

## BOOK ANNOTATIONS

*Rising to the Populist Challenge: A New Playbook for Human Rights Actors*. Edited by César Rodríguez-Garavito & Krizna Gomez. Bogotá, D.C., Columbia: Dejusticia, 2018. Pp. 202. Free (electronic).

REVIEWED BY TATIANA AUGUST-SCHMIDT

In a deeply self-aware volume, César Rodríguez-Garavito and Krizna Gomez's *Rising to the Populist Challenge: A New Playbook for Human Rights Actors* illustrates how right-wing populism threatens human rights movements around the world and develops a toolkit for human rights actors to counter populist efforts to undermine human rights. In an attempt to find a silver lining in this tumultuous time, Rodríguez-Garavito and Gomez, themselves human rights scholars and activists, suggest that populism has the potential to be a catalyst to encourage human rights actors to make long-needed transitions and adapt to a changing world. With increasing multipolarity, dwindling Anglo-American hegemony, and growing numbers of shameless leaders—traditional human rights tools like the boomerang model and “naming and shaming” are losing their effectiveness. In this new playbook, Rodríguez-Garavito and Gomez bring together scholars and activists who outline concrete strategies human rights actors can adopt to ensure the longevity of the movement at a time when the protection of human rights is particularly necessary.

Rodríguez-Garavito and Gomez define populism with two traits: anti-elitism, and anti-pluralism. While not all anti-elitists are populists, all populists are anti-elitist. Populists drive their movements by pointing to increasing socioeconomic inequality and the widening gulf between average citizens and powerful political decisionmakers. In order to emphasize this distance and shape the distinction for different sociopolitical contexts, populists tend to define the category of “the elite” as suits their needs. Wealthy and powerful people are often grouped together, and even traditionally disadvantaged groups such as Roma in Hungary, Muslims in India, and immigrants in the United States are defined as “privileged,” in or-

der to build solidarity between the “real people.” Populists tend to exacerbate the conflict between elites and the public by claiming they represent the interests of the “real people,” in contrast with wealthy and political privileged. Anti-pluralism, the second part of this definition of populism, is the embrace of “us vs. them” rhetoric. Populists leaders claim to be the only legitimate representatives of the people, and say that the people they represent are the only people that matter. Populist leaders see human rights as an impediment to the interests of the majority, and commonly adopt nationalistic, xenophobic, misogynistic, and explicitly anti-human rights language, which directly undermines the human rights agenda. If civil society fails to adapt its outdated human rights strategies to counter populist rhetoric and prevent such leaders from coming to power, the future of the human rights movement will be in jeopardy.

With respect to human rights, populism has two main goals: first, to undermine the efficacy of human rights actors; and, second, to undermine the geopolitical, social, and cultural legitimacy of human rights actors and principles. Populists undercut the efficacy and legitimacy of human rights by employing five main tools, which Rodríguez-Garavito and Gomez describe as the “populist playbook:” (1) restrictions on foreign funding, which many human rights organizations rely on; (2) smear campaigns; (3) restrictions on fundamental rights that strike at the heart of independent media and NGOs; (4) severe burdens on the operational capabilities of human rights actors and civil society at large; and (5) cooptation of sections of civil society, including through government-owned NGOs (GONGOs). In *Rising to the Populist Challenge*, Rodríguez-Garavito and Gomez develop a readily accessible toolkit to counter these tactics.

Before elaborating on concrete steps human rights actors can take to counter these challenges, the editors explain why populism today presents an unprecedented challenge to the human rights movement. The editors make three main arguments. First, they argue that although attacks on human rights actors have been going on for as long as there has been a movement, populism brings novel and especially difficult challenges. For one, the new populist-authoritarian era is defined by disdain for social conventions, on which human rights norms are heavily dependent. Since many human rights are

not codified in legal systems, the promotion of human rights often relies on changing social conventions—those unwritten rules which guide human behavior and which cannot be legally enforced. Populism also creates “a tension between rights and democracy—between the liberal and the democratic components of liberal democracy,” given that populist leaders often come to power through democratic means. This tension incentivizes populists to invest significant resources in obtaining constitutional and legislative reforms to constrain opponents, weakening and dismantling basic rights like freedom of expression, and consequently putting democracy itself at risk. The second argument is that populist leaders have taken advantage of a period of turmoil in the human rights movement to further threaten the movement. Third, the editors argue that the human rights field needs to reform for the better to meet new populist challenges, make up for past weaknesses, and fill those gaps which populist leaders now exploit.

The Playbook’s toolkit is divided into three parts: challenging the idea that the human rights movement is in crisis; fighting legitimacy challenges; and combating efficacy challenges. In one chapter, Kathryn Sikkink challenges pessimistic claims about the state of civil society and human rights and argues the claims are not substantiated by historical and statistical evidence. She asserts that reinforcing the idea that human rights are in crisis only further harms the efficacy and perceived legitimacy of the movement and affects the motivation of advocates within the movement. Katrin Kinzelbach and Janika Spannagel further argue that there is no evidence suggesting that human rights organizations are under threat globally.

Two of the most interesting Playbook suggestions offer insights for all of civil society. Kapronczay and Kertész show how to reach a broad audience in times of extreme polarization by focusing on the power of emotions and narratives. As an example, they look at the Hungarian Civil Liberties Union’s (HCLU) communications strategy called “HCLU is needed.” The strategy has helped the group maintain relevance and resist attacks by Hungary’s Prime Minister Victor Orbán, who created a deliberate campaign to discredit, delegitimize, marginalize, and stigmatize civil society organizations. Orbán openly argued that NGOs represent “the other”—language that is emblematic of anti-pluralist and anti-elitist populist

rhetoric. In response, HCLU avoided direct counter-narratives, which would make them appear defensive, and instead used the increased attention to tell a different narrative. Using social media as its main platform, HCLU told personalized stories demonstrating that their clients are, in fact, “one of us.” HCLU explained their messages and the values of the organization in plain language, rather than relying upon alienating and often over-legalized human rights jargon, and made the deliberate choice to highlight the work of the organization rather than the “abstract principles” they protect. By engaging with values-driven narratives, and emphasizing emotions and relatability, HCLU was able to relate to a broader audience and demonstrate the value of human rights work at a time when average citizens feel distant from such work. This fits in perfectly with broader conversations throughout the human rights movement about reaching the “persuadable” or “moveable” middle, understood as the group of people who are receptive to human rights issues but who may be unconvinced or alienated by human rights language. It is absolutely crucial that human rights organizations become more effective at communicating than their right-wing populist counterparts who capitalize on demonizing narratives. However, as human rights organizations adopt more emotion-based and value-driven language in their communication strategies, it is important for human rights actors to understand the consequences of playing into people’s fears and doubts, which could have the adverse effect of supporting right-wing populist rhetoric.

Another reason to appeal to the persuadable middle is to support funding efforts in response to populism’s efficacy challenge. As populist leaders crack down on foreign funding—such as Russia’s requirement that NGOs receiving foreign funding be registered as “foreign agents”—NGOs might reduce their dependency on foreign funding by developing local support for human rights causes. James Ron, José Kaire, Archana Pandya and Andrea Martínez write in their chapter about a research project in Mexico that looked at a survey of representative adults and analyzed how many adults were actually willing “if asked in the right way” to make small donations. The results show that there is real potential for raising local money. In order to implement such a plan, NGOs will have to hire new people to develop new social ties and build out a market niche, while also requiring the support of international

donors to develop local fundraising capacity. Though this approach may not work for every organization, the transition away from foreign funding will likely help local organizations be more invested in their communities and ensure the relevancy of their work to the local people. The authors' experiment was somewhat flawed, however, because it consisted of giving money to the experiment participants and then asking whether they wanted to donate to human rights organizations. Whether people would be as generous when they were not gifted this additional money is questionable at best. Nevertheless, the point stands that organizations need to do more to connect with local communities and rely less on foreign funding.

The spread of populist governments and movements threatens human rights in a myriad of ways. The human rights community must remember that this is a long-term effort, and be able to respond to criticism, reflect on shortcomings, and involve a broad range of perspectives to adapt to populism's new challenge. *Rising to the Populist Challenge* tackles difficult issues for the human rights community as a whole and recognizes that human rights strategies need critical rethinking. The Playbook makes a clear statement that it is time for change in the human rights movement and offers a new paradigm for achieving such reform. While comprehensive in nature, the Playbook is simultaneously measured, recognizing that the tools it offers cannot be applied in a blanket manner, but rather will need to be adapted to each situation. Rodríguez-Garavito and Gomez not only show how formal NGOs, as opposed to other kinds of human rights actors, can survive these new challenges, but also how they can be more effective. Rather than lamenting changing times or responding defensively, Rodríguez-Garavito and Gomez offer crucial insight into how the movement must change, and create a practical toolkit for human rights advocates who have to deal with dissolving democracies and eroding human rights. By bringing together the expertise of both scholars and activists, Rodríguez-Garavito and Gomez inspire their fellow human rights defenders to confront populist challenges to human rights and improve their own practices. As one of the foremost thinkers on the future of human rights, Rodríguez-Garavito is well-situated to compile this Playbook.

This book is a necessary resource for all those who are active in the human rights movement. Practitioners inside and outside the movement alike should take note, as rising to the populist challenge is something that civil society around the world must learn to do.

*Republic in Peril: American Empire and the Liberal Tradition.* By David C. Hendrickson. New York, New York: Oxford University Press, 2018. Pp. x, 287. \$34.95 (hardcover).

REVIEWED BY JACQUELINE B. GALLANT

Since President Trump took office, the “America First” policy pursued by his administration has had a number of significant consequences, not the least of which is the decline of the United States’ standing within the international community. The Trump administration, among other things, has jeopardized alliances that the United States built over decades, refused to participate meaningfully in climate negotiations, commenced an ill-advised trade war with China, and pursued perilous strategies in dealing with adversaries, including North Korea. These actions, and others, have prompted many observers to question the United States’ capacity to act as a leader within the international community—a role that it has played, not without drawbacks, since the end of World War II. Given this political context, a reexamination of the United States’ role in the international order is both timely and necessary.

David C. Hendrickson’s *Republic in Peril* purports to do just this, arguing that the United States’ mode of operating abroad since the fall of the Soviet Union has been characterized by a number of serious flaws and shortcomings. Hendrickson makes a number of broad critiques of American foreign policy that are sorely needed, particularly as it relates to the gap between the United States’ professed commitment to a liberal order and its illiberal actions abroad, as well as to the moral hazards associated with unilateral intervention or intervention dominated by the United States. He advocates a reorientation of American foreign policy towards the principles of traditional liberalism, as advocated by the Founding Fathers, as a remedy for the host of problems created by the interventionist brand of foreign policy pursued by the United States since the fall of the Soviet Union. The value of his cri-

tique, however, is diminished by his largely uncritical view of the Founding Fathers' own failure to abide by their professed liberal values and Hendrickson's failure to adequately support some problematic assertions.

