similarities, they have evolved in divergent ways. The author examines periods of convergence and divergence in the countries' regimes to determine the significant ways in which the "unhappy democracies" differ. In doing so, Bejarano also aims to build a framework for classifying and understanding "precarious democracies" such as these, using the borderline cases of Colombia and Venezuela to test and refine propositions proffered by recent studies on democratization.

In her Introduction, Bejarano gives the reader a general overview of the state of the literature on democratization in Latin America and notes her position on the theoretical landscape. Bejarano advocates a move toward characterizing democratic institutionalization as "a continuum rather than a dichotomy." That is to say, democratization should be viewed as an ongoing process with intermediate stages, and Latin American regimes need not swing between absolute authoritarianism and liberal democracy as many theorists once thought. She identifies two common approaches to understanding regime changes that she will go on to explore. First, the structural approach posits that democracy is the result of "the convergence of long-term structural processes not susceptible to willful manipulation or political actors." The second approach, the "modes of transition" hypothesis, asserts that diverging transitions from authoritarian regimes to democracy can be explained as the result of strategic decisions of actors suffering from few structural restraints. Thus, elite bargaining and negotiation primarily determine regime development.

Finally, Bejarano sets up the unique analytical framework that she will apply throughout the book, combining historical institutionalism with Terry Karl's concept of "structured contingency," specifically Karl's focus on the creation of institutional legacies and how they shape the range of choices availa-

ble to future policymakers. In developing her approach, the author emphasizes the history of each country's institutional evolution, stressing the critical role that institutions like the state, political parties, and the political party system play in translating economic structures and social transformations into political outcomes. In her historical institutional framework, Bejarano melds the structural and modes of transition theories, filling the gaps in their explanations of Venezuela's and Colombia's divergent paths. She posits that the history and evolution of political institutions can bridge the divide between structural and procedural explanations for the countries' democratic trajectories, giving observers a fuller understanding of the countries' progressions. Bejarano's approach convincingly explains the development and relative strength of the countries' democracies and the differing obstacles they currently face, though it also merits further testing.

In Chapter One, Bejarano challenges the structural approach's explanation of regime type in Colombia and Venezuela, taking the reader through the economic development of each nation and exploring both the resource-driven and class-based structural hypotheses. Bejarano argues that class-based hypotheses fail because they focus too narrowly on the strength of one class, typically either the working class or the bourgeoisie, as determinative. She asserts that in Venezuela all classes were necessary to coalition building and coalitions brought about political change. Further, Bejarano argues that as each country lacked a bourgeoisie class and a strong working class, neither class can be credited as the driving force of democratization. While the author successfully challenges black-and-white theories like Barrington Moore's "no bourgeoisie, no democracy," she fails to adequately address more comprehensive class-based theories that could explain the differing nature of the countries' democracies. For example, Karl suggests that the weakening and disappearance of the landed elites in Venezuela was one (though not the only) facilitating condition for democratization, and that the continued strength of the landed oligarchy in Colombia could explain the restricted nature of its democratic transition and its continued democratic weaknesses. Bejarano does not fully explain why her approach is superior to Karl's assertion that a strong, landed elite poses a hindrance to an inclusionary democracy.

Bejarano acknowledges that economic structural factors play an important role in explaining the differences in the evolution of the countries' democracies, though she also argues that in both contexts the framework's explanation is incomplete. She supports this contention in her resource-driven analysis by comparing Colombia and Venezuela to similar oil and coffee producers. Comparing Venezuela to oil producers in the Middle East, Bejarano argues that Venezuela's political development is an anomaly; she cites studies by Chaudhry and Ross that characterize oil as a structural hindrance to democratic development, since high oil prices buttress authoritarianism rather than promote democracy. Comparing Colombia to other nations with coffee production based on small, peasant-owned farms, Bejarano finds Colombia to be an outlier, as a "relatively dispersed structure of ownership and production, composed by myriad, independent, propertied coffee producers" should have led to a dispersed and democratic power structure. Despite these predictions, she observes, Venezuela was able to develop a more fully democratic regime than Colombia.

In Chapter Two, based on the discrepancies outlined in Chapter One, Bejarano argues that though the structural approach explains why regimes change, it fails to provide the mechanisms for this change. Bejarano supplements the structural theory with her focus on institutional evolution, arguing that political institutions are the mechanism through which these economic factors shape political outcomes. Like others, Bejarano emphasizes the roles of the state and political parties in shaping political outcomes. In Chapters Two and Three, Bejarano takes this approach a step further than her predecessors, asserting that the sequence of state and party consolidation and the vehicle of state formation can explain the differing strength of the countries' parties and their divergent democratic transitions. In doing so, she challenges two subsets of the process-oriented mode of transition theory: one subset claims that "pacted transitions" generally lead to a conservative bias that hinders democracy, while the other claims that such transitions lead to stable, albeit conservative, democracies.

Bejarano's criticism of such theories pertains to their failure to recognize pacts as consequences of historical-institutional realities, most notably the evils that the pacts were de-

signed to combat. Colombia's pacts, for instance, placed greater restrictions on inter-party competition and elections due to the parties' history of mutual exclusion and political violence. The Conservative and Liberal parties were internally mobilized by political elites and consolidated early. They emerged before the existence of a consolidated state and, in exchange for electoral support, fulfilled the bureaucratic functions that Colombia's weak state could not, serving landed and mercantile interests and acting as the vehicle for state formation. For decades the state was too weak to wrest power from regional elites and monopolize the use of force, enabling inter-party political violence. Thus, the Colombian pacts were rigid and entrenched in the country's constitution: the past political strife between the parties led to an arrangement where the two parties alternated the presidency for 16 years. As Bejarano explains in Chapter Five, this resulted in an exclusionary and inflexible political environment that led to intra-party competition and fragmentation, discouraged electoral participation, and fully excluded the left, which resorted to guerrilla warfare.

In contrast, Venezuelan parties did not emerge until after the regional caudillos (political-military leaders) and then the military had established a strong, centralized state. Thus, parties had to move beyond patronage to mobilize electoral support, and military intervention in politics was a greater concern. The existence of a strong state and lack of inter-party political violence allowed for a competitive multi-party system. Further, the mass mobilized nature of Venezuelan parties allowed for a more representative democracy and more flexible pacts. The structure of the pacts, however, led Venezuela's parties to become overly disciplined and hierarchical to a fault, becoming less responsive to social transformations and resulting in political dissatisfaction that motivated the attempted military coups of the 1980s. Bejarano asserts that the mere existence of a pact should not be considered determinative of political trajectories, instead suggesting that one should examine a pact's degree of inclusion, its varying restrictions, and its institutional entrenchment to gauge its effect on future political outcomes. While Bejarano touches on other countries with "pacted democracies" that defy the modes of transition subsets, readers are left wondering how the author's advocated

approach would hold up if it were thoroughly tested against these examples.

Chapter Five is also notable for its contribution of a new characterization of each country's political party system. Colombia and Venezuela's party systems were long classified as "stable, well-institutionalized, two party systems with very low . . . polarization." Bejarano moves beyond the parties' superficial institutional stability and identifies long-existing weaknesses that can explain the countries' recent political struggles.

Finally, Chapter Six provides a short historical-institutional account of each democracy's decay into its present unhappy state. In this chapter, Bejarano suggests that the two countries can serve as potential models for democracy in Latin America. While the author's framework successfully explains the divergent outcomes of two outwardly similar regimes, readers are still left to wonder how such a framework might function as a predictive model. Throughout the book, Bejarano concedes the importance of structural factors, political actors, and modes of transition, but argues that historical and institutional factors are equally important. Additionally, given the breadth of historical and institutional factors, and the detail with which the author explores them, one also wonders how these factors might interact to explain patterns or make predictions beyond Venezuela and Colombia.

Precarious Democracies provides a well-researched and much-needed comparison of Venezuela and Colombia's political evolutions. The book's greatest weakness lies not in the arguments the author presents, but in her ambitious undertaking. In so short a book, the author is unable to explain the theories of democratization she is refuting so that non-experts can appreciate the full impact of her assertions. It may ultimately prove overwhelming for non-experts to follow the author's detailed research and historical account, remember the competing theories of democratization, and independently evaluate them against Bejarano's approach. Additionally, the length of the book limits Bejarano's ability to challenge the more nuanced theories that experts would likely hope to see tested.

Cybercrime and the Law: Challenges, Issues, and Outcomes. By Susan W. Brenner. Boston, MA: Northeastern University Press, 2012. Pp. 263. \$35.00 (paperback).

REVIEWED BY GAREN S. MARSHALL

Susan W. Brenner's *Cybercrime and the Law* is a general introduction to the growing issue of cyberthreats. Despite the book's U.S.-centric approach, it gives readers who may be unfamiliar with cyber issues both a domestic and transnational overview of the various types of threats and governmental efforts to combat them. Although Brenner does an exceptional job in illustrating the fact that "cyber-space is a criminal tool of unprecedented complexity and potential," *Cybercrime and the Law* is not meant for readers expecting an in-depth analysis of potential solutions to the issue of cyberthreats.

As a general introduction to cyberthreats, Brenner identifies three paradigmatic categories: cybercrime, cyberterrorism, and cyberwarfare. Brenner dedicates the first five chapters of the book to cybercrime, subdividing the subject into "target" crimes and "tool" crimes. The former are instances where victims' computers, databases, or websites are actually the target of attacks (e.g., hacking, malware, and distributed denial of service (DDoS) attacks), while the latter are more traditional crimes in which a computer is used as a tool (e.g., fraud, theft, extortion). These chapters of the book are its biggest strength: Brenner systematically identifies and explains each type of threat, making it easy for the unfamiliar reader to get a sense of what "cyberthreats" are.

Cybercrime and the Law serves as a fantastic introduction to both the "target" crimes and "tool" crimes mentioned above. Although most lay readers will have heard terms like "hacking" and "malware" in the past, Brenner makes the basic terminology more easily digestible. In fact, she often uses case studies to put the issues into context, such as when alleged Ukrainian hackers stole nearly half a million dollars from First Federal Savings Bank in Kentucky (a combination of tool and target crimes) or when a series of DDoS attacks on Yahoo!, eBay, and other companies caused an estimated "\$1.2 billion in global economic damage" (a target crime). Furthermore, Brenner identifies both federal and state statutes that apply to such crimes as she explains each type of crime, and though she

finds the statutes in place to be adequate to address the conduct involved in cybercrimes, she also argues that the statutes are underutilized since perpetrators often avoid capture and prosecution. It is this problem—the inability of governments to detect and prosecute cybercriminals—that lies at the heart of *Cybercrime and the Law*.

At two points in the book, the author also makes an interesting comparison between modern day cyberthreats, and the use of the automobile by bank robbers in the early 20th century. As Brenner explains, the famed bank robbers Bonnie and Clyde used vehicles to quickly escape capture by fleeing the jurisdictions in which they committed their robberies. At the time, state and local law enforcement systems were ill-prepared to address such conduct: sovereignty between states meant that the robbers were able to avoid prosecution simply by crossing state lines after each robbery. Although the problem of jurisdictional avoidance posed by the automobile was eventually solved through federal criminalization, Brenner identifies parallel issues in fighting cybercrime that may not have as simple a solution.

According to Brenner, jurisdictional avoidance is an especially difficult issue in the context of cybercrime, since criminals may perpetrate their crimes without ever entering the victim jurisdictions. The problem is compounded by the fact that there is no relevant international legal body superior to sovereign nations—and thus no solution truly parallel to the federal criminalization that neutralized jurisdiction-hopping by criminals like Bonnie and Clyde. Furthermore, cybercriminals benefit from both anonymity and the ability to inflict great harm. As Brenner points out, the FBI estimates that cybercrime costs the global economy more than \$1 billion annually. Even more troubling is the fact that perpetrators may be able to attack not only businesses, but also critical infrastructure within the United States. Yet despite the author's detailed identification of these issues, *Cybercrime and the Law* is ultimately unable to offer many solutions.

According to Brenner, there are a sufficient number of U.S. criminal statutes in place to combat cyberthreats, but they are underutilized because of the government's inability to detect and prosecute cybercriminals. Federal and (even more so) state law enforcement bodies within the United States are not yet adequately trained and prepared to deal with cybercrime.

Furthermore, cybercrime creates some difficult evidentiary hurdles—the most obvious being the actual collection of the evidence, since computers involved in cybercrimes can be spread over several continents. Although these hurdles can be overcome by U.S. law enforcement officials dealing with cybercrime committed within the United States, they often seem insurmountable when transnational cybercrime occurs.

Chapter Seven of *Cybercrime and the Law* focuses on transnational investigation of cybercrime. Here Brenner identifies two major obstacles to such investigations: collecting evidence and obtaining custody of the suspects. Due to issues of national sovereignty, evidence collection is limited to formal (letters rogatory and treaty requests) and informal means (asking law enforcement of host countries to collect evidence). Similarly, custody may be obtained formally through extradition and informally through extralegal unilateral action (i.e., tricking perpetrators into entering U.S. jurisdiction or abducting them from host countries). Unfortunately, both of these hurdles are often insurmountable; for example, formal evidentiary channels are usually too slow to deal with high-paced cybercrimes involving unstable evidence. Furthermore, the United States does not have extradition treaties with many of the countries, such as China or countries within the former Soviet bloc, from which perpetrators are likely carrying out their attacks.

