

## BOOK ANNOTATIONS

AHMED, AKBAR, *THE THISTLE AND THE DRONE: HOW AMERICA'S WAR ON TERROR BECAME A GLOBAL WAR ON TRIBAL ISLAM* (Washington, D.C.: Brookings Institution Press, 2013).

ARMSTRONG, DAVID, THEO FARRELL, AND HÉLÈNE LAMBERT, *INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: SECOND EDITION* (Cambridge, UK: Cambridge University Press, 2012).

BAILLIET, CECILIA M., AND KATJA FRANKO AAS, EDs., *COSMOPOLITAN JUSTICE AND ITS DISCONTENTS* (New York, New York: Routledge, 2011).

KERSCHISCHNIG, GEORG, *CYBERTHREATS AND INTERNATIONAL LAW* (The Hague, The Netherlands: Eleven International Publishing, 2012).

KU, JULIAN, AND JOHN YOO, *TAMING GLOBALIZATION: INTERNATIONAL LAW, THE U.S. CONSTITUTION, AND THE NEW WORLD ORDER* (New York, New York: Oxford University Press, 2012).

LI, XIAOBING, AND QIANG FANG, EDs., *MODERN CHINESE LEGAL REFORM: NEW PERSPECTIVES* (Lexington, Kentucky: The University Press of Kentucky, 2013).

PATTERSON, ERIC D., *ENDING WARS WELL: ORDER, JUSTICE, AND CONCILIATION IN CONTEMPORARY POST-CONFLICT* (New Haven, Connecticut: Yale University Press, 2012).

PROST, MARIO, *THE CONCEPT OF UNITY IN PUBLIC INTERNATIONAL LAW* (Portland, Oregon: Hart Publishing, 2012).

SÖRGJERD, CAROLINE, *RECONSTRUCTING MARRIAGE: THE LEGAL STATUS OF RELATIONSHIPS IN A CHANGING SOCIETY* (Portland, Oregon: Intersentia Publishing, 2012).

YARWOOD, LISA, ED., *WOMEN AND TRANSITIONAL JUSTICE: THE EXPERIENCE OF WOMEN AS PARTICIPANTS* (London, UK: Routledge, 2013).

*The Thistle and the Drone: How America's War on Terror Became a Global War on Tribal Islam.* By Akbar Ahmed. Washington, D.C.: Brookings Institution Press, 2013. Pp. xi, 424. \$32.95 (hardcover).

REVIEWED BY CASEY DOWNING

This past year has seen the Predator and Reaper drones forcefully enter the American consciousness and conversation. Between the Obama administration's leaked "white paper" and Senator Rand Paul's exchanges with Attorney General Eric Holder about the legality of their use, drones, formally known as unmanned air vehicles (UAV), are finally being given the attention that they warrant. The debate could be framed thus: Is it just or wise to target potential combatants solely using remotely controlled aircraft whose "pilots" sit safely in control rooms miles away?

Entering the conversation is Akbar Ahmed, the chair of Middle East and Islamic Studies at American University and a senior fellow at the Brookings Institution. Professor Ahmed has written prodigiously on Islam, the Middle East, and the American "war on terror." Ahmed's latest work, *The Thistle and the Drone: How America's War on Terror Became a Global War on Tribal Islam*, begins with a discussion of the present administration's use of drones, but quickly broadens the conversation to the war on terror generally. Ahmed argues that the war on terror is not a war waged by the West against Al Qaeda. Rather, it is an American intervention into a global, centuries-long struggle: the struggle between central authority and the periphery in various societies.

Throughout history, central powers have sought to unite and administer large bodies of land through the use of military might and civic institutions. On the periphery are those who, by ethnicity, religion, or some other characteristic are excluded from the central state mechanism. Instead, these societies exist uneasily on the outskirts of the central authority's system. The two symbols in the book's title each signify one side of this conflict. The "thistle," which symbolizes the tribal socie-

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ties at the periphery, is drawn from Tolstoy, who likened the resilience of the Muslim tribes of the Caucasus who struggled against Imperial Russian rule to the toughness of a thistle. Ahmed sees this tenacity replicated in various tribal societies the world over, including the Kurds of Iraq and Turkey, the Somalis of Eastern Africa, the Yemenis of the Arabian Peninsula, and, the group with which Ahmed is the most familiar, the Pukhtun (sometimes spelled Pashtun) of Pakistan and Afghanistan.

The second symbol, the drone, represents not only American intervention into tribal societies, but the power and intimidation employed by the center against the periphery. What better demonstration of the vast asymmetry between American and tribal power and technology than a near invisible attacker, controlled by soldiers safely out of harm's way, that can rain down terror on a village at a moment's notice?

Even so, the book concerns drones, and American involvement generally, much less than the title might suggest. Rather, the book seeks to contextualize the current American war within the greater struggle between the center and the periphery. For Ahmed, Al Qaeda and other terrorist organizations are not an interconnected network of terrorist cells, nor are they a natural outgrowth of Islam. Rather, these groups have arisen as a response to the repressive actions of central governments aimed at subduing, or in some cases annihilating, the tribal peoples of the periphery. Moreover, the proliferation of new technology and weaponry, coupled with the use of asymmetric power by the center, has further alienated the periphery and contributed to the rise of terrorist groups.

To illustrate his thesis, Ahmed focuses on a group at the center of much of the present conflict in Afghanistan and Pakistan: the Pukhtun of Waziristan. The Pukhtun, among the toughest of the thistle-like tribal peoples, have struggled against central governments for centuries, most notably the British. In response to a military defeat at the hands of the Pukhtun in 1842, the British colonial administrators that held lands in India, Pakistan, and Afghanistan developed a system of administration that ceded a high level of autonomy to the tribes. Ahmed refers to this as the "Waziristan Model" of administration, which consisted of a tri-partite leadership: the tribal leader, the religious leader, and the political agent who

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represented the British government. The tribal leadership was formed by councils of elders in the various Pukhtun tribes and enforced the tribal values of the society. The second pillar, the religious leader, was the local authority in matters of the Islamic faith. However, Ahmed emphasizes that tribal understanding of Islam is significantly influenced and even superseded by tribal values. Thus, for example, the Pukhtun are particularly harsh in their treatment of women, and especially brutal in their pursuit of revenge—both practices that are not condoned by orthodox Islam, but are tolerated because of their deep tribal roots.

The third pillar was the government administrator, who acted as a bridge between the tribes and the central government. The most skillful of the administrators during British colonial rule were able to keep an uneasy peace between the tribes and the central government, generally allowing the tribes their autonomy but also negotiating for the British government to use the surrounding land as it needed. With Indian independence and the subsequent partition of Pakistan and India in 1947, the Pakistani government left the British administrative system largely intact, merely replacing British political agents with Pakistani ones. Ahmed himself was one such agent in the 1960s, stationed in Waziristan among the Pukhtun on behalf of the Pakistani government.

The second half of the twentieth century saw the slow disintegration of the Waziristan Model for various social and political reasons. As the Afghan government collapsed and the Pakistani government abandoned the task of administering Waziristan, more ruthless elements of tribal society were able to flourish there. Warriors with similar tribal backgrounds were also able to find safe haven in Afghanistan. Most notable was Osama Bin Laden, who had inherited the Yemeni tribal culture of his father. The Yemeni tribes, like the Pukhtun, based their membership and leadership upon a system of segmentary lineage, and held honor and revenge as a central facet of their value system. As Ahmed explains, “Bin Laden compared American actions in the Muslim world to the violation of women, always a matter of high sensitivity in tribal society, and applied the tribal idiom of honor as a rationale for the Muslim ‘raids’ as acts of revenge.” Pukhtun control of Afghanistan gave Bin Laden and those like him the time and space to pursue their revenge against the West, unmolested by the cen-

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tral Yemeni or Pakistani authorities that had previously pursued him.

The attacks of September 11th prompted an overwhelming response from the West. Part of this response grew out of the relationship between the United States and Pakistan—a relationship that gave President Musharraf of Pakistan the opportunity to do what he had planned for some time: crack down on the tribal areas in northern Pakistan. Musharraf, with the help of his new American friends, steamrolled through the northern areas and violently put down any opposition. This crackdown, however, elicited a response that surprised not only Musharraf and the Americans, but the tribes themselves in its violent lawlessness. So great was the tribal bent toward honor and revenge that the backlash veered quickly from Islam toward a violent nihilism. Young tribal warriors began killing tribal elders, and strapping bombs to women and mentally disabled persons to act as suicide bombers. Such actions are categorically forbidden by orthodox Islam, and are also abhorrent to traditional tribal sensibilities. Something, Ahmed notes, had gone very wrong.

This is the war inherited by President Obama. Given this, it is unsurprising that he chose to disengage from the mayhem by turning to drones. However, Ahmed believes that this tactic is a mistake. Only by painstakingly reconstructing structures that resemble the now defunct Waziristan Model might the Americans and Pakistanis hope to quell what will otherwise be a never-ending conflict. The tribal societies, Ahmed argues, will continue to retaliate to drone attacks and crackdowns from Pakistani and American military powers due to their tribal sense of honor and revenge, not some loyalty to global terrorist networks. Only by restoring a sense of honor, dignity, and autonomy to the tribes will the violence be quelled.

This is a tall order, and it's hard to know if Ahmed's prescription would be successful. Throughout the book, he goes to painstaking lengths to demonstrate that the many tribal societies on the periphery are similar in their beliefs and ways, and yet also independent from one another. The Pukhtun, Yemeni, Somalis, Chechens, Nigerian tribes and others are all built upon a foundation of segmentary lineage structure and values that place honor and revenge above all else. But it is hard to conceive, exactly, how so many tribal societies independently developed codes of structure and honor that so

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strikingly parallel one another. Ahmed deliberately paints these societies with rather broad strokes, illustrating that such societies are more similar than we in the West might think. Still, it is not an overreach to believe that Yemeni warriors such as Osama bin Laden were able to live safely hidden among the Pukhtun for so long because they shared similar values, and had undergone similar experiences of being targeted by their respective central governments.

But understanding the similarity between the tribes presents two further problems. First, the Waziristan Model, although it worked well in Pakistan for so long, may not be duplicable in other societies. Each of the central governments that must deal with tribal societies at the periphery has its own governing structure, legal system, and economic realities. Each of these countries also has its own distinct tribal societies, some of which might be more amenable to a Waziristan Model of governance than others.