Hendrickson begins by analyzing the dominant narrative U.S. officials employ to justify the United States' hegemony abroad. Essentially, the narrative asserts that U.S. hegemony on the international stage is necessary to ensure a liberal world order. According to this view, the United States is justified in imposing its policy priorities on other states in a manner that amounts to imperialism under certain circumstances, because the United States' hegemony is based on a system of rules. Hendrickson then undermines this worldview by exploring the many instances in which the United States has failed to follow these rules in its foreign policy, particularly post-1991. Hendrickson also questions the extent to which American foreign policy of the past twenty-five years has actually pursued liberal objectives.

A core component of Hendrickson's critique of recent American foreign policy is the idea that the "national security apparatus" has captured American decision-makers and is the driving force behind military expansion abroad, at the expense of the prosperity, liberty, and security of the American people. The ideology pushed by the "national security state," which justifies American intervention into the domestic affairs of foreign states, creates significant instability and has significantly harmed a number of people abroad. To rectify these harms and promote global stability, Hendrickson advocates a return to the worldview based on that held by the Founding Fathers; namely, a reorientation of American foreign policy to one consistent with a pluralist vision of the world, a respect for the "society of states," and a stronger emphasis on neutrality and non-intervention in the domestic affairs of foreign states. This view is summed up in Hendrickson's push for the United States to adhere to the Golden Rule when engaging with other states. Ultimately, Hendrickson believes that a reorientation of American foreign policy will better equip the United States and the world to address global problems, such as climate change, and foster stability and freedom worldwide.

Hendrickson's critique and proposal for the reorientation of American foreign policy are most compelling at their highest, most abstract level. It is undeniable that the United States'

intervention in the domestic affairs of foreign states in recent decades has created significant blowback. The United States has not only failed to permanently solve the issues that prompted its intervention, but has further destabilized foreign states and generated a number of consequences that continue to harm people in those states. One of the most potent examples of the failures of the interventionist foreign policy is the war in Iraq, which created a political vacuum in that country and fomented intractable instability in the Middle East. Examples beyond the Iraq War further support Hendrickson's proposition that the United States must orient away from an interventionist foreign policy, including the instability and harm created by the United States' intervention in Libya and the arming of rebels in Syria. The intervention opened a void that was subsequently filled by ISIS and other violent, non-state actors. Hendrickson also makes a strong critique of the undue influence that the "national security apparatus" has on the policies pursued by American decisionmakers, particularly with respect to the prioritization received by American military interests at the expense of other interests, including those of diplomatic players that would operate in a manner more consistent with a pluralist worldview.

The value of Hendrickson's perspective, however, is significantly diminished by a number of over-generalizations, oversimplifications, and inadequately supported propositions. One of the most jarring examples of these shortcomings is Hendrickson's discussion of the influence of Jewish Americans on U.S. policy towards Israel. He states, "[d]espite the political importance of Jewish opinion in shaping views of the Middle East, and also of Jewish money in American elections," the outlook of other Americans ultimately proves decisive. Raising the specter of "Jewish money in American elections" is a facially problematic statement, as it comes dangerously close to trafficking in stereotypes that have been leveled against Jews for centuries. As such, it requires, at the very least, adequate support, which Hendrickson fails to provide. The only source to which Hendrickson cites as support for this proposition is "Mondoweiss.net," which is labelled by some observers as a "hate website."<sup>1</sup> Hendrickson invokes similar stereotypes later

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1. David Bernstein, "Mondoweiss" Is a Hate Website, WASH. POST (May 4, 2015), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/>

in the book, when he again highlights the role of “Jewish money” in American politics by asserting that “[t]he persistence of the Israel lobby’s power is suggested by the parade of Republican hopefuls that made their way to Sheldon Adelson’s door in the 2016 presidential canvass (the other Republican primary) and the firm alliance Hillary Clinton struck with Netanyahu and Haim Saban, the Hollywood film producer.” Again, a proposition like this requires valid academic support. Hendrickson provides one source to support this, a *Mother Jones* article that focuses exclusively on Haim Saban, which fails to adequately substantiate Hendrickson’s claim of a wider trend.

Hendrickson’s shortcomings are not limited to his problematic presentation of Jewish Americans’ role in American politics. His rosy presentation of the Founding Fathers’ worldview on foreign policy fails to address the gaps that they too had between their professed liberal values and their actual practice. In failing to identify the illiberal behavior of the Founding Fathers, Hendrickson implies that they were truer to a liberal foreign policy than U.S. officials in the latter half of the twentieth century and in the twenty-first century. This, however, simply does not square with the United States’ history of westward expansion, whereby indigenous nations and peoples were displaced and subjugated. Hendrickson’s analysis also fails to acknowledge the United States’ history of illiberal foreign policy in the nineteenth century, including, but not limited to, the acquisition of Mexican territory by force and the annexation of Texas. A more realistic analysis of the United States’ historical foreign policy would acknowledge that there have always been gaps between the country’s professed commitment to freedom, liberty, and democracy and its actual practice.

Hendrickson makes some strong analytical points with respect to the blowback and harm engendered by the United States’ interventionist exercises abroad. He also correctly suggests that these harms and illiberal behavior undermine the

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2015/05/04/mondoweiss-is-a-hate-site/?utm\_term=.945e2be70347; see also Armin Rosen, *A Reminder that Anti-Semitism Has No Place in the Debate Over Israel*, ATLANTIC (July 14, 2012), <https://www.theatlantic.com/international/archive/2012/07/a-reminder-that-anti-semitism-has-no-place-in-debates-over-israel/259830/>.

moral legitimacy that the United States has invoked to justify its dominance in shaping and maintaining the liberal global system. However, the devil is in the details, and Hendrickson's broader arguments were often lost in the lack of evidence to support his assessments of the forces shaping American politics and the United States' history of illiberalism.

*A Theory of Global Governance: Authority, Legitimacy, & Contestation.* By Michael Zürn. New York, NY: Oxford University Press, 2018. Pp. xviii, 312. \$94.00 (hardback).

REVIEWED BY JACKSON GANDOUR

In *A Theory of Global Governance*, Michael Zürn proposes a wide-ranging theory of global politics that attempts to bridge the divide between realists, who see such politics as primarily a contest between formally equal sovereign states, and institutionalists, who emphasize the role of international organizations (IOs) and international law within the global system. In Zürn's account, world politics occur largely within various global governance institutions, but the normative and organizational structure of these institutions *endogenously* generates contestation between states and other actors. The endogenous nature of this conflict is key to Zürn's argument. For global governance to be more than an epiphenomenon of realist, inter-state power conflicts, global institutions *themselves* must generate or provide the structure. Zürn's project is rich with insights and his historical and structural analyses in particular offer promising directions for future theorizing. However, in parts, the theoretical core of his argument is underdeveloped. In particular, it often remains unclear how institutional forces shape conflicts in a manner that is irreducible to external, inter-state contestation.

Zürn's book begins by defining global governance as "consented norms and rules beyond the nation state as well as the exercise of authority across national borders." International institutions are structured by two key norms: the notion of a common good that global governance aims to provide, and the protection of individual rights and entitlements for non-state actors. Authority is defined as voluntary deference, and it is thus distinct from the simple exercise of power. For global governance institutions, this authority is "reflexive."

That is, those subject to their authority engage in “enduring reflection about the worthiness of that authority.” This dovetails into what Zürn calls the “authority-legitimation-link” (ALL), which is the core causal mechanism for many of the phenomena he later describes. The ALL posits that, as international institutions exercise authority, they are compelled to justify their actions using various “legitimation narratives.” Due to systemic democratic deficits, these institutions often have to defend their actions in technocratic terms. This makes them vulnerable to contestation from states and other subjects of authority, who can marshal delegitimizing counter narratives to oppose institutional actions. This dynamic drives change in global governance, including politicization, where objects of governance are made subject to public choice, and “counter-institutionalization”—where aggrieved states set up competing institutions to compete with existing ones. Depending on various factors, these forces can lead to a “deepening” or “decline” of the institution in question.

With this theoretical model in place, Zürn proceeds to give a historical overview of the rise of global governance, which began in the aftermath of WWII and accelerated after the collapse of the Soviet Union. Utilizing empirical data, he then examines the presence and effects of politicization and counter-institutionalization and predicts when each may cause a “deepening” or “decline” of global institutions. Zürn concludes by discussing a normatively ideal global order. Zürn identifies himself as a cosmopolitan, though through the use of global opinion polling he is able to balance idealism with empirical feasibility.

Zürn’s project is ambitious. His analysis attempts to provide both normative and descriptive accounts for understanding the heterogeneous phenomena that constitute global governance. The effort is largely successful. The mix of methodologies is welcome, as Zürn is steadfastly committed to keeping his theory empirically grounded and his use of empirical data is preferable to the common case-study method.

His use of an historical institutionalist analysis to trace the rise of global governance and the growth of specialized institutions—function systems—following the collapse of the USSR is particularly enlightening. Historical institutionalism assumes that actions occur within “institutional environments” and focuses on how institutions both shape and are shaped by their

historical context and how such interactions structure the beliefs and choices of relevant actors. Using this framework, Zürn offers an account of how, freed from Cold War ideological contestation, specialized global organizations flourished without constant political control.

A second highlight is his use of the concept of “reactive sequences”—whereby institutional forces generate their own resistance—to theorize the backlash to liberal and neoliberal international institutions. Such analyses are nuanced and especially pertinent. They allow us to place contemporary debates about the global governance’s democratic deficit, neoliberal ideology, and technocratic orientation into a theoretical framework and situate them within a broader process of historical development.

However, for the most part, Zürn’s analysis only focuses on a handful of major IOs, such as the European Union, United Nations, and the Bretton Woods institutions. As Zürn himself notes, “private, profit-seeking” organizations such as rating agencies and private “transnational regimes” like the International Accounting Standard’s Board also comprise global governance. Yet, apart from their mention in the introduction, such private bodies are almost entirely absent from the analysis. On their face, many of the dynamics Zürn identifies seem applicable to private global governance institutions, but empirical work on the matter could have strengthened the generality of his theory.

A more pressing problem concerns Zürn’s central causal mechanism, the “Authority-Legitimation-Link.” The central aim of his book is to present a theory of the *endogenous* dynamics which generate contestation and drive change within global governance. However, in many key parts of his analysis, the endogeneity of the dynamics Zürn identifies is hard to grasp. When discussing politicization of the E.U., for example, Zürn identifies the 2008 financial crisis and the 2010 Euro crisis as moments of heightened politicization. Such forces, if anything, seem largely *exogenous* and driven by outside economic factors or differences between Eurozone states. While of course the E.U. itself played a role in the crisis, the politicization does not neatly flow from any of the theoretical aspects of global governance Zürn identifies. As political economist Mark Blyth argues, Greek debt triggered a crisis because their potential default placed over-leveraged German banks—who had

lent Greece significant sums of money in the years leading up to the recession—at risk. The resulting pressure on Greece was compounded by concerns among major European banks about a potential “anti-creditor coalition” including countries like Spain and Portugal. The financial crises may have pressed the E.U. to legitimize its authority, but the political contestation caused by the crises seems more attributable to external shocks and inter-state conflicts than to internal, *institutional* dynamics such as the ALL.