What Brenner does not adequately discuss in Chapter Seven is whether host countries such as these are making serious efforts to arrest and prosecute the cybercriminals hiding inside their own borders. Furthermore, there is no mention of whether criminals within the United States are targeting victims in other countries. Brenner does end the chapter by discussing international efforts to make standardized cybercrime laws (e.g., OECD and the Council of Europe's Convention on Cybercrime), but she warns that it is unlikely there will be an international police body formed in the near future, since nations will not want to sacrifice their sovereignty. Yet since Brenner does not examine whether cybercriminals in the United States are targeting international victims, she leaves the reader wondering whether more extensive international agreements would be possible. If transnational cybercrime is only a significant problem for victims in the United States, it is understandable that other nations may not desire more extensive agree-

ments, but if the harm is similarly extensive in Russia, for example, collaborative efforts to investigate and prosecute transnational cybercriminals may be more likely to form in the future.

Since Chapter Seven mainly highlights the failure of governments to effectively apprehend and prosecute perpetrators of transnational cybercrimes once they have occurred, *Cybercrime and the Law* may also have benefited from the addition of a chapter on efforts to *prevent* cybercrimes, a topic Brenner largely overlooks. For example, in a study of international cybercrime for the year 2012, Verizon and a number of U.S. and international law enforcement agencies found that 97% of data breaches could have been avoided through simple or intermediate controls.¹ Although Brenner focuses on the fact that it may be impossible, at least in some instances, to apprehend those responsible for cybercrimes, she misses the fact that private organizations can take steps to significantly mitigate the effects of cybercrime. Just this past summer, Preet Bharara, the United States Attorney for the Southern District of New York, wrote an op-ed in *The New York Times* in which he explained that large and small corporations can help mitigate the effects of cybercrime by (1) regularly disclosing when they are victims of cyberattacks, (2) taking simple security measures like training and threat assessments, and (3) “understanding the threat in a comprehensive, serious manner.”² As Bharara points out, this is exactly what companies do when it comes to physical crimes like robberies, so there is no reason these steps should not be taken for cybercrimes.

Brenner also seems to overlook the impact that private security firms may have on the identification of, and protection against, foreign cyberthreats. For example, the private computer-security firm Mandiant recently produced an in-depth report on Chinese government-sponsored cyberattacks on U.S. companies.³ Private security firms like Mandiant may be able to offer a significant layer of protection to private com-

1. VERIZON, 2012 DATA BREACH INVESTIGATIONS REPORT 3 (2012), http://www.verizonenterprise.com/resources/reports/rp_data-breach-investigations-report-2012-ebk_en_xg.pdf.

2. Preet Bharara, Op-Ed., *Asleep at the Laptop*, N.Y. TIMES, June 3, 2012, at A25.

3. MANDIANT, APT1: EXPOSING ONE OF CHINA'S CYBER ESPIONAGE UNITS (2013), http://intelreport.mandiant.com/Mandiant_APT1_Report.pdf.

panies and even support U.S. government intelligence collection, yet Brenner does not mention their existence.

Finally, in Chapter Eight, the author returns her focus to the three paradigms of cybercrime, cyberterrorism, and cyberwarfare. According to Brenner, cyberthreats do not divide neatly into each of these three traditional paradigms, since attribution for cyberattacks is not as simple as it is for physical threats. Traditionally, war has been defined as hostilities between two or more sovereign nations, whereas crime and terrorism⁴ are defined as threats by domestic actors. Now, Brenner believes, these traditional categories are being eroded by cyberthreats that make national boundaries irrelevant. In addition, the scale of the attacks and anonymity of the attackers can make cyberattacks more ambiguous. For example, a massive DDoS attack on Estonia in 2007 was never clearly attributed to individuals or to a specific government entity. Although the Russian government was suspected of carrying out the attack, it could also have been a Russian government-sponsored attack or could have even been carried out by perpetrators in a third country who routed the attack through Russia to further conceal their identities.

All of this leaves the reader to question what implications the erosion of the traditional threat paradigms will have. As Brenner explains, categorizing threats is important because it determines which groups should respond to the threats (law enforcement or military). Since ambiguity in classifying cyberthreats makes it difficult for the U.S. government to respond effectively, Brenner thinks that the government may eventually adapt by forming one agency responsible for responding to all cyberthreats and merge the traditional paradigms. Alternatively, Brenner raises the possibility that nation-states may eventually be replaced by decentralized entities, making national sovereignty less of a barrier to prosecution.

Unfortunately, Brenner's analysis of the traditional threat category erosion is more cursory than her treatment of other topics, as she does not consider the argument that the traditional categories have been eroding not only because of cyberthreats, but also because of increased globalization. An increased ability to travel and communicate quickly has led to other threats becoming ambiguous. For example, the 9/11 at-

4. Brenner treats terrorism as a subset of crime identified by motive.

tacks were more ambiguous than the Japanese attack on Pearl Harbor, a paradigm example of warfare. The attackers on 9/11 were not a nation, but the scale of the attacks was so large that 9/11 did not fit neatly into the crime paradigm. In fact, the United States seemed to treat 9/11 as an act of war, and in some ways the crime and war paradigms were hybridized. Of course, the erosion of the traditional threat categories does make threats more difficult to deal with: responding to Al-Qaeda strictly through the crime or war paradigms, for instance, would probably be ineffective. However, efforts to mitigate threats and to come up with creative ways to combat them may be more effective than Brenner suggests. For example, perhaps one way the U.S. government can respond to cyberattackers is by using defensive DDoS attacks.

Overall, *Cybercrime and the Law* effectively introduces the reader to the area of cyberattacks. Yet it only touches upon many of the topics without giving them the in-depth treatment they deserve, and while Brenner identifies numerous difficult issues, she does not offer any innovative solutions to the issues posed by cyberattacks. In the end, *Cybercrime and the Law* leaves the reader with more questions than answers.

The New Continentalism: Energy and Twenty-First-Century Eurasian Geopolitics. By Kent E. Calder. New Haven, CT: Yale University Press, 2012. Pp. xxxiv, 377. \$35.00 (paperback).

REVIEWED BY MICHAEL A. SOCHYNSKY

In *The New Continentalism: Energy and Twenty-First Century Eurasian Geopolitics*, Kent E. Calder, a professor at the Paul H. Nitze School of Advanced International Studies at Johns Hopkins University, provides an impressively detailed and thoughtful chronicle of the Eurasian continent's ongoing economic and political integration. Calder recognizes that this "new continentalism" is a gradual and complex process that is taking place across multiple fault-lines. He contends, however, that this ever-increasing continental cohesion is driven primarily by Eurasia's inevitable energy interdependence, a development made possible by a series of key political transformations that have occurred since the late 1970s. To illustrate how and why this energy-driven integration is taking place, Calder delves into remarkable (if at times arcane) specificity. His survey of

the region's geography and political economy is packed with maps, graphs, and statistics, and at times the reader may feel overwhelmed by this fact-heavy account. Still, Calder never loses sight of a simple yet essential concept that runs throughout the book: West and Central Asia *have* the oil, and East and South Asia *need* the oil. The implication, made explicit only in the book's final chapters, is that America's role in the region is being gradually rendered superfluous.

Significantly, Calder's survey of Eurasia's emerging integration contains no formal legal analysis. International law perspectives—both public and private—are absent from the book. There is no discussion, for example, of the practical legal challenges posed by building transnational oil pipelines, nor is there more than a cursory mention of the human rights implications of a continental alliance that involves numerous authoritarian states. Rather, Calder makes clear at the outset that his analysis is grounded in international political economy, as well as the neglected but related disciplines of geography and geopolitics. Calder believes the subject matter warrants a resuscitation of these Cold War Era disciplines because unlike so many other economic and political trends, the exploitation and transfer of oil and gas—the phenomenon driving continental integration—remains largely unaffected by globalization. As Calder repeatedly reminds the reader in Chapter 2 (“Where Geography Still Matters”), both the supply and demand for much of the world's energy are concentrated on the Eurasian continent. The revolutionary changes in transportation and communication that have defined globalization haven't changed the fact that “Beijing remains closer to Tokyo, Seoul, and Teheran [sic] than it is to Washington, D.C.” We are going to need a map—not the Internet—to properly analyze Eurasia's unfolding evolution.

This focus on geography is one of the book's strongest points. The Eurasian landmass, which consists of the Middle East, Central Asia and the Caucasus, Russia, the Indian subcontinent, as well as East Asia and the Pacific Rim, enjoys a beautifully rich and complex geography. Those who recognize how Turkey or Pakistan's physical location has deeply influenced those nations' political identities, or those who take pride in being able to name all of the (increasingly relevant) “Stans” of Central Asia will find themselves at home in Calder's world. Here, countries still matter. If Eurasian interde-

pendence is being driven by state-backed energy companies, then the focus should be on the ambitions and interactions of the countries themselves, not simply individuals or private multinational corporations. In this regard, the book adopts a subtle but refreshing anti-globalization undercurrent.

To explain why Eurasia's transformation is taking place now, Calder identifies six "critical junctures" in Eurasian history: Deng Xiaoping's Four Modernizations (1978), India's parallel economic reforms (1991), the nationalization of Aramco in Saudi Arabia (1974), the Iranian Revolution (1979), the collapse of the Soviet Union (1991), and the advent of Vladimir Putin in Russia (1999). The author suggests that each of these pivotal moments presented policymakers with a fork in the road, and that the paths taken helped to break down the geopolitical divides that had previously thwarted Eurasian integration. Although providing this historical backdrop is essential to his project, Calder's "critical juncture" theory feels unnecessarily academic. If his purpose is to look at the past to explain the present and predict the future, it remains unclear what he gains by spending so much time exploring the theoretical underpinnings of the critical juncture model. By adopting such an esoteric framework, Calder risks alienating a broader readership. Still, this emphasis on history helps to ground the reader, and the author is wise to provide additional context in his thorough profiles of individual energy producer and consumer nations.

At the heart of the book, Calder defends his thesis by linking the growing production and export capabilities of the Middle East and Central Asia with the increasing demand of East Asia's more advanced economies. Calder clearly prefers facts over opinions. He declines to take up a persuasive or argumentative tone, instead offering us a series of data-driven passages that on occasion read like an almanac or encyclopedia. The discussion is comprehensive, and *The New Continentalism* could easily function as a valuable reference for those interested in Eurasian energy politics. We learn how certain key players such as Kazakhstan have accelerated stability and interdependence, which pipelines have been built and which are likely to be built, and how the energy entente has spurred broader economic, military, and political cooperation. Calder also provides an interesting account of the unique role played by mini-states such as Singapore and the United Arab Emir-

ates, and considers the growing importance of sovereign wealth funds as well. These discussions have the cumulative effect of making energy-driven integration feel less like a prediction and more like an inevitability. Still, Calder recognizes that emerging continentalism is a work in progress, and he identifies subregional rivalries, internal political upheaval, and the region's intense militarization as limitations on continental cohesion.

What then, are the implications? The idea of a New Silk Road composed of a network of oil and gas pipelines zigzagging across Central Asia is by no means new, nor is Calder the first person to write a comprehensive book on contemporary Eurasian energy strategy and geopolitics. Zbigniew Brzezinski, in his influential 1997 book *The Grand Chessboard*, recognized the possibility of Eurasian integration following the collapse of the Soviet Union and warned in stark terms that America must prevent such cohesion in order to maintain military, energy, and political security.⁵ Sounding the alarm, Brzezinski cautioned that "it is imperative that no Eurasian challenger emerges, capable of dominating Eurasia and thus also of challenging America. The formulation of a comprehensive and integrated Eurasian geostrategy is therefore the purpose of this book."⁶ Significantly, both Brzezinski and Calder identify Eurasia—Central Asia in particular—as the "geographical pivot of history," a phrase coined by turn-of-the-century British geographer Halford Mackinder. Both authors promote Mackinder's pivot theory and take it very seriously. As Calder writes, "the key to world power is control of the geographical pivot of history." Put another way, whoever controls Eurasia controls the world. So what happens when Eurasia controls itself?

For Brzezinski, the result would be "global anarchy."⁷ Calder, in contrast, manages to remain remarkably neutral throughout much of his analysis and declines to propose a Eurasian geostrategy for American policymakers. His purpose is not to lament the inevitable geopolitical transformation which he ably demonstrates is taking place, nor does he take any cheap shots at the rising influence of China, as many other

5. Zbigniew Brzezinski, *The Grand Chessboard: American Primacy and Its Gestrategic Imperatives* (1st ed. 1997).

6. *Id.* at xiv.

7. *Id.* at 30.

authors have done. Instead, Calder appears content to help us wade into the finer details of modern Eurasian political history, the mechanics of the emerging energy alliances, and the unique, pivotal roles of key individual nations. This non-sensationalist approach—to provide a survey and not a polemic—is admirable and refreshing, and is bolstered by his tremendous depth of knowledge and insight. Thus, although Calder's central thesis may not be novel, he offers what is perhaps the most even-handed, specific, and comprehensive account of Eurasian energy integration, and certainly the most current.

For this reason, it is troubling that the author evidently felt obligated to shift gears in the penultimate chapter, entitled "Strategic Implications." Here, Calder abandons his valuable even-handedness and warns that as Eurasia continues to become increasingly integrated and thus stronger, it will "undermine the preeminent global geopolitical position of the United States." As a consequence, these "adverse trends will make proactive, corrective steps increasingly urgent in future years." Yet Calder does not identify what form these corrective steps might take—instead, he retreats into an account of America's financial indebtedness to East Asia. Similarly, in a questionable subsection entitled "Dangers of International Anarchy," Calder inexplicably trivializes his discussion by devolving into unproductive and at times offensive generalizations: "The inhabitants of this rough neighborhood [the Middle East] are quintessentially people without rules. . . . For them, notions of constitutionalism, personal liberty, and the rule of international law are far-distant abstractions." Given Calder's earlier recognition of Eurasia's rich diversity and complexity, this *ad hominem* attack on the people of the Middle East feels crude and out of place.

