BOOK ANNOTATIONS

Habeas Corpus in Wartime: From the Tower of London to Guantanamo Bay. By Amanda L. Tyler. New York, NY: Oxford University Press, 2017. Pp. xiii, 450. $85.00 (hardcover).

Reviewed by Lynn Bager

Amanda L. Tyler provides a comprehensive historical account of how the interpretation and invocation of the writ of habeas corpus has evolved throughout Anglo-American history. Tyler's analysis begins by tracing the writ from its common law beginnings in England to its statutory codification in 1679. This history supports Tyler's central contention that English jurisprudence profoundly impacted the inclusion and original perception of the Suspension Clause, and thus the concept of habeas corpus, in the U.S. Constitution. Tyler draws upon this history to argue that the Suspension Clause was understood by the Framers to "prohibit the government, in the absence of a valid suspension, from detaining persons who can claim the protection of domestic law outside the criminal process, *even in wartime*." In the modern era however, American jurisprudence and governmental action have strayed from this original understanding of the Clause, and it is unclear if this traditional interpretation will have any impact on the American understanding of habeas corpus in the future.

Tyler provides the reader with an in-depth description of the Jacobite rebellions and related French invasions that sought to reinstate the Stuart line to the English throne in the late seventeenth and early eighteenth centuries. This history provides context for the types of "[r]ebellion or [i]nvasion" the Framers sought to prevent with the inclusion of the Suspension Clause in the U.S. Constitution. Tyler also provides an account of the first suspension of the Habeas Corpus Act of 1679 during the reign of King William and Queen Mary. In order to address the exigent circumstances of the Jacobite uprisings, King William wished to suspend the Act in the name of public safety. However, he believed that he was legally required to request that the House of Commons suspend the

protections afforded by the Act before taking action. William's deference to Parliament, Tyler argues, demonstrates that the Act "placed significant constraints on the executive's authority to detain persons, even in times of war," because the executive was historically required to communicate with the legislative body before suspending the Act's protections.

Tyler moves on to the Revolutionary War to demonstrate how the traditional lines of allegiance determined the Act's jurisdictional reach. Tyler grounds her central arguments within the context of the dilemma posed by American prisoners held on English soil during the war. This historical backdrop provides the reader with the context necessary to evaluate Tyler's arguments as she contrasts this historical perception of the habeas privilege with the American perceptions of the privilege during the Civil War, World War II, and in the aftermath of the September 11, 2001 terrorist attacks.

During the Revolutionary War, the concept of allegiance served a threshold sorting function; it dictated whether a detainee could invoke the protections afforded by the Act. Though the privileges of the Act were not available to Americans on U.S. soil, Americans were still considered natural-born subjects of England and were required to maintain their allegiance to England. As such, Americans deemed to be fighting for independence were considered traitors and detained. As the war progressed, an increasing number of detainees were transported to England for commitment. Once on English soil, Americans were afforded protections under the Act and could assert their right to a criminal trial within the ordinary criminal process.

However, these local jurisdictional rules caused a political dilemma for the British: they feared that it was unlikely that a trial would lead to a conviction for many of these American detainees. The only other option available to Great Britain was to categorize the American detainees as prisoners of war. Prisoners of war were not eligible for habeas protections, as they were taken out of the ordinary criminal process and were instead subject to the law of nations and the laws of war. However, treating American detainees as prisoners of war, rather than British traitors, would legitimize the colonies as a foreign enemy and implicitly recognize the independence of the American government. Since Great Britain was not inclined to admit defeat in the early days of the Revolutionary War, these

detainees were often exchanged with British prisoners through political channels and returned to America, or kept in squalid conditions on boats docked offshore. This dilemma continued until the war reached a tipping point during the British defeat in Yorktown, after which the British finally categorized American prisoners held in England as prisoners of war.

While this history is complex, Tyler clearly presents these considerations through several case studies. Tyler also adds a gloss on these studies through ample summaries and common themes. These takeaways allow the reader to explore how different facts among the case studies affect the calculus of the Act's jurisdictional reach, and understand the political and international law considerations implicated by the Act's application.

These British historical considerations corroborate Tyler's two central arguments regarding American habeas corpus jurisprudence. First, the English perspective towards the Habeas Corpus Act of 1679 contextualizes the Framer's original conception of the writ of habeas corpus and the Suspension Clause. Second, the privilege of habeas corpus has traditionally limited the executive, so that the executive may only detain an individual outside of the ordinary criminal process after a valid act of suspension by the legislative branch, even during wartime.

However, the historical support for these assertions becomes less clear after Tyler's account of the internment of Japanese American citizens during World War II. Tyler, in an uncharacteristically strong voice, argues that the internment of Japanese Americans citizens was undoubtedly the "most glaring violation of the Suspension Clause in American history." In 1942, Franklin Roosevelt delegated authority to the military under Executive Order 9066 to impose wide-ranging means to intern Japanese American citizens under the guise of "military necessity"—unsupported by any factual basis. Based on Tyler's extensive historical record developed in the preceding three parts of the book, the constitutional violation of this internment is clear. Tyler's arguments for how this egregious violation occurred are convincing. Despite some doubts regarding the internment's constitutionality from then-Attorney General Biddle and other government officials, this exercise of power was effectively unchallenged for several years due to racial con-

siderations, congressional inaction, Roosevelt's willingness to leave questions about the constitutionality of his actions to the Supreme Court, and the Supreme Court's subsequent avoidance tactics and delay.

Tyler also introduces a new concept that overshadows this "perfect storm" of errors: war hysteria. As Tyler notes, public opinion sided with President Franklin Roosevelt, and political pressure led Roosevelt to disregard the constitutional consequences of his actions. Other politicians, too, were swept up in the hysteria and ignored the facts on the ground. There was no evidence of a "rebellion" or "invasion" to justify Congress invoking the Suspension Clause, let alone justify the executive's unilateral emergency measures that detained tens of thousands of Japanese American citizens. The political susceptibility to public hysteria did not wane post-World War II, as evidenced by the congressional override of President Truman's veto of the Emergency Detention Act of 1950. The Act enabled the President to unilaterally declare an "Internal Security Emergency," and arrest and detain individuals—including citizens—based solely on suspicion of a likelihood of spying or sabotage. These knee-jerk political decisions can be likened to the Authorization for Use of Military Force (AUMF), which was enacted within days of September 11, 2011 and also empowered the executive to unilaterally detain suspected terrorists.

Yet, Tyler does not draw this comparison as she moves to the final chapter of the book, which discusses the U.S. perception of habeas corpus in the modern era. After a discussion of *Rumsfeld v. Padilla*, 542 U.S. 426 (2004) and *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), Tyler makes several conclusions about the effect of these recent decisions on the modern-day conception of habeas corpus. Tyler concludes that "the concept of a citizen-enemy combatant recognized in *Hamdi* cannot be reconciled with the understanding of the suspension model that governed up to and during the American Revolution, Founding Era, Civil War, and Reconstruction periods." She also states that both *Hamdi* and *Padilla* are "entirely at odds with the core understanding of what the Founding generation thought they were accomplishing in ratifying the Suspension Clause."

However, unlike the discussion regarding Japanese American internment, Tyler suggests no explanation for this departure from historical precedent, and fails to address a potential

comparison between the two events—that war hysteria may have contributed to both of these inconsistencies. Rather than suggesting that the dominant perspective towards habeas corpus jurisprudence in the United States has permanently evolved from its British roots, Tyler treats both the Japanese-American internment and the detainment of prisoners in Guantanamo Bay as aberrations from the traditional perspective grounded in historical context. However, it is unclear why these exceptions have pervaded during the twentieth and twenty-first centuries. This disappointing omission also fits into a larger critique of the book. It is unclear how the historical conceptions of habeas corpus affect its present-day application. While Tyler transitions from one era into the next with a few sentences at the end of each chapter, the overview given to the reader is incremental and limited. There are no direct connections established between the Habeas Corpus Act's earliest beginnings to its modern-day applications. The reader must read through hundreds of years of history in order to make any connection to the present era, only to be confronted with an explanation that completely derails the two foundational arguments running throughout the preceding ten chapters of the book.

The U.S. Supreme Court continues to depart from the historical conception of the habeas corpus privilege in *Boumediene v. Bush*, 553 U.S. 723 (2008). In *Boumediene*, the Court inexplicably focuses on the *common law* writ of habeas corpus, rather than the *statutory* writ derived from England's Habeas Corpus Act of 1679. As a result, the *Boumediene* Court views habeas protection as a fundamentally procedural right and ignores the substantive limitations on the executive historically required by the statutory writ. Yet, the entirety of the book focuses solely on the enormous influence of the statutory writ on American habeas corpus jurisprudence and the Suspension Clause; the common law writ is introduced only briefly as background material. Unfortunately, Tyler does not discuss why the *Boumediene* Court may have disregarded the historical underpinnings of the statutory writ in favor of the common law writ. Tyler instead argues that the Court's exclusive focus on procedure improperly "blur[s] the line between the Court's Suspension Clause jurisprudence and its modern due process case law" and "dilute[s] the protections and his-

torical function of the Suspension Clause as understood at the Founding and through much of American history."

Despite her in-depth review of the Supreme Court's most recent habeas corpus decisions, Tyler does not attempt to align these decisions with the two fundamental habeas principles developed throughout the book. It is unclear if the habeas corpus privilege continues to limit the executive as it has in the past, or if England's Habeas Corpus Act of 1679 is still relevant to American jurisprudence today. Although Tyler provides a clear and comprehensive account of the historical conceptions of the habeas corpus privilege, the reader is left without the necessary tools to understand why the present-day conception of the privilege no longer seems to fit within this historical context.

The International Criminal Court and Africa. Edited by Charles Chernor Jalloh & Ilias Bantekas. Oxford, United Kingdom: Oxford University Press, 2017. Pp. 387. $105 (hardcover).

REVIEWED BY SAM BASHMAN

The goal of Charles Chernor Jalloh and Ilias Bantekas's book *The International Criminal Court and Africa* is to explain how the International Criminal Court (ICC) and African states reached the recent level of distrust between them. In doing so, the editors largely succeed in analyzing the historical and legal developments that put a strain on this relationship. However, the book would have benefited from the inclusion of a discussion of relevant underlying political developments that may have contributed to the current state of affairs. In addition, the book would have been stronger with better organization and a clearer focus.

The book contains a series of essays by different authors discussing a wide range of related topics. These include the development of African legal systems, universal jurisdiction, the growing relationship between the African Union (AU) and the ICC, as well as potential solutions to resolve their current disputes.