Zürn’s discussion of counter-institutionalization suffers from the same defect. He gives much attention to the inter-state power dynamics that determine whether a competing counter-institution will be able to effectively challenge the authority of the older institution and pressure it into reforming. He claims that counter-institutionalization is an “endogenous institutional dynamic” insofar as “it is the institutional structure and distributional basis of the [global] governance system that create conflict lines.” While true in a sense, it is unclear why one would characterize this as an endogenous institutional dynamic rather than the result of exogenous power hierarchies that are *ossified* in an institution. In any event, realist, inter-state power dynamics, rather than formal institutional features like the ALL, seem most determinative.

What is often lacking in Zürn’s analysis is a clear explanation of how the institutional form *as such* contributes to the development of global governance. However, Zürn’s cosmopolitan constitutionalist approach gives him the tools to conduct the analysis. Using this approach, he characterizes global governance as consisting of “loosely coupled spheres of authority.” With this concept, we can understand the institutional forces that enable counter-institutionalization, since such processes would be far less frequent if global governance was structured by strict hierarchy as opposed to interconnected yet autonomous global bodies. It is a testament to the richness of Zürn’s work that the reader can use various theoretical nuggets scattered throughout his book to fill in explanatory gaps, but a deeper analysis of the central problem of how endogenous features of international institutions shape global governance would have ultimately made the project more persuasive.

Underlying the problems in both of the examples given above is the fact that the authority-legitimation-link is a funda-

mentally *discursive* dynamic. That is, the ALL is presented in terms of the narratives institutions tell to justify their authority, be it a “technocratic” narrative that emphasizes impartial expertise or a “fairness” narrative that highlights substantively just outcomes. Making a rhetorical dynamic a central causal mechanism will always be in tension with the exercise of raw power and make separating phenomena from epiphenomena difficult. It is no surprise, then, that Zürn is at his most persuasive when focused on historical and structural features of global governance, such as when he traces the reliance of IOs on technocratic justifications to the fact that IOs have to rely on such narratives given their unique form. This explanation itself indicates that the importance of discourse, while relevant, is overstated. The core problem, it seems, is not the inadequacy of technocratic narratives, but that of technocracy itself.

*A Theory of Global Governance* is a largely successful project which blends historical analysis, social theory, and empirical study. The ambition of Zürn’s project is hard to understate, as developing a general theory of a multifaceted phenomenon like global governance is a daunting task. It is no condemnation, then, to find that Zürn’s project has fallen short. Any project of such scope was fated to do so. Zürn surely is correct in his intuition that contemporary world politics is shaped by global institutions and is not merely irreducible to inter-state conflicts. However, his core causal mechanism—the ALL—is not, by itself, up to the task of explaining why this is the case. Nevertheless, in combination with his astute historical and structural analyses, Zürn provides invaluable tools which can assist future theorists of world politics explain the enigma of global governance.

*The Victim in the Irish Criminal Process.* By Shane Kilcommins, Susan Leahy, Kathleen Moore Walsh & Eimear Spain. Manchester, UK: Manchester University Press, 2018. Pp. viii, 171. \$32.95 (paperback).

REVIEWED BY MOLLY HENNEBERRY

*The Victim in the Irish Criminal Process* sets out to explain the past, present, and future treatment of “the victim” in the Irish criminal justice system. For a long time, the victim was

considered a piece of evidence, rather than a stakeholder in the criminal process. The authors explain the forces that led to the victim becoming a key player in the Irish criminal justice system, and the subsequent reforms that took place and that are yet to come that give the crime victim more control, privacy, and protection in Ireland. An unspoken yet obvious theme throughout the book is that the rights and services granted to victims in Ireland are largely due to international influences, making this a very interesting read both for those interested in the Irish criminal justice system and those interested in the treatment of crime victims in the West more generally.

The book begins with an insightful historical overview of the role of the victim in the Irish criminal justice system. The authors explain that in the eighteenth century, criminal prosecutions were entirely in the victim's control. The two parties to the action were the victim and the accused. By the nineteenth century, however, a shift from a private, individualized conception of justice to a public one began permeating society. Accordingly, the role formerly held by the victim in a criminal prosecution began to be held by the State. As prosecutions shifted from victim versus the accused to the State versus the accused, the victim was largely forgotten. In fact, concerns for the rights of the accused greatly overshadowed any concern for the rights of the victim.

By the late twentieth century, people began to pay attention to victims again. In the second chapter of the book, the authors attempt to explain the impetus for the victims' rights movement in Ireland. Interestingly, three of the four driving forces cited by the authors were international influences. First, the authors note that the international trend in victimology research led to Ireland undertaking victimology studies in the 1980s. This, in turn, raised awareness of the plight of the victim in the Irish criminal justice process. Furthermore, social movements abroad greatly influenced the Irish victims' rights movement. The United States' women's rights movement of the 1960s, for example, focused on victims of rape and domestic violence. This inspired the Irish Women's Liberation Movement, which turned assistance for victims of sexual violence into a prominent political issue in Ireland in the 1970s. Moreover, the growing international recognition of human rights played an important role in the reassertion of victims' rights in

Ireland. The United Nations, the Council of Europe, and the European Union each recognized victims' rights as human rights in the late twentieth century, which contributed to the growth of the Irish victims' rights movement. Lastly, the authors note that political pressure within Ireland to combat rising levels of crime helped advance the cause.

After explaining the origins of the quest for victims' rights in Ireland, the authors go on to illustrate various changes in the Irish criminal justice system in the late twentieth century and early twenty-first century that came about because of the victims' rights movement. The goal of these changes was providing crime victims with more information, protection, and privacy as they navigate the criminal process. First, the authors list several evidence rules that were enacted to make it easier for victims to testify. The authors also mention the opportunity to seek redress for a crime through a civil claim, which gives the victim more control over the proceedings. This chapter also outlines several European Union standards and guidelines for victims' rights that are followed in Ireland.

The following chapter describes the services available to victims of crime in Ireland. The authors point out that various governmental and non-profit organizations provide support and assistance for crime victims, but that the services fall short of the minimum requirements outlined in the European Union Directive on Victims' Rights. The Directive affords victims an entitlement to a wide variety of services intended to support and protect them throughout the criminal justice process, and several of those entitlements are not currently granted in Ireland. The authors seem to have a positive outlook on the situation, however, claiming that services offered in Ireland are currently being molded to fit those requirements.

The authors then acknowledge the challenges still to be overcome in the field of victims' rights in Ireland. In particular, the authors highlight the ways in which Ireland falls short of the European Union Directive on Victims' Rights both in terms of legal rights and rights to services for victims, and suggest ways by which Ireland could address these shortcomings.

*The Victim in the Irish Criminal Process* is a very interesting read. The authors offer fascinating anecdotes throughout the book. Some are unique to Ireland, such as the role of the

Church or the conflict in Northern Ireland in the plight of the crime victim. Others, however, span the globe. The authors discuss the Warren Court in the United States, social movements in Britain, and victimology research in Europe, to provide a few examples. This makes the book appealing to both those interested in Irish history and the Irish legal system, as well as those who are drawn to a more universal overview of the rights of crime victims.

One theme that emerges throughout the book is the strength of international influences on the position of the victim within the Irish criminal justice system. As mentioned above, the Irish victims' rights movement was originally inspired by international social movements. An example given by the authors is the United States' Women's Movement. This movement led to the creation of one of the first rape crisis centers to assist victims of sexual violence in Washington D.C. in 1972. Encouraged by the activity overseas, Britain opened its first rape crisis center in 1976. Ireland followed shortly after, founding a rape crisis center in Dublin in 1977. While the book is focused primarily on Ireland, the authors highlight that this was truly a global crusade for victims' rights.

Another international influence showcased throughout the book is the pressure from the European Union to assist victims. Indeed, it might not be a coincidence that the emergence of the victims' rights movement in Ireland coincided with Ireland joining the European Economic Community—now known as the European Union—in 1973. The Irish victims' movement was fueled by the European Union's recognition of victims' rights as human rights, and the subsequent European Union directives and guidelines affording protection and support for crime victims.

It is worth noting, however, that the book has two minor flaws. The first is that seemingly minimizes the complexity of the balancing act between the rights of the accused and the rights of the victim. The second is that it leaves the reader wondering why Ireland seems to be dragging its heels to meet the demands of the EU Directive.

First, the book highlights several evidence rules created to protect victims in court yet fails to fully address the effect of these rules on the rights of the accused. In certain situations, for example, victims may receive special accommodations

while testifying so that they do not have to confront the accused. While this is terrific for the safety and protection of the victim, it does not come without a cost. It must not be forgotten that these accommodations often mean that the accused does not get to confront the witness. The complexity of the balancing act between the rights of the victim and the rights of the accused deserves more attention than that which it was given in *The Victim in the Irish Criminal Process*.

Second, throughout the book the authors build up the idea that the campaign for victims' rights in Ireland is incredibly strong. The authors describe the powerful impact of the initial drivers of change in the late twentieth century. The book shows the drastic changes to the criminal system brought about by the victims' rights movement. The domestic political support for the issue is highlighted over and over again. Yet, despite all of this, the end of the book suggests that Ireland falls behind many of its peers in accomplishing the goals of the European Union Directive on Victims' Rights. Given the popularity of the cause both within Ireland and abroad, the reader is left wondering why this is the case.

Despite these minor shortcomings, this is an excellent book. The authors explain the history and status of the victim in the Irish criminal process in an engaging, logical, and insightful manner. Moreover, they do so in a way that goes beyond simply the Irish experience to incorporate influences and anecdotes from abroad. This makes the book relevant not only to those interested in Ireland but also to those interested in the treatment of the crime victim in the broader Western world.

*Nationalization, Natural Resources and International Investment Law: Contractual Relationships as a Dynamic Bargaining Process*. By Junji Nakagawa. New York, NY: Routledge, 2018. Pp. vi, 237. \$132.30 (hardcover).

REVIEWED BY JEFFREY HILL

By advocating for renegotiation of contracts between states and non-government entities in the event of conflict, Junji Nakagawa in his new book provokes interesting questions on the role of state sovereignty and a state's capacity to enter into binding contracts. Set within the context of investment

contracts for natural resource development, *Nationalization* thoroughly covers a broad range of issues present in the discussion and demonstrates Nakagawa's exceptional knowledge of the subject-matter. Nevertheless, his approval for renegotiation proves problematic because it runs counter to basic principles of international law and is too accommodating of states. States are imposing entities on the international stage who can, and do, wield their power in an unjust manner detrimental to private actors. Overall, there are stronger alternatives consistent with principles of international law which will protect private actors as well as sustain a state's ability to engage in meaningful negotiations.