The second and probably more formidable problem is that even where the Waziristan Model functioned well, in Pakistan, it broke down because of internal and external pressures. As mentioned above, the tribal system of the Pukhtun looks different than it did forty years ago owing to the changes in Pakistani governance structure, foreign conflicts (most notably with the Soviet Union), and the arrival of radical Islamic warriors such as Osama Bin Laden to Waziristan. The Waziristan Model may simply be too fragile to be a long-term solution.

But it is also one that should not be discarded. Ahmed, having successfully administered a tribal area for many years as a representative of the center, clearly identifies where the Americans have gone wrong. It may be a daunting task to reconstruct the Waziristan Model worldwide, but it is still a better option, perhaps, than allowing American drones to take a permanent residence in the skies above Waziristan. Reestablishing a peaceful coexistence with tribal Islam may be harder in the short term than bombing them into submission, but ignoring a peaceful solution may destroy the possibility of any long-term solution at all.

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*International Law and International Relations: Second Edition.* By David Armstrong, Theo Farrell, and H el ene Lambert. Cambridge, UK: Cambridge University Press, 2012 Pp. x, 352. \$34.99 (paperback).

REVIEWED BY N. ELLAS BLOOD-PATTERSON

For as long as the academy has divided its energies into schools of thought, the aggregation of knowledge has been impeded by infighting between various disciplinary echo chambers. Armstrong, Farrell, and Lambert's Second Edition of *International Law and International Relations* seeks to address part of this internecine quarrel. The book is built on two bedrock assumptions. The first is that the disciplines of international relations and international law have something to learn from each other. The second is that students of each field are not already aware of the theories the other has to offer. This is the project of the book: to serve as a primer for students and practitioners interested in this cross-disciplinary conversation. Writ small, the "message" of the book is straightforward: international law is a form of power in the international system. If scholars of international law seek to describe the content of this law, and scholars of international relations seek to describe the nature of international power, then each approach has valuable insights to offer the other. The goal of this book is to expose students and scholars to a different system of thought beyond their own familiar pastures. Of course, in distilling two disciplines' writing into 300 pages, a great deal of simplification is necessary. This is perhaps the book's core weakness: It achieves accessibility at the cost of subtlety and comprehensiveness. Nonetheless, the book is a successful, readable, and, above all, useful survey of two important approaches to the study of the international system.

The book is split into three parts. In the first, the authors provide historic context for the development of both the disciplines of international law and international relations. This section focuses primarily on theory. In the second, the book shifts to analyze key areas of international law, discussing them using the theoretical tools developed in the first section. Finally, in the last section, the authors draw conclusions based on their findings.

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One goal of this book is to address “blind spots” in each discipline. To that end, the first part of the book sets each discipline in its historical context. By looking back to the development of the international system as a whole, the authors shed light on the conditions that gave rise to each school of thought. Aside from a fascinating journey through how and why political systems have developed over the ages, this section roots the otherwise highly theoretical discussions that follow in a real political and historical place in time. The authors move at a brisk pace: A quick march through thousands of years reveals the Roman, Medieval, and ultimately Renaissance roots of the modern system of States and the international laws they created. Understanding this heritage is important for understanding the forces that have shaped international law and the grounding for many of the critiques leveled against the project.

The section on history gives way to what may be the densest chapter of the book—a full review of the main schools of thought and individuals who have influenced writing in international relations and international law. Here, one sees that the history was not wasted. The analysis grounds the successive developments in each discipline against the context of particular epochs in global politics. Thus, the authors suggest, it is important to remember that international law first was articulated by writers in the natural law tradition inherited from Christian philosophers of the Middle Ages. The primary urge to *describe* the law, rather than *prescribe* the law, comes directly from early scholars like Grotius who wrote in reaction against the natural law tradition as an escape from the divisiveness of appeals to religion in the shadow of the Thirty Years’ War. Similar treatment is given to international relations. This analysis helps to explain why international relations holds on to different biases and assumptions than international law, despite the two fields having an extraordinary degree of overlap in subject matter.

This review continues apace, through the major schools of international relations and international law. This is the core of the book: an adept and concise treatment of a very broad body of source material. For those reading the book with a background in either international relations or international law, it may seem that the authors do not always do the material justice—smoothing over complexity in theoretical

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stances or shoehorning theorists into neater categories than their full body of work allows. Nonetheless, this brevity is a gift. Although it treats the scholarship lightly at times, it does so because it must draw a comb across not one but two large and diverse fields of scholarship. The authors have a tendency to schematize, which is what makes the first part of the book—the chapters reviewing history and theory—useful as a tool to be applied in the latter half of the book.

The second part of the book is dedicated to international law as it is applied in practice. Here, the authors step down from the heights of scholarly abstraction and history to approach their subject with a decidedly un-theoretical bent. Each discussion treats its material with a granularity and factual grounding that is both accessible and direct. This section of the book reads with an easy narrative style, as the authors first give a short history of how each area of international law developed, and then dive into some of the modern problems that the discipline seeks to address. The emphasis on fact and direct description focuses the reader's attention on the politics leading up to the formation of treaties, and, in the case of customary law, how the shifting landscape of political power precedes the formation of practice and *opinio juris*.

For students who follow politics and law, much of the material presented here will likely be familiar. In the section on the law of armed conflict, for example, the authors spend a great deal of time discussing the recent wars waged by the United States in Afghanistan and Iraq, and the legality or illegality of these efforts as a matter of international law. However, even where the facts and arguments discussed are already familiar to readers, the authors excel in crafting their argument. By drawing out places where international relations theory interacts with international law, the reader can see why and how competing theories of international politics describe the same state activity.

As such, in the authors' treatment, each area of international law becomes a laboratory in which to test the different theories of international relations and international law in areas as diverse as the law on use of force (Chapter 4), international trade (Chapter 7), and international environmental law (Chapter 8). The result, unsurprisingly, is that some theories describe some areas of the law far better than others. For example, constructivism, which focuses on the power of civic so-

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cial values, is well suited to describe the development and enforcement of environmental legal regimes. In comparison, the State-centered realist rubric provides far less help in describing why States would voluntarily give up ground in negotiation to the creation of environmental treaties. On the other hand, the realist school is highly developed in describing wartime State action, which even legal scholars tend to admit is often characterized by widespread non-compliance with the laws of war.

Using real world examples solidifies the theoretical grist from the first half of the book. Even for readers with a prior background in one—or both—of the disciplines addressed by the book, it can be very rewarding to see the authors synthesize and apply two generally separate bodies of theory when approaching these classic “problems” of international law.

The book is not without its shortcomings, however. The authors frequently rely on “schematizing” as a method of differentiating schools of scholarship. This often takes the form of numbered lists. This is a fine tool, and its common use makes it a familiar point of reference in the reading. However, inconsistent usage makes this stylistic touchstone a confusing element in many chapters. Occasionally the authors lead with a “first” and then the “second” and “third” points are lost in prose paragraphs, or unclearly flagged, making it more confusing to find the referent than if there had never been any suggestion of a set of numbered points to be covered! On a similar note, the central chapters addressing different areas of law suffered from highly inconsistent approaches. Unifying the style of writing, and especially formatting, would go a long way to making the book’s analysis across different subjects easier to compare and contrast. Additionally, highly distinctive authorial styles across subject matter make it hard to compare the legal work in, for example, the environmental law chapter to even the human rights chapter.

But these criticisms are merely minor quibbles in a successful enterprise. Despite the formidable challenges of distilling centuries of history, theory, and research, the authors have supplied a very readable and useful primer on the overlay of international law and international relations. *International Law and International Relations* is a fine book worthy of anyone who wishes to expand the horizon of her or his knowledge in either field.

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*Cosmopolitan Justice and its Discontents*. Edited by Cecilia M. Baillet & Katja Franko Aas. New York, New York: Routledge, 2011. Pp. 237. \$145.00 (hardcover).

REVIEWED BY MADELINE SNIDER

Much has been said about the ways in which globalization has increased the flow of people, goods, and ideas across borders and has begun to shape law and policy both domestically and internationally. Cosmopolitan justice—and cosmopolitanism more broadly—sees potential in globalization. Cosmopolitanism in its various forms aims to transcend borders, to push beyond a state-centric world order, and to move toward an international order that privileges common humanity and justice. Yet in spite of this vision and the rise of non-state actors in international affairs, the reality is not always so rosy. Globalization has led not only to greater communication and understanding between peoples, but also to fracturing and confrontation. Increased engagement in the world can cut both ways, and can sometimes lead to xenophobic and isolationist backlashes. Moreover, in the face of transnationalization, states have often sought to reassert their sovereignty, most prominently through immigration controls and border security measures.

*Cosmopolitan Justice and its Discontents* seeks to bring cosmopolitan discourse in line with a complex reality that does not always match the yearning for a world in which “universal rights and entitlements trump parochial identities and selective distribution of rights.” The volume brings together the works of a number of scholars and aims to address some of the criticisms of the cosmopolitan vision. The various chapters address issues of sovereignty and borders, international criminal law, migration, and international economic law, and reflect on how developments in these areas align with theories of cosmopolitan justice. While much of the existing literature on cosmopolitanism is written from the perspective of sociology, philosophy, or political science and takes a positive view of the cosmopolitan vision, *Cosmopolitan Justice* seeks to infuse the discussion with a legal perspective and engages some of the prominent critiques.

Part I discusses what is perhaps the most persistent and obvious counterpoint to the cosmopolitan vision: the contin-

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ued prominence of sovereignty and the relevance of borders. In "Cosmopolitan Sovereignty," Sam Adelman takes on the centrality of nation-states as the primary actors in international law and international relations. Adelman recognizes a central tension, stating that "[t]he idea that all human beings have equal worth in a single moral community is noble . . . but it [is] difficult to reconcile with the importance of local contexts, histories, interpretations and traditions." Additionally, Adelman questions the extent to which the European Union (EU) and the International Criminal Court (ICC)—often heralded as relatively successful examples of cosmopolitan experimentation—really stand for the proposition that cosmopolitan values are chipping away at sovereignty. Yet, in spite of the challenges that sovereignty poses, Adelman argues that we should not give up on the cosmopolitan vision in the present but instead turn toward incremental action "from below" to advance cosmopolitan values.