Still, for most of the book, Calder appears unconcerned with whether Eurasian cohesion is a good or bad thing, and is more interested in demonstrating that it *is* a thing. *The New Continentalism* is by no means a page-turner, and the author assumes that his readership is limited to those with an interest either in the region or in the academic disciplines he uses to frame his discussion. But one wonders why this subject matter couldn't command the interest of a broader audience. As Calder makes clear, this historic transformation is both remarkable and relevant. Despite its likely failure to attract a broader audience, *The New Continentalism* is informative and compre-

hensive, and serves as an excellent source for anyone interested in understanding how the emerging Eurasian energy alliance came into existence, and how it is likely to evolve in the years to come.

Solomon's Knot: How Law Can End the Poverty of Nations. By Robert D. Cooter and Hans-Bernd Schäfer. Princeton, NJ: Princeton University Press, 2012. Pp. xix, 325. \$35.00 (cloth).

REVIEWED BY CHRISTEL Y. THAM

The Solomon's knot, a decorative motif used since ancient times by Roman, Middle Eastern, and African cultures, consists of two closed loops, doubly interlinked in an alternating and interlaced manner. In *Solomon's Knot: How Law Can End the Poverty of Nations*, Robert Cooter and Hans-Bernd Schäfer use this motif as a metaphor for how the law can solve the "double trust dilemma" between investors and innovators by forming a mutually dependent and reinforcing relationship between capital and ideas. The double trust dilemma arises in situations where the innovator must trust the investor not to steal his idea and the investor must trust the innovator not to steal his capital. Distrust obstructs innovation, and the book narrates how insecure property, unenforceable contracts, uncollectable debts, financial chicanery, and other legal problems can stifle business ventures and cause national poverty. In contrast, strong legal institutions such as well-formed laws and an independent judiciary support and promote innovation by uniting capital and ideas—the two linked loops in the Solomon's knot. This increased innovation, the authors argue, ultimately leads to growth that will draw developing nations out of poverty.

This legal theory of economic growth is not a novel one, and Cooter and Schäfer are not claiming so here. Rather, the book's value lies in its comprehensive yet well-distilled presentation of the main insights and theories of law and economics relating to growth in developing countries. The presentation of these theories is enhanced by their categorization based on specific areas of the law, such as property rights, contracts, corporate law, bankruptcy, and corruption. By using historical anecdotes from around the globe and across different histori-

cal periods, the authors succinctly and creatively show that the success of many theories of economic growth hinges upon the development of strong legal foundations. For example, the privatization schemes of the 1990s in the former Eastern Bloc only succeeded once laws and policies provided the foundation for markets. Without competitive markets and bidding, the sale of national and state-owned enterprises can easily be co-opted by insiders who have the political leverage to obtain the enterprise at a fraction of its market price. To illustrate this, Cooter and Schäfer cite the example of the Ukrainian government's 2004 sale of its largest steel mill, as part of its privatization scheme, for \$800 million to a consortium that included the son of the country's president. Following the election of a new president, the same mill was sold the next year in a public auction for \$4.8 billion. These simple anecdotes provide a vivid context in which to demonstrate the interaction of legal and economic theories, allowing the reader to discern the trend that eventually emerges.

Notably, the authors rarely underscore the significance of legal institutions in creating stable business environments—an oft-cited and almost clichéd rhetoric echoed by politicians, lawyers, and economists alike. Instead, they differentiate themselves by focusing more on the role of legal institutions in promoting *innovation* that leads to the creation (rather than redistribution) of wealth. A stable business environment is but one of the factors that can promote innovation. To this end, Cooter and Schäfer track the typical life cycle of an innovation from the germination of an idea to its development, launch, and subsequent diffusion, focusing on the various legal concerns that may arise at each stage.

For example, in Chapter Three, the authors highlight three different stages of financing, and the corollary legal issues, that relate to the three stages of the development of an innovation: relational, private, and public. Trust between the investor and innovator must be established at each stage, albeit through different devices. At the relational financing stage, trust is established through familial or personal ties, for instance by a personal loan from a friend. As the innovation develops and more extensive financing is required, private and public financing become more suitable options. At this point, the authors observe, the investor and innovator must employ legal devices in order to overcome the distrust between them

since they do not have any personal ties. At the private financing stage, venture capitalists and innovators rely on state enforcement of financing contracts to ensure that both individuals keep up their side of the bargain. Finally, during the public financing stage, the laws of securities, corporations, and bankruptcy ensure that the firm's managers and directors adequately protect shareholders' interests. This simple dissection of the life cycle of an innovation allows the authors to effectively parse the relevant bodies of law that apply at each stage, enabling readers unfamiliar with business strategy, or legal and economic theory, to follow their arguments easily.

Indeed, the authors may have deliberately chosen this more accessible and entertaining method of presentation (including the use of anecdotes and less technical language) precisely because they recognize the multi-disciplinary nature of this area of study, where legal, economic, political, and business ideas intersect. Unfortunately, the book's greatest strength—its accessibility, breadth, and ability to convey complex ideas in simple terms—is also its greatest weakness. The study of law and economics is nothing if not nuanced, and accessibility comes at a cost. Some of the theories and policy recommendations that the authors espouse are sweeping to the point of being simplistic. The study of the law alone is sufficiently complex as to defy easy generalizations, and the same principle applies to the theory of law and economics. Scholars and legal practitioners in today's globalized world already encounter a multitude of multi-disciplinary issues in their daily work. For example, corporate lawyers do not study business law in a vacuum. As practitioners who strive to be attuned to the needs of their clients, they have to acquire more than a mere working knowledge of finance, accounting, business, and economic concepts. Ultimately, Cooter and Schäfer may have underestimated the ability of their readers to grasp difficult ideas.

In doing so, they risk compromising the intellectual accuracy of their work. One instance of this occurs in Chapter Twelve, where the authors discuss how liability law in developing countries can be strengthened in order to improve the safety and protection of workers and consumers. Here, Cooter and Schäfer argue that accident law in developing countries should rely more on clear statutory stipulations of rules rather than vague standards. They posit that clear rules allow for swift

decisions without collecting much information, enable judges and administrators with low education and little training to apply the law more easily, and make fraud easier to detect. However, clear rules, especially in developing countries, may not necessarily be more beneficial than standards. Clear rules and swift decisions sometimes generate arbitrary bright lines that do not take into account all the countervailing circumstances surrounding the tort or accident. In fact, precisely because the safety precautions and working environments are so dangerous, workers and consumers might find themselves deviating from set rules more often than not. Furthermore, although clear rules may make it easier for poorly trained judges and administrators to apply the law, this merely transfers the discretionary task to legislators upstream—legislators who may be even less qualified than the judges and administrators downstream. Compounded with the corruption problems that plague the bureaucracies of many developing countries, clear rules may cause more harm to individuals in those countries by foreclosing any opportunity for them to argue their case or justify their behavior before a court of law.

At times, the authors' approach also takes a one-dimensional view of the law, portraying legal institutions such as independent courts, legislatures, and justice departments as a panacea to the problems of global poverty. In doing so, they overlook another significant aspect of the rule of law that is just as relevant: the social and cultural aspect of the law. As Alexis de Tocqueville famously argued in *Democracy in America*, the rule of law is not only about the environment in which the state operates, but also about the overall presence and cultural significance of rule of law in our daily lives.⁸ From this point of view, it would be naïve to assume that individuals in developing countries will readily plug themselves into new legal institutions and become willing cogs in a newly constructed machine. Instead, experiences from recent history have shown that there must also be a strong element of the rule of law present in the popular culture, in the sense that citizens already regard the law as available, legitimate, and fair. The presence of the law has to be regarded "as something more than the activity of an occupying army"—citizens must be ready to access legal institutions and rely on the law to func-

8. See generally Alexis de Tocqueville, *DEMOCRACY IN AMERICA* (1835).

tion in their daily activities. Indeed, in the context of promoting innovation, the entrepreneurial spirit is as important as the presence of the legal institutions that bring their ideas to life. Without individuals developing new ideas and strategies, no amount of legal infrastructure will help in the creation of wealth.

Overall, the authors occasionally neglect to draw sufficient caveats to acknowledge the complexities of this intricate discipline, which sometimes results in over-simplified generalizations that harm the work's intellectual accuracy. Nevertheless, *Solomon's Knot* remains an entertaining and comprehensive read. It successfully conveys the main theories of law and economics within the context of promoting innovation as a source of sustained growth. Moreover, it proposes clear and simple policy recommendations for developing countries to adopt in pursuit of greater wealth creation and economic development.

The Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Time. Edited by Irwin Cotler and Jared Genser. New York, NY: Oxford University Press, 2011. Pp. vii, 412. \$85.00 (hardcover).

REVIEWED BY MATTHEW B. SIMON

The responsibility to protect (RtoP) is an emerging norm of international law, a new paradigm that seeks to stop mass atrocities in the 21st century. This ambitious doctrine is set against the backdrop of the international community's spotted history of indifference in the face of humanitarian crises. The authors who contribute to this collection of essays, ably edited by Irwin Cotler and Jared Genser, explore the legal, political, and historical contexts that laid the groundwork for this rapidly developing doctrine, discuss its potential (as well as its potential limitations), and, most importantly, offer practical recommendations on how to "close the gap between the reality and promise of RtoP." This comprehensive overview of RtoP brings together a diverse international team of authors whose varying backgrounds give depth and texture to this developing norm. The authors' differing opinions, moreover, present a balanced picture of the doctrine and immerse their readers in the political debates surrounding its implementation. The

book is both informative and stimulating, as it pairs nuanced doctrinal analysis with captivating political and historical studies of RtoP's development and its influence on modern mass atrocities.

The *Responsibility to Protect* begins with essays that explore the development and contours of the doctrine. The RtoP doctrine, adopted in paragraphs 138-140 of the 2005 World Summit Outcome Document, rests on three pillars: "(1) the responsibility of the state to protect its population . . . ; (2) the commitment of the international community to assist states in meeting those obligations; and (3) the responsibility of member states to respond in a timely and decisive manner when a state is manifestly failing to provide such protection." The need for such a doctrine is made clear by Václav Havel and Desmond M. Tutu in their Introduction to the volume, which describes the catastrophic results of the international community's failures to take humanitarian action in the face of mass atrocities.

Yet Lloyd Axworthy, in his essay "RtoP and the Evolution of State Sovereignty," cautions that the need for humanitarian action must be balanced with state sovereignty, the norm of non-interference in the internal matters of other states. Axworthy further explains that state sovereignty is likewise essential to promoting peace and security between states because politically motivated acts of aggression can easily be cloaked as humanitarian interventions. Such concerns are aptly illustrated by the United States' invasion of Iraq and Russia's invasion of Georgia, each justified under the auspices of humanitarian intervention. RtoP thus attempts to strike a balance between the need to intervene and the concern over violations of state sovereignty. In doing so, it answers the call to action delivered by Kofi Annan in his Millennium Report: "If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to Rwanda, to Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?"

Axworthy explains that the first attempt to strike this balance was made by the International Commission on Intervention and State Sovereignty (ICISS) in 2000. The Commission's report, released in 2001, championed the idea of sovereignty as a right and a responsibility: a responsibility to protect one's citizens from massive human rights abuses. Moreover, the re-

port argued that where a “state’s exercise of sovereignty conflicts with its responsibility toward its people,” such sovereignty can and should yield to the needs of its populace. The report was later used to develop the modern RtoP doctrine outlined in the 2005 Outcome Document.

In the chapter “Challenges and Controversies,” Nicole Deller observes that as a result of political compromise, the modern doctrine left behind some of the most progressive ideas contained in the ICISS report. Most notably, where the ICISS report suggested alternative options for intervention authority when the Security Council failed to intervene in an ongoing humanitarian crisis, such as regional organizations or the General Assembly procedure “Uniting for Peace,” the Outcome Document rests the sole authority of humanitarian intervention with the Security Council. As a result, the Outcome Document drastically narrows the distinction between existing international law and the non-binding RtoP doctrine, raising the question: Does the RtoP add anything at all?

Many of the authors in *The Responsibility to Protect* face this question head-on. They mostly agree that RtoP places a larger emphasis on each individual state’s responsibility to prevent (rather than prosecute) mass atrocity crimes, as well as on states’ collective responsibility to assist one another in meeting this obligation. In the chapter “Defining the Crimes,” for example, Tarun Chhabra and Jeremy B. Zucker identify “some ambivalence on the legal status of . . . collective state responsibility . . . for preventing and halting violations of all *jus cogens* crimes,” indicating that RtoP could clarify and strengthen this area of international law. Despite some differences from existing law, William W. Burke-White, in his excellent essay “Adoption of the Responsibility to Protect,” states that the obligations in the Outcome Document are “neither novel nor groundbreaking.” Burke-White suggests that RtoP should be embraced for its normative and political force—i.e. the doctrine’s ability to pressure states into action—rather than its legal influence.

To understand the compromise that led to a more conservative RtoP, the book presents five essays that explore different regional perspectives on the development of the doctrine: “Africa,” “Asia and the Pacific,” “Europe and North America,” “Latin America and the Caribbean,” and “Middle East.” Each essay examines the historical and political factors that drive a

particular region's perspective on the doctrine. In "Latin America and the Caribbean," for example, Gilberto Marcos Antonio Rodrigues makes clear that dual histories of foreign intervention and mass atrocities have deeply affected the perspective of RtoP in those regions. Incorporating varying regional viewpoints generally led to the Outcome Document's larger focus on the international communities' assistance in preventing mass atrocities from taking place and the prerequisite of Security Council authorization for humanitarian interventions. These regionally focused essays underscore the delicate political circumstances of RtoP, providing broader insight into the political compromises and realities of any developing international norm.