Nakagawa analyses disputes arising out of states' nationalization efforts that often lead to the renegotiation of a contract between a state and the entity contracting with the state. Nakagawa refers to this process of renegotiation as dynamic bargaining theory and examines renegotiation as a potential solution to natural resource disputes. He focuses on agreements in which the host state presumably lacked the domestic capacity to extract its national resources and instead contracted with foreign companies to conduct the work. Nakagawa asserts that many of these agreements then lead to conflicts between the state and the company. He attributes the high frequency of conflict to the contracts' long duration, uncertainty of successful resource extraction at the outset, volatility of commodities markets, and the changing domestic policy of the host states. Due to a state's reliance on outside expertise and technology, full dissolution of the agreement is not a positive outcome for the state even when conflicts are present. Instead, the state prefers renegotiating the agreement so as to maintain its access to the otherwise unobtainable resources while also addressing whatever particular concern(s) the state may have with the original agreement. Unlike the public records of court proceedings, there are substantial challenges to finding these renegotiations, as they leave little public record. The process is not moderated by a third party and is purely private. Nakagawa further asserts that renegotiation is an approach that allows for both a state and the company to achieve their respective goals. For example, the question of imposition of domestic law upon a foreign investor is best solved, Nakagawa maintains, through renegotiation.

Nakagawa first covers the history of natural resource agreements and the mechanisms used to resolve disputes between states and foreign parties arising from mining contracts. Initially, states in the nineteenth century granted concessions allowing foreign entities to operate mines under domestic law of the states. The rights of the mining entity were fairly well established, and states could only revoke permission for a foreign entity under special circumstances. The understanding at the time was that only states were actors under international law. This meant that mining entities were not, legally speaking, on a level playing field with states and, as such, were incapable of dealing with states as equals.

This “concessions” understanding of the nineteenth century asserted that states retained ownership of their resources and simply allowed mining entities to utilize these resources. The concessions theory is premised on the idea that states retain permanent sovereignty over their natural resources, consistent with the U.N. General Assembly’s 1962 resolution 1803 (XVII) which recognized states’ permanent sovereignty over their natural resources. This recognition of permanent sovereignty strengthened the rights of states to cancel and revise agreements in the wake of decolonization. The relationship between states and non-state entities changed again, however, with the rise of the Washington Consensus of the 1990s and then the rise in popularity of the bilateral investment treaty and free trade agreements. These developments have given non-government entities the right to bring states into arbitration and arguably places the mining entity and the government on equal legal footing before the arbitral body.

Nakagawa, in presenting an alternative approach, claims that, parties should renegotiate and reach a suitable “mutually satisfactory agreement” to resolve conflict. This is objectionable, as instead of truly representing a mutually satisfactory agreement, it is really the state strong-arming and cheating its way out of a contract. The two parties already reached a mutually satisfactory agreement through the initial contract. Unilateral renegotiation, or renegotiation with the looming threat of unilateral alteration, is not a mutually satisfactory agreement. This undermines the legitimacy of contracts with states that hold to this theory and violates the general principle of *pacta sunt servanda*—that contract obligations must be observed by all parties.

If states want to retain the power to revise contracts, they should include explicit termination clauses or sign shorter contracts with renewal options giving them the right to exit the contract. Instead of using simple contract tools already at their disposal, some states have opted to negotiate in bad faith given their multifarious nature and ability to change their mind midway through the performance of a contract. Moreover, although states are unlikely to be subjected to specific performance, states should be compelled under international law to pay compensatory damages when they breach their obligations. Caveats to this principle should include contracts made by states under duress or coercion of a colonial power, as it hard to say that state sovereignty was actually exercised in either of those instances. Additionally, states should retain the power to unilaterally alter a contract when force majeure is invoked.

Nakagawa's reliance on a realpolitik theory of negotiation, focusing on practical reality rather than idealized international law, is compelling. International law has traditionally made it difficult for non-states to stand on the same footing as states. Modern agreements have altered this long-standing assumption. However, the author's framing of the renegotiation process as an acceptable maneuver within the bounds of international law is troubling and confusing. While it is clear that states maintain sovereignty over their resources, it is unclear why this same principle of sovereignty does not prevent them from breaking their contractual obligations to non-state parties. The argument that a contract can be unilaterally altered by a state because of its permanent sovereignty over resources opens the question of whether all contractual agreements of such a host state are in fact illusory. If the entering into a contract is considered an act of sovereignty by the state, it should not be so easily breachable by another act of sovereignty. This logic raises the question of whether a state is ever capable of binding itself through contract.

Instead, the legitimization of coerced renegotiation should be replaced with more sophisticated contracts that specify terms of revision and are not subject to unilateral alteration. The rise of the modern bilateral investment treaty and the application of umbrella clauses of separate agreements to these treaties is an effective method of ensuring that states observe *pacta sunt servanda*. Many modern bilateral-investment

treaties hold states responsible by providing arbitral forums in which non-state parties can seek judgments against states. Additionally, investor-state arbitration should continue to be used as a way to allow states and investors to operate on the same footing under international law. Arbitration agreements also provide endless customization for the states and investors to find a solution that is actually mutually agreeable, as opposed to compelled by coercion. Future resource contracts can be improved and made more likely to survive if (1) they have shorter terms, (2) they include built in options for the parties to continue or terminate, (3) they include ceiling and floor clauses that anticipate commodity price volatility and give participants options in response to drastic changes in commodity price to avoid unfair distribution of profits between the state and the operating company, and (4) they clearly articulate a revision process.

Another element relevant to this discussion that could be explored further by Nakagawa is the possibility of applying political risk insurance to give corporate parties the ability to hedge their exposure to state nationalization or expropriation. The principal of such a policy would be built into the cost of any project involving a state likely to “renegotiate” a deal. If such an insurance policy was available to resources extracting entities they would not be pressured by state threats of termination or renegotiation, as they would be adequately covered by third-party insurance.

Nakagawa, however, argues that a framework premised on renegotiation nevertheless protects companies through the fear of reputational harm. States will favor renegotiation rather than risk the reputational harm that will result from their breaching. However, it seems unlikely that renegotiating with a company is better for the reputation of a state than ending the agreement entirely. Renegotiation of a contract is far from mutually advantageous and in reality, represents a state leveraging its implicit threat of termination.

Furthermore, the power disparities between states and corporations is generally quite large. Even the most powerful companies do not have sovereignty over the resources they extract. While reputation costs can certainly injure a state’s ability to get another company to take on the task, the state will likely be able to find another entity to do the work. Presumably, if a company incorporates the risk of dealing with the of-

fending state and still finds that the project has a positive net present value, it will contract with the disreputable state. Unfortunately, Nakagawa does not thoroughly explore this topic and his book might benefit from added exposition.

Additionally, the argument of the author appears contradictory as it points out that revising a contract unilaterally will cause reputational harm to the state, but at the same time argues that new entrants into the resource extraction service market will encourage more revisions by the state because the state will have more potential partners. The tension between the reputational harm suffered by states and the advantages to be gained by additional competition could be explored further. While the two are not necessarily mutually exclusive, these ideas are in tension and *Nationalization* would be well served by a case-by-case analysis weighing the harm of revising or exiting a contract against the gains to be made from obtaining a new contract with a new partner.

Overall, Nakagawa explores the many ways in which states can alter agreements of resource extraction. His general solution, however, is problematic because it validates state action that violates *pacta sunt servanda*. Entities dealing with such states would be better served by opting into treaties that provide for arbitration of dispute settlement in a manner that treats non-state entities and states as co-equal actors under international law. Such a system would reduce the state's ability to unilaterally renegotiate under implicit threat of cancellation. Nakagawa's theory on renegotiation, premised on an understanding of strong state power, opens troubling questions about whether contracts between a state and a non-government entity are truly binding in light of the state's omnipresent threat of termination.

*Before Intelligence Failed: British Secret Intelligence on Chemical and Biological Weapons in the Soviet Union, South Africa and Libya.*  
By Mark Wilkinson. New York, NY: Oxford University Press, 2018. Pp. v, 229. \$70.00 (hardcover).

REVIEWED BY HEATHER McADAMS

*Before Intelligence Failed: British Secret Intelligence on Chemical and Biological Weapons in the Soviet Union, South Africa and Libya* explores author Mark Wilkinson's research into terrorism and

intelligence, particularly U.K. intelligence and the factors that determine its effectiveness. Specifically, *Before Intelligence Failed* analyzes why U.K. intelligence “failed” during the Iraq War after decades of success in gathering accurate information. The United Kingdom initially used faulty intelligence that Iraq was manufacturing chemical weapons to justify entering the Iraq War. In the 1960s, the United Kingdom adopted a particularly strong stance against chemical and biological weapons (CBWs), and until Iraq it boasted a track record of successful intelligence-gathering in relation to CBWs. Wilkinson walks through this record—focusing on the U.K.’s successful monitoring work on the Soviet Union, South Africa, and Libya—to explain why U.K. intelligence failed in Iraq. Wilkinson begins by wondering whether something changed in intelligence-gathering; or alternatively, whether the experience in Iraq represented a true “failure,” or just exposed flaws that had always plagued the U.K. intelligence regime. He dismisses the latter possibility, assumes an affirmative answer to the first question, and proceeds to interrogate *what* changed. Ultimately, Wilkinson concludes that the answer lies within the interaction between intelligence gathering and foreign policy, and he consequently focuses on how intelligence and policy are connected, and under what conditions intelligence influences policy.

In arriving at this ultimate question, Wilkinson first introduces the Iraq War, and the British conception and structure of the U.K. intelligence system. He then analyzes case studies from the Soviet Union, South Africa, and Libya. He concludes by contrasting these case studies with what happened in Iraq, identifying three specific differences that contributed to intelligence failure. First, in the case studies, U.K. intelligence groups operated independently of policy-makers. In contrast, Iraq-era policy-makers demanded specific intelligence in support of already-made policy, an inefficient relationship that prevented actors from seeing the full picture. Second, pre-Iraq, intelligence was collected over long periods of time, which improved the reliability of the human intelligence (HUMINT) that U.K. intelligence groups frequently collected. However, Iraq-era intelligence relied on HUMINT despite time constraints that made HUMINT inherently unreliable and prevented collection of more-reliable system intelligence. Third, over time, the success of U.K. intelligence work created a strong reputation, and their conclusions were highly

respected by the time of the Iraq War. However, by that point the individuals responsible for those successes were largely no longer active, and they were unable to maintain the same standards in Iraq. Given these three differences, Wilkinson ultimately concludes that U.K. intelligence works best over time, which suggests that U.K. intelligence agencies are not well-equipped for the type of time-sensitive operation demanded in a preemptive war. Overall, Wilkinson's research is in-depth, and his thesis is interesting, focused, and relevant to present-day conversations insofar as it isolates a situation in which British intelligence fails—preemptive war—and explains why that is the case. However, the communication of information is at times flawed, both substantively and technically.