In "Does a World State Lead to a Graveyard of Freedom?" Ronald Tinnevelt asks, "what kind of global institutional scheme best fits the requirements of moral cosmopolitanism—the idea that human beings are ultimately units of moral concern?" Tinnevelt argues in favor of a more articulate consideration of a "world state" as a global institutional scheme to advance cosmopolitanism, and considers the primary objections to a world state: (1) that a global state would be either ungovernable or unaccountable to its citizens and would tend to vitiate collective identity necessary for group cohesion or steamroll cultural differences; and (2) feasibility arguments. Ultimately, Tinnevelt argues that a subsidiary, federal world republic achieved through a significant degree of self-governance and transitional phases would dispatch with most of these concerns. Tinnevelt also deals with Adelman's concern by arguing that in a federal world republic, cultural pluralism could be maintained within member states. He argues that constituent states of a federal world republic would be able to define the rights of their citizens and systems of social justice according to their respective cultural norms. However, it is worth asking whether a world state that adheres to cultural relativism is not both impractical and an arrangement that would fail to achieve a fundamental aim of the cosmopolitan world order: human dignity and social justice for all without regard to national borders.

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Part II questions whether international criminal law has helped or hindered the realization of the cosmopolitan ideal. In “Guilty Landscapes, Collective Guilt and International Criminal Law,” Chrisje Brants argues that the growth of international criminal law and international tribunals that apply this law is an integral part of the transition to a cosmopolitan international order. According to Brants, international criminal law is regarded as a means of reinforcing the rule of law and democratic ideals, ending impunity, providing recognition and redress for victims, and ultimately realizing the humanitarian morality that is necessary to push forward the cosmopolitan project.

However, Brants questions the extent to which this body of law is able to achieve these cosmopolitan aims in light of the principle of individual guilt. According to Brants, the “collectiveness” of international crimes (genocide, crimes against humanity, and war crimes) calls into question the appropriateness of the principle as a motivating factor for determining guilt and meting out justice because “trials are unable to encompass the scope and complexity of the relationship between collectivity and violence.” On the other hand, collective punishment is also incompatible with notions of human rights and due process. In recognizing this tension, Brant reminds the reader that international criminal law is but one tool to advance human dignity on an international scale.

Part III addresses the issue of migration. In “All the People in All the World: A Cosmopolitan Perspective on Migration and Torture,” Barbara Hudson discusses the border region as a testing ground for the cosmopolitan principle of hospitality—the right of the stranger, the outcast, the stateless person to be received without violence when entering another’s territory. In a discussion of Article 13 of the Universal Declaration of Human Rights—which includes the right to leave one’s state—Hudson points out that the border control mechanisms in place in wealthy states stand in violation of the right to leave. But the fence, and border control mechanisms like it, exist not to keep people in, but to keep others from freely entering the state. While this may very well raise significant issues with regard to the cosmopolitan principle of hospitality, there is a distinction to be made between the right to leave one’s own state, and a right to enter another. Hudson seems to confuse the two, and does not discuss or reconcile the difference

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between them. It is true that, in international human rights law, there is a right to leave one's state; however, this does not confer an automatic right to enter another state. Hudson makes a jump from the right to leave to the right to enter without adequately exploring the relationship between the two concepts.

Katja Franko Aas, in "Cosmopolitanism, Boundaries and Frontiers," argues that borders are not only a source of demarcation, a line at which the "other" is turned away, but, in Europe, are also a focal point of a kind of European cooperation that engenders integration and solidarity and keeps the cosmopolitan experiment within Europe both contained and continuing. In this way, Aas points out, cosmopolitanism can, paradoxically, contribute to exclusion and continued divisions. As Aas's discussion demonstrates, history does not move in a single clear or inexorable direction, toward either coalescence or fragmentation of global society. Within a single area of state action there can be multiple (and sometimes inconsistent) meanings. Regionalism, however, may be an area in which pockets of cosmopolitanism can flourish. Yet, as Aas argues, the construction of a broader "European" identity—though once inconceivable—may also entail the "othering" of non-Europeans and may be detrimental to people from states struggling with issues of rule of law and human rights.

One way in which international law has begun to shift toward a focus on the individual has been through international economic law. In Part IV, the authors question whether this has been an entirely positive development from a cosmopolitan perspective. In "The Cosmopolitanism of Transnational Economic Law," Robert Wai states that "[i]f the distinct concern of cosmopolitan justice is to examine the normative import of the sociological reality of transnational connections of various kinds, then surely this must include the economic relations that now straddle sovereign boundaries in myriad ways." While cosmopolitan theorists tend to engage primarily with international human rights law and international humanitarian law, Wai's analysis is notable for exploring the cosmopolitan implications of international economic law. Wai notes the increasing importance of private actors in shaping international economic relations, and asks whether the autonomy of private parties to contract to define their legal relationships at the international level may at times be harmful to third parties or

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the public interest. Wai argues that the growing web of private international contracts may constitute something approaching a stateless global legal order. For example, in confidential commercial arbitration, the public has little or no knowledge of information relating to contractual disputes that may be of significant utility to officials responsible for the development and enforcement of public laws and regulations. Ultimately, though, Wai does not see the growing body of transnational economic law as inherently incompatible with cosmopolitanism. He recommends a state-centric and pragmatic way forward, recognizing the role of the state in limiting the autonomy of private parties to contract in the name of third party interests and public policy informed by cosmopolitan values. Wai's proposal stands in contrast to Adelman's suggestion that cosmopolitan values are best advanced "from below" by non-state actors.

Similarly, in "Cosmopolitan Competition: The Case of International Investment," Malcolm Langford addresses the international investment regime and points to the global civil society campaign that toppled efforts to conclude a multilateral investment agreement in the 1990s—a movement hailed as an early example of "cosmopolitanism from below"—as counterproductive and ultimately damaging to the cosmopolitan cause. Activists in this movement argued that the proposed agreement gave too much of a free rein to foreign investors in sensitive areas of domestic policy, and did not sufficiently allow for states to limit investor actions and ensure that the investment was favorable to the local population as well as the foreign actor. Langford's criticism of the movement centers not on the movement's sentiments but on its approach. According to Langford, in rejecting and refusing to engage with institutions dominated by states, the movement missed an important opportunity to inform the process and advance cosmopolitan values. While the campaign succeeded in impeding the conclusion of an agreement that the movement saw as inimical to its values, the byproduct was the perpetuation of an arguably even less desirable status quo. This critique is generalizable to other actions taken in the name of "cosmopolitanism from below," particularly movements that stand in opposition to mainstream institutions, but which fail to offer constructive alternatives.

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Overall, this volume is successful in providing an overview of the major controversies related to cosmopolitan theory and its application in the arenas of international law, politics, and policy. However, the volume could be tied together more neatly if the epilogue recognized where the various authors contradict, disagree, or are in a dialogue with one another. Some general conclusions could be helpful to summarize the arguments laid out in the book.

*Cosmopolitan Justice* is at its most successful and most convincing where cosmopolitanism is presented as a prescriptive, as opposed to descriptive, aspirational version of the world: A world that is less statist and more focused on the empowerment of human dignity. There is potential for a cosmopolitanism that has something to say about the ways in which we *should* look to order our relations with other human beings, and about what *should* animate our discussions and decisions. Toward that end, *Cosmopolitan Justice* makes a welcome contribution in that it rejects an account of unbridled faith in the promise of, and inexorable move toward, the cosmopolitan imaginary.

*Cyberthreats and International Law*. By Georg Kerschischnig. The Hague, The Netherlands: Eleven International Publishing, 2012. Pp. v, 365. \$127.50 (hardcover).

REVIEWED BY ALEX LEITCH

Imagine two hypothetical cyber-attacks: In scenario one, a cyber-attack against a sole power generator causes it to overheat and explode. Due to systemic redundancy there is no effect on overall power services; aside from the physical damage to the power plant, the incident has no further consequences. In scenario two, a cyber-attack against key financial systems targets precious software and data. As a result, there is no physical damage, but there is an economic collapse, causing devastating human suffering. Under international law, which incident should count as a use of force?

Georg Kerschischnig's *Cyberthreats and International Law* concludes that, under a traditional conception of armed attack premised on physicality, the cyber-attack on the power plant would constitute a use of force while the attack on the financial system would not. Kerschischnig analogizes the for-

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mer to a border incursion—a clear use of force—and the later to the 1973 oil embargo—not usually considered a use of force. In the case of the cyber-attacks, however, Kerschischnig argues that this categorization is clearly flawed given the disparate human impact resulting from the attacks. By posing this hypothetical, Kerschischnig demonstrates that the laws of war, as they currently exist, may be inadequate to address challenges posed by cyber threats.

The term “cyber-security” and its antecedents have become buzzwords in the media, academia, and policy circles. The term covers a vast array of “cyber-threats,” from the physical safety and reliability of infrastructure to spam and online espionage. In spite of the popular attention to the term, government and private sector efforts to confront the problem of cyber-threats have been lacking. Having worked as a legal advisor to the United Nations in New York, Kerschischnig’s background has given him a chance to view these efforts first hand. In this work, Kerschischnig sets out to provide an introductory overview of the application of international law to cyber-threats. Along the way, he provides background information on both cyber-threats and international law and addresses a host of related issues, including applying legal frameworks to the issues raised by cyber-threats, identifying key problems and dilemmas in the field, and proposing actions and policies for moving forward. One can only speculate that Kerschischnig wrote this book with the hopes that, if read by his fellow practitioners, it might encourage a more robust response to cyber-threats by the international community.

Regarding the tone and focus of the book, it first must be mentioned that Kerschischnig’s writing is impressively readable, especially given the challenging and complex topic addressed. This book is an excellent introduction to cyber-threats and the international legal issues they implicate. Multiple chapters are dedicated to what can be considered introductory material on either cyber-threats or international law. Kerschischnig explains that he includes this information to acquaint someone who is unfamiliar with the topic and to allow even knowledgeable readers to understand his perspective. True to his claim, Section One provides a basic historical, technical, and theoretical background for understanding cyber-threats. Section Two nicely lays out the relevant issues of international law. Some readers, however, may wish that Ker-

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schischnig had directed his work towards a slightly narrower audience. A reader with significant background knowledge of cyber-security would be advised to skip the first chapters, and one with knowledge of international law can skim much of the introductory legal analysis. Only after 120 pages is international law actually applied to cyber-threats with any seriousness.

Once getting past the introductory material, Kerschischnig identifies a number of legal dilemmas that have been created by the rapid expansion of cyberspace. Topics include *jus in bello* applied to cyber-war, "hactivism," and human rights aspects of cyber-conflict. Some scholars have implied that applying international law to the cyber realm is a fruitless endeavor. Kerschischnig writes under the assumption that this is not the case, though he does not ignore the many pitfalls of the process. First, and perhaps most importantly, Kerschischnig avoids the mistake of remaining trapped inside his own discipline, and reminds readers that the law is just one component of a larger strategic paradigm (including politics, national security, and trade) that international actors consider when acting in cyberspace.