With a firm understanding of the doctrine, *The Responsibility to Protect* examines the practical impact that RtoP could or did have in case studies of recent mass atrocities in Darfur (Sudan), Burma (or Myanmar), Kenya, Sri Lanka, the Democratic Republic of the Congo, and North Korea. The case studies, which collectively act as a short (and, of course, not exhaustive) history of modern mass atrocities, accentuate the complexities of taking RtoP from theory to practice. As Andrew Natsios and Zachary Scott state in their essay "Darfur, Sudan," RtoP "can only be implemented through institutions, and the strengths and weaknesses of those institutions will determine whether the doctrine [is successful], not the language of the doctrine itself." The case studies consistently show that developing logistic, diplomatic, civilian, and military capabilities are just as important (if not more so) as the development of the doctrine itself.

Each of these essays adds to the reader's overall understanding of the doctrine. Yet *The Responsibility to Protect* may be more conspicuous for what it is missing than what it includes. By no fault of the editors, who published the book shortly after the international intervention in Libya, the book contains no discussion of the ongoing crisis in Syria or Mali, and little discussion of the impact of the Libyan intervention on RtoP. Perhaps foretelling the importance of Libya on the doctrine, Gareth Evans, in his closing chapter "Lessons and Challenges," states that if the NATO mission in Libya "overreaches [its] mandate, there is a risk that Libya, far from setting a new benchmark for future commitment in extreme cases, will prove to be a high water mark from which the tide will rapidly

recede.” Additionally, although Mohamed S. Helal gives a succinct analysis of Libya’s potential influence on RtoP in his essay “Middle East,” one might expect a chapter exclusively dedicated to the Arab Spring if the book were written today.

Readers looking for a more compact account of RtoP may find the collection’s value outweighed by the sometimes repetitious nature of the format, and international scholars who are familiar with RtoP may find that the book occasionally proceeds at too high a level of generality. Yet they are certain to find fascinating ideas to explore further. Ultimately, anyone looking for exposure to this burgeoning principle of international law, the politics that underlie its developing norms, or a brief history of contemporary mass atrocities will find *The Responsibility to Protect* captivating.

Shutting Down the Streets: Political Violence and Social Control in the Global Era. By Luis Fernandez, Christian Scholl, and Amory Starr. New York, NY: New York University Press, 2011. Pp. vii, 207. \$23.00 (paperback).

REVIEWED BY ANISHA MEHTA

Shutting Down the Streets: Political Violence and Social Control in the Global Era, by Amory Starr, Luis Fernandez, and Christian Scholl, discusses the significance of protest policing in the last decade with a focus on the impact of “alterglobalization” movements. According to the authors, alterglobalization is a “term that refers to the diverse yet synchronous solidarity movements that not only oppose globalization in its current form but also propose alternatives to it.” These movements oppose the impact of groups and institutions such as the World Bank and G8 conferences on globalization. The authors assert that social controls turn political dissent into criminal behavior and that the “policing of protest” is actually a form of “violence against democracy.” For example, the way in which globalization conferences (such as the G8 conferences) are organized—involving huge police presences and the militarization of entire towns—is seen as a method of policing protest that is really a strike against democracy. This book is a passionate argument against the current policing of dissent, which the authors argue has become a norm in our society.

The authors provide an insightful explanation of current trends towards the policing of protests, including a vast array of empirical support. While the book uses a great deal of scholarly literature, it does not solely target an academic audience, but rather anyone interested in the role of social movements in today's society. It is a quick and easy read, offering a broad range of information on the subject, but it does not necessarily reach the depth necessary for academics studying the policing of dissent. For example, while the authors generalize greatly from their experiences in North America and Europe, they do not discuss the differences between political movements in these regions or how the government responses have differed. They also spend little time discussing movements in South America and Asia, choosing to focus primarily on the United States and Europe.

Shutting Down the Streets is the result of research concerning over twenty international protests in North America and Europe, beginning in 1999 with the "Battle of Seattle" through the 2009 NATO protests in Strasbourg, France. The authors also studied over fifty domestic events relevant to the international movement, researched the effects of surveillance on activists in the United States, analyzed relevant policy and legal documents on the shifting control tactics of authorities, and examined relevant archival material. Their research focused on social movements, mainly the protests of these summits, and how the social control of dissent has affected their formation. In explaining why they chose to focus on protests of summit meetings, when their thesis addresses social control of dissent more generally, the authors observe "that summits are especially useful because they are a snapshot of an entire social movement and its diverse participants and activities." Yet this explanation seems inadequate, given the wide variety of modern political dissent and social movements that sometimes have little to do with political summits. The authors observe that there is a great deal of documentation of participants' experiences with social control at summit meetings that can be studied and analyzed. However, readers may desire a more thorough explanation concerning the link between these "snapshots" and the experiences of social dissenters outside of the summit context.

The first and most well-developed method of social control that the authors focus on is space. Chapter Two, "The Ge-

ography of Global Governance,” explains how global institutions use space as a primary method of control. Summits, such as the G8 conferences, have to “simultaneously repress dissent and appear open and democratic” so as to look legitimate. To do so, global leaders must choose locations, divide the space, impose regulatory controls on individuals, and militarize locations in ways that channel dissent into predictable and controllable “flows of people, ideas, and events.” The authors describe how police have adopted strategies such as choosing geographically defensible and socially isolated locations to help maintain control—thereby legitimizing the perception of global governance institutions by allowing them to maintain control while appearing open to protest. For example, the 2007 G8 conference was strategically located in Heiligendamm, an isolated coastal town that was easy to secure. Similarly, global institutions have reduced the disruptive capacity of alterglobalization movements by manipulating space to keep protests predictable while still maintaining their democratic image, though with varying degrees of success. In 2001, Canada erected a major fence around the Free Trade Area of the Americas (FTAA) summit in Quebec City that the press and public called “Canada’s wall of shame,” destroying any perception of a democratic event. Thus, when the G8 conference was hosted in Canada in 2002, it was located in Kananaskis, a rural mountain resort. The goal is not to silence all protests, but rather to limit protest to non-disruptive dissent.

While the authors present compelling evidence on how space is used to manipulate political dissent, there is little discussion of why this space is so crucial. They state that “the visibility of social conflicts has to do with the capacity of social movements to appropriate spaces of hegemonic production of visibility”; however, with modern political dissent so often occurring through online mechanisms such as Twitter, is the politicization of space as important as it once was? For example, the protests and demonstrations of the Arab Spring were greatly aided by their use of social media to organize the protests and to bring attention to the conflict. Similarly, the international “hactivist” group Anonymous has been able to cause great disruption without utilizing any space, solely by relying on Internet demonstrations. While space was still necessary for the Arab Spring protests, one wonders whether in the future

technology will minimize the need for space in social movements? As global organizations continue to manipulate space to avoid dissent, will social movements turn more towards technology to avoid these issues?

In Chapters Three and Four, the authors go on to discuss the political and economic realities of social control. The militarization of entire towns for specific summits serves to push protestors away from the events and ensure they are seen as outside the norms of democracy. The authors discuss the enormous expenditures made by governments, agencies, and institutions to preempt dissent—costs that have steeply risen every year and have led to tension between institutions and governments over who should fund the huge security undertakings. These undertakings turn protest policing into “Low-Intensity Operations” where, instead of focusing on order maintenance, the focus is on eliminating the enemy. The political system also works to criminalize individuals associated with alter-globalization movements. According to the authors, governments are dealing with protestors as insurgents, creating counterinsurgency groups to defend against them. These long-term campaigns have extensive resources to combat against protest that is considered disruptive. “Security perimeters, massive budget outlays, personnel mobilization in the tens of thousands, use of new weapons, and the rest of the police tactics . . . have the unmistakable effect of discouraging participation in the social spaces that nurture dissent” and thus are a form of political violence against democracy.

Chapter Five, “A Taxonomy of Political Violence,” explores how policing affects dissenters, both their discourse and their psyche, given that the marginalization and criminalization of political activists turns them into the “other.” Dissenters are associated with huge security budgets, massive police presence, armored vehicles, and more. “The whole population of the city must prepare for large-scale violence, from which the good citizens are to be protected by security checkpoints, fences, militarized police, and patrols.” Policing also preempts dissenter action by turning public space into police zones. New and inexperienced protestors, quickly alarmed by the police presence, often leave the dissenter groups. The authors end the chapter by discussing how political violence encompasses both bodily violence against dissenters and the diminishing of their political rights. They strongly assert: “Democratic nations

will kill activists. You are by no means safe to express yourself." While they give some examples of bodily violence against activists, they do not compare reactions of different governments to political activists, and they give few examples when discussing global governmental violence against activists.

Chapter Six focuses on anti-repression activism and how social movements have combated the repression created through the policing of protest. These include tactics such as breaching anti-protest zones and blockading streets (so that if protestors cannot enter the meetings, no one can), as well as legal activism and political litigation. The authors also offer a few examples of the communication infrastructures that have been developed to allow dissenters to coordinate during protests, such as decentralized information points, pirate communications, and newswires on websites. However, the chapter does not focus on the major technological advances, such as social media, that have allowed for information to be spread quickly and efficiently with little chance of being blocked by institutions.

The authors passionately discuss how the security culture that exists today allows for political violence in the name of protecting democracy. They believe that "[f]or those who see the liberal democratic state as a medium of peaceful and progressive change, that promise is in deep trouble." While they make a strong argument, based on scholarly literature and empirical evidence, that institutions manipulate and control social movements leading to repression of dissent, more information is required as to how social movements have adapted to these new situations. Have dissent and social movements simply changed form due to these pressures, or—as the authors argue—have they diminished so greatly as to threaten democracy? The authors also strongly argue that social dissenters have been marginalized and criminalized, but further study is required as to how this is impacting social movements. In an age where it is possible to dissent while remaining anonymous, does the marginalization that the authors discuss really have such a chilling effect on dissent? Overall, *Shutting Down the Streets* makes strong and compelling arguments against the practices of policing dissent and the current security culture, while remaining an easy read for academics and non-academics alike.

War by Contract: Human Rights, Humanitarian Law, and Private Contractors. Edited by Francesco Francioni and Natalino Ronzitti. Oxford, UK: Oxford University Press, 2011. Pp. xliv, 532. \$160.00 (hardcover).

REVIEWED BY HANNAH M. JUNKERMAN

War by Contract: Human Rights, Humanitarian Law, and Private Contractors is a thorough exploration of the legal implications of the increasing use of Private Military and Security Companies (PMSCs), particularly under the framework of International Humanitarian Law (IHL) and Human Rights Law (HRL). PMSCs, defined by the editors of this collection as “corporations offering security, defense and/or military services to states, international organizations, non-governmental organizations, and private companies and/or armed groups,” are increasingly used to fill roles traditionally held by national militaries. The tasks delegated to PMSCs include (among others) the operation of weapons systems, detention, interrogation, and intelligence. Because the advent of the PMSC is a recent phenomenon, several questions concerning them remain unsettled: how to classify the legal status of the PMSCs and the individuals whom they employ, what legal framework to apply to their actions or misdeeds, and whether or how to regulate them. The articles published in this collection, originally the product of a research project commissioned in 2008 by the European Union and conducted by seven European universities, constitute an attempt to answer some of these challenging legal and policy questions. No doubt as a result of its origins, the book consistently approaches this topic from a European perspective. Nevertheless, the scope of the articles is truly international, the topic timely, and the scholarship of high quality.

The book is structured as a five-part collection of thematically-grouped articles: Security and Policy Perspectives, Human Rights, International Humanitarian Law, Accountability and Responsibility of Private Contractors, and Criminal and Civil Liability of PMS Companies and their Employees. While such formal separation is crucial to maintaining focus and coherence through a lengthy exploration of an extremely broad topic, some sections are more naturally grouped than others. For example, Part I, dedicated to Security and Policy Perspec-

tives, features a broad, theoretical orientation to the topic, followed by a narrow piece that focuses on the use of PMSCs and private armed guards to combat the reemerging threat of piracy. While each article is interesting on its own, they are the only two articles in Part I, and the lack of connection and differences in approach and scope are noticeable.

Part II, dedicated to exploring HRL and PMSCs, provides a more cogent, complete, and compelling account of the current law of state responsibility, including the obligation of states to prevent and prosecute violations of international law by PMSCs. In an example of a particularly well-coordinated sequence of articles, three chapters explore the responsibilities of the home, hiring, and host state. By juxtaposing these articles, the editors allow the reader to compare with ease the different legal frameworks proposed by the authors for each state's level of responsibility. For example, in Chapter Seven, Christine Bakker explores the responsibility of the host state, recognizing that there may be practical limits on the state's capacity that require a suspension of international obligations. The home state, the responsibility of which is discussed in Chapter Five by co-editor Francesco Francioni, is allowed no such leeway. In fact, Francioni argues that the law of international human rights places a general due diligence requirement on the state to ensure that actors within its territory are not violating human rights. If such violations do occur, the states must provide appropriate sanctions and compensation. The skillful sequencing of these articles complements the individual topics they address, giving the reader a valuable opportunity to compare the proposed legal frameworks in quick succession.