After the introductory chapters of *Before Intelligence Failed*, Wilkinson launches into his first case study, a captivating account of how U.K. foreign policy interacted with intelligence to influence the United Kingdom's relationship with the Soviet Union. The section dedicated to the Soviet Union is the highlight of the work. Unfortunately, the following two case studies seem underdeveloped by comparison. Of the eight chapters, two are dedicated to the Soviet Union, while South Africa and Libya receive one apiece. The physical length of the section alone is not evidence of mismatched attention, but it does reflect more significant evidence, and detailed analysis that exceeds that of the other sections. The prose of the Soviet Union section is engaging, reading more like a story than dry exposition. The section connects to the overarching theme, foreshadowing Wilkinson's ultimate conclusion that the answers he seeks lie in the connection between foreign policy and intelligence. The case study even demonstrates the place of HUMINT in U.K. intelligence, and introduces the improving reputation of intelligence agencies.

In contrast, the South Africa section focuses on the complex decisions that arose when general U.K. policy interests did not align with the specific interest of eliminating CBW, and the Libya section primarily exemplifies the value of properly-collected HUMINT. By the time these two case studies enter the picture, Wilkinson has already supported his ultimate conclusions, and it feels as if the latter two studies are only included to indicate a trend. The Soviet Union case study details the full context of the U.K.-USSR relationship, from the temperaments of the leaders involved to the goals and struc-

tures of their governments. In contrast, the description of the respective contexts of South Africa and Libya are narrowed to facts directly relevant to the data points Wilkinson is presenting, so they feel undeveloped in comparison. In this way, they are strikingly less well-rounded, giving the impression that Wilkinson would have preferred to make his point by comparing and contrasting the Soviet Union case study with Iraq. Granted, perhaps the mismatched attention is instead because of the comparative wealth of information available about the Soviet Union, as a result of the abundance of research into Cold War-era politics and ongoing declassification. However, this only suggests another reason for the mismatched attention; it does not change the fact that a distracting gap exists.

The uneven levels of attention are exacerbated by another problem that plagues the South Africa section in particular: there is a distinct lack of contextual detail in the analysis, to the point of distraction and, sometimes, confusion. Apartheid is rarely mentioned, despite its importance to South Africa's desire for CBWs in the late 1900s—not to mention its importance to understanding South Africa in general. When apartheid is mentioned it is never lingered on for long, and the reader is often left to connect the dots. For example, Wilkinson is clear that U.K. intelligence did not prioritize monitoring South Africa CBW programs. However, he then fails to follow through with the logical conclusion that this was perhaps due to the fact that the South African programs were more a threat to its internal population than a security threat to the U.K. In addition, a portion of the section discusses the ability of South African intelligence to infiltrate the United Kingdom—a topic that begs further explanation of the countries' relationship, from their colonial history to apartheid. Even a brief overview would be beneficial, especially given that the section begins by admitting the United Kingdom's role in allowing South Africa access to CBWs during World War II. The reason for this lack of context is unclear, but perhaps it was deemed too complicated. True, a long explanation that loses focus of the subject of the case study would impact the section's clarity, but there should be a balance struck between *focused* and *enough information to fill in the gaps*. Beyond the lack of background, the South Africa case study is simply handled poorly. In the most egregious example, after establishing the African National Congress (ANC) as the current governing

party of South Africa, Wilkinson refers to the organization as a “terrorist group” when discussing South Africa’s security concerns in the 1980s. Such a statement demands qualification—both over whether it was proper to give the ANC that label, and to explain how the ANC is now the governing party in South Africa, as well as the party that publicly ended the CBW program. At best, this disrupts the internal consistency of the section; at worst, it casts an unqualified negative light on the ANC government, without exploring the apartheid regime against which it was acting.

In a more technical sense, the communication in *Before Intelligence Failed* is at times flawed, such that it imparts a sense of disorganization and impedes communication. First, the transformation of the thesis throughout the work, summarized above, is rarely explicit, to the point that it takes close reading to connect the thesis to the case studies. Only by reading the concluding sections can the reader fully understand how any of these examples connect to a larger point. Even the Soviet Union case study, which exemplifies Wilkinson’s conclusions, can only be fully understood in hindsight. Between the introductory chapter and the penultimate chapter, Wilkinson drops statements like breadcrumbs that update the reader on the state of his thesis. He first asks if anything changed in the intelligence community before Iraq, then leaps to asking about the relationship between policy and intelligence; he leaves the connection between the two—that the way policy-makers use intelligence has changed—largely implied by the case studies. This would be less problematic if the case study analyses explicitly connected to the thesis. However, Wilkinson holds off on making the connections between the case study analyses and the thesis until the last chapter. This leaves the reader in a state of vague confusion until then, and gives the impression that the work is, essentially, 130 pages of background leading to fifty pages of analysis. Wilkinson is effectively relying on the reader’s attention-span to make his point.

The second technical flaw is Wilkinson’s tendency to embark on tangents. For the most part, *Before Intelligence Failed* is well-organized, and aptly divided into sections that are reflective of their material. However, occasionally Wilkinson will digress for several paragraphs. When he does so, the information is usually necessary, but it is a jarring experience that emphasizes that the case studies are not explicitly connecting to

the thesis. A particularly egregious example of this occurs when Wilkinson departs from describing what finally convinced the United Kingdom of the Soviet Union's CBW program, to explaining Mikhail Gorbachev's policies and relationship with Margaret Thatcher. It is fascinating material and resurfaces several times. However, the digression, while relevant to the discussion, is so long and detailed that it would function better under its own header. Further, the disorganized tone that such digressions impart is worsened by the occasional minor inconsistency. For example, Wilkinson references the Joint Intelligence Committee frequently, but any given chapter will either assume the reader will recall the acronym and call it "JIC," or will regress to establishing the acronym as if for the first time: "Joint Intelligence Committee (JIC)." There seems to be no rhyme or reason to how any given chapter will refer to the organization at first mention, and this lack of consistency only highlights the more significant ways in which the text feels disorganized.

As such, while *Before Intelligence Failed* is a fascinating and well-researched read, there are several substantive and technical issues that can make the work appear unbalanced or disorganized. Everything about the Soviet Union section, from the well-written prose to the detail and depth of the analysis, seems to reflect that it deserves more attention than the other case studies, despite their presentation as equals. The South Africa section is particularly lacking in detail, specifically context regarding the apartheid and the relationship between the United Kingdom and South Africa. Several technical flaws—lack of explicit and consistent connection to the thesis, a tendency to digress, and inconsistency of acronyms—also contribute to a sense of disorganization. Because of this, the work would function best as an informative text, specifically as an introduction to British intelligence, the United Kingdom's involvement in Iraq, and the Soviet Union's CBW program. Select chapters on these topics would be an excellent addition to a relevant course's syllabus; however, as a complete work, it has notable shortcomings.

*The Elgar Companion to the Extraordinary Chambers in the Courts of Cambodia.* By Nina H.B. Jørgensen. Cheltenham, MA: Edward Elgar Publishing, 2018. Pp. 420. \$180.25 (hardcover).

REVIEWED BY CORINNE McCRUM

*The Elgar Companion to the Extraordinary Chambers in the Courts of Cambodia* reads as an authoritative text on all structural and legal aspects of the Extraordinary Chambers in the Courts of Cambodia (ECCC). This tribunal was created decades following the Cambodian genocide and has a number of unique aspects, including the scope of U.N. involvement and quantity of victim participation during the investigation stage of proceedings. While far from perfect, the ECCC provides insight into how a tribunal, pressed by a vast public outcry for justice, might be set up to contend with atrocities committed many years in the past. Over the course of its four hundred pages, Nina Jørgensen, a former advisor to the ECCC Supreme Court Chamber, embarks on the hefty task of covering the background, legality, structure, procedure, cases, proceedings, crimes, liability, sentencing, victims, legitimacy, and legacy of the tribunal. While at times dry, the text is thorough and leaves the reader feeling that they understand the ins-and-outs of the ECCC's procedures, powers, and challenges.

Providing a brief overview of the text necessitates a breakdown by chapter, as each could stand alone as a focused essay on a specific aspect of the ECCC. The introduction provides only a short overview of the genocide itself with a focus on the timeline of political developments. Jørgensen's writing presumes a certain level of knowledge about the Cambodian genocide. While not necessary to understanding the functioning of the ECCC, it makes for a richer reading if one familiarizes themselves with the historical and political context of the genocide before diving in. Next, Jørgensen in "Legality" turns to issues of legitimacy that often plague international criminal tribunals and are of particular concern when the crimes committed are temporally distant—in this case, over thirty years old. She points in "Internal Rules" to the unique nature of the rules implemented by the ECCC in lieu of Cambodian rules of criminal procedure, including the significant change of extending the statute of limitations. The chapter on "Structure"

provides a base of information about the component organs of the ECCC and its staff, a necessary facet for understanding the composition of the bench and counsel. With a significant portion of the judges and staff administered through the United Nations, the balance between Cambodian and international voices in the proceedings is relevant to understanding split courts. Chapter four on “Procedure” attempts to demystify the complex process each case goes through as it works its way through the various bodies of the ECCC.

In the next chapter “Cases,” Jørgensen provides a brief overview of the personal background of, and claims against, Khmer Rouge leaders and officers who have been charged under the ECCC. Chapter six on “Proceedings” focuses on everything that occurs in the lead-up to a case before the ECCC, with a particular focus on areas where its legitimacy and functionality is most challenged. Chapter seven’s “Crimes” primarily discusses the classification of the atrocities committed by the Khmer Rouge rather than the details of the crimes themselves. Considering the ever-evolving nature of public international law, especially in regard to what may be considered an internationally criminal act, this is no easy task. Classification requires discussion of the potential sources of law and international norms at the time of these acts. The following chapter, “Liability,” builds upon this by discussing the reasonable foreseeability by senior officials that their fatal commands and orders to subordinates would constitute crimes in light of Nuremberg-era jurisprudence. Joint criminal enterprise is also discussed in depth, with Jørgensen covering the concept’s development in customary international law and eventual implementation by the ECCC. “Sentencing” briefly overviews two cases which reached the sentencing stage of proceedings. Jørgensen in this chapter analyses the legal framework and reasons underlying the ECCC’s determinations that each defendant deserved life imprisonment. Chapter ten, “Victims,” focuses mainly on civil party participation in proceedings in which the ECCC addresses admissibility of victim impact statements during the investigations stage. Considering the sheer number of victims as compared to the accused, the court has struggled with balancing efficiency and providing justice to individual victims. The following chapter on “Legitimacy” deals with some of the criticisms leveled against the ECCC. These include issues of transparency and the debatably inefficient bi-

furcation of the bench between Cambodian and international judges, as both sides often hold widely divergent views. In the final chapter, “Legacy,” Jørgensen presents an argument in support of the ECCC—despite its faults—as a means of restorative justice, and acknowledges its contributions both to the historical record on the Cambodian genocide and to the evolution of international criminal law.