One set of essays addresses the difficulty of promoting the goals of the ICC's punitive form of justice alongside other forms of justice that promote peace. For instance, the book

discusses the development of the African legal system. It examines the transition during colonization from a system focused on community-based legal solutions, where the goal was to find adaptable solutions that best helped the local populace, to retribution-based justice, though in some places the two were combined. Another author compares these two methods and their relative strengths and weaknesses in dealing with large-scale human rights violations. The ICC fails to engage on the community level to obtain enforcement of its decisions; however, community-based justice often lacks the breadth and power to address crimes committed on a national level. A discussion of the ICC's interactions with the peace-making process in Africa leads to a debate around whether the ICC's prosecution of leaders in African nations harms the peace-making process and, if so, how to reconcile the need for accountability of past crimes and the present need to establish peace.

Other authors discuss the erosion of the relationship between the ICC and the AU. These essays note that many African countries were major proponents of the ICC during its foundation, and that the continent contains the ICC's largest bloc of members. However, as time passed, the relationship between the two groups soured as the ICC used its power to indict sitting African leaders. The indictment of sitting African leaders has led to an outcry on the continent against the ICC, and widespread refusal to assist the organization. Furthermore, there have been claims that the organization is biased against African nations and not politically neutral, due to the fact that the ICC has almost exclusively prosecuted Africans and has largely failed to prosecute individuals from other continents.

In addition to these major topics, the book also discusses other subjects such as universal jurisdiction and how it can be used as an argument for the ICC's jurisdiction, as well as the issue of piracy in Africa—which explores the prosecution of international crimes in a context outside the ICC.

The book is largely effective in discussing the failure of the relationship between the AU and the ICC, the legal arguments regarding the ICC's actions, and potential solutions to the underlying problems that have caused deterioration of the relationship between the AU and the ICC. However, the book could have been improved with a stronger overall structure

and greater focus on the underlying political reasons for the current state of affairs.

One of the largest points of tension is, as mentioned, the perception among African states that the ICC is unfairly politicized against its largest group of members. The book gives the example of how the ICC has failed to prosecute other leaders when they have committed crimes—as occurred in Syria. However, in that case the fact that Assad has a strong ally in Russia may have prevented international prosecution. In contrast, the case against Al Bashir of Sudan has been more controversial. The AU saw this "as proof that the ICC Prosecutor was essentially guilty of selective justice by unfairly targeting Africans." Concerning here is the extension of the ICC's jurisdiction to a non-party state. In addition, the AU has criticized the prosecution of sitting leaders because it interferes with state sovereignty, leading to the argument that the trials "should be suspended until they complete their terms of office . . . ." All of these factors have led African leaders to push back against the ICC and propose a more local solution to the problem.

While the book does well in discussing this historical development, it could have been improved by discussing the underlying political causes for this change from the perspective of African leaders. The book acknowledges the difficult diplomatic situation of many African leaders, which arises from potential jeopardization of their diplomatic relations with neighboring countries due to the duty to enforce arrest warrants from the ICC. In addition, the book also effectively discusses how African leaders have criticized the court for harming ongoing peace processes on the continent.

Nevertheless, these criticisms leave open the question as to why these nations did not foresee the problems during the founding of the ICC. For instance, the ICC is based on the complementarity principle, which requires that the country of which the accused is a resident either be unable or unwilling to prosecute him in order for the ICC to have jurisdiction. Based on this founding principle, it would seem apparent that there would be some instances where individuals whose states did not want to prosecute them for political reasons would be prosecuted by the ICC. As a result, while it is often difficult for parties to fully comprehend how an organization will work *ex ante*, the scenario where citizens may be subject to ICC prose-

cutions precisely because their states did not want to punish them should have been anticipated. This book would have benefited from a discussion as to why the states did not foresee this possibility, or if they did, why they changed their views once the prosecutions began.

The book includes a strong discussion of potential solutions to repair the damaged relationship between the AU and the ICC. For example, various articles suggest balancing peacemaking processes and community justice with trying to avoid impunity on the continent. Combining these processes would include splitting the cases between the ICC and community justice courts, better educating populations about the ICC's proceedings, and holding the trials closer to the conflict regions. In addition, the book also suggests that the ICC work with African leaders and listen to their criticism in determining how to better operate. This would present a stark contrast with the ICC's previous actions, such as its attempt to require defendants Kenyatta and Ruto to be present at all portions of their trials despite their duties as president and vice president of their country. Overall, these potential solutions are promising because they address the major complaints that the AU have regarding the ICC.

Another area in which the book is effective is in discussing the legal theories regarding the ICC's jurisdiction. For instance, the book discusses how the ICC may be able to establish some of its power through the concept of universal jurisdiction. There is also a discussion of how its power may stem from the United Nations, as well as the potential limits of that theory. However, while there is a strong discussion of the legal theories regarding the ICC's power, one of the weaknesses of the book is in properly structuring these arguments. More specifically, almost all of the legal arguments in the book favor the ICC over the AU and many of these arguments are outright dismissive of the AU legal position. At the same time, there is one article that supports the AU position. However, the other articles do not counter or engage its legal theory. This is problematic because the book does nothing to resolve the discrepancy between competing legal theories.

On the one hand, the overwhelming focus on ICC-favorable positions makes it appear that this is the stronger argument; but, the presence of the opposing argument and a general failure to directly address it creates a question as to the

strength of that viewpoint. The editors mention how they wanted to give a large amount of discretion to the individual authors in determining the substance and topics of their sections. While this allows for a large range of interesting discussions and topics, it also means that authors with differing legal opinions are unable to adequately address each other. This makes the book seem more like a collection of individual articles as opposed to a full conversation between the various authors. The collection of articles is particularly disjointed when considering the piece on the prosecution of piracy. While this article is well-written and addresses an important legal topic, it does not fit into the larger theme of the book in regard to the ICC and its relationship with Africa—exemplifying how the articles tend to be disjointed as opposed to creating a well-developed theme.

Overall, Charle Chernor Jalloh and Ilias Bantekas generally succeed in discussing the historical developments in the relationship between the ICC and the AU and examining the legal theories underpinning the disagreements between the organizations. However, the book lacks a sense of cohesiveness largely due to the variety of disparate topics and the fact that the authors in the book, while on occasion referencing each other, do not actively engage with the other essays. The book helps the reader develop a level of understanding about the relationship between the ICC and Africa, but would have benefited from an overarching theme that could lead to improving the ICC's record in and relationship with the African states.

India Turns East: International Engagement and US-China Rivalry. By Frédéric Grare. New York, NY: Oxford University Press, 2017. Pp. v, 265. $45.00 (hardcover).

Reviewed by Rebecca Berman

In *India Turns East: International Engagement and US-China Rivalry*, Frédéric Grare sets out to provide a detailed overview of India's Look East Policy, as well as an analysis of the extent to which the Look East Policy has been effective in addressing India's regional concerns. The book includes substantial analysis of how relations with the United States factor into India's positions and policies with its neighbors. Grare begins with an introduction to the Look East Policy, and the driving forces

behind it. Following the end of the Cold War, India found itself isolated. Consequently, since 1992, this policy has served as India's "attempt to reconnect with Asia" through economic and strategic partnerships with neighbors across the Eastern Hemisphere. Grare contextualizes and presents the Look East Policy as "an economic imperative" that developed in multiple phases—first by emphasizing trade and foreign direct investment, then by expanding to emphasize economic and security issues that had a much wider geographic scope.

Through the Look East Policy, India has focused its policies on building relationships with its neighboring states. Grare discusses the specifics of India's developing ties with Singapore, Indonesia, Thailand, Malaysia, Australia, Myanmar, Japan, and China. His analysis includes discussion of India's participation in various regional organizations such as the Association of Southeast Asian Nations (ASEAN), the ASEAN Regional Forum (ARF), and the ASEAN Defense Ministers Meeting (ADMM-Plus). This includes a nuanced perspective on the limitations of India's international relations with both individual countries and multilateral organizations alike. For example, Grare points out that India's participation in ADMM-Plus is important in that it "institutionalizes India's security role in the region," but also explains that the organization appeals to India because it is so tame—it "pose[s] no threat to any major power," and has limited ambitions. Grare also discusses the importance of India's involvement in ASEAN, yet highlights the "ineffectiveness" of the organization, pointing out that India will need to "play a more important and active role in . . . emerging institutions" in the future.

Grare makes it clear that one of India's goals in building regional relationships has been to curb China's dominance in the region, and act as a counterbalance to China's rising economic and strategic power. However, he also makes clear that India fears antagonizing China, or even appearing as though it is attempting to antagonize their neighbor to the east. As Grare explains at various points throughout his work, this consideration comes into play with many of India's diplomatic, economic, and strategic decisions. For example, Malaysia's "relative proximity to China" has, in part, "inhibit[ed] the development of a stronger political and defense relationship" with India. China has also affected India's efforts to develop its ties with Australia. According to Grare, "both states see a lot of

disadvantages but few benefits in appearing confrontational towards China," and this "will continue to impede a greater development of the relationship."

Thus, India's insecurities vis-à-vis China end up factoring heavily into a complete understanding of the Look East Policy. He underscores time and time again that India hopes to improve its own posture, and offset China's aggrandizement. Simultaneously, he emphasizes that India does not itself hope to become a regional hegemon, nor does it want to anger its Chinese neighbors. India's precarious position is a strong motif throughout the book, and comes up with regard to its relations with other countries as well. For example, India is wary of getting overinvested and caught up in its dealings with Vietnam. Grare writes, "[d]espite security concerns similar to Vietnam's, India [is] not willing to risk its relation with China for the security of Hanoi." This is also true of India's relations with Japan. Consequently, the development of India's ties with several of its neighbors ends up rather constrained. The trend is further reflected in India's relationship with the United States. While India sees value in cozying up to the United States for many reasons, India refrains from getting too close for fear of a negative reaction from China. Put simply, India fears becoming part of a "zero-sum game" between the United States and China. Consequently, India's caution prevents it from working too closely with either power, just as it avoids working too closely with many of its neighbors.

Grare paints an image of an India that walks on eggshells in its foreign relations. While the country attempts to form robust international relationships, it holds back for fear of Chinese backlash. Although his book discusses a policy meant to improve India's position internationally, the limited progress stemming from the Look East Policy underscores the caution that shadows India's behavior in the global arena.

Grare ends his lengthy discussion of India's ambivalence and caution with advice for India's future decisions. He argues that regional institutions should be put to better use, and that India should better "display its true capacity for leadership as well as its value and aspirations" so that India can achieve "the fulfillment of the actual objectives of the Look East policy." In other words, Grare advises India to do what the country had initially intended to do with this policy: make a concerted ef-

fort to build valuable relationships with the country's neighbors.

Overall, Grare's work provides excellent context on key power dynamics in South, Southeast, and East Asia. The sections dedicated to India's relations with individual countries are insightful and engaging. The chapter detailing India's relationship with Myanmar is especially evocative because it illustrates the messy and complex relationship between India and China through a cross-section of their interactions in a small, Southeast Asian country. Both India and China consider Myanmar strategically important to their own regional objectives, and both face problems with insurgent groups that operate out of the small country's jungles. Grare's country-specific analyses are illustrative because they highlight not only how India interacts with those countries, but also how India's struggle with a regional hegemon comes up in relations that may initially seem to have nothing to do with China.