Part III explores the puzzle of whether IHL applies to PMSCs, and if so, to what extent and under what circumstances. In the first of these chapters, Mirko Sossai suggests that the legal framework applied to PMSCs depends on their status as legitimate combatants. This determination is based on whether there is "direct participation in hostilities," defined as a "direct causal link between a specific act and the harm likely to result." If there is direct participation, the PMSCs are subject to the same law as the national armed forces. If there is no direct participation, the PMSCs are legally considered civilians.

Another suggestion for how and when to apply humanitarian law is offered by Giulio Bartolini, in a chapter entitled “Private Military and Security Contractors as ‘Persons who Accompany the Armed Forces.’” This chapter suggests that PMSCs may be deemed Persons Who Accompany the Armed Forces (PWAAFs), a category that dates back to at least 1863 and originally described those who offered logistical services such as food and welfare to national militaries. Importantly, if contractors are PWAAFs, they are granted Prisoner of War status if captured, so long as the state has identified them as members of this particular category. However, Bartolini recognizes that because this label cannot apply to those who are engaged in hostilities, it cannot act as a *per se* categorization of PMSCs.

Finally, in Chapter Sixteen, the section on IHL ends with a question that is raised in multiple chapters: are PMSCs mercenaries and thus subject to the United Nations International Convention against the Recruitment, Use, Financing and Training of Mercenaries which entered into force in 2001? As Luisa Vierucci pointed out earlier in Chapter Twelve, it is fairly easy for PMSCs to avoid falling into the prohibited category of mercenary because the requirements are “so stringent that [they] make the category almost exclusively theoretical.” The UN working group on the use of mercenaries came to this same conclusion and therefore recommended a new international convention to clarify the legal space in which contractors operate—often referred to as a “grey zone.”

Part IV explores the absence of a satisfactory framework for accountability and responsibility of private contractors in international law. The major hurdle in this area is the lack of enforceability. For example, two of the proposed models for imposing accountability—market-driven corporate responsibility initiatives and standard-setting self-regulation associations—suffer from the same fundamental problem: the voluntary nature of the standards. Furthermore, as Carsten Hoppe and Ottavio Quirico point out in Chapter Eighteen, even when an enforcement mechanism is created, companies can easily avoid censure. For example, when the Standards Committee of the International Peace Operations Association (IPOA), a standard-setting organization, began an investigation into Blackwater (the private security company made infamous by the Nisour square incident in Baghdad), the company simply

left the association. IPOA was left with no choice but to say that Blackwater had been in good standing prior to its departure. In the end, no satisfactory framework for legal accountability is proposed in Part IV.

Part V concludes this collection with a look at the possibility of criminal or civil responses to violations of international law. While these mechanisms are possible, for example through civil litigation under the Alien Tort Statute, the three chapters in this section make clear that such responses are still rare and limited primarily to actions in the domestic courts of the United States.

The two main problems with this collection—lack of overall clarity and repetitiveness—are perhaps not unusual for books published out of many separate research agendas. The lack of clarity on the state of the current law and its likely future, either from a predictive or normative standpoint, is in part due to the unsettled state of the law in this area. However, the lack of consistent indicators to signal when authors are taking a normative position versus a descriptive, predictive, or simply theoretical one, complicates this already murky area. Furthermore, not surprisingly for a book clocking in at 23 chapters and over 500 pages, there is a fair amount of repetition. The issues that arise in different chapters are often similar and rehearsing them through a slightly altered or refocused lens does not add much to the reader's understanding.

Another source of repetition is the subtle anti-PMSC policy bias that is evident in nearly every article. While no one calls for a ban on the use of PMSCs (most likely because such a demand would be futile), most of the articles begin from the premise that the role of PMSCs should be limited so as to minimize the risk of civilian deaths or war crimes. This is not surprising, given that most public discourse around PMSCs centers on misbehavior. Many people first became aware of PMSCs' role in armed conflict following the Nisour Square incident, in which 17 unarmed Iraqi civilians were killed and 20 were wounded in an attack by Blackwater contractors. Because of the importance of this incident in shaping the public, legal, and academic perception of PMSCs, it is mentioned in nine separate chapters.

What is often overlooked in these discussions, however, are the legal consequences for contractors' employees, not just as agents of the PMSC, but also as individuals. Given that contractors are sometimes sent where conditions are too dangerous for the national military to operate, the question of what rights accrue to the people conducting the missions is important. In one chapter of the book, entitled "The Right to Life and Self-defence of PMS Contractors," Guido den Dekker and Eric P.J. Myjer undertake an analysis of the right to self-defence on the part of individuals hired by the PMSCs. The authors conclude that contractors, even if they are legally civilians under IHL, have a right to self-defense. Furthermore, both the territorial and the hiring state have a due-diligence obligation to provide necessary protection corresponding to potential risks to the lives of contractors. Where other forms of protection are not available, this obligation may require that the contractors be provided with arms for self-defense. However, the chapter concludes with a warning to states that, in order to avoid potential violations of IHL, they should avoid sending private contractors to areas that are dangerous enough to necessitate the carrying of personal arms. Admittedly, as a legal, academic text, the main purpose of this chapter is to explore the legal implications of PMSC actions under IHL and HRL. However, it misses a chance to engage with the reality of PMSCs not only as a legal puzzle, but a human experience with significant unappreciated costs: the lives of the individuals hired by the PMSCs.

Despite the tendency towards repetition, this book offers a thorough, impressively researched, and amply investigated discussion of a timely topic. Although the articles in this collection were written between 2008 and 2011, discussion around these questions continues. On March 18, 2013, for instance, the U.N. Working Group on the Use of Mercenaries commissioned a study by a five-person group of experts on the use of private military and security companies by the U.N. bodies worldwide.⁹ This book makes an important contribution to this area of law, one that will benefit both policy- and law-mak-

9. Office of the High Commissioner of Human Rights, *UN Working Group on Mercenaries to Launch Study on the Use of Private Military and Security Companies by the UN* (Mar. 18, 2013), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13154&LangID=E>.

ers around the world as they continue to work through the legal implications of the use of PMSCs.

Law and Policy for China's Market Socialism. Edited by John Garrick. New York, NY: Routledge, 2012. Pp. xix, 268. \$145.00 (hardcover).

REVIEWED BY JO XU

Law and Policy for China's Market Socialism, edited by John Garrick, a solicitor of the Supreme Court of New South Wales, is a formidable attempt to highlight the emerging outcomes of Chinese legal reforms based on new empirical research by professors, PhD scholars, and practicing lawyers from around the globe. The book is comprised of fourteen essays, divided into three parts, and aims to provide those "wishing to gain a better understanding and seeking success in the world's most dynamic marketplace" a basic survey of the issues in China's economy, business, law, and politics. While the book has a law and policy focus, it also provides insight into many macro-level economic and political considerations that surround China's evolving legal regime, including ongoing debates about the trajectory of China's legal reforms.

As Garrick frames the debate in his introductory essay, while "some argue that China has laid a foundation for rule of law . . . others claim it is stagnating or even regressing on important measures." Garrick's introduction, which presents a brief history of China's evolving legal system and its major problems, builds a solid foundation for readers to understand the basic tensions within the Chinese legal system and the major problems confronting Chinese society more generally. It also highlights the book's main objective: to explore the tension between the laws in theory and their implementation in practice. Most of the articles that follow—each written by a different author—agree with the conventional wisdom that China's economic growth and social stability will not be sustainable without changes in its legal structure. Yet beyond this, most of the authors do not openly support one view or the other; instead, they try to present the arguments on both sides, showing the interconnectedness between China's legal reforms and its effect on China's economic development, and leaving the final judgment to the reader.

Part I of the book, “China’s evolving investment, company and business law environment,” introduces the reader to legal reforms that enabled China’s autarkic economy to grow into the second-largest economy in the world. In Chapter One, professor of Chinese law Jianfu Chen describes the change in Chinese policy from welcoming foreign direct investment to becoming a major investor abroad. Chapter Two considers the development of corporate law in China (focusing on the “New Company Law” adopted in 2005), while Chapter Three illustrates corporate insolvency and company reorganization laws by examining case studies of major corporate bankruptcies, discussing what the new data implies for Chinese corporate insolvency. Chapter Four shows how international laws affect the Chinese legal regime, by analyzing the effects of the United Nations Convention on Contracts for the International Sale of Goods (CISG) on Chinese contract law. By using both Chinese and U.S. CISG case law, this chapter highlights issues that are most relevant to litigation and arbitration between the two countries.

Part I is arguably the most cohesive of the book’s three sections, providing background information on the Chinese business law arena, discussing its strengths, and addressing some of its main problems. For instance, Chen observes in Chapter One that the government has done a good job of implementing and enforcing the law not only because it wants the domestic Chinese economy to grow, but also because it wants China to expand globally. However, as Chen also points out, the sharing of control between macroeconomic management of the state and microeconomic management of the companies is a major problem, and he concludes that more time is needed before a clear victory for one side or the other can be seen.

The breadth of issues covered in this book is extensive. As Part II and Part III demonstrate, however, one drawback to covering such a wide scope is the inability to dig deep into any single area. Part II, “Critical issues for China’s law and policy reforms,” turns inward to discuss several more sensitive aspects of reform, including new property, environmental, and labor laws. Chapter Five discusses the evolution of real estate property law in contemporary China—a timely topic, given the increased privatization of land ownership—and the key drivers of, and impediments to, property law reform. Chapter Six, co-

written by two professors at the City University of Hong Kong and an advisor to China's Ministry of Environmental Protection, surveys China's environmental law reforms from different perspectives, focusing on the connections between propaganda and the fact that, while the Chinese government is more serious about environmental protection than ever before, it does not want environmental reform to lead to soaring business costs. The authors' evaluation of the implementation and enforcement of such reform shows that the government still favors economic development over environmental safety, though they also suggest that the discrepancy between theory and practice seems to be narrowing.

The focus then shifts to labor law. Chapter Seven highlights key legal and policy reforms that affect China's business environment at the firm level, while Chapter Eight collects empirical evidence from recent case studies of Chinese SOEs (state-owned enterprises) operating in host nations such as Papua New Guinea and Australia. Chapter Nine analyzes China's tax law reforms against the policymaking backdrop of the mid-1990s, which saw market reforms pushed through in the face of opposition from entrenched interests, as well as the more recent push for environmental sustainability. This chapter covers a variety of topics related to changes in the tax law, including "downsizing SOEs, forcing the military to sell off its interest in commercial enterprises, abolishing allocation of foreign exchange and the dual tier foreign exchange system, and . . . regaining central control over the fiscal system through tax reform." However, the "heart of tax law reform" is merely a reflection of China's biggest problem: how to balance the growth of the economic pie with fair allocation of economic wealth.

Part III deals with courts, alternative dispute resolution, and anti-corruption measures in China, and presents potential insights into a crucial question: "Just how safe is it to do business with China?" Chapter Ten looks at the role of the judiciary in enforcing economic and social rights (ESR), comparing the courts of several countries, and concluding that Chinese courts have difficulty implementing ESR because of structural weaknesses in the legal system. A variety of factors constrain the ability of the courts to carry out their work, including shortcomings in China's regulatory framework, a lack of specific and robust individual remedies in many laws, institutional

designs that limit the power of the judiciary, political limitations, and ideological conflicts between “New Left” advocates of socialist justice and “New Right” proponents of neoliberalism. In Chapter Eleven, Fan Yu, a law professor at Renmin University of China, analyses and describes the role of mediation. Her research shows that despite popular views of its decline, mediation has actually grown in China and is likely to play a bigger role in dispute resolution in the future. This chapter is particularly relevant to current developments, as China’s Supreme People’s Court has recently confirmed that a People’s Mediation Agreement is binding.

While each essay is interesting in its own right, the chapters jump from one issue to the next without any particular pattern. For example, Chapter Twelve turns from mediation to organized crime, examining a crackdown in Chongqing as an example of the gradual intensification of the power nexus between some corrupt government officials and organized crime groups in China. Furthermore, while the book tries to group the wide range of issues into three parts, the topics vary so drastically that the portioning does not add much cohesion. Part II, for instance, is called “Critical issues for China’s law and policy reforms,” but it could be argued that all the issues presented in the book are critical to China’s legal regime. As a result, the placing of chapters is occasionally misleading. Chapter Eight (“Chinese outward direct investment: case studies of SOEs going global”) and Chapter Nine (“China’s taxation law reforms in the context of ‘market socialism’”) might have been better placed in Part I of the book rather than in the second part, due to their focus on business rather than social issues. Chapter Twelve (“Organized crime in China: the Chongqing crackdown”) could have been grouped into Part II instead of Part III, which deals primarily with dispute resolution.

In the concluding chapter, Garrick seeks to tie together the wide range of topics. He concludes that while empirical findings suggest that China’s laws and regulations are improved and more integrated with international best practices, more reform is still needed: “the jury is still very much out on where China is headed and whether it will continue the impressive march toward superpower status.”

Despite its organizational flaws, this book is well worth reading for its introduction to the vast survey of issues that face

the Chinese government. It successfully conveys the enormous changes that have taken place in China over the past twenty years. Its research is thorough and insightful, its analyses are thoughtful and unbiased, and the writing is clear and engaging throughout. It ultimately provides information that anyone with an interest in Chinese business or law should be familiar with, and its macro-level discussions also reveal the importance of understanding China's problems because of their potential effects on the United States as well as the world.

Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries. By Arend Lijphart. New Haven, CT: Yale University Press, 2012. Pp. ix, 348. \$21.00 (paperback).