Reflecting on the book as a whole, there are a number of areas within it which intersect and cross-reference one another, such as the chapters on legality and legitimacy. Alternatively, other chapters, like procedure, could be read in isolation if one were only focused on a particular aspect of international tribunals. This focus on the nitty-gritty details of the inner-workings of the ECCC makes the book a useful tool for those embarking on a research piece regarding such tribunals or the development of international criminal law in general. However, while useful as a technical tool, *The Elgar Companion* is not likely to be particularly engaging for those seeking a more casual read on the background of the ECCC and prosecutions of superior officers because it does not deeply examine the personal stories of the offenders or the genocide itself.

Having lived in Phnom Penh while working at an NGO, this reviewer came to the book familiar with the background of many of the crimes prosecuted by the ECCC. Thinking back on what it was like to see relics of the genocide firsthand and to visit the Tuol Sleng Genocide Museum to hear from survivors, it is clear that there is a deep need amongst the Cambodian public for recognition of what happened during the genocide in order for many of those involved to move forward. That it has taken so long for any of the war crimes to be prosecuted is a tragedy and validates the establishment of the Tribunal. However, the exorbitant cost and very small number of cases actually considered by the ECCC throws its efficacy into question. In the final chapter Jørgensen counters this issue by arguing that one of the key benefits of the Tribunal is its role in allowing victims of the genocide to be heard. Through victims’ voices, the international community is establishing a public record of these atrocities. This argument might be stronger if there were a more in-depth discussion of the public opinion of the Cambodian people; perhaps through polls segmented by generation to see specifically how

those alive during the genocide and later generations feel about the ECCC.

One final minor criticism lies in the chapter titles and ordering. Titles such as "Cases" and "Victims" were a little confusing considering that they did not explicitly refer to their heading. For example, only the most basic background of the individual cases was discussed in "Cases," while "Victims" referred mainly to the process for civil claims in the ECCC. The chapters themselves were useful, but they did not present what one might expect if selectively researching discrete topics and deciding what to read by chapter title. Additionally, some of the topically interconnected chapters were nevertheless widely spaced apart. It would have been more beneficial to read these chapters side-by-side, as waiting until the end of the book to read a counterpart chapter made it more difficult to connect the two subjects. This was particularly the case with the "Legality" and "Legitimacy" chapters. While these critiques are relatively minor, they speak to the flow of the text as a whole, which oftentimes was a bit choppy.

Overall, Jørgensen's strength undoubtedly lies in exploring the details of the inner workings of the ECCC. Having worked there herself in a number of capacities over many years, this familiarity shows and provides the reader with an insider's view of the Tribunal. Examples of her mastery of all aspects of the ECCC abound and leave the reader far more knowledgeable on even the most obscure aspects of the structure, cases, and procedure of the ECCC. While it was easy to get bogged down in detail at times, this authoritative text is suitable for anyone researching international criminal tribunals, the aftermath of the Cambodian genocide, or the development and implementation of international criminal law.

There is one piece of the text which has not yet been mentioned. It is the shortest yet most heartfelt and personal part of the book: the preface. While readers might be tempted to skip ahead past the preface, those few pages provide an emotional backdrop which strengthens the impact of the mainly scholarly consideration that is to follow. In it, the author recalls watching the film *The Killing Fields* while in middle school. She distinctly remembers thinking nothing of seeing one ill-fated student throw food out before attending the viewing. Only after watching the film, with starving children ever-present amidst the carnage of the Cambodian genocide, did

Jørgensen understand the symbolic significance of such an act. Her empathy here is palpable. The preface ultimately provides a personal connection between the author and the subject matter that strengthens the book's overall tone. It is, and should be, difficult to take such deeply heart-wrenching and disturbing events as a genocide and crimes against humanity and integrate them into an academic discussion of issues as dry, albeit important, as legal procedure or tribunal structure. Nina Jørgensen does an outstanding job of doing just that without losing sight of the many millions impacted by the Cambodian Genocide.

*Punishing Atrocities Through a Fair Trial: International Criminal Law from Nuremberg to the Age of Global Terrorism.* By Jonathan Hafetz. New York, NY: Cambridge University Press. Pp. vi, 196. \$110.00 (hardcover).

REVIEWED BY MONICA PELAYO

Jonathan Hafetz sets forth in *Punishing Atrocities Through a Fair Trial: International Criminal Law from Nuremberg to the Age of Global Terrorism* to highlight the tension between holding perpetrators accountable and conducting fair criminal tribunals in order to explore three issues in international criminal law: procedural safeguards and other fair trial guarantees, different modes of liability, and the selection process for the subjects of investigation and prosecution. Hafetz masterfully traces the historical evolution of these issues in international criminal law from Nuremberg to the International Criminal Court, providing readers with a foundation to understand his argument. Hafetz stumbles in applying fairness and accountability concerns when addressing the question of whether terrorism constitutes an international crime; ultimately concluding that treating terrorism as an international crime does not meet the goals of international criminal law. He further struggles in striking the appropriate level of detail for his audience, melding his ideas, and developing his fanciful solutions. However, any loose ends Hafetz fails to tie together may be indicative of international criminal law as a whole.

Hafetz commences with a description of the trial of Nazi war criminals at Nuremberg, which he describes as the birth of modern international criminal law. Through exploring the dif-

ferent proposals for holding the perpetrators responsible, the author highlights the greatest achievement of Nuremberg: “hold[ing] individuals responsible through the mechanism of a criminal proceeding.” Hafetz examines the tension of fairness and accountability in the execution of the trial. This tension arose from: prosecuting *ex post facto* offenses, including crimes against humanity, which had never been used as theories for criminal liability and were uncodified in treaties; utilizing conspiracy and organizational theories of liability; denying a right to appeal despite the International Military Tribunal’s authority to try defendants *in absentia*; and potentially engaging in victor’s justice because the judges were only from Allied forces and did not consider crimes committed by Allies.

The author jumps to the creation of the *ad hoc* tribunals in the mid-1990s, explaining that these international criminal tribunals were only possible following the thawing of Cold War tensions. Hafetz notes the improvements made by the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) as compared to the Nuremberg Trials—including their establishment by the international community, their grant of jurisdiction by governing statutes, and the existence of a right to appeal. However, the tension between accountability and fairness persisted. The dependence of these tribunals on states “created pressure to expand modes of criminal responsibility and to restrict the procedural rights of defendants in several ways.” Additionally, liability was expanded via joint criminal enterprise, which violated *nullum crimen sin lege*, and through the development of command responsibility, which threatens the principle of personal knowledge. Hafetz further notes that the ICTR and ICTY statutes address defense issues, but nevertheless equality of arms issues continue because “international criminal tribunals have not accepted the proposition that equality of arms requires equality of means and resources between the prosecution and defense. Instead, the principle of equality of arms is understood merely to require equality of treatment.” Hafetz pushes that while the *ad hoc* tribunals expanded upon Nuremberg’s template, accountability and fairness issues nevertheless persisted.

Hafetz then advances the idea that the creation of the *ad hoc* tribunals paved the way for the establishment of the International Criminal Court. Despite the fact that “[o]n paper, the

ICC provides defendants with the most extensive fair trial rights of any international criminal tribunal to date,” Hafetz is troubled by the expanded role of victims in proceedings and the ICC’s efforts to establish a historical record, all of which may clash with the presumption of innocence. Further, collective criminality concerns linger as the Rome Statute codifies the doctrine of command responsibility. Nevertheless, Hafetz’s fear is somewhat ameliorated by the ICC statute providing for different levels of control. Hafetz is also concerned with the selection of cases and the ICC’s disproportionate focus on countries in Africa and exclusive targeting of one side of a conflict despite evidence of international crimes on all sides. Due to the unsatisfactory balancing of fairness and accountability by the ICC and *ad hoc* tribunals, the author pushes the idea that hybrid tribunals are likely to increase in prominence in international criminal law going forward.

Hafetz then pivots into a discussion of terrorism, arguing that the lack of comprehensive legal framework for dealing with terrorism is due to the lack of a universal definition. Despite the difficulties, he contends that there is a need to internationalize terrorism prosecutions with the express goal of emphasizing the gravity of terrorism. Fair trial concerns are of particular importance in this context because “[c]ounterterrorism measures have historically weakened legal safeguards relating to arrest, detention, treatment and trial in order to provide a supposedly more effective framework for combating terrorism.” He then applies his accountability and fairness framework in answering whether terrorism should currently be considered an international crime, ultimately deciding that it should not.

Hafetz mostly succeeds in offering a good introduction to a historical survey of international criminal law and its weaknesses. The book is aptly named in that Hafetz begins with the inception of modern international criminal law at Nuremberg and continues to the present-day concerns surrounding terrorism. He excels in providing background information on historical events, thoroughly explaining who the actors are and the different sides of contemporary debates. For instance, in his discussion of the Nuremberg Trials, he describes the positions of the different Allied forces in the proper procedure for the Nazi war criminals. Joseph Stalin advocated for mass executions, Winston Churchill pushed for shooting Nazi leaders,

and U.S. Secretary of War Henry L. Stimson demanded criminal trials. Hafetz also presents background legal information sufficient to jog one's memory if one has an understanding of international and criminal law. For instance, Hafetz explains the meaning of Latin terms, such as the *tu quoque* defense and *nullum crimen sine lege*, in a manner that is easy to understand yet not patronizing. Additionally, the writing style is easy to follow; it is succinct and not overly pedantic. Hafetz also provides several pages of references at the end of every chapter so it is easy to check his sources if one wants further information.

At times, however, Hafetz's transitions feel forced. Hafetz delves into the concept of legitimacy in chapter four, arguing that sociological legitimacy—the perception of the relevant audience—is significant to “motivate adherence to rules and laws governing behavior and strengthen alignment with state actors and institutions.” This is coupled with fairness, as “[f]air treatment helps generate positive identification with legal structures and institutions by demonstrating that power-holders are acting in fair, justified, and measured ways.” This sudden jump into legitimacy feels awkward, as the discussion leading up to it revolves around a historical survey of international criminal law and its strengths and weaknesses. Throughout the book, the author emphasizes that there is an ongoing tension between accountability and fairness, but it is not until this point that Hafetz explains why we care so much about fairness.

Similarly, the transition to terrorism feels disjointed, as the rest of the book focuses more on institutions in international criminal law. The shift to arguing for a legal framework for terrorism and then concluding that it is best not to elevate its status is jarring. Hafetz could benefit from spending another chapter on this issue, as it is part of the title of the book and yet receives mere perfunctory treatment.

Hafetz falls flat, moreover, in apparent confusion over his audience and overly idealistic proposals for addressing continuing gaps in the reach of international criminal law. Hafetz takes the time to explain several legal concepts, including terms that an audience with a basic legal education would understand. For instance, he needlessly defines *mens rea* and *actus reus*. He also defines the distinction between civil and common law systems in chapter two but not upon first referring to the distinction in chapter one. At the same time, Hafetz fails to explain other legal concepts even though they are in the same

vein as concepts he has already explained. For instance, he fails to explain conspiracy and accomplice liability. This seems odd given he takes the time to explain *mens rea* and *actus reus*. He further does not explain what customary international law is, nor does he define *ultra vires*, *proprio motu*, or *sine qua non*. Hafetz assumes a familiarity with the structure of the United Nations, jumping into the U.N. Security Council Resolutions and referencing the General Assembly and the U.N. Charter without pausing to provide any background information. The failure to explain more complex legal concepts while consistently defining more simplistic terms results in confusion over who the intended audience is.