Regarding the application of *jus ad bellum*, Kerschischnig identifies many difficult issues the international community must address. As illustrated in the beginning example, military operations in cyber-space pose unprecedented challenges to the law of armed conflict because there is the potential to exploit a legal gap between physical force and other forms of coercion. Kerschischnig argues that traditional conceptions of the law of war cannot adequately address cyber-attacks because they do not reflect the proportionate level of human and economic damage that these attacks can inflict. Instead, Kerschischnig appears to approve of a balancing test that takes into account the consequences of such an attack when determining whether the attack constitutes a violation of the law of war. This contrasts with the traditional approach of focusing solely on the nature of the action itself and whether it consists of the use of physical violence. According to Kerschischnig, such a balancing test could include the following factors: 1) severity or the degree of damage; 2) immediacy or the pace of the development of the negative consequences; 3) directness (direct effect versus necessity of other contributing factors); 4) invasiveness; 5) measurability; and 6) presumptive legitimacy.

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Under this test, scenario two above involving the attack on key financial systems would presumably be considered an armed attack whereas scenario one involving the attack on a power plant would not.

In addition to providing suggestions as to how to legally interpret actions in cyberspace, Kerschischnig also provides recommendations to the international community. In doing so, he acknowledges both that international law is not a panacea for dealing with cyber-conflict and that inaction is dangerous. The majority of his recommendations focus on harmonizing state practice and clarifying international norms either through international conventions or less formal arrangements. He pragmatically concedes that such norms should not include limits on cyber-espionage, as states are unlikely to follow them. One of his most innovative recommendations is the creation of an international organization, preferably under U.N. auspices, with impartial experts from member states. Kerschischnig argues that such an organization might “engage in a variety of tasks, for example monitoring cyber-space, giving advance warnings, and developing security strategies and technical solutions.” Unfortunately, Kerschischnig does not go into further detail regarding the form of this proposed organization. What would voting look like for such an organization? Would resolutions of this organization be binding or hortatory? Would it be structured like the International Labor Organization with requisite representation not only from states, but from other areas of society as well? Could “impartial” experts be nominated by states or chosen by the organization? As the book itself acknowledges, the private sector and other non-state actors are some of the most active participants in improving international cyber-security. What role would they have in such an international organization, if any? Would Google, Goldman Sachs, or the Institute of Electrical and Electronics Engineers have a seat at the table? While illuminating, the suggestion for an international organization, much like many of Kerschischnig’s other suggestions, could benefit from further elaboration.

One aspect of the analysis Kerschischnig has left to other scholars is the question of how cyberspace will affect the very premises of international law itself. International law has mostly been formed over centuries without cyberspace. Our very notions of sovereignty, international relations, and law

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come from a world without the incredible tool that is the Internet. There have always been ways that technological change has impacted the law. At one time, national sovereignty over the coasts was largely determined by the cannon range of Her Majesty's Royal Navy. The effects of cyberspace on international law will almost certainly be even greater. The question remains whether cyberspace will so fundamentally change the human experience and relations between states that the premises of international law as we know it will also have to adapt. From his outstanding work, it appears that Kerschischnig believes it will.

*Taming Globalization: International Law, the U.S. Constitution, and the New World Order.* By Julian Ku and John Yoo. New York, New York: Oxford University Press, 2012. Pp. viii, 272. \$35.00 (hardcover).

REVIEWED BY JEFF DAHLBERG

The nations of the world are becoming progressively more interconnected as technology increases in speed, sophistication, and availability and goods and services cross borders at ever-increasing rates. As countries benefit from this growth in technology and trade, they are also uniting in an attempt to address common challenges via legal mechanisms such as the Kyoto Protocol, which regulates carbon emissions. This process of globalization poses unique challenges and opportunities for international lawyers, who must navigate an expanding web of treaties, executive agreements, international bodies, and soft law. To some practitioners, this is undoubtedly a positive development.

Julian Ku, Professor of Law at Hofstra University Law School, and John Yoo, Professor of Law at UC-Berkeley Boalt Hall Law School and former Assistant Attorney General in the Office of Legal Counsel of the U.S. Department of Justice during George W. Bush's presidency, see things differently. In their book *Taming Globalization: International Law, the U.S. Constitution, and the New World Order*, Ku and Yoo express deep concern about the potential for increased international cooperation to impinge upon American constitutional values of federalism and the separation of powers, and ultimately upon U.S. sovereignty. They have deep concerns about the prolifera-

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tion of bilateral and multilateral treaties, judges' reliance on customary international law and foreign law in U.S. courts, and the capacity for international organizations and tribunals to usurp control over policymaking and domestic affairs from the political branches of government and thereby from the American people. These trends, they argue, threaten to "Europeanize" the United States, changing it from a country whose government derives its power and responsibilities solely from the American people into one that is subject to externally-imposed obligations and duties.

For example, treaties such as the Chemical Weapons Convention (which the United States has signed and ratified) require the U.S. government to consent to periodic and unannounced inspections by members of international bodies. Ku and Yoo argue that this type of arrangement undermines the integrity of the Constitution by giving law enforcement authority to a third party outside of the domestic political and legal system, is unaccountable to the American populace, and is not bound by strictures such as the Fourth Amendment. The authors establish their views as in many respects running counter to scholars such as Louis Henkin, who "give international law and institutions a powerful role in the American lawmaking system." They also distinguish themselves from "originalist" thinkers such as Michael Ramsey, who believe that international law should be interpreted in the way it was conceived at the time the Constitution was ratified. Rather, Ku and Yoo argue for an adaptable approach to the interpretation of international law, dependent "on presidential leadership," that "tames" globalization by requiring its domestic effects to pass through Congress while allowing the President wide latitude in interpreting international law in pursuing America's foreign policy objectives.

Ku and Yoo also discuss several other types of treaties to illustrate the constitutional threat posed by the expansion of global governance regimes. For example, in the case of proposed carbon emissions treaties, the authors argue that, although it is within the federal government's power to enact legislation regulating large-scale energy producers pursuant to its Commerce Clause authority, "[i]t is doubtful . . . that federal regulation could extend to home production or consumption of energy that occurs off the electric grid." The regulation of such private conduct generally falls to the states; the federal

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government cannot reach it. Were the President to enter into a multilateral treaty regulating energy consumption and emissions, however, Ku and Yoo argue that the federal government might attempt to do just that in order to comply with its treaty obligations, a move that would raise federalism concerns.

In the face of these perceived threats posed by the growth of global governance, Ku and Yoo propose three solutions: (1) the establishment of a presumption that treaties are non-self-executing; (2) greater Presidential control over the interpretation of customary international law; and (3) an enhanced role for the states in the implementation of treaty obligations. The authors contend that each of these solutions will reduce the threat that globalization poses to sovereignty and the Constitution, while still enabling the United States to participate in the international sphere.

Ku and Yoo contend that popular sovereignty would be best served by a presumption against treaties being self-executing. Currently, it is up to U.S. courts to interpret the legal effect of treaties. If a treaty creates an enforceable right requiring no further action by a government, it is said to be self-executing and operates with the force of law; however, if the treaty merely contemplates or promises that governments will take some future action, it is not self-executing and requires domestic legislation in order to have binding effect. The authors argue for a presumption, absent a clear statement to the contrary, that treaties signed by the President and ratified by the Senate should not take domestic effect unless Congress passes its own legislation to implement them. The authors believe that this approach would best accord with the notion of popular sovereignty—that the legitimacy of government is derived solely from the people. A presumption of non-self-execution would ensure that the House of Representatives is able to participate in the implementation of treaties. (The current practice, enshrined in the Constitution, provides that a treaty becomes law after being signed by the President and ratified by a two-thirds majority of the Senate.) On the other hand, the authors argue that if treaties are presumed to be self-executing, the President can essentially circumvent the normal process for passing legislation and unilaterally impose international obligations on the country, thus threatening the constitutional principle of the separation of powers.

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Ku and Yoo also express concern that treaties are often negotiated away from public view, in private conferences and meetings where international organizations and NGOs have an inordinate amount of influence. According to the authors, requiring legislation in Congress before treaties can be implemented could ensure greater deliberation and participation by representatives of the American people. The authors freely concede that this approach is more cumbersome and time-consuming, but they believe these shortcomings to be outweighed by the benefits of greater democratic legitimacy and harmony with the Constitution. However, Ku and Yoo fail to resolve the question of why the treaty-making process is democratically deficient. The same pressure—threat of being voted out of office—that constrains the behavior of elected officials in enacting domestic legislation is also present in negotiating treaties. Just like the passage of legislation, treaties require the approval of two separate branches of government, and a treaty must achieve a supermajority in the Senate for ratification.

Ku and Yoo's second proposal relates to customary international law (CIL). The authors contend that the interpretation of CIL obligations should lie primarily with the President, rather than the courts. They begin by arguing that, under the Constitution, CIL obligations, unlike treaties, lack the status of federal law and therefore do not serve as a legal limitation on the President. To the degree that the President is constrained by CIL, it is because of the *political* ramifications of failing to abide by it rather than the legal consequences. The authors contend that there is a "functional advantage" in giving the President, rather than the courts, the power to make policy decisions regarding the interpretation of CIL and whether to abide by it. Courts, they argue, are not well positioned to decide "foreign policy" matters—they lack expertise in foreign affairs, cannot act with the same speed and secrecy as the executive branch, and are limited in the ways in which they can receive and collect information. Giving this authority to the President, the authors contend, will allow the federal government to act quickly and decisively and to balance various delicate foreign policy concerns in deciding whether, and to what extent, it should comply with CIL.