REVIEWED BY MURAT KAYALI

In his second edition of *Patterns of Democracy*, Arend Lijphart compares and contrasts the structural and functional elements of 36 modern democracies across a number of dimensions ranging from party systems to degrees of constitutional rigidity. Lijphart uses observational and statistical analyses to conclude that consensual democracies are “kinder, gentler,” and—contrary to conventional wisdom—more effective than their majoritarian counterparts. Lijphart does an excellent job of packing a wealth of material into a concise package and supplying the reader with a comprehensive and persuasive sketch of contemporary democracy.

Lijphart begins his book by illustrating the differences between two broad classifications of democracy: the Westminster, or majoritarian, model of democracy and the consensual model of democracy. He uses the examples of the United Kingdom, New Zealand, and Barbados to paint a preliminary picture of the majoritarian model and then uses Belgium and Switzerland to introduce the reader to the consensual model.

The body of the book is more or less evenly divided into eight chapters, each of which focuses on one or more specific variables within democratic governments. These variables include party systems, cabinets, executive-legislative relations, electoral systems, interest groups, division of power, legislative bodies, constitutional rigidity, judicial review, and central banks. Lijphart groups the variables into two “dimensions”: the first five variables constitute what the author refers to as the

executives-parties dimension, and the second five variables form the federal-unitary dimension.

According to Lijphart, majoritarian models are characterized by the concentration of “executive power in one-party and bare majority cabinets.” When one party is elected by way of majority or plurality vote, that party controls the entire executive branch and the opposing party or parties become the opposition. In majoritarian democracies, minority groups tend to be underrepresented in government. In contrast, consensus democracies are characterized by power-sharing in coalition cabinets. Therefore, in a plural society with many distinct minority groups, smaller factions achieve more adequate representation in government.

Generally, majoritarian democracies also tend to have two-party political systems, whereas consensus systems tend to have more. Of the democracies that Lijphart examines, Switzerland (an example of consensus democracy) averaged over 5 political parties per election, while the prototypically majoritarian United Kingdom averaged 2.16 and the United States 2.39. In the arena of executive-legislative relations, majoritarian democracies tend to exhibit executive dominance; by contrast, consensus democracies display a more balanced executive-legislative relationship. Additionally, majoritarian democracies are more likely to exhibit a concentration of power, whereas consensus democracies are characterized by a division of power. Consensus democracies tend to share power between central government and local governments; likewise, they also tend to have bicameral legislatures in which two houses share the lawmaking power, as in the case of the U.S. House of Representatives and Senate. Consensus democracies also tend to have very rigid constitutions that are not easily amended and are protected by judicial review. Majoritarian democracies tend to have more flexible, even sometimes unwritten, constitutions that are not subject to judicial review.

Ultimately, Lijphart summarizes the expansive data by mapping the democracies onto a two-dimensional plane, with one axis representing the executives-parties dimension and the other representing the federal-unitary dimension. In his final three chapters, the author assesses the relative merits of consensus and majoritarian models and finally arrives at the conclusion that the consensus model of democracy is superior

to the majoritarian model. According to conventional wisdom, Lijphart states, consensus democracies are better at representation, while majoritarian democracies are better at making decisions. Lijphart refutes this conventional wisdom and claims that consensus democracy is superior not only in terms of representation but also in terms of decision-making. To support this conclusion, Lijphart selects four factors that he believes are indicative of a democracy's quality: women's representation, political equality, electoral participation, and satisfaction with democracy. To assess these four factors, the author cites a number of indexes that attempt to quantitatively evaluate democracies across these factors.

Lijphart's conclusions seem intuitively and qualitatively sound. Yet it is difficult to assess whether they would stand up to more rigorous empirical scrutiny; as is the case with many correlative studies, ascertaining whether causation follows from the correlation can be a nearly impossible task. Do consensus democracies lead to greater satisfaction with democracy, or are countries with a greater culture of political satisfaction more likely to implement consensus democracy? Many of these questions are unavoidable in studies in social sciences, and unlike many of the physical sciences, social science does not lend itself to perfect empirical study in a controlled environment. Therefore it may be unfair to criticize Lijphart's methods of analysis—but by the same token, it would also be unwise to treat his conclusions as infallible.

The book is accessible even to those with little background in political science or theory. It provides a refreshing view not centered on American democracy. In the United States young students are provided with, at best, a limited understanding of contemporary democratic systems, and they are rarely exposed to the structure and function of foreign democracies. As a result, many Americans see the United States, at least to some extent, as the prototypical model of democracy upon which other democratic governments of the world are (or should be) based. Lijphart's global analysis unveils the inner workings of many of the world's democracies, and exposes the lay American reader to in-depth comparisons of the many varieties of democratic governmental systems.

For the lay reader, the breadth of data combined with the conciseness of the analysis can be overwhelming at times. When a single paragraph contains references to half a dozen

countries, it can become difficult to keep track of the unique combinations of characteristics that form each country's government. Yet such record-keeping is likely not what Lijphart intends: the book is written for those seeking a big-picture analysis that focuses on correlations and systems rather than individual countries. If, however, one is interested in learning about the subtleties of constitutional structure and judicial review in Uruguay or France, for example, this book would not be the place to look. Lijphart treats the thirty-six countries like experimental subjects used merely as tools to demonstrate his thesis. At times, this focus on the big picture may leave the reader wishing the book included more information about the cultural and societal factors that have influenced each country's style of governance. On the other hand, such indulgences would serve to distract from Lijphart's central arguments and would produce a work far too voluminous and convoluted to fit in one book.

Lijphart's writing is simple and clear, and his arguments are persuasive. The impressive body of data contained in the book is the product of many years of research. Since Lijphart published his first edition of *Patterns of Democracy* in 1999, the global political landscape has changed. Three of the 36 democracies studied in the previous edition—Venezuela, Colombia, and Papua New Guinea—have ceased to maintain free democracies and have been replaced in this edition by Uruguay, Argentina, and South Korea. Just in the last two years, we have also seen the toppling of decades-old regimes in Egypt and Libya, the formation of the new state of South Sudan, and the emergence of a grim civil war in Syria. Ten years from now new democratic societies might have developed, and it is more than likely that other democracies will have fallen. Undoubtedly, Lijphart's research will still be as relevant as it is today.

Patterns of Democracy puts forth a convincing set of arguments in pursuit of the age-old goal of achieving an optimal system of government. In doing so, its author provides a valuable resource for budding political scientists and legal scholars alike. Though the democracies of tomorrow may not be modeled on *Patterns of Democracy*, Lijphart has nevertheless provided insight into many of the moving parts of modern democracies. While he recognizes that there is no one-size-fits-all democratic system to suit all countries, he makes a powerful

case for the more widespread implementation of consensus democracy.

The New Industrial Revolution. By Peter Marsh. New Haven, CT: Yale University Press, 2012. Pp. vii, 311. \$35.00 (hardcover).

REVIEWED BY ANNEMARIE L. HILLMAN

Newspaper articles and political speeches constantly invoke the fear that American manufacturing is on an irreversible downward trajectory. Many note the rapid growth of the manufacturing sectors in Japan and especially China, and suggest that American and “Western” industry may have been permanently eclipsed. Yet *The New Industrial Revolution* envisions a different future for American manufacturing and worldwide manufacturing as a whole. It proposes that the continuing improvements in technology and an increasing need for sustainable industry will promote a system of niche industries, clustered in regional centers but firmly connected to other centers across the globe. Supposedly, the United States and other Western countries will become centers for design and manufacturing of specialized products, with much of the manufacturing of basic components used to implement these ideas occurring in China and Japan. Flow of technology from the richest countries to the poorest will increase. Design, production, and service of goods that support both “mass customization” and “mass personalization” will be encompassed within global value chains of operation, created by multinational companies or strong business partnerships. The new industrial revolution will be a truly international process, with an emerging balance of power between centers of design and manufacturing in different parts of the world.

Although one might expect a book addressing the emerging patterns of manufacturing to be a rather dry and technical read, Peter Marsh succeeds admirably in sustaining the reader’s interest in the subject. Stories of innovation, design, and business acumen from well-known companies—such as Nike, Toyota, and Swatch—are interspersed with those of lesser-known manufacturers. As a result, Marsh is able to attract the reader’s attention, while still exposing her to unique corporate processes and innovations that might not be so in-

teresting at first glance. Additionally, insider accounts of the cultural and economic hurdles faced by management as companies expand globally provide interesting insight into industry dilemmas.

Unfortunately, the book largely stops at these stories, with only a thin veneer of analysis. Marsh's economic theories are sparsely explained, with little support beyond anecdotal evidence of changes in certain companies and, occasionally, changes in certain industries. There is minimal attempt to prove that the patterns noted by the author are truly far-reaching, and not time- and place-specific. More importantly, exploration of the political and moral implications of Marsh's proposed new industrial revolution (such as the influence of demand for manufacturing jobs on political decisions, or changing conditions for workers) is extremely limited. Even if the anecdotes Marsh provides can be presumed to provide solid evidence of the economics of the emerging industrial revolution, it is unclear what the broader effects of this new revolution might be. Without insight into these potential effects, the ultimate global importance of the new industrial revolution remains unclear.

The New Industrial Revolution begins by providing an overview of the history of manufacturing, reaching back to smelting used by humans more than 5000 years ago. It describes China's dominance in forging steel for much of history, as well as the technological advances in manufacturing that led to the end of China's reign and prompted the dominance of England, then Western Europe, and finally the United States, over manufacturing worldwide. Marsh then proceeds to describe the technological changes that have influenced the ebb and flow of manufacturing prowess between nations, including development of the wheel, computers and software programs, and various types of electricity. For those readers who are avid students of history, much of this information will be familiar. However, mention of more unusual developments, such as the recent development of data gloves and software, which can allow wearers to "touch" objects created on computers, allows most readers to add at least a small bit of knowledge to their repertoire.

Even at this early stage of the book, however, Marsh begins to miss opportunities to probe deeper into the material. In discussing the evolution of technology, he quotes a CEO

who prefers to hold the research and development functions of his company in the Isle of Man, rather than China, where control over intellectual property is limited. No effort is made to delve into these differences in intellectual property rights, nor how they might affect the development of technology more specifically. Do most companies agree with the company from the Isle of Man? What government policies in particular limit the intellectual property rights of companies within China? Marsh also discusses the ways by which technology evolves, with each generation of technology providing a new platform of growth for the next. But is this type of evolution sustainable? Beyond a small group of anecdotes, what makes Marsh so sure that long-term trends in these areas can continue? The answers remain unclear.

Marsh then proceeds to focus on the components of his new industrial revolution, starting with a discussion of mass production, in which he argues that the growth of mass production has led to the dominance of mass customization and mass personalization. The former entails a method of creating large numbers of goods while maintaining a wide range of options; the latter describes a mass production system of making unique goods tailored to customer specifications. These methods supposedly result in more complex, market-susceptible, global value chains for companies than ever before. Niche products, useful in multiple narrow markets, will further promote the new industrial revolution.

Once again, however, Marsh neglects to fully explore the implications of his proposals. In part of a paragraph, he notes the role played by a reduction in trade barriers, easier travel and communications, and decreased shipping costs in promoting global foreign direct investment. He mentions the importance of the collapse of communism, deregulation in India, lack of capital in Germany after World War II, and the loosening of trade restrictions between Western companies and China, but he limits his exploration of these ideas to statements of fact: they were important. If technology and the growth of niche industries are vital to the new industrial revolution, it would be helpful to understand the factors at play in creating this development, as well as how the new industrial revolution might be impacted by changes in trend. For instance, what would happen to the new industrial revolution if China, an enormously important player, began tightening

trade again? Which factor is most crucial? Many of these changes are unlikely to be repeated (e.g., the fall of Communism), and it is unclear if the trends identified by Marsh will be affected by the lack of these events, or would be impacted if similar instigators were likely to occur. Without clarification of the underlying conditions most vital for the new industrial revolution, it is difficult to assess the basis for the author's proposed revolution.

Marsh also believes that environmental concerns will create a new industrial revolution, as companies turn to innovation to develop more sustainable products and industrial processes. Yet he does not explain why companies will shift their approach to the environment. Marsh notes the increasing awareness of rising carbon dioxide levels and their global effects, but he does not explain how this increase specifically inspires technological change or causes change in company methods, especially since similar data has not resulted in changes in the past. It is unclear if the companies that initiated this shift have been inspired by moral compulsion, economic compulsion, or both. Additionally, there is little evidence to suggest the changes are widespread, rather than a reflection of the idiosyncratic preferences of certain industry owners. Without understanding these cause and effect patterns, readers may find it difficult to agree with Marsh's suggestion of a drastic shift in manufacturing values.

A book on manufacturing would be incomplete without a discussion regarding China's role in the global manufacturing scheme, and the author devotes an entire chapter to the world's largest manufacturing country, energy user, and goods exporter. Marsh explores China's role as a market, as well as its role in the creation of trade imbalances, currency manipulation, and corresponding political tensions with western countries. He further declares, "The nature of these linkages, and the political backdrop to how they unfold, will be a key component of the new industrial revolution." Once again, however, he does not delve deeply into the causes, effects, or specific repercussions of China's unique position. He mentions the unique level of government resources and finances that Chinese companies receive, and the perception that this creates unfair trade advantages for Chinese companies, but he does not comment on whether this type of government involvement should be modeled elsewhere or stymied within China. Marsh

suggests China's dominance will be limited by the contradictions between undemocratic control of the country and "free-wheeling capitalism," but he does not explain how these conditions will directly affect the development of his proposed industrial revolution. Most notably, there is minimal discussion of the human element of China's system. Cultural clashes and adjustments between merging companies are depicted through interesting anecdotes describing, among other things, the role of table tennis in uniting international businesses. Yet Marsh does not discuss the impact that China's dominance has on the working conditions of millions of people, a highly visible issue that could have huge repercussions in a new manufacturing era.