Furthermore, Hafetz's proposed solutions appear too idealistic. When Hafetz addresses the decentralized system of international law, he delves into the structural limitations of the ICC and the *ad hoc* tribunals. He asserts that the ICC misses an opportunity to promote fair trial standards and should address this issue "by conditioning state control over prosecutions of nationals charged with crimes under the Rome Statute on adherence to [fair trial] standards." This implicates state sovereignty issues, as the ICC would be asserting its jurisdiction over a national jurisdiction when states express that they would like to pursue the case themselves. Additionally, the Rome Statute adopts the principle of complementarity, not primacy, to national courts. It does not seem likely that states parties would appreciate the ICC dictating what their criminal procedures should look like. One should tread carefully in making further demands on states who are parties to the Rome Statute, given that powerful states, such as the United States, are already *not* party to the Rome Statute, and the ICC's power would be hampered if additional states were to withdraw.

Hafetz's prioritizing the express goal of labeling terrorism as an international crime rather than a functional one feels counterintuitive. Elevating terrorism's status would seemingly only please terrorists, as they thrive off of the notoriety gained from the atrocities they commit. Furthermore, with the popular method of suicide bombing, elevating the status of terrorism would likely do little, as one cannot prosecute the perpetrator. Granted, one may be able to prosecute leaders of terrorist organizations, but terrorists do not always work in tandem.

In the end, the issues that Hafetz faces in tying together his book may reflect international criminal law as a whole. International criminal law is inherently messy in that states have different legal systems, legal norms, and histories. There may be no neat way to tie everything together, and there may be no solutions that all states will agree upon. The variation in high- and low-level explanations may be required in order to account for differences in legal education systems globally. Hafetz therefore, despite these challenges, succeeds in presenting a detailed historical and legal account of international criminal law. He successfully highlights international law's strengths and proposes interesting, albeit unrealistic, solutions to its weaknesses.

*Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions that Shape Social Media.* By Tarleton Gillespie. New Haven, CT: Yale University Press, 2018. Pp. 215. \$30 (hardcover).

REVIEWED BY MICHAEL PIZZI

If there were any doubts that online content moderation is a societal problem, they were put to rest after the 2016 U.S. presidential election, when Facebook and Twitter inadvertently played host to a complex campaign of political engineering allegedly funded and operated by the Russian government. The need to find a solution to fake news and disinformation landed the content moderation debate squarely in the political mainstream. It is no longer tenable to dismiss these debates as tech policy esoterica, nor does deleting one's Facebook account inure them to the platform's negative externalities.

In a new book, *Custodians of the Internet*, sociologist Tarleton Gillespie recasts Silicon Valley's endemic failures in this new light. He argues that social media companies have become so "entwined with the institutions of public discourse," so crucial to the functioning of democracy, that they have acquired a responsibility to the public that extends far beyond their click-through terms of service.

*Custodians of the Internet* is a timely interrogation of the structural challenges facing online content moderators. Combating the storm of abuse, extremism, and disinformation that

circulates across social media platforms has emerged as a policy priority from Washington to Brussels. Lawmakers have introduced heavy-handed legislation aimed at tackling complex content challenges—like sex trafficking and terrorism—by mandating aggressive content policing. In response, tech companies are investing vast resources into machine-learning algorithms to expedite and automate content moderation. Yet until tech companies figure out how to solve the line-drawing problems outlined in Gillespie’s book, automation might only compound these platforms’ systemic failures.

Gillespie’s central thesis is that social media platforms have for too long been allowed to perpetuate the myth of their “neutrality” in governing online speech when, in fact, moderation is their key commodity. Without some form of content policing, Facebook and Twitter would be even more chaotic and hostile forums where few users—and even fewer advertisers—would venture. If content moderation is the service these platforms provide, “then it no longer makes sense to treat it as a bandage to be applied or a mess to be swept up.” The title of the book, he eventually explains, is a double-entendre: on one level, social media companies are the janitors who “clean up” the mess on their platforms. As is increasingly apparent, they are also the custodians whom the public has entrusted to govern global speech, and it is time they take that duty seriously.

For those unfamiliar with the contemporary debates over online speech, *Custodians of the Internet* is a thoroughly researched yet digestible survey. Gillespie begins by framing the unprecedented challenge posed by online content moderation. Operating as both editors and curators of vast global platforms, social networking sites create a parallel world of private law that is adjudicated largely in the shadows. Teams of policy managers and content reviewers make unilateral decisions about which words, conduct, and images are acceptable to share on their platforms. Gillespie describes the fundamental paradox of this arrangement: sites like Facebook and Twitter gained global popularity in part because they allowed anyone to speak their mind freely, forge connections, and share ideas across vast global networks.

It quickly became clear, however, that censoring some users’ posts would be necessary to prevent harassment, terrorism, and various forms of exploitation from flooding these platforms. As one might expect, human behavior online tends

to mirror the diversity of human interaction offline—including the bad. If anything, the veil of anonymity afforded by many platforms may incentivize even worse behavior. From the early days of Facebook, Twitter, and YouTube, social media platforms have had to deal with cyber bullying, sexual harassment, and threats of violence. Platforms were required to make judgements on cultural values, too; for instance, on what degree of nudity is acceptable, and in what contexts. Of course, users frequently disagreed with these decisions and made their displeasure known. Sometimes Facebook was accused of censoring too heavily, impinging on free expression. Other times, it was doing too little, and failing to protect marginalized users from abuse.

The challenges only escalated as platforms scaled into the millions and then billions of users, who collectively upload terabytes of data every day. Soon, messier issues, like hate speech, rose to the fore. Drawing the line between acceptable and threatening political discourse is an inherently subjective and politicized endeavor, even within a single country. Facebook takes it on in every jurisdiction in the world, all at once.

While the scale of this challenge is unprecedented, Gillespie observes that many of these line-drawing challenges reflect classic First Amendment debates, such as the proper balance between individualistic and collectivistic freedoms. The Silicon Valley libertarian ethos has long privileged the former, championing the power of unfettered free speech to air out and extinguish bad ideas. Even as users raised complaints that harassment and abuse were making platforms inhospitable for some, tech companies dragged their feet on reform. Whether blinded by their free-speech ethos or simply trying to put on a brave face as problems spiraled out of their control, Gillespie argues that tech companies took far longer to change than they should have.

In explaining the staggering complexity of this challenge, Gillespie maintains a critical and diagnostic approach. He bemoans the distinctly Silicon Valley brand of naivete that expected a set of “shared values” to emerge from their “community” of users—the platforms had simply grown too large and diverse. It was only after more shocking and systematic abuses began to receive press that companies were spurred to more concerted action. Purging the platforms of ISIS recruitment videos and pro-anorexia support groups became a necessity for

the business model: no company wants an ad for their product juxtaposed with an ISIS beheading video. For the sake of profitability, platforms had to crack down.

One of Gillespie's primary value-adds is shedding light on the murky mechanics of online content moderation. There is almost no public data on how much, and what types of content, get removed on a daily basis—companies release such information only at their pleasure, so researchers like Gillespie rely largely on user anecdotes. The methods of moderation vary by platform, but most regulate content through a mixture of user-flagging and review. To guide content review teams—who are often low-paid contractors in places like the Philippines—and set expectations for users, each platform typically publishes a set of community guidelines that lay out the parameters of permissible posting. Guidelines tend to be vaguely worded by design, leaving content moderators leeway to adapt the regulations to new situations as they arise.

In a sense, community guidelines function similarly to a constitution. Unlike a formal legal system, however, there is very little transparency into the application of the rules in practice. According to Gillespie, community guidelines sometimes look and function like law, and at other times deviate considerably from any recognizable legal doctrine. Still other community guidelines are merely “self-serving window dressing” that companies pedal to convince the public of their commitment to addressing user complaints when, in reality, they have not figured out how to do so.

Platform “law” diverges from formal law in another key way: it is increasingly automated through machine-learning algorithms. To be sure, there is real promise in automated techniques to improve consistency and speed of response. Still, AI-driven decision-making is inherently risky, too. Countless studies reveal that algorithms frequently reflect the biases of their human creators. While they are relatively advanced with regard to image and video files, they are still bad at interpreting text. For instance, an algorithm is unlikely to distinguish between a sarcastic or satirical quotation of extremist ideology and genuine adoration. Moreover, with algorithmic filtering, undesirable content doesn't necessarily need to be removed to “go away.” Platforms can simply hide certain types of content from users' attention. Gillespie calls this “moderation by design,” and it is dangerous for the very reason that it is effective:

the targeted group has no idea they are effectively being censored.

At various points throughout *Custodians of the Internet*, Gillespie does his best to chart a path toward change. In his boldest argument, he raises the possibility of a controversial legal reform: altering intermediary liability. U.S.-based social networks have so much leeway to govern their platforms because they cannot be held liable for the content their users post—no matter how insidious or pervasive. There are several justifications for this protection, including the prevention of hyper-aggressive content removal. Gillespie argues that if platforms are going to be shielded from liability for the content they host, promote, and generate ad revenue from, then society should demand more of them. For instance, perhaps they should be obligated to meet minimum transparency requirements in order to enjoy such protection.

One area Gillespie does not explore is the potential role for international law. Though content moderation is currently the domain of private companies, its challenges and consequences are transnational. While there is little hope of aligning disparate cultures and political systems on substantive content policy, international law could at least help coordinate minimum standards on procedure and user rights. In 2018, the U.N. Special Rapporteur on Freedom of Expression, David Kaye, issued guidelines for a “human-rights approach” to online platform regulation.<sup>2</sup> Speaking to both states and private internet companies, Kaye called for many of the principles endorsed by *Custodians*, including greater transparency and the right to appeal.

Addressing the companies, Gillespie echoes the now-tired calls for greater transparency. His more innovative proposals regard how companies can more effectively engage users in moderation. As Gillespie sees it, users share some responsibility for governing these platforms—after all, they are the ones creating the content. Gillespie argues that social media companies can be more proactive. They are famously adept at extracting insights and preferences from users for advertising

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1. David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Rep. on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/HRC/38/35 (Apr. 6, 2018).

purposes, so Gillespie wonders why they do not apply AI and machine-learning to better understand what users consider to be threatening, pornographic, or “fake news.”

Throughout the book, Gillespie’s analysis is anchored in a keen understanding of the business imperatives at stake in content moderation. However, what some may view as the book’s pragmatism, others may consider its primary flaw. Those looking for a radical call to action—for the overthrow of Bezos and Zuckerberg—will not find it here. Instead, Gillespie tends to focus on modest reforms that would mostly allow the platforms to continue operating their businesses as usual. He steers clear of firebrand leftist critiques, most glaringly the so-called “hipster antitrust” movement that has recently taken aim at Big Tech.<sup>2</sup> That movement argues that the traditional antitrust model, premised largely on consumer pricing, should be updated to address the unprecedented influence wielded by Amazon, Facebook and Google over every facet of American life.