Glaringly absent from Grare's analysis, however, is a discussion of how the Trump Administration has affected, or will affect, India's Look East Policy and its policies towards the United States. The absence of this discussion is particularly troublesome because Grare discusses Bush-era policies towards India, and Obama-era changes to those policies, as well as the varying views of Indian strategists to those policies. At a time when the American government espouses an "America first" mentality, an analysis that excludes this recent reality seems incomplete.

Similarly, Grare brings up the Trans-Pacific Partnership throughout the book, and asserts that such emerging trade agreements are important to consider in analyzing "the future of India's economic and political standing in Asia." Yet, Grare glosses over a discussion of Trump's withdrawal from the Trans-Pacific Partnership, and the consequences of that decision. Although a discussion of past administrations' policies and objectives is still useful, a publication that seeks to provide perspective on India's position in the world in the future should recognize potential effects that the Trump administration could have on India. It is, of course, understandable that a book can only account for current events up to a certain point due to the timing of the publication process. However, the effects of a change in the administration of the United States do warrant recognition.

Other topics mentioned throughout the book also warrant deeper discussion. In assessing relations between China and India, Grare frequently mentions the 1962 war between the two countries. However, he fails to inform his reader about the war's particulars. It is rather frustrating that this war is so important to so much of the book, yet details about the conflict are absent from the introduction. Grare's discussion of the Strait of Malacca presents a similar problem. This strategically important body of water comes up in the book's third chapter, "Southeast Asia in India's Defense Strategy." Grare introduces it by pointing out that "about one third of global trade and almost all energy trade between the Middle East and East Asia travel through the strait's 550 nautical miles." In light of this staggering level of global importance, it is surprising that discussion of this strait and relations concerning it are not a major part of this book's analysis. Of course, elaboration on all interesting conflicts and geographic boundaries mentioned throughout the book would make it unwieldy. However, readers would benefit from additional details on matters that heavily inform India's policy objectives.

Grare points out that "India's strategy toward Southeast Asia cannot be neatly characterized into a single policy." The analysis throughout *India Turns East: International Engagement and US-China Rivalry* suggests that this is the case with India's international relations more broadly as well. As India tries to find its place in a shifting world order, and hopes to avoid alienating any major world powers, its policies and objectives will only become increasingly complex. Grare does a superb job making sense of India's relationships in the Eastern Hemisphere, and effectively highlights the problematic, yet understandable, nature of the caution that underlies so many of India's foreign policy decisions. As such, he presents a reality that is hard to disagree with—India's ambivalence stands in its way. Its position in the global arena will improve when India more intently pursues the objectives of the Look East Policy, and makes use of existing multilateral regional institutions in doing so.

The Paris Agreement on Climate Change: Analysis and Commentary. Edited by Daniel Klein, María Pía Carazo, Meinhard Doelle, Jane Bulmer, and Andrew Higham. New York, NY: Oxford University Press, 2017. Pp. xxxii, 435. $75.77 (hardcover).

Reviewed by Paul Brudnick

Weaving together the insights, perspective, and expertise of well over two dozen editors and contributors hailing from an impressive breadth of disciplines, this compilation conducts a deep dive into the historic Paris Agreement on Climate Change of 2015. In support of their stated goal of "enhanc[ing public] understanding of . . . [the Agreement and] what needs to be done [in order to] deliver on its promise," the editors devote significant attention across three interrelated sections of the Agreement's key facets: Part I captures the context under which the Agreement arose, Part II consists of an article-by-article critique of its substantive components, and Part III reflects on its strengths and weaknesses. As Part II is more encyclopedia than essay, this review focuses on the first and third parts. Given the redundancy perhaps inherent in having so many contributing voices, little substance is lost in such an approach.

Part I presents an overview of the Agreement's development and foundational underpinnings. As befitting any discussion of climate change, it begins with the science. Through a series of charts and diagrams whose bright colors belie their menacing consensus, Andreas Fischlin traces the correlation between increases in atmospheric greenhouse gas (GHG) concentrations and rising temperatures to demonstrate the robust evidence of anthropogenic climate impacts before stressing the critical need for a "science-policy interface" in order for policy-making to actually be informed by science. The Intergovernmental Panel on Climate Change (IPCC) was formed in 1988 and remains the body chiefly responsible for facilitating this dialogue at the United Nations. It has played a critical role in generating persuasive reports that have spurred development of much of the UN climate regime—most notably, the UN Framework Convention on Climate Change (UNFCCC) (1992), the Kyoto Protocol (1997) and, most recently, the Paris Agreement.

Part I next traces the evolution of the UN climate regime through its convoluted negotiation history from a policy perspective. The authors note the development of various institutional frameworks and bodies, as well as the progress achieved in determining overall objectives, such as emissions reductions targets. However, they also acknowledge the manifest collective action problems inhibiting the implementation of these plans. The actions of wealthy developed countries have disproportionately contributed to climate change, yet its effects will disproportionately harm those least responsible. To evidence the scale of this contributory disparity, the CO_2 emissions in the United States in 2012 stood at seventeen tons per capita; its closest peer in per capita emissions, the European Union, stood at eight tons. While basic notions of fairness demand that developed nations contribute more to mitigating climate change's impact, deciding how to allocate responsibility has proven a central and recurring challenge.

In its final two chapters, Part I elucidates the central concepts of the Agreement as well as its legal structure. The Agreement is predicated on "a few core conceptual pillars": the ambition to (1) lower GHG emissions, (2) create a climate regime differentiating between developed and developing countries, and (3) drum up support for climate change efforts. Compared to its predecessors, the Agreement sets a more ambitious temperature increase limit goal—1.5° C versus the previously sought 2° C—and its development included a larger role for a variety of stakeholders ranging from nonparty entities, such as businesses, NGOs, and subnational government entities, to major states like China. The grand conceit of the Paris Agreement, the reader is told, was for it to serve as "an experiment [in creating a] political narrative that is clearer than its less prescriptive and precise legal backbone." The failure of the Kyoto Protocol to take hold is blamed in large part on its fixation on legally binding obligations that were underambitious, infused with the sort of differentiation concerns addressed above and lacking any meaningful implementation structure. The Paris Agreement instead relies on the countries themselves to determine which efforts they intend to make, implementing a "transparency framework" requiring regular updates as well as taking stock of progress, complemented by established financial commitments, technology sharing, development goals, and capacity-building.

Having pored over each article of the Agreement in Part II, Part III considers the strengths and weaknesses of the accord, particularly in light of the departure it represents from the preceding Kyoto Protocol. According to Meinhard Doelle, the Kyoto Approach created a top-down enforcement mechanism in which emission reduction targets were jointly binding on countries. The downside to such an approach was the potential for a domino effect when one country either dropped out, like Canada, refused to join, like the United States, or simply ignored the "unilaterally offered" targets, as many countries did. In contrast, Paris focused on "self-imposed, voluntary commitments" from countries under a "managerial approach" that viewed countries as capable of rising above the purely self-interested presumptions underpinning Kyoto. In crafting the Paris Agreement, the drafters kept an eye toward both long-term norm-building and establishing mechanisms for accountability. In that vein—and taking the adage about sunshine serving as the best disinfectant to heart—the drafters included provisions encouraging regular, public declarations of each state's national objectives and a system of collective, yet adaptive, progress benchmarking. This reflects their belief that this flexible, open, and collaborative framework would ultimately yield stronger results.

The Paris Agreement also sought to weave a cornucopia of international challenges into its efforts, as represented by the preamble's inclusion of everything from climate justice to indigenous, labor, human, health, and gender rights. After again recapping the chief objectives of each section, Doelle vacillates between hailing the Agreement as an unprecedented and "truly global effort to address climate change," and acknowledging its uncertain terms, for example, when a "peak year" will be reached in order to achieve the temperature increase limit target. Doelle also questions ambiguous provisions involving "limited detail" on numerous key sections, such as the role of actors other than national governments, or how to allocate responsibility for the inevitable losses and damages resulting from climate change. At best, the Agreement is a "recipe for success" and sets "the floor . . . of efforts required." Doelle posits what may be the central question of the book almost as an afterthought: "Can the managerial approach adopted in Paris succeed without a stronger top-down compo-

nent?" It is somewhat disheartening that the best answer such an impressive roster of experts can seem to muster is "maybe."

This was a challenging book to read. The chapters veered toward the repetitive and the transitions were at times stodgy. However, that is not to say the substance was uninteresting, and the innovative use of section labels, charts, and diagrams served as useful aids to the reader in grasping an enormously complex historical process and document. What made the book so challenging to read, in large part, was its tone. To inhabit a post-Trumpian world order and read the concluding sentence of the foreword, that the Paris Agreement had placed us "irreversibly on our way" to tackling climate change felt almost surreal. In fairness to the editors and contributors, few could have anticipated that the United States would not only pull out of Paris but also act in direct defiance of virtually all of its objectives. That said, the book makes occasional references to the "election of a new administration . . . under which climate actions nationally may . . . be constrained" without probing what the potential ramifications could be when one of the largest polluters defects, particularly given the largely voluntary nature of the Paris Agreement. It asserts that the Agreement was drafted as a flexible framework with "practical realities, such as the domestic political situation in the United States" in mind, yet fails to elaborate further. This seems a crucial folly. To reframe the aforementioned central question of the book, the reader today faces a more fundamental version: Can the Paris framework succeed—does it serve a purpose—in light of present circumstances?

Taken collectively, the nature and structure of the Agreement would seem to—cautiously!—offer an answer in the affirmative, but only through concerted efforts on behalf of a wider array of actors. The Agreement's openness to emissions trading, offsetting, and other market and non-market mechanisms, as well as the potential role of non-state-actors, such as sub-national governments, business and industry, NGOs, regional intergovernmental bodies, and others, seems promising. Should the various stakeholders involved come on-board with regard to the Agreement's lofty goals of equity, justice, and fairness stated in the preamble, there is a chance that perhaps the pieces could fall into place for a more lasting and effective climate-change regime.

Innovation in Energy Law and Technology: Dynamic Solutions for Energy Transitions. Edited by Donald Zillman, Lee Godden, LeRoy Paddock, and Martha Roggenkamp. Oxford, UK: Oxford University Press, 2018. Pp. xxi, 435. $99.99 (Kindle) or $120.24 (hardcover).

Reviewed by Julia Chen

In 2018, countries are facing energy crises and concerns across the world. Often, people look to technological innovation to solve these problems. However, if not supported by law and policy, the benefits of innovation can be diluted. What changes in law are necessary to allow these innovations? How can legal changes be implemented sustainably and efficiently? How can law, technology, and the market work together to reduce greenhouse gas emissions? This book tackles these questions and provides an overview of current trends in energy and law.