Before finally moving to a more specific overview of the new industrial revolution that is the topic of this book, Marsh describes pooling of resources and human capital in certain industries, and the role of regional clusters of industry in promoting industrial growth through innovation. He also briefly notes the impact of nanotechnology, and the possible applications of synthetic biology for improving manufacturing output and minimizing environmental harm. These chapters are interesting, but they feel disjointed within the book's broader context.

In the last chapter of his book, Marsh synthesizes his thoughts regarding the new industrial revolution. Unfortunately, instead of fleshing out the broader political and moral implications of the new revolution, the chapter largely summarizes the author's comments from the previous nine chapters. More analysis is incorporated into the description in this chapter than previously, however, and the author's effort here, although falling far short of being truly in-depth, helps to compensate for his lack of analysis elsewhere. After revisiting China's governmental policies promoting industrial development, for instance, Marsh notes that these regulations have sparked intense international debate, as they do not comply with international guidelines pertaining to fair trade. However, he does not describe these debates or the guidelines. He begins to address the status of workers, noting the increase of highly paid jobs in fields such as engineering, but he neglects to discuss the change in conditions for workers on the manufacturing floor. On the penultimate page, he finally makes policy recommendations, suggesting that 1) greater emphasis be

given to deepening the role of technology, design, and manufacturing in countries' cultures; 2) state-backed financial support be provided when conventional funding is unavailable; and 3) young people be recruited into the manufacturing sector. Yet the specifics of these proposals remain undefined. The moral and human dilemmas of the new industrial revolution remain unexplored to the end.

Utilizing stories from a wide variety of companies across the world, Marsh paints an interesting, but undeveloped, picture of the new industrial revolution. The reader is able to understand, to some extent, the possible evolution of business in the new economy and the role that technological and environmental advances might play in the new revolution. If it was Marsh's goal to write a basic history of manufacturing, and to sketch an anecdotal picture of emerging trends, then he has succeeded. Unfortunately, the reader searching for more is left unsatisfied. The underlying connections between cause and effect remain unsupported, and the book's analysis lacks any comprehensive international, political, or moral context—or even a clear basis for its economic predictions. The reader is left knowing what Peter Marsh thinks might happen, without knowing how likely the revolution is to occur, or the broader implications if it does.

Minority Rights, Freedom of Expression and of the Media: Dynamics and Dilemmas. By Tarlach McGonagle. Cambridge, UK: Intersentia, 2011. Pp. v, 668. \$133.00 (paperback).

REVIEWED BY ANJALI MANIVANNAN

The relationship between media and freedom of expression has become increasingly important in the post-9/11 world. In *Minority Rights, Freedom of Expression and of the Media: Dynamics and Dilemmas*, Tarlach McGonagle asks whether international law and European law ensure that minority persons can effectively exercise their right to freedom of expression. He uses international and European human rights law as well as public international and European law, as his framework in order to explore media and minority rights. He ultimately determines that while international and European standards have largely incorporated minority rights, national and sub-national standards have yet to do so. This book is extremely com-

prehensive—albeit limited to the exploration of international law and one regional (European) framework. Since it fills a sizable gap in scholarship on the relationship between members of minority groups (or the groups themselves) and freedom of expression, it will probably be of most use to readers interested in this specific topic. McGonagle's book is an invaluable read for anyone researching minority rights and freedom of expression and of the media under international or European laws.

The author guides the reader by briefly introducing each chapter and its thesis and providing a concise conclusion, which allows readers to quickly determine whether the chapter is of interest. Chapters are grouped thematically into Parts, but someone with a basic knowledge of human rights law could probably read any individual chapter without much difficulty, due to the book's excellent internal references. However, this structural clarity is often lost within the individual chapters, and as a result, readers may have difficulty following McGonagle's thesis. While chapter subheadings are helpful, clearer topic sentences and transitions would improve the clarity as well as the cohesiveness of each chapter. With regard to tone, McGonagle frequently indicates that he was extremely successful in achieving each chapter's aim, a presumption that readers may find off-putting. Moreover, the author also side-steps wide-reaching interpretations—as seen in his discussions of minority rights protection and hate speech—and his scholarly approach to the subject matter may be frustrating to those seeking practical advice.

Nevertheless, McGonagle provides an excellent introduction that lays out an overview of the issues explored in each chapter. He also discusses various requirements that need to be fulfilled by a group in order for it to be considered a minority. Unfortunately, there is a lack of historical background on the evolution of how international law treats "minorities." Instead, McGonagle tends to emphasize theory over practical applications—a trend that continues throughout the book.

In Part I, McGonagle addresses theoretical and normative approaches to minority rights. Chapter One covers the basics of "minority rights," while Chapter Two proceeds to summarize international and European standards and jurisprudence that focus on minority rights. Although most of this background content is extremely accessible, a section or table that

evaluates the different instruments might have been useful for comparison purposes.

Part II covers the convergence of freedom of expression and minority rights by delineating theoretical and normative approaches to this intersection. Chapter Three, which considers the role played by freedom of expression in the assertion of minority rights, is primarily a delineation of aspects of mainstream and minority media, and could have benefited from an analysis or evaluation that would tie its discussion back to the book's broader aim. However, the following chapter succeeds where its precursor falls short, not only by positing that these concepts have not been coupled in an explicit or meaningful way in generalist international human rights treaties, but also by explicitly assessing the attempted couplings between minority rights and freedom of expression. While European frameworks are also included in this chapter, the table listing negative and positive goals does not list the corresponding international and/or European instruments with these goals. This oversight could have been remedied if information were provided on the page at hand such that the reader does not need to revisit sections to refresh her memory. Chapter Four also dedicates a section to treaty interpretation under the Vienna Convention, which may not be necessary for readers already familiar with elementary public international law. Perhaps McGonagle could have included treaty interpretation as an addendum.

McGonagle moves away from theoretical and normative approaches in Part III, where he covers the regulation and restriction of expression to protect minority rights. Chapter Five examines societal responses to minorities with regard to the notion of tolerance. McGonagle presents his view of tolerance as a proactive tool "to build and consolidate awareness and understanding of inter-community differences." Here the author provides a flow chart to explain what elements could lead to intolerance, though the concept of tolerance is not well-defined and could have been connected to media and communication more explicitly. Overall, McGonagle recognizes that minorities and their rights do not exist in a vacuum: minorities have relationships with other groups in society, so minority rights need to be realized with these relationships in mind.

Chapter Six, which analyzes restrictions on the right to freedom of expression under international and European law,

also marks the first time McGonagle mentions the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). This seems odd since ICERD, which covers discrimination, may strike some readers as the most logical framework under which to explore minority rights. The third and fourth chapters in Part III, Chapters Seven and Eight, discuss “hate speech” and the potential of integrated approaches for combating “hate speech,” respectively. The author brings in non-legal solutions to the problem of hate speech, thus slightly broadening the scope of his discussion. Yet Chapter Seven seems to lose sight of the book’s main focus on minority rights, and the author could have more precisely explained the connection between “hate speech” and minorities, as the examples do not seem sufficient.

Part IV discusses the regulation and facilitation of expression to promote minority rights. McGonagle focuses here on positive State obligations concerning freedom of expression and minority rights beginning with Chapter Nine, which expands on Chapter Five’s discussion of pluralism and tolerance. Chapter Nine brings in many examples of European Court of Human Rights cases to provide guidance regarding State obligations to promote pluralism. Chapter Ten examines international and European instruments that promote cultural and linguistic diversity, fleshing out the concepts of culture as well as cultural and linguistic diversity. Here, the author provides useful background by noting possible rationales for the promotion of cultural diversity—an approach that might have been helpful in the author’s earlier discussion of the ambiguous notion of “minority.”

The last chapter, Chapter Eleven, covers State obligations regarding rights of access to the media. This chapter draws on more cases from the European Court of Human Rights to analyze and critique its jurisprudence related to freedom of expression and access rights. However, the chapter chiefly succeeds in how it connects many ideas that were previously discussed, including the pivotal idea that human rights are interrelated and interdependent. Additionally, McGonagle notes that rights, including access rights, are dynamic and thus constantly developing. As rights change, so do the attached duties. Later, he lists factors that influence minorities’ access to the media, particularly if different languages are at play. Finally, there is a short section on new information and commu-

nications technology-driven challenges. In today's day and age, technology is critically important, and McGonagle could have dedicated more pages to really exploring and expanding upon his existing discussion.

The book concludes with clear summaries of every chapter and McGonagle's forward-looking final remarks. He recognizes existing challenges, highlighting the lack of consolidation of minority rights at the national and sub-national levels. He then offsets these concerns by assuring the reader that minority rights and freedom of expression can be progressively contextualized, consolidated, and finally integrated under legal standards. McGonagle's insights inform the interpretation, implementation, and monitoring of the aforementioned rights and their relationship to international and European standards, which have future implications that readers can appreciate more fully after finishing this book.

Rule of Law after War and Crisis: Ideologies, Norms and Methods. By Richard Zajac Sannerholm. Cambridge, UK: Intersentia, 2012. Pp. xvi, 276. \$105.00 (hardcover).

REVIEWED BY KENDALL L. MANLOVE

There is a general consensus among academics and practitioners that the establishment of the "rule of law" is an essential component to any sustainable transition from a state of conflict to one of peace and stability. However, while broad agreement prevails with regard to the diagnosis, the exact parameters of the cure are still being contested. In *Rule of Law after War and Crisis: Ideologies, Norms and Methods*, Richard Zajac Sannerholm analyzes the record of international rule of law reform efforts in states emerging from conflict, prescribing a number of ways in which rule of law assistance could be improved in the future. In both his analysis and recommendations, Sannerholm displays a deep, methodical understanding of both the rule of law and the challenges facing post-conflict societies, and he provides important insight into the role that the rule of law can play in establishing long-lasting peace and stability.

In Part I, Sannerholm discusses how disagreement over the precise meaning of the rule of law can sow confusion and conflict. He acknowledges the long-running debate among le-

gal theorists concerning adherence to a formal “thin” conception of the rule of law that focuses on formal and procedural values, rather than a substantive “thick” definition that also includes substantive limits on the exercise of power by state actors. The international community, in its nation-building efforts, has embraced this substantive definition. For the purposes of his study, Sannerholm adopts his own definition of the rule of law, one that includes both substantive and formal principles: protecting against arbitrary rule through the imposition of certain limitations on state power, and providing a predictable framework of rules that guides human conduct by allowing individuals to calculate the legal consequences of their actions.

Sannerholm next observes that the establishment of the rule of law must overcome two key obstacles: lack of capacity and lack of awareness. Most societies recovering from war and crisis face a severe shortage of lawyers, judges, and civil servants at all levels. There is usually a low level of judicial independence and a general lack of procedural safeguards, two problems that tend to perpetuate corruption. Moreover, individuals in post-conflict environments are generally unaware of their legal rights and tend to view the law as a tool of oppression rather than as a source of security. Sannerholm posits that the “central challenge” facing rule of law reformers is transforming “internationally supported laws, institutions and practices into viable, independent and effective national laws, institutions and practices.” In other words, the success of rule of law reform depends on whether international actors can contextualize and adapt general principles to local realities. An overreliance on foreign experts and abstract top-down solutions can signal doom for the establishment of the rule of law. Not only must the state be able to apply these principles; the citizens must also accept them as legitimate. For example, Sannerholm discusses how in Afghanistan, the people have come to distrust rule of law reform efforts because they have become instilled with “strong moral and value-laden connotation[s],” associated with the international effort there. As a result, there is a risk that Afghans will perceive the rule of law as a “blunt instrument meaning little more than a general notion of ‘good.’”

Sannerholm goes on to show how the debate over the precise objectives of rule of law assistance is shaped by the particu-

lar interests and agendas of the players involved. International actors tend to emphasize three broad objectives: good governance and development, human rights, and security. Sannerholm correctly points out that the rule of law is a necessary but insufficient component for accomplishing these goals. He discusses various actors on the international stage—the United Nations and the European Union, for example—that tend to attach the rule of law to other concepts, such as democracy, human rights, or economic and political equality. The peril of linking the rule of law to these other aspirations, however, is that it confuses the issue of whether the rule of law is primarily a means of accomplishing other goals, or if it is a worthy goal in itself. Sannerholm is rightly suspicious of those who emphasize linking the rule of law with other substantive values. Too often, the rule of law is promoted as a means of establishing free markets and creating opportunities for outside investors instead of a tool for promoting human rights and social justice. Restricting the rule of law to its formal attributes keeps it intellectually distinct from these other values, and while this restriction may mean that the rule of law is not itself a panacea, it nevertheless remains a bright star among a constellation of values that includes democracy, human rights, and social justice.

In Part II, Sannerholm analyzes the implementation of rule of law reform, focusing on three aspects: constitutional reform, institution building, and accountability mechanisms for international actors. In transitional societies, the establishment of foundational constitutions depends primarily on the facts on the ground. East Timor, for example, had no existing legal structures except for Indonesian law, and was almost entirely dependent on the United Nations in drafting a new constitution. In Liberia, on the other hand, the United Nations did not have the same authority to enact laws and played merely a supporting role in that country's legal reform process. One of the biggest challenges is "finding the law" in situations where there may be either no laws on the books, or else so many laws that they end up duplicating or contradicting each other. Equally challenging is the task of depersonalizing the law so that political power exists as part of the institutions, as opposed to being imbued in individuals.