Ku and Yoo are likely correct in their assertion that the executive branch is better suited to act in the foreign policy arena. However, in arguing this point, the authors rely on the

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notion that compliance with CIL is essentially a matter of politics and policy, and that law has little to do with it. While CIL is generally followed by most countries most of the time, they argue that this is only due to the fact that it is generally in States' interests to comply, and that States can violate CIL when they disagree with it or when it will benefit them. But allowing exclusive presidential interpretation of CIL as a matter of policy, and allowing no role for the judiciary in interpreting CIL as a source of U.S. *legal* obligations, would create a political chess match. While this may accurately describe some dealings in the global sphere, it seems an overreach to imbue all of customary international law with this non-legal, purely political flavor. There may be very good reasons to hold that many of the obligations imposed by CIL are in fact legally binding, such as the prohibitions on torture and piracy and the setting of boundary lines. Further, although the authors characterize courts as inefficient and ill-suited for delicate and urgent foreign policy decisions, it remains unclear why the judiciary should be left out of the CIL interpretation business. After all, interpreting the nature of legal obligations is precisely what courts are designed to do. Deference to the executive branch on the interpretation of CIL could retard the development of meaningful rules of conduct among nations, as the U.S. government would only comply if doing so were advantageous and other countries would ostensibly follow suit.

For their final proposal, the authors envision a strengthened role for the states in the implementation of treaty obligations. State courts could develop individual "common law"-type approaches to the interpretation of treaty obligations, subject to presidential override when necessary. For example, the Convention on the Form of an International Will requires countries to alter their probate laws to recognize an instrument for an international will. After signing and ratifying the Convention, the federal government left the question of how to implement the changes (affecting probate law, a traditional state domain) to the states. Some states passed legislation implementing the treaty and others did not. According to Ku and Yoo, this approach better honors the United States' federalist tradition and gives states the necessary leeway to determine how international legal obligations will play out in the local context. But the authors do not adequately address the objection that having as many as fifty state-specific interpreta-

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tions of treaty obligations defeats the purpose of treaties being enshrined in the Supremacy Clause of the U.S. Constitution. If each state can decide for itself how to implement an obligation (or even *if* it should be implemented), the notion of the executive branch being the sole voice of the nation in foreign affairs seems to lose its meaning.

Beyond these specific objections, readers who view the development of international law in a positive light will likely take issue with the authors' view that treaties and international organizations are a threat to the United States and its constitutional system, a view that is fueled by a palpable distaste for the European model of collective governance. The authors' policy prescriptions are unquestionably bold and certain to spark critical thought and debate regarding the long-term effects that globalization may have on constitutional principles. They remind us that the resilience of the United States is due in part to its observance of the Constitution and responsiveness to the will of the people, and thus caution is in order when entering into regimes that depart from these principles. But I question whether "taming" globalization will also result in other countries following the United States' lead and curbing their involvement in international regimes, thus "taming" the expectations that international law has placed on governments—such as respecting human rights, preserving the environment, and refraining from the use of force. While this might comport with a formalist conception of the Constitution, it would be quite the bittersweet victory.

*Modern Chinese Legal Reform: New Perspectives.* Edited by Xiaobing Li and Qiang Fang. Lexington, Kentucky: The University Press of Kentucky, 2013. Pp. xxx, 284. \$60.00 (hardcover).

REVIEWED BY QUAN ZHOU

China's rapid socioeconomic transformation of the past twenty years has led to dramatic changes in its judicial system and legal practices. As China's international influence has increased, the global community has dedicated more resources to understanding the country's evolving democratization. Although Chinese policymakers have identified the expansion of civil liberties and long-term legal reforms as essential to the

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nation's acceptance as a global player, there remains a gap between the government's promise of legal reform and the realities of legal practice in China. In *Modern Chinese Legal Reform: New Perspectives*, Xiaobing Li and Qiang Fang seek to provide a better understanding of China's post-1978 economic, political, and social transitions by examining the country's legal system, identifying the contradictions in Chinese policy making, and explaining the dilemma Beijing faces. By organizing the chapters under three general headings—China's approach toward the rule of law, legal reform, and civil liberties and human rights—the editors also try to explore the persistent problem in China's legal reform: The ruling party remains largely above the law and has often violated the law.

Part I consists of three essays which examine the Chinese government's ongoing efforts to construct the rule of law. First, Qiang Fang studies the role of state-run media in China's efforts to attain the rule of law. Fang centers his research on the Chinese Communist Party's (the "Party") newspaper *China Youth Daily* and argues that the newspaper's role, in conformity with the Party's goal of moving toward the rule of law, has evolved accordingly, from a staunch mouthpiece, to an elementary educator of law, and finally to a commentator on the problems of the legal system. Fang argues that legal reform has not weakened the Party's control over public media. Instead, newspapers continue to serve as a loyal tool of the Party and have acted closely in accord with the Party's policies. Although Fang's assertion is essentially correct, he places too much emphasis on this party-run newspaper instead of providing examples from privately-owned newspapers, which in recent years have offered a different voice from the Party.

Next, the political scientist Yuchao Zhu addresses the problem of disparity between written law and actual practice, which Zhu terms "deviation in law practice." Zhu argues that China's efforts to establish the rule of law are problematic because of serious deviation, which he attributes to the internal problems of China's legal and political systems. As an example, the author identifies the judiciary's subordination to Party officials, which is achieved through political restrictions on judicial appointments and control over the judiciary's budget. Zhu also suggests an intrinsic incompatibility between a one-party state and the rule of law. Like Yuchao Zhu, Xiaobing Li also looks at the gap between the promise of the Chinese Con-

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stitution—which technically provides the right to free speech—and its actual enforcement. Li demonstrates that although the Chinese government has adopted some measures for respecting and safeguarding political and human rights, these promises have not played out in reality.

Part II of the volume offers a specific assessment of several important aspects of legal reform. For example, Jieli Li characterizes the government's different legal policies on the economic and political sectors as a "double-track social-legality," and contends that the Chinese government has pursued legal formalization in the areas of the economy and commerce, while retaining administrative control over politics and ideology. Li concludes that the nature of the current double-track legality in China will trend toward the rule of law with Chinese characteristics (the Party is largely above the law), which suits single-party socialism. To support his idea, Li explores the limited efficacy of new labor laws, as well as the tug-of-war between the government and dissident lawyers. But a stronger case, which Li fails to examine, lies in the sharp contrast between rapidly developed commercial law and China's untouched constitutional law.

Meanwhile, Yunqiu Zhang probes the development of Chinese labor laws in the context of globalization. Although the Party has developed comprehensive labor law reform, Zhang finds that there are several crucial omissions that threaten to compromise the efficacy of this reform. Specifically, China has yet to incorporate the core labor standards of the International Labor Organization, including freedom of association. There is also a close relationship between China's legal reform and its entry into the World Trade Organization (WTO). In his essay, Xiaoxiao Li studies the enormous efforts by the Chinese government to conform to the requirements of the WTO after China joined the organization in 2001. Li argues that the WTO offers the best opportunity for China to reform its legal system and establish the rule of law. Li concludes that China has done much to adapt itself to the requirements of the WTO, and he hopes that the Chinese government will further diminish its interference in trade. Li's study also offers strong support to Jieli Li's proposition that the Party is in pursuit of double-track legality. While the Party is conservative about political reform, it appears willing to over-

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haul the country's commercial law in order to avoid trade conflicts.

The institution of the death penalty for economic crimes is relatively new in China. As Liying Li's chapter shows, in 1979, only two of the twenty-eight capital crimes were economic in nature. But in 1997, economic crimes such as bribery, currency speculation, and tax fraud became punishable by death. Li explores the debate between scholars who are concerned by this increase and an angry Chinese public that overwhelmingly supports harsh punishment of corrupt officials. Li takes note of the Party's balancing plans (appeasing the public's anger by reducing the sentences for economic crimes) but predicts that China's new direction will leave dilemmas, such as the large number of executions and lack of government transparency, unresolved. Li hints at the notion that single-party dominance created this conundrum, but fails to explore this problem further. In addition, while Li mentions that public opinion still plays a role in the Party's attitude toward the death penalty (a phenomenon dating back to Mao's time), he fails to analyze this in the context of modern China, where the Party struggles to placate a public that is increasingly frustrated with inequality.

Bin Ling and Liqun Cao question the Chinese government's current policies on drug abuse and prostitution, which have deep historical roots. The authors note that the government has addressed these social vices with an iron fist, but argue that this harsh policy has failed to repress drug abuse and prostitution. Using Western models, particularly the U.S. model, they recommend that the Chinese government abandon its draconian policy and adopt a more sensible approach given that social vice is an inevitable part of society. The authors' advocacy of lenient treatment is not novel, as the government faces constant pressure to reduce sentencing in its criminal statutes. Moreover, they fail to make a cogent argument that draconian criminalization is ineffective. The authors mention that both problems were eliminated in the early years of the PRC. Yet after economic reform, drug abuse and prostitution reemerged and increased sharply despite harsh punishment. On the other hand, this conclusion does not necessarily follow, given that the situation might have been worse without those harsh policies. Moreover, the authors fail to produce a

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comparative study on the effectiveness of Western Europe's more lenient policies.

Part III includes two chapters exploring freedom of the press and human rights. Addressing the topic of human rights, Yuchao Zhu acknowledges the efforts made by the Chinese government toward legal reform, but shows that crucial instruments, such as the constitution, criminal procedural laws, and administrative laws, have failed to protect human rights. Nevertheless, Zhu finds positive trends in China's legal reform: Although China subordinates human rights to economic reform, legal reform has heightened people's consciousness of their rights, and Chinese society has taken steps through media groups and citizens' open petitions to press the state to move toward greater human rights protection. To better protect human rights, Zhu suggests the need for a change in the legal institutions and the prudent or even conservative treatment of the current legal system. Although this conclusion is a bit superficial, Zhu still provides interesting insight into the interaction between legal and political reform.

As we know, freedom of speech is an important constitutional right and key to the rule of law. Xiaobing Li discusses the Chinese government's control over the public media in his chapter. Although the public's access to information has improved, the Party has taken several measures, primarily censorship of sensitive topics, to maintain strict control over the media. The Party has also increased its censorship in cyberspace. Li calls for the Chinese government to respect people's constitutional rights; this, however, remains a hollow solution to the problems faced by the Chinese people. Furthermore, the author fails to pay attention to how the citizenry has used the Internet to influence the free speech debate. Internet users, although facing stringent censorship, have been able to shed light on sensitive topics including corruption within the Party, and the Party has been forced to respond.