This book situates the relationship between technology and law within today's rapidly changing energy landscape. As the global effort to combat climate change and market demand for greener energy systems grows, the book examines how law and governance are necessary to support this transition. Authors from twenty-one different nations examine how these moving parts connect to global trends in energy law. This is explored through twenty-three chapters divided into four parts.

The chapters play both an expositional and an analytical role. On the expositional side, authors of varying backgrounds provide an inside look into current, cutting-edge energy law trends in each country. On the analytical side, the chapters are often successful at identifying gaps in legal frameworks and providing policy and legislative suggestions for bridging this gap. This book provides a strong introduction to the role of law in transitioning to renewable energy, and is an excellent way to learn about specific countries' energy industries and legal regimes.

Part I includes four chapters that broadly describe and contextualize the need for law in the energy sector. These chapters explore legal principles that are necessary for good design in market policy, climate change legislation, and regulatory structures. These chapters provide an introduction to

relevant energy law concerns, and also emphasize the need for governments to support their energy goals with clear and efficient laws.

Chapter 2 focuses exclusively on "Climate Change Legislation." It effectively identifies the tension between politics and climate change law. While climate change is a long-term and multidimensional problem, governments are often elected to three or five-year terms, and voters are disproportionately concerned with short-term problems. The authors include case studies on subsidizing electric vehicles and the United Kingdom's Climate Change Act 2008. Overall, the chapter successfully emphasizes the importance of government actors in the clean energy sector, and provides clear recommendations to governments on optimizing policy options and improving legislation.

Chapter 3, titled "Transition to a Low-Carbon Energy Economy," focuses on how sustainable energy goals can be both constrained and supported by law. The chapter uses Canada as an example, and it explores constitutional constraints, legal liability, and regulatory takings. The authors provide a comprehensive review of relevant energy law in Canada, and also analyze and critique the current province-specific energy plans and emissions targets. Overall, this chapter provides a targeted and specific look at a particular country's legislation and low-carbon energy goals. It also provides a realistic look at the challenges to building a successful energy law framework.

Chapter 4 focuses on "Smart Cities and Smart Regulation." It explains smart energy systems through the European Union's regulations. The chapter would be a good standalone read, especially as it provides recommendations on best practices, and these could be useful for policy-makers and government actors. The book would have benefited from the inclusion of a cheat sheet section in each chapter listing best practices clearly and concisely. Instead, the chapter repeats a lot of information already presented in earlier chapters. Thus, Part I could be stronger if there was more cohesion between chapters and less repetition.

Chapter 5 provides an interesting look at techno-nationalism. It warns against protectionism, as international competition in the clean energy sector has harmful long-term consequences. The chapter is effective because it clearly identifies a

legal issue and provides solutions through direct examples. For example, offshore wind technology is used as an overarching case study, and international treaties and abstract legal concepts are applied to this concrete case. The use of a specific case study makes the chapter extremely convincing, as it sets out the argument for cooperation and against techno-nationalism.

Part II focuses on emergent technologies and how legal frameworks adapt in response. These five chapters provide a useful survey of cutting-edge technologies such as smart electricity grids, advanced uses of nuclear energy, and innovative uses of hydrogen in the transportation sector. These innovations either prompt or respond to changes in energy law. While some chapters in Part II could have had more of a legal focus and a more succinct analysis of the technical details, the majority of chapters in this section succeed at showing gaps in the law and providing suggestions for legal innovations.

Notably, Chapter 10 describes the regulation of electricity storage and clean energies in Mexico. The case study provides a useful guide for the reader's understanding of the need for clear legal regimes when addressing innovations. It focuses on the legal and policy tools that facilitate the growth of storage technologies within Mexican smart grids and the energy industry. It also clearly identifies gaps in the law, as the authors note that Mexican laws and regulations are not well-suited for the unique technical issues accompanying electricity storage facilities. The authors suggest a way to bridge the gap, as they articulate the need for an independent regulatory structure and better consideration of electricity storage in legislation. This situation is then analyzed with respect to the existing law of nuclear energy, as well as the law of the sea regime. Chapter 7 also uses this roadmap, as it explains the tensions between today's legal framework and tomorrow's innovation needs. It then suggests solutions for facilitating the introduction of clean technology within a decade. This structure should be replicated in the rest of the book. Other chapters should clearly identify a gap and propose solutions, all while using a concrete example for easy visualization to guide the reader.

Part III discusses the traditional energy sector. Even in light of the growing trend towards renewable energy, it is important for the book to include a section on traditional energy sources. Coal, oil, and natural gas will continue to be leading

energy sources for at least the next few decades. These five chapters examine how substitute fuels and efficient technologies in the fossil fuel industry can assist in the transition to renewable energy. The authors note that a complete ban of traditional fuels is unlikely, as many countries rely on traditional sources for economic reasons.

For example, Chapter 11 focuses on the unique energy needs and vulnerabilities experienced in Colombia. The authors argue that new coal-burning technologies are necessary for the economy, and to satisfy energy demands. Colombia's government sees coal energy as a necessary back-up for hydroelectric power and overall generation capacity. However, it also has to reconcile this strategy with its commitment to the Paris Agreement, and the chapter provides suggestions for legal compliance. The chapter is useful in demonstrating that the current political discourse in Colombia considers renewable energies non-competitive in the market, with the exception of hydropower. It also demonstrates that countries at varying stages of development have different priorities and legal needs.

Similarly, Chapter 14 addresses energy needs from a South African perspective; the authors recognize that the country's energy supply and resource scarcity needs are pushing the government to seek out additional energy sources beyond its current reliance on coal. The authors argue that hydraulic fracturing and gas is cleaner than coal, while also acknowledging the environmental damages, water scarcity, and climate change concerns presented by fracking. The authors ultimately conclude that the government will embrace fracking, and they suggest that the important legal innovation in this space is to introduce governance imperatives and strengthen parliamentary process in the energy law space. Both this chapter and Chapter 11 are important perspectives from the Global South, and it is important to listen to the voices of authors from these countries. However, it would be interesting to hear more from these authors on the potential timelines for phasing out these traditional technologies.

Lastly, Part IV presents specific case studies that demonstrate how both technological and legal innovation are necessary to facilitate a transition to sustainable infrastructure. This section most clearly demonstrates the book's strengths. Part IV successfully expands on the theoretical aspects of Part I with

comparative examples. It covers an impressive breadth of countries, as it includes perspectives on Canada, Brazil, the Middle East, China, the EU, the United States, Australia, and Germany. On another dimension, it also considers regional, national, and international frameworks and how they provide support for energy transitions. This provides diverse viewpoints informative for both readers and policymakers.

Chapter 19, titled "Financing Renewable Energy in Brazil," focuses on how Brazilian climate change policy and energy legislation support renewable energy. This is contextualized within Brazil's oil and gas industry crisis. The authors look at taxation as a tool for financing clean energy. They first identify a key problem, as Brazil does not impose environmental taxes. The authors then propose solutions. For example, existing taxes could be lowered for renewable energies and goods that encourage environmental protection. The chapter is largely an expositional piece on each specific Brazilian policy or piece of legislation. The chapter could be more effective if these individualized analyses were more coherently linked.

Chapter 20 focuses on "Advancing Innovations in Renewable Energy Technologies as Alternatives to Fossil Fuel Use in the Middle East." A chapter on this region is particularly important, as the Middle East encompasses some of the world's leading exporters of oil and natural gas. The Middle East holds about 45% and 48% of the world's proven gas and oil reserves, respectively. Fortunately, many countries in the region have vocalized support for the transition to lower-carbon and renewable energy systems. However, this has not been accompanied by substantive legal change or actual laws. The author clearly identifies major legal barriers and suggests how gaps can be mended through policy solutions and transparent legislative frameworks.

Overall, the editors succeed in showing that technological and legal innovations in the energy field are interconnected and co-dependent. The different chapters successfully detail the importance of legal barriers, frameworks, and successes to innovation in energy. The book also succeeds in integrating perspectives from different regions across the world; reflecting the different energy needs and goals of each country, which give rise to vastly different legal tools and frameworks. These perspectives can be useful to policymakers and government actors looking for a comparative review of energy laws. The com-

parative approach of this book is useful, as the global energy sector and renewable energy legislation are underdeveloped and there are a limited number of success stories. This book is one example of the collaborative information sharing that is necessary for overcoming collective action barriers, and its varied insights provide an excellent survey of the pressing challenges slowing energy reform across the world.

Atrocity Speech Law: Foundation, Fragmentation, Fruition. By Gregory S. Gordon. New York, NY: Oxford University Press, 2017. Pp. xxviii, 436. $90 (paperback).

Reviewed by Gina Eum

The most horrendous mass atrocities in human history started with incendiary rhetoric. Dehumanization of victims in the minds of would-be perpetrators, effectuated by the medium of speech, has enabled mass atrocities like the Armenian Genocide, the Holocaust, and the crises in Rwanda and the former Yugoslavia. How does international law tackle the causal connection between speech and consequent acts of violence? Should international law criminalize and punish such speech? Gregory S. Gordon, a professor at the Chinese University of Hong Kong, and a former prosecutor with the International Criminal Tribunal for Rwanda, answers those questions in his book, *Atrocity Speech Law: Foundation, Fragmentation, Fruition*. In this unprecedented era of instant information distribution through the internet, where tweets and Facebook posts so easily influence and induce bias in the minds of people, Gordon's attempt to clarify and organize international speech law is highly relevant.

First, Gordon argues that international law does not have the proper terminology with which to name such criminal speech. For example, the term "hate speech" does not capture the speech's relationship to heinous violence. Other terms, such as "incitement speech" are too narrow and do not include other types of liability, such as speech abetting, or ordering. To address this gap, Gordon creates a new, comprehensive label: "atrocity speech." Atrocity speech law is the body of international rules and jurisprudence dealing with criminalization of speech related to mass violence. Gordon attempts to ease the friction between the rights to free expression and the

right to be free from invidious discrimination by clarifying the elements of the distinct body of "speech crimes," as separate from other core crimes including genocide, crimes against humanity, and war crimes. The book then undertakes an ambitious mission to create a unified and coherent legal framework for atrocity speech which aims to prevent inchoate atrocity speeches by criminalizing the acts of incitement, abetment, instigation, and ordering without mandating an actual attempt or commitment of an atrocity.

As identified by the book's subtitle, the book is divided into three parts: (1) foundation, (2) fragmentation, and (3) fruition. Part One, "Foundation," discusses the history of speech and mass atrocity and the existing international jurisprudence dealing with atrocity speech. After a comprehensive discussion of how the competing policy objectives—protection of free speech on the one hand and regulation of hate speech on the other—are balanced at the international level and the domestic level, Gordon surveys the existing legal framework regarding atrocity speech.