Whether the process includes an interim charter or a new permanent constitution, Sannerholm argues that international

actors should resist the urge to negotiate solely with the political elites and encourage greater public participation in the legal reform process. Broad participation will help prevent institutional capture by the military victors of the conflict. While Sannerholm cautions against an overreliance on the top-down implementation of abstract international norms, the use of international treaties and “justice packages”—sets of pre-drafted codes—can still play a role in providing a framework, particularly in places such as East Timor and Kosovo where existing laws are inextricably linked to an oppressive past. However, as noted above, international actors must be cautious in ensuring that these laws are adaptable to a local context. Attention to procedural values can also play a large role in ensuring that reforms are carried out and tailored to meet the demands of society.

Sannerholm rightly criticizes international actors for approaching institutional reform as a practical matter of refurbishing courthouses and prisons and upgrading technology, rather than as a question of capacity building and behavior modification. The most fastidious constitutional and legal reforms will not take hold if the institutions lack the ability to enforce them. Successful institutional reform requires the establishment of an array of institutions including an independent judiciary, a professional legal class, watchdog institutions, and effective public administration. The international community will likely have to assume temporary control over these vital functions from the start. Therefore, it is imperative that domestic actors are brought on board early, so that they have the capacity to take over and are not left high and dry when the international community hands over these responsibilities. Sannerholm points to Iraq and the de-Baathification that took place after the fall of the Saddam Hussein as an example of institutional reform that failed to consider the long-term effects this process would have on the health and capacity of Iraqi institutions.

For Sannerholm, caretaker governance by an international body presents a fundamental paradox. On one hand, a lack of legal certainty and openness threatens the rule of law. Yet on the other hand, the hasty overturning of established laws and the passage of many new laws in rapid succession in effort to establish a new democratic government is inherently destabilizing and thus also jeopardizes the rule of law. This

fundamental contradiction can be at least partially addressed through increased transparency in the reform process. International institutions often have ambitious mandates in implementing rule of law reforms, and a large number of the donor agencies that participate in these processes will often “ask for exemptions from prevailing law” in pursuit of their own institutional goals. Sannerholm points out that a lack of coordination between disparate agencies leads to a duplication of efforts and can create an environment more conducive to competition than cooperation. Moreover, there is no overarching mechanism responsible for “watching the watchmen” and holding them accountable. The national government, which has the nominal authority to do so, has no *de facto* authority—which is why these donor agencies are there to begin with. Instead, Sannerholm suggests that the international community needs to develop either some sort of fiduciary-relationship model, or a set of detailed, normative guidelines to direct the agencies involved in rule of law reform. Proper accountability mechanisms will ensure that these agencies practice what they preach and avoid accusations from domestic actors or watchdog organizations of operating under double standards. While closing the accountability gap is indisputably important, Sannerholm seems to champion this almost as a separate goal in itself, rather than as another means of bolstering the rule of law.

In Part III, Sannerholm concludes by reiterating his concern that, without clearer and more focused policies, rule of law reform may become nothing more than an “honorific title for an amalgam of values.” In order to better promote the rule of law, international actors need to return to first principles and adopt what Sannerholm refers to as an “ends-based approach” that focuses on restraining arbitrary power and enabling human interaction. Furthermore, while constitution-building and the development of criminal law receive a surfeit of international assistance, areas of governance such as public administration are typically neglected, leading to a gap between the laws on the books and how they are applied on the ground. While international standards are useful and should be employed when necessary, they should not be relied upon as automatic gap-fillers when suitable domestic alternatives are available. The author also encourages international actors to accomplish more by focusing less on the “prestigious” tasks of

drafting constitutions and revising criminal codes and, instead, giving more attention to areas that enable citizens to become “consumers” in the reformed system. Finally, Sannerholm urges more transparency in the rule of law reform process so that all stakeholders can not only evaluate the performance of international actors, but also ensure that national political actors do not use a lack of transparency as a platform for self-aggrandizement or a pretext for keeping their fellow citizens in the dark.

In short, Sannerholm’s pithy volume is an excellent primer for those interested in international rule of law reform efforts in countries emerging from war or crisis. He harbors no illusions about the challenges that these reform efforts face, and his criticisms of such efforts to date are realistic and incisive without succumbing to pessimism. Overall, *Rule of Law After War and Crisis* is a welcome contribution to our understanding of the foundational importance of the rule of law and the immense challenges the international community faces in establishing it where it is absent.

Justice and the Enemy: Nuremberg, 9/11, and the Trial of Khalid Sheikh Mohammed. By William Shawcross. New York, NY: PublicAffairs, 2011. Pp. 257. \$26.99 (hardcover).

REVIEWED BY JULIE FULOP

Justice and the Enemy: Nuremberg, 9/11, and the Trial of Khalid Sheikh Mohammed, by British writer William Shawcross, explores how the United States should deliver justice in prosecuting the Al-Qaeda terrorists who were responsible for the 9/11 attacks, with a focus on the attack’s planner, Khalid Sheikh Mohammed. Using the historical Nuremberg trial as a comparison, Shawcross poses challenging questions for his readers. At the most abstract level, he asks his readers to consider how the United States can provide fair trials for the terrorists while ensuring satisfying results for the victims’ families. While encouraging readers to critically analyze their own positions on the issue, Shawcross makes no pretense about hiding his own beliefs: he argues that “[O]nly America has the power and the optimism to defend the world against what really are the forces of darkness,” and that prosecuting Khalid Sheikh Mohammed and other radical terrorists in a military tribunal is

the most proper means of delivering true justice. His book explores the legal implications of trying terrorists in an American legal system, yet he also provides his own analysis of Islamic Radicalism, comparing today's trials of terrorists to the trials of Nazis at Nuremberg, and explaining his view of terrorists amid the current controversial debates on the subject.

Justice and the Enemy is both an informative and important read for those wishing to critically analyze the philosophical arguments for prosecuting the enemy. Additionally, the book is appropriate for a broad spectrum of readers, from legal experts to those with scant knowledge of our legal system, and Shawcross' marked effort to explain legal concepts in digestible words is a truly valuable skill, one that legal scholars could learn from. For example, Chapter One ("Precedents") concisely explains the Nuremberg trials and their importance in the context of forwarding international legal principles related to the protection of civilians. Using a logical and agreeable tone, Shawcross also presents news stories and legal material in a comprehensive manner, while simultaneously making his book exciting and suspenseful for those who are unfamiliar with current debates on the topic. His book leads readers to appreciate the delicate problems the United States faces in dealing with an Islamic militant group that, Shawcross believes, disrespects our legal system, abhors our westernized culture, and is intent on destroying it. He encapsulates this idea when he writes, "For [the Al Qaeda terrorists] there is no law but sharia." Thus one of the overarching themes in this book addresses how and to what extent we are giving constitutional protections and just trials to those who, as Shawcross elucidates, do not recognize the U.S. judicial system as valid.

With a focus on the American legal system, the author weighs the benefits and drawbacks of trying suspects in federal district courts versus military tribunals. Shawcross ultimately prefers the military tribunal, which he argues provides additional desirable protections. He emphasizes that there are many safeguards built into military tribunals and that Supreme Court cases since 2001 have solidified defendants' rights of appeal in a military tribunal to be "almost identical to those convicted in federal court." Shawcross explains additional similarities: for instance, in military tribunals Al-Qaeda defendants "were all presumed innocent, their guilt had to be proved beyond reasonable doubt, and each had the right of appeal all

the way to the Supreme Court.” He explains the most significant differences to be in the jury composition and the fact that military commissions permit hearsay evidence. Finally, he finds that the military tribunal would offer more stringent protections on classified information.

The author’s conservative stance on the topic is evident, yet his political views do not overwhelm his commentary. While a staunch liberal might have difficulty swallowing some of his ideas, Shawcross has an admirable knack for arguing his opinions convincingly, yet still cogently presenting the facts surrounding Khalid Sheikh Mohammed and the “enhanced interrogation techniques” (“EIT”) used at Guantanamo Bay that, some other commentators have argued, constituted torture. Moreover, in assessing the differing policies of the Bush and Obama administrations, Shawcross eventually finds that both men have been “honorable leaders.” They had “. . .different perceptions of the world, but confronted with the nihilism of Al-Qaeda, each faced similar, painful, and overwhelmingly sad choices between lesser evils.” He further finds that sympathy for Bush and Obama should outweigh any condemnation, since both Presidents have dealt with a trying crisis that has no straightforward or painless solution.

Shawcross also delves into commentary on Islamic radicalism by pointing out that these “mad” leaders not only disrespect Western culture, but also are responsible for multitudes of Muslim deaths. He offers the thought-provoking statistic that “. . .over the last half century, by far the greatest number of Muslims killed around the world have been murdered by other Muslims.” In presenting this fact, the author highlights the challenging situation the United States is presented with: trying to treat suspected terrorists with respect by giving them a fair trial, even those that have taken the lives of fellow Muslims. Shawcross also attempts to provide his readers with some background on Islamic culture generally, as well as the radical Islamic movement often associated with terrorists. He comes up a little short in describing this movement, however; readers uneducated on this topic may be left with many questions concerning the origin and current status of Islamic radicalism.

Additionally, Shawcross constantly uses the analogy of prosecuting Nazi leaders to Al-Qaeda terrorists. While the comparison is certainly an appropriate one, and provides some insight into these ideologies, the differences in these sit-

uations should also be underscored. Most notably, the Nazis were a ruling political party that murdered millions of Jews, while radical Islamic terrorists, though certainly guilty of myriad atrocious acts, are a fringe group that has yet to inflict a similar number of casualties. Equating Islamic terrorists with Nazis is tempting for the sake of comparison, yet a failure to note the prominent differences between them minimizes the true significance of both situations.

Despite defects in this comparison, Shawcross' strong stance against the imminent threat terrorists pose is truly refreshing—especially in current American culture where a statement that is not perfectly “politically correct” often requires copious amounts of courage. Shawcross writes, “Enemies like [Islamic terrorists] cannot be appeased any more than Hitler could be appeased. They must be fought and defeated.” Thus, while the comparison between Nazis and terrorists may not be flawless, Shawcross captures the essence of the analogy: he emphasizes that these terrorists, just like the Nazis, are ultimately trying to force their belief system onto the world while massacring any non-believers; he argues that their intolerance of others will have catastrophic and fatal consequences.

Interestingly, Shawcross' father was heavily involved at the Nuremberg trial as the lead British prosecutor, a unique connection that likely inspired him to draw the analogy between the two groups, shaping his beliefs on this controversial topic. Moreover, Shawcross' intimate knowledge surrounding the Nuremberg trial adds a deeper understanding of the moral desire each of us has to be just and fair to the enemy. Repeatedly, Shawcross references the Nuremberg trial to remind his readers that evildoers will always be present, urging us to learn from our past experiences so that in the future we can properly ensure justice both for the victims and for those being charged or suspected of crimes. Shawcross also reminds us of Justice Jackson's belief that “prosecutors should never put a suspect on trial unless they understand he could walk free.” This same cautionary warning is applicable in both federal courts and military commissions, and Shawcross encourages his readers to envision the feasible situation where a terrorist could be tried and found innocent. Ultimately, prosecutors must accept this possibility if we are to deliver justice in a fair manner through a trial.

In years to come, as U.S. attitudes toward dealing with radical Islam evolve, Shawcross' book will serve as a solid analytical record of the current debate related to the challenge presented by Al-Qaeda terrorists. As the author observes, this issue of how to handle the "enemy" will continually recur: we do not live in a perfect world, history repeats itself, and we are bound to face a new enemy, perhaps just with a different name and face. Shawcross also notes that violence-inflicting leaders such as Ayatollah Khomeini, Osama bin Laden, and other leaders of the Islamist revival are "mad" the same way Hitler was. Returning to his Nazi-terrorist analogy, he states of Al-Qaeda terrorists, "[t]heir madness resides in the fact that for them, dogmas, not consequences, matter." Ultimately, whether we are dealing with the Nazis, Al-Qaeda terrorists, or another enemy, the issue remains the same: how can we best protect ourselves and prosecute the enemy, while still remaining true to our beliefs in a fair trial and just treatment of those charged with crimes? In Shawcross' view, this issue of the "lesser evil" is inevitable, and accepting it may be necessary in order to ensure a fair society. As readers, we are left asking ourselves: should we risk unfairly prosecuting the accused in order to protect our society and seek justice for victims' families?

By the end, readers may find the author's optimistic belief that justice is attainable through some means to be inspirational: "[I]n the question of justice for the enemy, the subject of this book, there is every reason to believe that the nation and its courts—military and civilian—will continue to interpret the law in an exemplary fashion, and with the defendants enjoying far more rights than their predecessors did at Nuremberg." Yet Shawcross also ends the book with a blunt ultimatum: if we do not accomplish "justice for the enemy," then we are either living in an anti-democratic, anti-constitutional United States or in a world where terrorist attacks have defeated us. Many readers may finish the book sharing the author's hopeful attitude, if only to maintain some peace of mind, and leave with a deep faith that the U.S. judicial system will find justice for the enemy, whether by military tribunal, federal trial, or some other means not yet envisioned. Still others may disagree with his more fundamental beliefs—such as those who argue that military tribunals are unconstitutional, that the Nazi / Al-Qaeda analogy is improper, or that real jus-

tice is only attainable through a higher level of due process, no matter who is being tried. Whether or not one supports Shawcross' views, *Justice and the Enemy* is a stimulating read that provides thoughtful commentary surrounding this controversial debate.