Overall, *Modern Chinese Legal Reform* provides Western readers with a good sense of China's legal reform by focusing on a range of problems encountered by the Chinese government, and the editors were wise to include authors from a variety of disciplines such as political science, history, and law. While many authors in the volume allude to the underlying problem of one-party rule and attribute these challenges to the Party's unwillingness to grant political reform, they fail to

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expand upon that argument and therefore avoid addressing the hard question about how best to promote democratization in China. As a result, their suggestions for reform will largely be ineffective. As some authors noted, without effective political reform, the Party will continue breaking its constitutional promises and remain above the law. As a result, the legal reform promised by the Party will remain a hollow one. On the other hand, as Jieli Li argues, the Party is carrying out its double-track legality policy, bargaining away the constitutional rights of Chinese people in exchange for economic progress. The book does devote one chapter to the WTO's impact on China's legal system, but it could provide a better picture for the readers through a more thorough analysis of China's rapidly changing commercial law. In spite of these weaknesses, *Modern Chinese Legal Reform* is an informative read and is useful in identifying issues related to China's legal reform.

*Ending Wars Well: Order, Justice, and Conciliation in Contemporary Post-Conflict.* By Eric D. Patterson. New Haven, Connecticut: Yale University Press, 2012. Pp. xi, 206. \$55.00 (hardcover).

REVIEWED BY MEGHAN RAGANY

Since the 1990s, there has been an increasing awareness of the challenges of ending violent conflicts and establishing sustained peace. A pattern of intractable conflicts in recent years has challenged those in the field to develop new strategies for addressing late- and post-conflict situations. *Ending Wars Well: Order, Justice, and Conciliation in Contemporary Post-Conflict* by Eric D. Patterson seeks to provide a policy framework for confronting the various challenges that arise in post-conflict situations through the lens of just war theory, a school of thought that provides an ethical foundation for the laws of armed conflict. Patterson argues that establishing peace and stability in post-conflict settings requires focusing on the three principles of Order, Justice, and Conciliation, of which achieving Order should be the primary goal. Patterson's approach fuses an analysis of practical experiences and political realities with an academic consideration of ethics and morals.

This approach is well-suited for Patterson's purpose, which is to provide a framework for practitioners and scholars

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to identify best practices for achieving peace and stability in what is currently a disjointed field. To this end, the book is written in a clear, concise, and accessible manner. Patterson unquestionably succeeds in distilling complex situations and ideas down to a clear, straightforward analysis. The inevitable trade-off, however, is that the book is unable to provide a full understanding of how to address the problems it examines. Further work to flesh out the policy implications of his proposed framework would be a worthwhile follow-up to this valuable volume.

Patterson begins with an exploration of why actors involved in post-conflict situations have generally failed to appreciate the challenges inherent in ending conflict and reestablishing stability, and consequently to develop systematic methods for addressing these difficulties. Patterson identifies a range of factors that may explain this gap between expectations and reality, including the still-prevailing focus on state sovereignty in international law, which stresses principles of non-interference in other states' affairs. Additionally, Patterson notes that Western governments tend to distance themselves from the political processes and clashes occurring in the developing world or have unrealistic expectations about the pace of political and economic reforms in post-conflict settings. Patterson's analysis, while helpful for those who lack context regarding post-conflict stabilization and reconstruction, is a bit reductionist in its approach. It tackles complex ideas such as the effects of globalization and Western values in a way that requires broad generalizations. Ultimately, this section will be useful for those operating within the context of Western support for countries recovering from armed conflict but who are not particularly familiar with the underlying development themes discussed.

Next, Patterson draws on the principles of just war theory to posit a concept of *jus post bellum* that draws on the same ethical principles as *jus ad bellum* (regarding the decision to enter into war) and *jus in bello* (regarding conduct during war). Patterson seeks to integrate pragmatic concerns about the challenges of actually ending a conflict with a workable ethical framework for ensuring justice post-conflict. The bulk of this analysis centers on what Patterson sees as the three components of *jus post bellum*: Order, Justice, and Conciliation. While all three are valuable, Patterson argues that achieving

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Order should be the primary goal since actually ending the conflict is paramount. The third through fifth chapters of the book examine each of these components individually, and include an analysis of the underlying moral principles that should be considered when determining the best course of action in a given situation. Additionally, each chapter provides brief examples of how this analysis applies to a variety of post-conflict situations, ranging from Kosovo to Rwanda to the U.S. Civil War.

Chapter Three stresses Order as the primary goal of *jus post bellum* and argues that efforts to pursue other goals should not take priority over this basic imperative. Patterson effectively breaks down the elements of Order and stresses its achievement as a moral imperative. A reader may be frustrated, however, by the lack of analysis regarding how to establish Order. Indeed, the example that Patterson gives of Kosovo may be exceptional given that he traces the success in achieving Order to a tremendous expenditure of resources and political will by the international community, arising in large part out of the unique circumstances of that situation. Patterson's call for all those involved in post-conflict work to focus on ensuring Order before pursuing other peace-building initiatives may not provide satisfactory guidance for actors who have little control over funding and support for such efforts.

Chapter Four discusses Justice, which Patterson argues should be pursued in some cases when possible, but should always be subordinate to the primary concern of achieving Order when the two are in tension. The obvious question, which Patterson does not answer, concerns how one is to figure out when it is appropriate to pursue Justice. Aside from this question, the chapter is particularly notable for its clear definition of the concept of Justice, which has otherwise come to encompass so many concepts as to lose a great deal of meaning in the broader discussion of post-conflict resolution. Whereas conceptions of justice frequently include transformative and redistributive aspects, such as reforming unequal social structures and facilitating long-term healing and forgiveness, Patterson defines Justice narrowly in terms of responsibility and deserts. In defining Justice, Patterson divides the concept into the categories of restitution (recompense for victims, primarily through financial reparations) and punishment (imposing penalties on perpetrators of wrongdoing during the conflict).

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Patterson also brings clarity to the concept of Conciliation in the fifth chapter. Literature on conciliation/reconciliation, as Patterson recognizes, suffers from a great deal of imprecision. In particular, Patterson argues that this literature conflates Conciliation at the individual level with the strategic, interest-based processes of Conciliation that occur on the level of national and international politics. Patterson discusses the latter as his third component of *jus post bellum* and argues that the pursuit of pragmatic Conciliation processes that are focused on coexistence at the societal level can bolster Order, and possibly Justice. Instead of highlighting elements such as forgiveness that are often emphasized in discussions of Conciliation processes, Patterson emphasizes tactics such as truth-seeking, which can provide a way to advance beyond retributive justice, reintegration of combatants into society, and forging alliances that create new strategic relationships among countries or groups that were formerly enemies. The common thread among these tactics is that they are intended to have a practical impact on the stability of the society, regardless of people's individual experiences of conflict. Patterson is successful in outlining a coherent concept of Conciliation but, again, Patterson does not address when and how the need for Conciliation processes can be recognized and how they can be successfully carried out.

After laying out the concept of *jus post bellum*, Patterson contrasts his framework with other approaches to post-conflict stabilization, including transitional justice, human rights, and the role of international law and international organizations. The comparisons effectively highlight the underlying assumptions, goals, and strategies favored under these different approaches in a way that provides a clear understanding of how a practitioner's particular orientation can influence the strategies pursued post-conflict. For instance, Patterson argues that transitional justice approaches are frequently employed in the context of a transition from authoritarian government and thus tend to focus on establishing a democratic regime, which may or may not be appropriate in all post-conflict situations. Patterson concludes that, while many of the approaches provided by transitional justice such as truth and reconciliation commissions, can be valuable tools for *jus post bellum*, he argues that differences in context mean that such mechanisms cannot be accepted uncritically. With respect to the field of

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human rights, Patterson also highlights the tension between human rights approaches that focus on maximizing a broad conception of justice, and the *jus post bellum* goal of achieving Order.

While practitioners in different fields may take issue with certain aspects of Patterson's very brief and necessarily broad analysis, this section provides a valuable service by breaking down the underlying goals of each approach, possibly assisting practitioners to better assess the strategies that are most appropriate for different post-conflict contexts. This section also demonstrates the value of Patterson's decision to clearly delimit his theory. In a field where many scholars tend to recommend a medley of approaches to post-conflict stabilization at the risk of not fully developing any of them, Patterson successfully outlines a concise and targeted approach that may be of great value to those working in this field.

Ultimately, Patterson succeeds in his main goal of providing a clear, concise framework for practitioners in various fields to apply principles of just war theory to post-conflict situations. Patterson's framework is persuasively argued and accompanied by a range of practical examples. At the same time, Patterson only provides very general guidance on how his framework can be implemented in specific post-conflict contexts. To gain sufficient insight about how to implement the framework, the reader will unavoidably need to turn to other sources on post-conflict stabilization. Patterson's arguments also raise a host of complex, underlying questions that the book does not seriously address, such as the consequences of tension between the *jus post bellum* framework and dominant international law paradigms. *Ending Wars Well* provides a conceptual framework that practitioners can work within, but its conciseness means that it is likely to raise as many questions as it answers. This book is a valuable resource for any in-depth examination of post-conflict situations, but should not be the only one upon which a reader relies.

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*The Concept of Unity in Public International Law.* By Mario Prost. Portland, Oregon: Hart Publishing, 2012. Pp. vii, 218. \$104.00 (hardcover).

REVIEWED BY VANESSA I. GARCIA

International law has always been a complex and somewhat elusive concept, and scholars continue to debate the degree to which international law should be considered a legitimate and autonomous body of law. This discussion has been further complicated by the impact of globalization. “Fragmentation” is how Mario Prost characterizes the effect that globalization has had on international law scholarship in his book, *The Concept of Unity in Public International Law*. Although there is debate as to the source of fragmentation within international law, Prost argues that, “the established vision of international law as a unitary whole is under threat.”

Many scholars have written about the realities of fragmentation in international law. Prost takes a different tack, however, and argues that in order to discuss fragmentation, scholars must first have a more clearly articulated notion of the concept of unity. Unity, the author argues, is “hardly ever rationalized,” “is more assumed than explained,” and “remains vague and intuitive.” This book is intended to bring some clarity to this concept. Prost does not propose a single, cohesive definition of unity, nor does he make normative claims about “whether international law is or should be unitary.” Instead, the author attempts to dispel the formlessness that surrounds the concept of unity by exploring and comparing five possible meanings of it in international law.

Prost begins by giving the reader some background on the concept of unity to help “define, delimit and problematize” what he means by the concept. First, Prost considers the powers of perspective and perception on how one defines the concept of unity in an effort to explain that, contrary to intuition, unity is impossible to delineate fully and does not have one clear, agreed upon definition. This is an obvious point that many academics seem to have overlooked. However, Prost makes a secondary point in order to advance his main argument: In order to engage in a productive conversation on the nature of fragmentation, one must first establish a common understanding of unity, something that Prost argues scholars

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have failed to do. Prost provides a much-needed service by exposing this overlooked gap in the way international law scholars conceptualize their field. Through the use of concrete examples, he paints a vivid picture that makes obvious the fundamental disconnect that exists between the debate surrounding fragmentation and the lack of a common foundation from which to expand on this debate.