Speech as an element of international criminal liability was first discussed at the Nuremberg International Military Tribunal (IMT) held in the wake of World War II. The IMT recognized that Nazi atrocities were rooted in propaganda, and created the new offense of "crimes against humanity," which criminalized certain widespread or systematic attacks directed against civilians. Atrocity speech law was further developed in the 1948 Genocide Convention, which made "direct and public incitement to commit genocide" a punishable crime. This provision was incorporated into the respective statutes of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia, each of which includes provisions for instigation and ordering. Finally, the Rome Statute of the International Criminal Court criminalizes direct and public incitement to commit genocide as well as ordering, soliciting, and inducing of the Statute's core crimes. Gordon's meticulous introduction of the history reveals the piecemeal approach of international law with respect to speech crimes, and simultaneously serves as a solid educational foundation for practitioners and scholars who are interested in learning about inciting speeches. His research is thorough, barring a minor error identifying Istanbul as the capital of Turkey.

In Part Two, "Fragmentation," Gordon critiques the fragmented legal doctrines applied to atrocity speech. He argues that the piecemeal trajectory in international law has produced "a doctrinal Frankenstein's monster" whose application has been anything but coherent. For example, Gordon notes that the prosecution of the crime of incitement has been inconsistent. Gordon argues that the judgment of *Prosecutor v. Akayesu* (1998), although it provided important initial guidance regarding the elements of incitement, failed to analyze other relevant aspects of an instance of speech, such as the quality of the speech or the channel of communication. The existing criteria have not been systematically applied, even within the case law of the Rwanda Tribunal. The current body of case law also does not clarify whether a causal link is required between the speech in question and subsequent violence. This confusion regarding the causation requirement creates another problem in demarcating the boundary of the crime of incitement separate from the crime of instigation. Gordon also points out that there is no international body of law which addresses incitement to commit war crimes, leaving a substantial gap in atrocity speech jurisprudence.

However, it is regrettable that Gordon fails to discuss the implications of these conflicting policy objectives with respect to protection of free expression and regulation of hate speech. As Gordon himself recognizes, within domestic jurisdictions, statutes dealing with hate speech vary significantly, and each culture has a different approach to striking the balance between the protection of free speech and the enforcement of hate speech laws. Gordon's attempt to create a clear and inclusive legal framework lacks consideration of the policy conflicts.

The book's final section, "Fruition," makes proposals for reform. Gordon makes a radical move by proposing an all-inclusive "Unified Liability Theory" for atrocity speech law. His new system attempts to fix the problems he discusses in Part Two by separating speech crime liability from the core crimes—for example, Gordon argues incitement of war crimes or terrorism should be criminalized, rather than how current international law only links incitement to the crime of genocide. Then, Gordon proposes a new categorization of speech liability which classifies atrocity speech into four types: (1) incitement: speech made before an atrocity, with the intent of inciting the atrocity, but not resulting in atrocity; (2) speech

abetting: speech delivered simultaneously with the commission of an atrocity, with the knowledge that the speech was being delivered in this simultaneous fashion in support of the atrocity's commission; (3) instigation: speech made with the intent to cause a particular atrocity and causally connected to the atrocity; and (4) ordering: speech made with a causal tie to subsequent violence in the context of a superior-subordinate relationship, such as the one between a commander and a soldier. Gordon further argues that criminalization of hate speech should expand beyond genocide and crimes against humanities to include the crimes of aggression and terrorism. To flesh his idea out in the most concrete fashion, Gordon even included a fully-written draft of a treaty on Atrocity Speech Offences.

Gordon's proposed treaty proposes an innovative and comprehensive new legal structure, but scholars should look beyond the book's scope and go further than his proposals. Atrocity speech now takes unexpected forms and travels at an unprecedented speed and scale thanks to technology. Social structure has changed, creating new minorities and majorities that have not been previously recognized by international law. Article 3 of Gordon's proposed treaty imports the definition of "victim group" from Article 7(1)(h) of the Rome Statute, which defines it as "any identifiable group or collectivity [based on] political, racial, national, ethnic, cultural, religious, gender . . . or other grounds that are universally recognized . . . under international law." However, the Rome Statute then subsequently defines "gender" as men and women, not leaving any room for transsexual persons or individuals with other gender identities to be recognized as a "victim group." By uncritically adopting the Rome Statute's narrow definition of "victim group," Gordon's treaty may leave out many potential victims with particular sets of vulnerabilities that have not yet been recognized by existing international law.

It is also dubious whether Gordon's attempt to create a deterrence effect by drawing a clearer line of criminality would work in our current fast-changing society. Gordon tries to define the "context" criterion of the incitement component by dividing the criterion into two types: "internal," the speaker's background, authority, previous publication history, and the manner of transmission; and "external," the political and social context, media environment, and audience characteristics.

However, Gordon's internal context seems to be outdated in the era of social media. It is no longer the case that spoken words travel faster than written words. A short tweet can reach the broadest population and instigate the most brutal violence through retweets and further amplification via sharing in other social media channels. The sharing mechanism creates an issue of limiting liability for third-party re-publication—should we accuse an individual with five followers of genocidal *mens rea* for sharing a genocidal message? What if an individual with fifty million followers shares a genocidal message and makes the message go viral, but without any *mens rea*? Trying to remove all the ambiguities of the existing system may instead create a more significant loophole for online atrocity speech perpetrators to avoid criminal liabilities.

Atrocity Speech Law: Foundation, Fragmentation, Fruition offers a comprehensive study of the international law governing hate speech and proposes a holistic solution to the problems of the existing laws. Gordon's book invites scholars to understand the history of the subject and the fundamental concepts of international criminalization of speeches. It also leaves space for those interested in the field to build upon his study, and to look beyond the book's scope. The book, with its thoughtful analysis and proposal, is a meaningful response to the era of hateful rhetoric and hostility.

March 17: The Red Wheel, Node III, Book 1. By Aleksandr Solzhenitsyn. Notre Dame, Indiana: University of Notre Dame Press, 2017. Pp. xx, 662. $34.30 (hardcover).

Reviewed by Seth Halper-Stromberg

Revolutions are never simple. Amidst the carnage and bloodshed, a fight for control immediately raises the thorny question of who ought to be in power. For most living in the Soviet Union, the Russian Revolution presented a straightforward answer to this question: the liberals were impotent, the Tsar was morally bankrupt, and the Bolsheviks were heroes and rightful leaders. Aleksandr Solzhenitsyn's *March 17: The Red Wheel, Node III, Book 1* (*The Red Wheel*) is a direct challenge to this entrenched and unquestioned narrative. Through his retelling of the final days of the Russian Empire, Solzhenitsyn intimates that it was instead the liberals, with their calls for a

democratic constitutional monarchy, who should have been the legitimate leaders to usher Russia out of those disastrous years. He laments this missed opportunity, and the subsequent rise of the Bolsheviks. However, his vision should not be confused with a completely Westernized conception of secular power and legitimacy. Solzhenitsyn's tacit support for a liberal system of governance is fundamentally based on his reverence for the Russian monarchy and its marriage to the Russian Orthodox Church. Yet Solzhenitsyn's failure to critically analyze these two political institutions throughout the novel is *The Red Wheel's* biggest flaw. The overall effect is to sap some of the moral authority from Solzhenitsyn's vision for a Russia that might have been.

This historical novel, as part of an epic ten-book series (what great Russian novelist would settle for anything less?), starts right with the Russian Empire rapidly descending into chaos. Covering the disorder in Petrograd during the final days of the Tsar's reign, the action is seen through the eyes of a diverse and extensive cast of characters, most of whom are real historical figures. The Tsar shares the spotlight with workers protesting on the street, soldiers mutinying against their officers, and liberal Duma deputies scheming against one another. Each chapter focuses on the perspective of only one character and *The Red Wheel*, true to its name, continuously revolves through them as the action progresses. This can be confusing because Solzhenitsyn does not adhere to a strict chronological order, leading the reader to wonder at times what's truly happening. The effect of all this is to create a dizzying atmosphere, mirroring the chaos and uncertainty those living at the time certainly felt.

The story begins inconspicuously enough at the imperial residence in Tsarskoe Selo, safe and insulated from the unrest in Petrograd. Tsar Nikolai II, in his typical removed and haughty fashion, ignores Petrograd and bemoans the loss of his wife's beloved Rasputin. At this stage, no one is threatened. The Duma, the legislative body of the Russian Empire, is concerned but willing to work together with the Tsar. The protesters are, at times, even congenial with those tasked to maintain order. Scenes of protesters conversing with the Cossacks are common. The people want bread, not blood.

As the week progresses, the situation deteriorates. The Tsar naively believes he can quell the unrest with more

soldiers, more effective military commanders, and more force. But his lack of awareness evokes a terrible backlash. Shops are ransacked, soldiers mutiny, and shots fire from both sides. People begin to die. There is now a serious shift in mood. Succinctly capturing this uneasy tension on the streets, Solzhenitsyn writes, "[w]hat made this day different was that there was none of the good cheer or play of the two preceding . . . . The power of the street had begun to be felt." As a result, Duma deputies begin questioning the continued viability of the Tsarist regime and calls for getting rid of the Tsar grow more vociferous. Faith in the Tsar and the existing political system palpably weakens, and the picture of legitimacy grows murkier.

It is at this point, when the very pillars of society are shaking at their foundations, that the fear of actual revolution becomes realistic. In this precarious situation, the Tsar's claims of moral legitimacy become absurd, a fact Solzhenitsyn correctly identifies. Solzhenitsyn understands that the old order is too rigid, too trapped in its old ways to adjust to the changing circumstances. The issue of whether Nikolai must leave is settled; the question of how exactly to move forward is not.

Solzhenitsyn's answer to this question is best encapsulated by the character Mikhail Rodzyanko, a leading liberal Duma deputy. Serving as a main protagonist of the novel, he is portrayed as thoughtful, prudent, and, above all else, honest. Rodzyanko supports a gradual shift in power. He hopes Nikolai will voluntarily agree to abdicate and cede the throne to his brother, Grand Duke Mikhail, who in turn will support the supremacy of the Duma. In doing so, Rodzyanko seeks to preemptively establish the legitimacy and legality of a new system by maintaining a connection with the old order.

Solzhenitsyn is not wrong in his argument that the newfound order should maintain a nexus between the old and the new. By upholding tradition, and with it a semblance of legality, claimants to power are more likely to respect the rule of law. The rule of law, with all its incumbent procedural safeguards, is a necessary component to preventing unspeakable atrocities and horrors during chaotic times. It presents a check to unmitigated power. Therefore, Solzhenitsyn's tacit support, based on his depiction of Rodzyanko, for slow, gradual, and *legal* change is reasonable. Conversely, when everything is rushed, when everything is permitted in the name of revolu-

tion, nothing is too brutal or vicious. The Jacobins' Reign of Terror or Mao's Cultural Revolution come to mind. For Solzhenitsyn, the Bolsheviks present this threat.

On a certain level, Solzhenitsyn is completely justified in portraying the Bolsheviks as a violent threat. Based on their certainty in their own righteousness and legitimacy, they did not shy away from the prospect of brutality and destruction. Their calls for absolute authority, a so-called dictatorship of the proletariat, rightfully invokes the fear that individual rights and the rule of law will not be respected. However, it would be disingenuous to claim that this was the sole reason for Solzhenitsyn's denouncement of the Bolsheviks. Solzhenitsyn's aversion can also be explained by his disgust with their renunciation of religion. For Solzhenitsyn, the Bolsheviks were brutal *because* they had forsaken the Orthodox Church. Their elimination of religion—later partially reinstated by Joseph Stalin—dragged the people down to the Bolsheviks' depravity. They had set Russia on a path to Hell.

Knowing this, it becomes clear that Solzhenitsyn's acceptance of Rodzyanko and the liberal order is not because Solzhenitsyn necessarily admires liberal values. Rather, he views the liberal order as the best possible means to preserving the monarchy, and by extension Russia's sanctity. This is not to oversimplify Solzhenitsyn. He was a complicated man (not to mention a brilliant writer), with complicated ideas. He rightfully presents the Russian revolution from many different perspectives, emphasizing the moral ambiguity that accompanies the messy business of revolution. However, the underlying subtext clearly spins the monarchy and Orthodox Church in a favorable light. Whether this view is correct or not is beyond the scope of this review. Instead, most problematic is Solzhenitsyn's lack of honest criticism of those institutions; *The Red Wheel* simply glosses over or completely ignores their faults.

Solzhenitsyn presents the monarchy through rose-colored glasses. Perfectly encapsulating his nostalgia for the Romanovs, Solzhenitsyn writes, "[The palace] was not a place for battle. This palace was a treasure of memories." Although he understands that the monarchy under Nikolai cannot survive, he still holds on to the notion that the monarchy as an institution can. Nikolai's incompetence and ineffectiveness is starkly contrasted with the dignity and preparedness of his brother and successor, Grand Duke Mikhail. One Tsar can merely replace

another. In doing this, Solzhenitsyn ignores the systemic problems that were inherent to the monarchy: its alienation from the needs of the people, sanctioned intolerance of minorities, and constant creation of poor leaders. Solzhenitsyn whitewashes the faults and flaws of the Russian monarchy.

To compound this mistake there is little, if any, criticism of the Orthodox Church despite its own problems with corruption, bigotry, and complacency. The Church and religious figures, from a simple monk to the head of the Church, are suspiciously absent from the entire novel. This is disappointing because Solzhenitsyn misses an excellent opportunity to meaningfully discuss the Church's role in the Revolution and what its future role may be. Instead, his lack of criticism suggests he envisioned that the new system should have allowed for the Church to play a large role. This certainly does not comport with the concept of a Western, secular democracy—as separation of the church from the state was not a high priority for Solzhenitsyn. More importantly, Solzhenitsyn's general lack of discussion of the Church, its future role, and its ties with the monarchy makes it seem as if he is hiding something from the reader, as if he is not telling the full story. The result is the dilution of Solzhenitsyn's own moral authority because he does not come across as completely forthright.

Another area left unaddressed by Solzhenitsyn's story is the messiness of these types of change. Revolutions necessarily implicate the question of legitimacy on the international stage. At least two sides will always claim to hold legal authority and the tricky issue of who to recognize will arise. Potential solutions, such as recognizing those in effective control or recognizing those deemed to be the "true" voice of the people, always leave something to be desired. Solzhenitsyn, unfortunately, does not directly address this question here. He is exclusively focused on Russia. Nevertheless, his support for the liberal politicians, notwithstanding their tenuous grasp on effective control, sheds some light on what his views might have been regarding the question of international recognition.

Overall, *The Red Wheel* is a book well worth reading. Aside from being an engrossing novel, it proved highly relevant at the time of its publication. Solzhenitsyn, perhaps purposefully, published this novel when the Soviet Union was on the brink of collapse. As a number of Soviet Republics yearned for independence, the question of legitimacy was certainly on the

minds of many. Solzhenitsyn, through this novel, calls on his compatriots not to repeat the same mistakes of history, not to give in to the violence and brutality of the past. His courage in making this call is admirable. Moreover, his declaration of support for a liberal order, one predicated on tradition, prudence, and a connection with the past, is laudable. However, his view should not be completely sanitized into one that fits Western sensibilities. He did not support liberalism for liberalism's sake, but rather only insofar as it would preserve the Russian monarchy and Orthodox Church, the "true" guardians of the Russian people. Although Solzhenitsyn's views of moral legitimacy should not be fully accepted in a society dedicated to the separation of religion from the state, his support for a liberal legal order should be respected as a worthwhile compromise.

The International Human Rights Judiciary and National Parliaments: Europe and Beyond. Edited by Matthew Saul, Andreas Follesdal, and Geir Ulfstein. New York, NY: Cambridge University Press, 2017. Pp. xii, 403. $125.00 (hardback).

Reviewed By Tianwei Liu

Saul, Follesdal, and Ulfstein's book, *The International Human Rights Judiciary and National Parliaments: Europe and Beyond*, explores the relationship between the emerging international human rights judiciary (IHRJ) and national parliaments. The book addresses concerns regarding the IHRJ's perceived threat to national democratic processes, responding to protests from domestic parliaments regarding perceived "jockeying" for prime real estate in the area of human rights law. This book confronts backlash against the external body and ultimately argues that such a threat remains unfounded, and that instead the IHRJ advances parliaments' democratic efforts.

The book makes a coherent argument through the use of smaller analytical essays written by various authors, and brings together a range of perspectives in order to address and reflect on key issues regarding human rights, their place in parliaments vis-à-vis the IHRJ, and the future of and relationship between the two entities. These analyses are also written with a focus on European parliaments and their relationship with the

European Court of Human Rights (ECHR), as a case study that makes broader comments on the relationship between national parliaments and IHRJ bodies in general.

Ultimately, *The International Human Rights Judiciary and National Parliaments* addresses an oft-discussed and significant legal issue: What happens when international law clashes with state sovereignty? By limiting its scope to human rights law, the book avoids becoming a discussion of all international institutions at once. Nonetheless, it is a bold set of proposals, purporting to address concerns regarding state sovereignty by not only suggesting systems to facilitate how the two entities interact, but also by arguing that in fact, national parliaments *need* the IHRJ to properly implement human rights law, and vice versa. Despite appearing as a collection of essays written from different perspectives, the book does well in establishing the weaknesses on both sides of the question, thus problematizing arguments that would clearly support either international institutional supremacy or state sovereignty in human rights concerns.

The book focuses on three broad issues: first, the way in which the IHRJ connects with national parliaments; second, how those connections might challenge or enable growth in the development of more robust human rights; and last, as part of the book's broader overall argument that the IHRJ *does* benefit national parliaments' human rights efforts, the book normatively asks what the IHRJ might do in the future to maximize such contributions to national parliaments.

The book itself is structured in four parts. Part I examines the nature of the human rights roles of parliaments, as well as the regional and international efforts that have contributed to the more active engagement of parliaments in human rights issues in general. In addition, even early on in the book, at the end of Part I, an essay discusses a potential framework for structuring a parliamentary oversight mechanism, such as a standing human rights committee, shedding light on the need for parliamentary change when it comes to human rights-oriented approaches. Part II addresses how the work of the IHRJ contributes to national parliaments, arguing through a series of articles that the IHRJ's contributions at the domestic level vary between parliaments. This helps to define the issue with respect to both domestic parliamentary insufficiency and institutional underperformance on the part of the IHRJ. Part III

examines the potential of the IHRJ to contribute to parliaments' human rights roles, by establishing opportunities and challenges for future improvement. The essays also examine how this might be implemented without parliaments and IHRJ institutions overlapping in their human rights obligations, by outlining potential maps of IHRJ jurisprudence and the role of derogation clauses and remedies. Part IV discusses ways to better manage relations between parliaments and the IHRJ through concepts such as democratic override, as well as the potential barriers posed by considerations of democratic sovereignty, and potential factors for determining whether or not a parliament could resist IHRJ judgments for the sake of its own sovereignty.

The book effectively argues both sides of the current debate before moving on to its multifaceted solutions; despite being largely in support of granting more power and influence to the IHRJ, it does not condemn historical state derogations or "civil disobedience" from the institution's rulings. In fact, such instances become part of the analyses, and are used as lessons from which the authors create a more flexible structure in which certain state derogations would become permissible—a sort of multi-factor test. This particular approach is more effective and realistic than those that refuse to credit state objections as unlawful or out-of-bounds, considering the significant role that states have in establishing and maintaining international order. In addition, as the book itself maintains, states are crucial to the furtherance of human rights in ways that the IHRJ cannot accomplish alone. The fact that essays in the book do focus on the importance of not only national parliaments, but of nations as a whole in creating a "human rights culture" among communities and individuals is particularly insightful—especially considering how difficult it may be, in analyzing institutions, to continue to remember the human element on which cultural and societal changes rest.

The scope of the book, however, is far more limited than its broader thesis, and the geographic narrowness of its case studies is never explained. The book begins with certain broad assumptions; at the beginning of the introduction, the authors proclaim that they will be addressing the interplay of the IHRJ and national parliaments by primarily focusing on the European Court of Human Rights and its relationship with European parliaments. There is an implicit assumption that this

case study will suffice in making broader claims regarding national parliaments and their relationship to the IHRJ beyond Europe. There is little, if any acknowledgment of the fact that these claims may not extend beyond the European example; certainly, little commentary on whether different experiences with regards to the democratic process and human rights legislation would yield different relationships. Even without considering international judicial bodies, it is not such a stretch to argue that different national parliaments—for example, former colonies, or former Soviet Bloc nations—may have formed distinct political cultures and relationships that influence how they interact with international bodies as a whole. However, to the extent that any of the authors within the compiled essays discuss other "tests," such examinations remain within Western Europe, or briefly discuss New Zealand and Australia. This is not to say that an argument solely based on a European example is not worthwhile; however, it seems presumptive for the authors not to introduce these caveats and acknowledge potential limitations to their studies before embarking upon their analysis.

In addition, this narrow scope means that the solutions suggested in the book may have a limited application. An essay written in Chapter IV, which suggests a series of "test factors" for determining where national sovereignty might override an IHRJ judgment, fails to acknowledge that national sovereignty varies according to the historical and modern structures of the parliaments, and states, in question. States are likely to weight their sovereignty and their human rights records differently, and may have varied relationships with international bodies in general. Despite the fact that an entire essay in this book is dedicated to placing the United Kingdom's derogations from IHRJ rulings in their historical context, it fails to acknowledge how other historical contexts may throw a wrench into some of the proposed institutional changes that purport to "fix" the relationship between IHRJ and national parliaments.