In the second part of the book, Prost critiques the “conventional discourse on international law’s unity.” Prost examines the two characterizations of unity most typically used in the literature—material unity and formal unity—and breaks them down. Material unity is most often discussed as a “unity of norms” or as a lack of conflict of norms. Prost highlights how the very notion of a conflict is not universally understood or defined. If norms mean different things to different people, then it follows that the same set of circumstances could possibly represent unity to one person and not to another.

Formal unity represents the idea that there is a coherent ordering system to international law with primary norms and secondary norms. Prost argues that this conceptualization is limited and that it disregards the many other dynamics at play in international law. Prost gives significant attention to the many moving parts that make up what is thought of as international law and calls into question what he perceives to be an almost blind reliance by current scholars on an intuitive understanding of unity without the establishment of a common starting point. In dissecting these two positivist characterizations of unity, Prost raises a wide range of complex questions, and effectively demonstrates that the unrecognized conceptual confusion around unity has inevitably interfered with effective debate over the nature of fragmentation.

In Part Three, Prost presents several possible ways to frame the concept of unity that he argues would more successfully establish a common starting point for discussion. In this section, Prost moves away from the positivist constructions of unity that are most often relied upon by scholars in the fragmentation debate today and explores what it means to think about the unity of international law from a non-positivist standpoint. For Prost, “[i]nternational law is as much a system of rules and institutions as it is a system of thought, communication and values.”

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The first conception that Prost puts forward is that of “cultural unity.” The cultural unity of international law refers to a common *method* of communicating and developing norms rather than the unity of substantive law or formal legal arrangements. The second and third conceptions are two forms of logical unity: what Prost calls “epistemo-logical unity” and “axio-logical unity.” Logical unity is the idea that “the unity of international law stems not from the compatibility between legal norms but rather from the transcendence of positive rules.”

Given that much of the scholarship about fragmentation lacks a clear and thoughtful analysis of the current conceptualization of unity, Prost’s alternate conceptions of unity are refreshing and engaging. It is in this section that Prost does the most to try to shift how we think about the concept of unity. He suggests approaches that involve totally “new objects, new forms and new criteria of unity.” The new “visions” of international law’s unity appear radically different from what most scholars incorporate into their analyses of fragmentation. At the core of his conceptualization of unity is the notion of approaching international law from a broader perspective; one in which the harmony and synchronicity of processes and interactions are far more significant than the smaller details of substantive law. The author challenges readers to open their eyes to a completely new way of thinking about unity in an effort to enable international law to move forward in a stronger and more unified way.

Overall, Prost is largely successful in achieving the goals of this book. He effectively demonstrates the importance of establishing a common understanding of unity in order to move forward the discussion on fragmentation in international law. He delivers his argument artfully and clearly. The book is an accessible read that provides a change of pace for the legal scholar and invites the reader to contemplate the fundamental issues that influence how international law develops. It does not provide any answers for the correct formulation of unity itself, but that is not the goal of the book. Instead, it sets the stage for further development of the concept of unity in international law and encourages scholars to first determine a common framework and understanding of unity, whatever that might be, before engaging in debate about fragmentation.

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*Reconstructing Marriage: The Legal Status of Relationships in a Changing Society.* By Caroline Sörgjerd. Portland, Oregon: Intersentia Publishing, 2012. Pp. vii, 356. \$112.00 (paperback).

REVIEWED BY SYLVI SAREVA

In *Reconstructing Marriage: The Legal Status of Relationships in a Changing Society*, Caroline Sörgjerd seeks to uncover the “essence of marriage.” Through an in-depth analysis, Sörgjerd goes beyond classical legal inquiry to consider the ways in which the regulation of marriage reflects the cultural, historical, and symbolic dimensions of the institution. Exploring the cultural evolution of marriage in Sweden over the course of the past three centuries, Sörgjerd argues that the values that society attaches to marriage are just as important to understanding the institution as its function as a legal contract or a civil status. Sörgjerd examines various cohabitation models and surveys the historical developments in family law—including the recent extension of marriage to same-sex couples. In doing so, she emphasizes the distinction between two well-established functions of marriage—marriage as a legal contract and marriage as a civil status—and reveals how the recent gender-neutral marriage enactment expresses a shift back to an emphasis on the latter. In addition, Sörgjerd’s research contextualizes the legal developments that led to the recognition of marriage for same-sex couples in Sweden within an international framework. Unlike typical legal studies, Sörgjerd examines the issue from a number of disciplinary perspectives and demonstrates how changes in societal values and opinions influence the institution’s purpose and cultural meaning as reflected by national legislation, placing a particular emphasis on developments in society’s attitudes toward same-sex relationships. Similarly, while most legal scholarship on marriage tends to emphasize the role and function of the institution as a legal contract, *Reconstructing Marriage* suggests that the symbolism attached to marriage may affect the legal effects thereof, and that legally equal institutions can have different symbolic connotations.

Sörgjerd begins by outlining the historical development of Sweden’s marriage laws with each chapter focusing on a relevant enactment. Rather than simply considering the effects of

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the particular enactment on marriage as a legal contract, Sörgjerd surveys the specific interests, needs, and legal considerations extending from financial and religious considerations to an added interest in non-marriage cohabitation that gave rise to the enactment at the time of its ratification. Through this analysis, Sörgjerd conveys how these societal and legal trends influenced marriage through the liberalization of the institution itself.

In Chapter Two, Sörgjerd discusses the Code of 1734, which mandated that a marriage be officiated in the Swedish Evangelical Lutheran state church in order to achieve valid legal status. Sörgjerd notes that the Church of Sweden had a monopoly both on concluding marriages and establishing the prevailing moral standards regarding family life and sexual relationships. She argues that these monopolies led to the prominence of religious values in marriage regulation throughout the eighteenth and nineteenth centuries, a period during which a theoretical distinction between ecclesiastical and civil law had little practical importance. Sörgjerd effectively illustrates how religious influence on social values formed the basis for a legal understanding of marriage as a divine institution.

In Chapter Three, the author focuses on the Marriage Code of 1920, which replaced the Code of 1734, and the ways in which it reflected changing societal values. Most notably, the Code granted women full legal capacity such that spouses had equal rights and obligations as to one another, their property, their children, and divorce. Sörgjerd explains that the Marriage Code of 1920 was enacted at a time when society was gaining a new appreciation of equality between men and women. The new law was also notable because it introduced the notion of marriage as a private affair rather than an issue of state or church concern. However, Sörgjerd notes that while these modern values set the ideological basis for social and legislative changes to come, at the time, they were largely irrelevant in practice. For example, married women, though technically “equal” to their husbands, continued in their traditional roles, working at home and raising children while men provided for the family financially. Sörgjerd also demonstrates how the Marriage Code of 1920 actually protected these traditional roles, as it essentially required men to support their wives during marriage. Sörgjerd references similar developments throughout Scandinavia, noting that a shared culture,

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geography, and history led to the development of a unique model of marriage common to all Nordic countries: the “pioneers” of the principle of equality between spouses.

Chapter Four explores the “family law revolution” of the 1960s and 1970s. Sörgjerd places particular emphasis on a series of 1970s enactments that largely secularized Swedish marriage law and increased spousal autonomy by simplifying considerably entrance into, and exit out of, marriage. Sörgjerd notes that societal factors such as increased cohabitation outside of marriage contributed to the shift towards a broader definition of marriage. In this chapter, Sörgjerd also examines the now-abolished “faithfulness criterion” of the Marriage Code of 1987, which required spouses to “show faithfulness and consideration for one another” and to “jointly take care of their home and children and in consultation promote the best interest of the family.” Sörgjerd suggests that a symbolic dimension of marriage remained and that it continued to be seen as an institution governed by special values that distinguished it from other legal contracts or forms of cohabitation.

Chapter Five explores this symbolic dimension further: Sörgjerd describes the Cohabitee Enactments of 1973, 1987, and 2003, which were special family law enactments that both granted rights and imposed certain rules on unmarried cohabiting couples. While cohabitation is not an independent civil status like marriage, Sörgjerd notes that the Cohabitee Acts delineated certain “status features” that were thought to promote stability while nevertheless keeping cohabitation distinct from marriage. For example, Sörgjerd explains that cohabitation might imply a degree of commitment and stability not present between a boyfriend and girlfriend in a “regular” relationship. Sörgjerd also considers the impact that increased cohabitation has had on marriage, arguing that while it is possible to view the Cohabitee Acts as undermining the institution of marriage, such considerations are irrelevant from a legal point of view, since societal values have evolved to encompass cohabitation. Thus, Sörgjerd argues that the primary goal of legislation should not be to maintain a clear distinction between cohabitation within marriage and cohabitation outside of marriage. Instead, Sörgjerd notes that, because cohabitation without marriage has become a legally recognized cohabitation model, promoting equity when such cohabitation ends is in the public interest.

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Chapter Six looks to the 2009 gender-neutral marriage regulation, which opened up marriage to same-sex couples, to further illuminate the impact that shifts in social attitudes have had on the core values attached to marriage. As in the other chapters, Sörgjerd convincingly relates the modern enactment to prior historical enactments by using earlier analysis to create a backdrop for the 2009 enactment. She also examines key events, such as the Cohabitee Act and a ruling by the Swedish courts awarding a lesbian mother child custody, that led to the official acceptance of homosexuality and its eventual legal recognition. Similarly, Sörgjerd examines the religious reaction against a gender-neutral marriage concept, noting that the Church of Sweden's notion of marriage as a union exclusively between a man and woman might still influence the value Swedish society attaches to marriage. In addition, Sörgjerd uses the gender-neutral marriage regulation to examine the differences between marriage and registered partnership, once more signaling the symbolic value and status function of marriage that contribute to its perceived superiority vis-à-vis other forms of relationships. In considering the impact of the enactment on the institution of marriage, Sörgjerd argues that same-sex marriage may in fact strengthen the institution by keeping it up-to-date with modern values.