In conclusion, despite its significant geographic limitations and unexamined consequences for the overall scope of the thesis, *The International Human Rights Judiciary and National Parliaments* addresses a major question in international law with a balanced approach and a range of structural solutions. By problematizing the current relationship between national parliaments and IHRJs, the book creates room for essays to

propose new ways in which the two entities can work together to promote human rights without infringing upon one another, ultimately arguing that the system of international law is only truly adequate if it facilitates cooperation between institutions and entities at many levels.

Social Enterprise Law: Trust, Public Benefit and Capital Markets. By Dana Brakman Reiser & Steven A. Dean. New York, NY: Oxford University Press, 2017. Pp. xii, 202. $49.95 (hardcover).

REVIEWED BY JAMES LLOYD

Social enterprises are profit-making entities that are willing to trade profit for gains in social good. These entities develop a "double bottom line," whereby their social contribution is considered alongside their net profits. They are distinct from non-profits, and also distinct from pure profit-making entities, which measure success on the basis of the value that they provide for shareholders, even though they may engage in some corporate responsibility activities.

These enterprises have generated substantial social good, whether that be in the form of paying above-market wages to their employees or providing their product *gratis* to needy communities. Moreover, they have been remarkably successful: customers are often willing to pay a premium for their offerings in order to contribute to their dual-mission, thus ameliorating the costs of their second bottom-line.

Brakman Reiser and Dean, however, observe that these companies are often unable to grow rapidly due to their lack of access to capital, thus limiting the scale of the social good they can provide. These organizations struggle to access capital because of a fundamental trust issue between investors and social enterprises.

The authors observe that under normal circumstances, when all parties are motivated solely by profit, there is an alignment of each party's incentives; what will provide the most profit for the founders will also provide the most profit for their investors. Thus, while there may be divergence on the means to the end, the end is clear. However, when there is a dual bottom line the situation is complicated, as the parties must allocate emphasis between their missions. For social en-

terprises, it is extremely difficult for them to identify sources of capital that will not jeopardize their mission once some control is ceded to the investors. Conversely, potential investors who are committed to investing in mission-based enterprises have few guarantees that the enterprise will stick to its social objectives. Simply investing in charities is not a solution, because capital invested in charities can never be retrieved.

Brakman Reiser and Dean describe this quandary as an "assurance game" and argue that resolving this trust deficit will allow social enterprises access to capital, will allow capital access to social enterprise, and will allow the public access to the benefits of organizations with a social mission. The authors turn to the law in order to resolve the assurance game, identifying three mechanisms of potential value.

While those mechanisms would likely work, and be effective in promoting the success of social enterprises, there is little-to-no hint as to how they might be implemented. Consequently, *Social Enterprise Law* is unable to serve as a practical guide for enterprises and investors. However, it does function as a demonstration of how law interacts with economic incentives, and how a broad perspective on corporate law can allow it to become liberating, rather than limiting.

The authors review the current legal forms available to social enterprises, which are categorized as "first generation forms." These include benefit corporations, Vermont's "low-profit limited liability company" (L3C), and Delaware's public benefit corporations. However, these forms are rarely used by social enterprises. The authors observe that state legislation has created forms that tolerate, but do not enforce, social enterprises and their double bottom lines. Critiques of those forms include the fact that they do not place an imperative on the social mission above the profit mission from an organizational perspective, and also fail to place a corresponding imperative on directors from a fiduciary perspective. Further, the authors note questionable enforcement of these corporate forms, noting unilateral opt-out rights, dodgy disclosure requirements, and self-monitoring. Altogether, these legal forms are inadequate to resolve the assurance game hindering capital investment in these social enterprises, because they are not sufficiently strict on wayward entrepreneurs and investors. The authors compare these forms unfavorably to the United Kingdom's Community Interest Company (CIC), which have a mis-

sion prioritization requirement, reporting requirements, and an asset lock that limits distribution of dividends.

Based on that survey, the authors propose a legal form for social enterprises. Dubbed the "Mission Protected Hybrid" (MPH), it would serve as powerful branding, demonstrating that those entities that adopted it were fully committed to their mission. This branding thus allows social enterprises to differentiate themselves from for-profit entities, a boon for both entrepreneurs and investors. They propose that this form would only be available to entities that both explicitly stated a dual purpose and commit to prioritizing it. In terms of enforcement, the authors anticipate review of compliance on entry, and over time via mandatory reporting. Enforcement could be performed by state attorneys general, through empowering stakeholders, or by a for-purpose regulatory body. The authors recognize that this solution would require significant legislative action to be implemented—both to create the form and to create effective enforcement mechanisms.

More immediately, the authors propose a financial instrument. Rather than gaining equity, investors looking to contribute to social enterprises could frame their support as debt. Such a financial instrument could be explicitly contingent upon continued adherence to the mission of the social enterprise. The authors note that financial instruments are already remarkably flexible, allowing for different levels of control, risk, and return. In this case, a financial instrument could be structured so that if the enterprise strayed from its mission, the instrument would convert into common stock, thus allowing investors control over the enterprise. The authors believe that this contingent conversion provision would be a strong incentive for the enterprise to remain on mission and would also act as a strong signaling mechanism to all parties of the centrality of social good to the organization's efforts.

Finally, the authors observe the massive potential pool of retail investment capital, and the role of the federal government, via the SEC, in monitoring investment opportunities for those small investors to protect their interests. This was most recently demonstrated by the 2012 Jumpstart Our Business Startups (JOBS) Act, which altered the way in which investors became accredited, cut regulations around the mini-IPO process, and made changes to the way in which investments could be crowdfunded, as well as making online advertising not an

immediate indicator of intrastate economic activity. These changes made it easier for retail investors to find and invest in enterprises, but also exacerbated the assurance game even further, as small investors are less protected by SEC regulations. Further, retail investors lack the sophistication to craft custom arrangements and also risk their fellow investor being less socially driven, thus pulling the enterprise away from its initial mission. The authors propose combatting this via an innovative tax regime that would exclude some mission-based income from taxation as a carrot. The inverse stick would be to charge ordinary income tax rates rather than the lower rate levied on income from dividends. As well as being a strong incentive for social enterprises to focus on their mission, the authors argue that this regime would serve as a powerful indicator to retail investors, generating the assurance that is currently lacking.

Of course, this solution, as well as the authors' MPH proposal, would require immense governmental intervention to be implemented. It is in this regard that *Social Enterprise* struggles to make an incisive impact on the field.

The book is well-written: the authors clearly have a strong understanding of the incentives and outcomes associated with social enterprise and corporate law in general. This understanding manifests in clear, comprehensible explanations; one could read this text with only a minimal understanding of law and business and come away with an appreciation of the issues at hand. The book also serves as a review of the social enterprise field—latter chapters discuss metrics used to measure social performance of social enterprises and exits from social enterprises. Those chapters are replete with case-studies and lessons learned; any reader interested in the social enterprise space would be well served by starting with this text. Above all, the text is demonstrative of the flexibility of the law, and its power in shaping the way businesses and investors conduct themselves.

Importantly, the proposals that the authors introduce appear to be workable. The authors have clearly considered them closely, and have taken account of the incentives that drive investors and entrepreneurs, and in particular the way in which corporate law attempts to harness those imperatives. As they tinker with existing tools, the proposals have the advantage of predictable outcomes, even though those tools are being used in novel ways. Further, the proposals work within the

current structures of corporate activity—they do not require fundamental changes to the status quo, being mere addenda that would have minimal effect on the existing system. As such, were they to be introduced, they would elicit little opposition, and would likely be easily adopted by those to whom they are designed to appeal.

However, in its blurb, *Social Enterprise Law* claims that it "provides tools that will allow [social enterprises] to raise the capital they need to flourish." In this expansive aim, the book has not succeeded. The substantive proposals that the authors proffer are either impossible for legislators to implement, or too complex for investors to understand and bother implementing. A budding social entrepreneur would not come away with a solid action plan for running her efforts, but rather a collection of "coulds and should" that are ultimately unhelpful. It also fails to demonstrate that there is an appetite in the market for these innovations. It is unclear that charities are not meeting the needs of philanthropic investors, or that standard corporations are inadequate to meet the needs of social enterprises. Finally, the text does not consider the ramifications of cross-border activity, or of problems that are global in nature.

Thus, *Social Enterprise Law* fails in its lofty ambition to be "a rich guide for students, entrepreneurs, investors, and practitioners," as much of its content is aspirational or nascent. However, it does serve as a useful introduction to the challenges that social enterprises face in raising capital, and, were its proposals to land on the desk of a state legislator, their implementation would undoubtedly add punch to the social enterprise game.

Constitutional Adjudication in Africa. Edited by Charles M. Fombad. Oxford, UK: Oxford University Press, 2017. Pp. xxiv, 378. $100 (hardcover).

Reviewed by Ashley Miller

Charles M. Fombad takes on an ambitious task in his book *Constitutional Adjudication in Africa*. He covers a discussion of the diversity of African countries' approaches to adjudication of constitutional questions, as well as arguments regarding the common problems faced by the continent, including its

shared colonial heritage. The book is a collection of essays and analyses, with many of the pieces focused on examinations of the intricacies and mechanics of constitutional adjudication on a country-by-country basis. Overall, the book is a great introduction to the nuances of a diverse selection of countries in Africa and how they have built their systems of constitutional adjudication. The book's biggest strengths are two-fold: the incredible detail of its analysis, and its big-picture view of the judiciary's role in government and in society. It does not solely focus on these institutions, but instead looks to how these judicial mechanisms interact with the political priorities and complex historical dynamics of each country. There is a constant background dialogue of how political power structures interact with what decisions are made regarding the judiciary, especially in questions regarding the constitution.

Furthermore, there are also pieces that examine continent-wide trends that come from a shared experience of colonialism, and the push in the 1990s to take part in constitutional reform. While the editor clearly outlines general categories such as decentralized versus centralized review methods and civil versus common law systems, he also makes clear from the beginning that there is flexibility in how each country borrows and constructs its own model, unique to its own sociopolitical environment and history.

The author gives an incredibly in-depth overview of the different models of constitutional review around the continent, with a temporal focus on the post-1990 constitutions. During that period, there was a wave of reform efforts that attempted to make courts more independent and more capable of protecting human rights and the rule of law. The section of the book focused on this time period is particularly interesting because of how it weaves an analysis of the strengths and weaknesses of the different models into a discussion of how the choice of design relates to colonial influences. However, Fombad treats the colonial heritage with delicacy and sheds light on how African countries were not merely passive inheritors of a colonial legacy. Instead, many of the more successful African states managed to creatively fashion their systems by borrowing from other systems and combining aspects of other models in an active way.