After bringing us to the present, Sörgjerd next compares Sweden's experience with social and legal changes to marriage with the broader European experience. The legal status of same-sex couples is a highly contentious issue in international law. More than two-thirds of the Member States of the European Union have recognized or are in the process of preparing legislation that will recognize same-sex couples by statute. Other European jurisdictions specifically limit the definition of marriage to opposite-sex couples. Across the globe, many jurisdictions still criminalize homosexual behavior, and the issue of marriage equality has gained increasing importance as a question of international human rights. In her analysis of the European experience, Sörgjerd considers the controversial issue of same-sex marriage from the perspective of family law, placing society's attitudes toward same-sex couples in the wider context of changing values concerning the institution of marriage as reflected by substantive regulations.

In Chapter Seven, Sörgjerd examines marriage in Spain and the Netherlands in order to contrast Sweden's legal devel-

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opment concerning same-sex marriage with two jurisdictions that have enacted similar gender-neutral legislation, but in the context of different social, historical, and religious backdrops. The analysis reveals that despite differences in each country's legislative methods and the primary legal effects of various family law enactments, in each case, the ultimate legal development has been the recognition of gender-neutral marriage. Sörgjerd also touches upon same-sex marriage and registered partnerships in the Nordic countries, noting that Nordic legal cooperation and a desire to be the "most progressive" has led to similarities in Nordic legal reform. Although the chapter provides an interesting perspective on the development of legislation recognizing same-sex partnerships, Sörgjerd falls short in locating a comparison that contributes to the reader's understanding of the essence of marriage in general. Rather, the analysis simply provides an additional angle on the previously established analysis. In particular, it is unclear how this comparison contributes to her underlying argument as to the symbolic dimension of marriage beyond the observation that the experiences of Spain and the Netherlands show that the Swedish experience is not unique.

Chapter Eight explores the impact of the shift in European human rights doctrine toward the legal recognition of gender-neutral marriage. Through the examination of multiple E.U. treaties and various court cases, Sörgjerd illustrates that many developments that have occurred in various European jurisdictions have also occurred at the broader E.U. level. Sörgjerd refers to E.U. developments that defined "family members," such as the Regulation of 1968, which sought to encourage the free movement of workers, and the Citizens Directive, which expanded this principle of free movement to all E.U. citizens. Similarly, she discusses key decisions by the European Court of Justice that emphasize the European Union's fundamental principle of non-discrimination and chart the European Union's move toward an extended concept of family, particularly with regards to same-sex couples. Sörgjerd successfully ties the analysis back to the issue of the "special value" of the institution of marriage; Sörgjerd argues that because of the persistent stigmatization that LGBT people have faced throughout history, this symbolic recognition of their relationships afforded by access to marriage is particularly valuable.

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Sörgjerd concludes with an analysis of the diversity and elasticity of the institution of marriage. She summarizes the transition of the institution from civil status to contract and back again by noting that while Swedish legal reforms since the 1970s sought to minimize the effects of the moral values incorporated in earlier regulations and thus emphasized the “legal contract” function of marriage, the gender-neutral marriage enactment of 2009 brought the importance of marital status back to the forefront. Sörgjerd further summarizes the symbolic dimensions of marriage that imbue it with values that extend beyond the legal domain. Finally, Sörgjerd considers whether the institution of marriage has a future, addressing arguments for and against the abolition of marriage. Sörgjerd concludes by reiterating that marriage remains the archetype of a virtuous and secure relationship because of its symbolic dimension that connotes such qualities as a life-long relationship founded on love and respect. In short, *Reconstructing Marriage* provides readers with a unique perspective on marriage that seeks to examine more than its mere legal implications.

*Women and Transitional Justice: The Experience of Women as Participants*. Edited by Lisa Yarwood. London, UK: Routledge, 2013. Pp. v, 216. \$145.00 (hardcover).

REVIEWED BY EMILY KENNEY

Lisa Yarwood’s *Women and Transitional Justice* examines transitional justice—the range of mechanisms and processes that can be used to address large-scale past abuses—from the perspective of women. The various authors’ works illustrate the dearth of women’s voices in past transitional justice processes, as well as the potential of transitional justice to transform patriarchal social structures and improve women’s lives in post-conflict, post-colonial, and post-authoritarian societies. Yarwood has cultivated a geographically diverse group of authors, with backgrounds as practitioners and academics. Transitional justice is a field that is expansive and ever expanding, and Yarwood’s goal of describing and analyzing women’s roles within the field as beneficiaries, protagonists, participants, and practitioners is ambitious. Considering this ambition, the book is remarkably short, consisting of only nine chapters. Although each chapter makes unique contributions

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to the field of transitional justice, for some readers, the anthology may paint a somewhat confusing and disjointed picture of what transitional justice is, and how women participate in it.

As a field, transitional justice is often conceived of as incorporating four interrelated yet distinct types of mechanisms and processes: truth-seeking, criminal justice, reparations, and institutional reform. Many of the chapters in *Women in Transitional Justice* focus on women's participation in criminal justice, with little attention paid to truth-seeking and institutional reform—areas where women have been critical forces and are deserving of attention in a book such as this. Women also feature primarily in the anthology as beneficiaries and participants of transitional justice mechanisms; the book largely ignores the women who shape transitional justice policy as practitioners. Although the book sets out to provide an all-encompassing view of women in transitional justice, the result is much more modest—but important, nonetheless.

Transitional justice mechanisms are usually implemented in developing countries that are emerging, or seeking to emerge, from conflict or authoritarian regimes. In this context, Yarwood makes a confusing editorial choice to propel the reader directly into one of the less-familiar areas of transitional justice, beginning the collection with her own chapter on the use of reparations in a *developed* country, New Zealand, to address past abuses against the indigenous Maori population. The chapter provides a detailed description of Maori women's experiences with transitional justice in a post-colonial setting, and shows how women's voices were critical to ensuring that New Zealand's "claim settlement" process focused not only on financial compensation for past harms, but also on addressing some of the underlying causes of discrimination in modern New Zealand. This chapter surely belongs in the anthology, but appears starkly out of place at the start of a book with such an expansive scope.

With Chapter Two, Amy Barrow broadens the book's narrative, exploring the mainstreaming of gender in transitional justice processes generally, through the implementation of four U.N. Security Council resolutions on women, peace, and security: Resolutions 1325, 1820, 1888, and 1920. Barrow suggests that, although these resolutions make an important contribution toward guaranteeing women's participation in transitional justice mechanisms, they lack the sophistication to truly

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transform women's lives in post-conflict societies, and are not radical enough to shift patriarchal social structures in the private sphere. As Barrow explains, women in transitioning countries are not only seeking redress for past abuse perpetrated by the state, but also for violations committed within the private realm. For women, part of transitional justice is a guarantee that violations will not recur, which can only be accomplished through a dramatic shift in social attitudes toward women, both in the public and private spheres.

Chapter Three, by Annelotte Walsh, is the first of the book's three chapters that examine women's participation in criminal justice proceedings. Walsh's chapter focuses on the participation of girls in international criminal justice, reminding the reader that age *and* gender-sensitive criminal proceedings are necessary to truly provide redress for girls affected by human rights abuse. The editor then interrupts the flow of the three criminal justice-focused chapters, inserting Chapter Four, by Sarah Maddox, on women refugees' participation in transitional justice. In this chapter, Maddox walks the reader through three interviews conducted with practitioners who have worked with refugee women from transitioning countries. Maddox's sociological approach—an in-depth description of her interviews—provides rare insights into the concerns of refugee women from transitioning countries, but struggles to fit in with the book's other chapters, which tend to be more historical and policy-oriented.

The collection then returns to its criminal justice theme; in Chapter Five, Caroline Fournet discusses the adjudication of sex crimes in international criminal law, and in Chapter Six, Clotilde Pégrier chronicles the experiences of female rape victims at the International Criminal Tribunal for the Former Yugoslavia (ICTY). These chapters feature considerable overlap. In particular, Fournet delves into a multi-page explanation of the differences in the prosecution of rape at the ICTY and the International Criminal Tribunal for Rwanda (ICTR)—an explanation that Pégrier repeats (albeit in less depth) in Chapter Six. Reading both chapters in one sitting, one is left confused as to why the two authors did not collaborate on a single chapter on the prosecution of sexual violence, with a case study on the ICTY.

Chapter Seven, by Lauren Fielder, is the book's lone chapter focusing on the area of transitional justice that seeks

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to reform state institutions, including the judiciary, which have perpetrated or been complicit in past human rights abuse. Fielder examines the role of constitutional courts in transforming customary international law to account for considerations of gender equality, concluding that women can use constitutions and the courts to challenge the view that “culture” is a static concept that does not contemplate women’s rights. Fielder’s inquiry is particularly useful in light of the new constitutions currently being drafted around the world, allowing the reader to contemplate how women can use progressive constitutions to advance women’s positions in traditional and religious societies.

In Chapter Eight, co-authors Catalina Diaz and Iris Martin return to the book’s first theme: reparations. Diaz and Martin describe Colombia’s reparations process, which took place through the country’s “Peace and Justice” criminal proceedings. This process was able (despite certain failings) to incorporate many of the concerns that women’s groups raised. This chapter highlights the importance of looking at women as more than vulnerable victims, and empowering them to make valuable contributions to transitional justice, thereby improving transitional justice’s capacity to transform a society.

The book closes with a single chapter on what is perhaps the most “traditional” aspect of transitional justice: the truth commission. Julissa Mantilla Falcón describes the gender approach of the Peruvian Truth and Reconciliation Commission (TRC) in a poignant close to the book. Falcón laments the still-androcentric approach that the international community takes toward transitional justice, while at the same time providing an uplifting contrast through an exploration of the gender-sensitive approach that the Peruvian TRC ultimately took in its work. Falcón reminds us that transitional justice that transforms gender relations is possible, but still too often only occurs as a result of hard-fought battles by concerned women’s groups and individuals.

*Women in Transitional Justice* makes a valuable contribution to the field, adding a gender perspective to a conversation where—as many of the book’s chapters highlight—it is often missing. However, a reader who is seeking a more coherent discussion about the basics of gender and transitional justice might be well advised to look elsewhere. Yarwood’s seemingly arbitrary placement of some of her chapters, the under-em-

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phasis on some of the more important areas of transitional justice—particularly, truth-telling and institutional reform—and the repetition of the chapters focused on criminal justice, might leave someone unfamiliar with foundational concepts in transitional justice confused about the field. The collection, while lacking the breadth and depth to fully describe the diversity of women’s experiences with transitional justice, is nonetheless an important step in a conversation that scholars and practitioners must continue to have about the importance of ensuring that transitional justice mechanisms are capable of truly transforming societies for *all* of their members.

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