The book offers various examples of different constitutional adjudication models, comparing successful cases, such

as Benin, with less stable systems, such as Cameroon. Fombad identifies generalized problems in Cameroon leading back to the lack of strong separation of powers in the governmental system, which results in large amounts of power going to the president. At the same time, he argues that the lack of stability is partially due to the adoption of a very Gaullist constitution during the period of reform that swept Africa. The ordering of the chapters on Benin and Cameroon as consecutive essays only highlights the huge discrepancy between access rules and the courts' ability to hold other branches of state accountable in the two countries. The book goes on to discuss in detail the specifics of how the adjudication systems work in other countries including Ghana, South Africa, Nigeria, Ethiopia, and including analyses of remedies, access to courts, and competing principles of constitutional interpretation.

The essays reach beyond a purely domestic focus on adjudication of constitutional matters and also address how international law is or is not incorporated into constitutional questions. The book grapples with these practical questions with the same level of realism that adds depth to its theoretical musings. The book points out that there is often a gap between the law and the daily life of those outside the courtrooms. Furthermore, a separate question involves whether international law is even seen as democratically legitimate. However, the author argues that the question of democratic legitimacy may be alleviated by the ratification of treaties by the legislature—which largely ends up being a political question.

Arguably, a weakness of the book is that the level of detail and focus on individual cases sometimes leaves the reader with the task of creating connections and making comparisons. Fombad managed at the end to put together some of the puzzle pieces with an overview and a continent-wide conclusion. However, during almost the entirety of the book, even in the sections that are more transnational, the discussion is structured around the ways each country approaches the problem faced more generally.

Nevertheless, this nation-specific analysis could represent less a weakness and more a strong challenge to notions of the concept of Africa as a monolithic legal, cultural, and political entity. Fombad is not quick to generalize across the continent or offer sweeping solutions. Elsewhere, the search for commonality overlooks the diversity of perspective and of political

challenges across the continent. His focus on how each country faced the task of building a judicial system capable of supporting democracy and protection of individual rights makes it clear that, much like a plant, whether or not a system flourishes depends on its unique environment. It also makes each country the active participant in defining its own system of adjudication and gives countries both credit and responsibility for the state of constitutional protections. His focus on the particulars may be part of an argument made between the lines of the book: that there is no Africa-wide solution.

The book also manages to not merely focus on the legal systems as they are today but also look to the past as a guide to the future. Later in the book, there are a handful of in-depth historical case studies. The description of "The Birth of the South African Constitutional Court" in Chapter 14 explains in detail the formation of that country's Constitutional Court as an effort to strengthen post-apartheid rights protection. It goes into extreme depth about all the decisions made in forming the Court, from whether there should be law clerks to the details of what building would house the Court. At the same time, this case study of South Africa emphasizes an important dynamic that runs throughout the book: optimism regarding Africa's ability to build strong institutions, even on the fractured base of a complex history, whether it be colonialism or apartheid.

Moreover, the book captures some of the subtleties of how African nations approach constitutional legal issues in non-structural ways, such as the concept of *ubuntu*. The idea is notoriously hard to define but involves the collective good, solidarity, and the realization that individual rights are connected to group goals. The idea originated in South Africa, a current success story among African judicial systems, and has spread throughout the continent. The mention of this particular facet of quasi-philosophical and quasi-legal wisdom reflects the book's strategy of diving deep into the smallest, almost undefinable details about how people think about the constitution and the judiciary in an attempt to provide real and context-specific solutions.

The author does not end on a note of despair. The best representation of the optimism of the book is the case of Benin, which he portrays as a shining beacon of system design. Its past was not quite as bright, having been characterized at

one point in time as the lost cause of the continent. Benin may be the perfect analogy for the between-the-lines message of the book more generally: that the countries of Africa are not bound by their past, and that strong institutions built to fight for protection of constitutional rights may be the path to a brighter future.

Blood Year: The Unraveling of Western Counterterrorism. By David Kilcullen. New York, NY: Oxford University Press, 2017. Pp. ix, 288. $17.95 (paperback).

Reviewed by Jeffrey Tonge

In *Blood Year*, David Kilcullen provides an inside view of the origin, failure, and ramifications of Western counterterrorism strategy over the last twenty years. Kilcullen argues that the uniform strategy employed by the United States and its allies to combat terrorism failed to acknowledge changing conditions on the ground, and permitted the rise of Islamic State of Iraq and Syria (ISIS).

Kilcullen identifies four key threats posed by ISIS. First, the group's effective use of social media and other new technologies to cultivate home grown terror threats that are difficult to track and prevent. Second, ISIS's strategy to attract and train foreign recruits who can then return to their home countries with minimal difficulty. Third, the success and influence of ISIS as encouragement for other terrorist groups worldwide to increase their operations. Fourth, the impact of the current conflict in the Middle East on countries in the area, as well as countries in Europe.

Kilcullen's comprehensive treatment of the War on Terror and the rise of ISIS begins with a discussion of the disaggregation strategy devised and used by Western countries. Disaggregation sought to defang the global Al Qaeda organization by dividing it and splitting its resources and coordination, so that regional powers could more easily contain and defeat the smaller local groups.

After highlighting the rapid emergence of sectarian conflict in Iraq resulting from the reckless planning behind the 2003 invasion of Iraq, Kilcullen examines the effect of the 2007 surge in Iraq. The discussion of the surge marks where

Blood Year is most interesting, and where Kilcullen's insider perspective provides valuable insight into the War on Terror.

For readers unfamiliar with the details of American counterterrorism strategy, Kilcullen's analysis strips American foreign policy of partisan considerations and identifies the most important themes. Kilcullen explains that, as a tactical shift, the surge remedied many problems inherent to the invasion of Iraq by finally providing sufficient boots on the ground to stabilize the country. Kilcullen argues that Bush's change in strategy was too little, too late because the insidious problems of sectarian and religious conflict had already taken root in Iraq. Further, political change in the United States stunted any possibility of long-term success due to President Obama's reluctance to remain in the Middle East. Administration change in the United States may have dramatically altered the rhetoric emerging from the White House, but Kilcullen notes that this shift had little impact on the strategy employed by the armed forces. Both administrations preferred light footprint armies with few soldiers deployed on the ground, but Obama increased the use of drone strikes and mass surveillance to target Al Qaeda's leadership.

The rise of ISIS in Syria and its expansion into Iraq marked the emergence of a new kind of terrorist threat. This successor organization took advantage of new technologies, such as social media, to work around Western counterterrorism strategies. Employing a decentralized leadership structure permitted disparate, isolated terrorist organizations to work together to achieve more abstract goals—for example, the establishment of an Islamic caliphate. Creative uses of new technologies also allowed ISIS to discretely cultivate home-grown terror threats such as the lone-wolf attackers responsible for recent attacks in France and the United States, which Western counterterrorism services struggled to find. By operating as a sovereign nation engaged in a conventional war, ISIS was able to take advantage of poorly trained, unorganized, and underfunded militaries around the Middle East. Using columns of troops and armored vehicles allowed ISIS to capture important cities in the Middle East to establish *wilayat*, or states, within their new caliphate.

Kilcullen concludes that the best solution to the current problems in the Middle East lies in an active containment strategy that seeks to prevent the further spread and entrench-

ment of ISIS in the region. However, given the current political climate in the United States, the author recognizes that such efforts would likely be unpopular due to the necessarily long-term commitment of significant troops and resources.

The most interesting aspect of *Blood Year* lies not in Kilcullen's comprehensive and insightful description of the development of the current state of affairs in the Middle East, but rather in his willingness to engage in honest self-reflection that addresses both the successes and the failures of the United States' foreign policy. If policymakers had a similar willingness to reflect on their policies, perhaps many of the pitfalls and quagmires that have troubled the United States could have been avoided. Kilcullen's description of *Blood Year* highlights this point:

"I know [Disaggregation] intimately, because I was part of the team that devised it. So if this story is really a confession of failure, then it's my failure too. And if we want to comprehend how things went so awry in 2014, we must first admit our shortcomings, and then try to understand where the strategy came from, and how it went so badly wrong."

The strategic missteps by the Bush administration that precipitated the Iraq War could only have occurred in conditions where key decision-makers were either unwilling or unable to honestly assess the prospects of success and failure. Instead of recognizing the substantial differences between Iraq and Afghanistan, policymakers ignored a wide range of factors indicating that an invasion of Iraq could produce long-term conflict which would embroil the country in sectarian crisis. Further, Secretary of Defense Rumsfeld failed to adequately prepare the United States to rebuild Iraq following the removal of Saddam Hussein.

The Obama Administration also failed to honestly assess the situation in the Middle East and the existing strategies employed by President Bush. Campaign promises guaranteeing a troop draw-down and retreat from the Middle East clouded the judgment of the Obama Administration and obscured the fact that a precipitous withdrawal jeopardized any hard-earned gains from the 2007 surge. More fundamentally, although the rhetoric coming from the White House changed after 2008, the overall strategy of disaggregation continued to be em-

ployed. Basing Middle East policy on results and not rhetoric may have prevented the eventual rise of ISIS.

Paradoxically, the reflection that would have benefitted policy makers in their prosecution of the War on Terror concurrently serves to undermine freedom and civil liberties in the United States. Following impactful terrorist attacks or attempts, such as 9/11, the airline shoe bomber, or the 2015 attack in Paris, countries revise and heighten security measures to prevent repeat occurrences. Increased scrutiny in airports, monitoring of telephone calls and emails, and hardening of public areas all serve to reduce the chance of similar attacks occurring again. However, in the age of ISIS, evolving terrorism strategies that rely on radicalizing lone-wolf terrorists via the internet mean that pre-existing measures may not meaningfully hinder potential terrorists. Rather, as Kilcullen argues, the net effect of invasive security measures may be to increase the threat of terrorism by contributing to the narrative of a war between the liberating East and the oppressive West.

Kilcullen's book is most engaging when explaining the role Western counterterrorism policy played in the rise of ISIS. Unfortunately, after providing a detailed description of the factors contributing to existing circumstances, he fails to thoroughly treat the current state of affairs in the Middle East. Kilcullen could have provided an expert's insight into contemporary developments in the Middle East that are difficult to find anywhere else. Serious discussion of strategy proposals for addressing ISIS would have provided a much more satisfactory ending, especially when compared with the nebulous "active containment" strategy recommended by Kilcullen. Further analysis of the impact of President Trump's election, developing conditions in Syria, and changing political relations with Russia would also have been a welcome addition to this book.

Blood Year is a valuable read for anyone interested in learning more about Western foreign policy in the Middle East. Kilcullen clearly and concisely explains the history and development of current conditions in the Middle East. For experts, this book provides a new, interesting perspective from a policymaker intimately familiar with the details of the War on Terror. Although the conclusion leaves the reader wanting more concrete proposals for dealing with ISIS, Kilcullen's other insights make reading this book worthwhile. Kilcullen's

willingness to acknowledge and discuss the failures of the West's Disaggregation strategy provides a valuable lesson applicable to many other situations. Rather than doubling down on a flawed approach, honest reflection on the strengths and weaknesses of an approach allows a policymaker to adapt their strategy to changing circumstances.