While pointedly critical of certain companies, Gillespie seems resigned to their supremacy and fails to consider the potential for non-commercial alternatives. The community-run moderation model has worked remarkably well for non-profit Wikipedia, and Mark Zuckerberg himself floated the idea of an independent “Supreme Court” to oversee content moderation on Facebook. Nor does Gillespie address mechanisms for accountability. This is surprising, since the historical narrative he weaves about the rise and fall of Facebook’s public reputation is, at times, an indictment of Silicon Valley’s abdication of responsibility for the chaos it helped create.

Ultimately, however, many readers will appreciate Gillespie’s laser-sharp focus on the practical and achievable, and his fixation on forward-looking reforms instead of relitigating past transgressions. In this, *Custodians of the Internet* is a refreshing counterpoint to the vitriolic outrage often hurled at Big Tech. Unlike social media’s fiercest critiques, Gillespie does not wish away these platforms, which is just as well, given that Facebook is not going anywhere—last year alone, the social network added 200 million new users. Instead, Gillespie offers actionable

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2. Robinson Meyer, *How to Fight Amazon (Before You Turn 29)*, ATLANTIC (2018), <https://www.theatlantic.com/magazine/archive/2018/07/lina-khan-antitrust/561743/>.

suggestions for improving user participation and transparency, without ruling out the possibility of systematic, legal change.

*What is the Sharia?* By Baudouin Dupret. New York, NY: Hurst Publishers, 2018. Pp. ix, 346. £35.00 (hardback).

REVIEWED BY BEENISH RIAZ

Is *sharia* the unknowable law of God, an emancipatory ethic, or a barbaric system of oppression? In *What is the Sharia?*, Baudouin Dupret implies that *sharia* is at once all of these and yet none of these. He describes *sharia* as amphibious, its import changing with its context. The word is, in fact, a norm, a *normativity*, developed by people, communicated to people, and intended to change the behaviors of people. This makes it particularly susceptible to so-called language games. Dupret classifies use of the term in two different ways. One is political, separating Muslims from others. The other is legal, referring to a body of *fiqh*, or Islamic law, derived primarily from the Qur'an and the *Sunna*: words, actions and the tacit acceptance of the Prophet of Islam. Dupret then argues that to truly understand the meaning, impact, and influence of *sharia*, one must first determine the identity of the person using the term—are they a politician from South Carolina, or a poor Egyptian man—and where they use it—in a courtroom, a speech, or an academic article. While this argument is fascinating, the author only engages with it in the introduction. The remainder of the book is primarily descriptive. Failing to live up to its promise, *What is the Sharia?* gives only a basic overview of Islamic law and only briefly indicates the many political uses of the term *sharia* in practice and their implications. Moreover, even though his account of Islamic law is clear and concise, Dupret overlooks several nuances of the law, including some prominent critiques and debates.

Dupret begins the book with an outline of the traditional sources of the law and their historical significance, moving through a discussion of the Qur'an, prophetic tradition, consensus, and analogical reasoning. Most Sunni schools of thought rely on these four sources to determine positive Islamic law, defining the specific rights and obligations of Muslims. The key topics related to the Qur'an that Dupret explores include the history of the revelation of the text through

the Prophet Muhammad, the debate on whether one can derive law from this text, the compilation and transmission of the text, and its meaning and interpretation both in the days of early Islam and, very briefly, in contemporary times. In his account of prophetic tradition or *sunna*, Dupret describes the historical creation of *hadith*—a collection of the sayings of the Prophet, and its “science”—used to determine the authenticity of scholars’ accounts of the words and actions of the Prophet. He then indicates the legal uses of *sunna* and *hadith* historically and as a part of Islamic law today. Finally, Dupret gives an account of consensus and analogical reasoning. These are both methods of reasoning and ways of knowing that help jurists derive law from the Qur’an and *sunna*. For instance, drawing analogies allows a jurist to use a case given in the Qur’an and apply its rationale to a new case. Similarly, consensus helps scholars decide on a single interpretation of the text, practically foregoing all others. Dupret also presents the different understandings of Sunni and Shi’ite schools of law, including where they overlap. He concludes this description by illuminating the use of *fatwa* (a legal ruling) and the contemporary relevance of reasoning in interpretation. However, he only briefly touches on some debates in interpretation before rapidly moving on.

Next, Dupret describes the concept of *usul al fiqh* (the methodology of the law), explaining how Islamic jurists derive positive law from available sources. He then goes on to briefly survey this positive law, which includes devotional acts of prayer and the five pillars of Islam, family relations, property law, contractual law, and criminal law—including offenses against life, the body, and property. However, he fails to indicate in sufficient detail the differences in purely religious law, concerned with prayers and the five pillars, and administrative law. While the latter is codified, the former is left for the believer to follow as he or she will without state oversight. A key takeaway from this section is Dupret’s integration of contemporary applications of the law to novel contexts. This section highlights what he sees as the “plasticity” of Islamic law, and by extension *sharia*. Judges can come to several conclusions about law, including opposing conclusions, by interpreting the sources. Even when the text is clear, judges have a great deal of discretion in determining the law that applies to any given situation. This flexibility mitigates against the perceived harsh-

ness of *sharia* law, especially present in the consciousness of most Western readers of the text. In this sense, Dupret educates his audience on the true nature of *sharia*, at least as applied today, dispelling myths and misunderstandings. However, he fails to note that this very flexibility of *sharia* also makes it difficult to establish a defined and predictable law. In some areas of law, prominently criminal law, clear rules are essential to provide notice and fair warning. If these can be subject to multiple interpretations, several due process problems may exist.

Additionally, Dupret presents a philosophical account of Islamic law. He conducts a particularly insightful analysis of the concept of justice in Islam, noting the main divide between the Ash'arites, the majority who favor literal interpretation of the text, and the Mu'tazilites, who favor rational interpretation and are now extremely small in number. He notes how this divide between rational and literal has theological and philosophical underpinnings. It comes from two different understandings of the nature of God and the nature of "good" and "bad." This leads him into a description of the enforcers and interpreters of Islamic law, the judges. Dupret gives a quick historical account of the nature and origins of Muslim judges from the time of the Caliphs, to major Muslim empires including the Umayyads, the Abbasids, and the Ottoman Empire. Missing, however, is any mention of the Mughal, the Fatimid, or the Safavid Empires. Dupret instead traces the modern Islamic jurist to a series of reforms and the rise of the nation state in the late days of the Ottoman Empire, as well as looking at the birth of several Islamic states in Asia, the Middle East, and North Africa. Dupret fails to describe the history of Islamic law and practice in other key regions including West Africa, which to this day has a sizeable Muslim population.

Dupret sees codified Islamic law and *sharia* as an invention of the present day, stemming out of a colonial legacy that imposed a positivist model on many nascent, Muslim-majority countries. Dupret does an excellent job of noting regional differences in Islamic law and how jarring diversity was for colonizers seeking to impose uniform standards. In changing the institutions and how Muslims perceive and use Islamic law in these countries, Dupret implies that *sharia* itself transformed such that Islamic law in its classical form largely disappeared. However, by covering this topic in only a few short paragraphs,

Dupret moves on without a full explanation, leaving only this implication without a thorough analysis.

Following this account, Dupret notes that today there is no “transnational” Islamic law across Muslim-majority countries. He reiterates the adoption of Napoleonic law in most Arab states. However, at the same time, Dupret indicates the areas of law where Islamic law persists, including personal-status law. He gives examples of its continued use in Egypt, Iran, and Morocco. In all these cases, Islamic law has undergone several changes to more closely resemble Western legal systems, while retaining certain specific features of Islamic law.

Other areas of law that remain heavily influenced by Islamic law are criminal law and civil law. As examples of this, Dupret cites the cases of Pakistan, Iran, Egypt, and Tunisia—again noting the willingness of courts in these countries to modify laws in response to modernization and globalization. Dupret even gives a brief account of Islamic banking and the reinterpretation of the text necessary to make global finance possible for Muslim countries. Dupret strives to sort the different situations where judges and others in Muslim-majority states use *sharia*. These include situations that directly implicate the law such as veiling in Egypt, the use of the concept of *sharia* to bolster political decisions like banning the Communist Party in Morocco, its use as a general principle, and, very rarely, its use to invalidate positive law. While this schematic is helpful and Dupret presents one key case per category to explain his argument, he fails to truly explore *sharia*'s use and what it means for Muslims today. Instead, Dupret quickly moves into an explication of the link between Islamism and nationalism, focusing on the case of Algeria. He indicates the inclusion of references to *sharia* in many constitutions and in rhetoric by several prominent regimes such as the Muslim Brotherhood. Again, he makes these observations with very little discussion of what they mean.

Dupret then moves into yet another context featuring *sharia*, namely its appearance in countries where there is a Muslim minority and Islamic law becomes in many ways “a marker of identity.” He indicates the different ways Muslims continue to apply *sharia* in these spaces, such as by choosing to resolve marriage disputes through arbitration with an expert in Islamic law presiding over the proceedings. He also indicates several calls to reform the law by Muslims living in Euro-

pean countries. Although he briefly notes that Muslims are a sizeable minority in several non-Western states, prominently India and China, he immediately jumps into an account of how nations politicize *sharia* and treat it as an ideology and how often Islamism is a response to Western ideals. Here, Dupret fails to acknowledge that in the Western context *sharia* is not always treated as ethically “bad.” Rather, in attempts to integrate a growing Muslim immigrant population, states often embrace aspects of *sharia* such as Islamic finance to appeal to the new constituency. The attitudes of Muslim-minority countries towards *sharia* is more nuanced than Dupret presents.

In the end, *What is the Sharia?* remains a brief but helpful guide to Islamic law and is particularly useful for people who do not know much about the topic and are looking for an overview of key concepts, ideas, and applications of the law. For scholars already well-versed in Islamic law, the book does not live up to its original promise of analyzing the impact of *sharia* as a norm in any great detail. It also overlooks several significant aspects of Islamic law. As a result, the book does not offer many new insights. Dupret’s major contribution is in raising the critical question of what *sharia* is and the implications of the answers given to that question, an idea ripe for future discussion and analysis.

*Evidence for Hope: Making Human Rights Work in the 21st Century.*  
By Kathryn Sikkink. Princeton, NJ: Princeton University Press, 2017. Pp. vii, 318. \$35 (paperback).

REVIEWED BY ARIANA NAVARRO ROWBERRY

In *Evidence for Hope: Making Human Rights Work in the 21st Century*, political scientist Kathryn Sikkink challenges current scholarship and popular opinion that posits human rights are in a state of crisis by zooming out to analyze the long arc of human rights development. The author notes that there is less violence and fewer human rights violations in the world today than at any other time in history. She attributes these improvements in large part to human rights. The book is divided into two main segments arguing that human rights are 1) legitimate, and 2) effective in driving positive change.

Sikkink establishes the legitimacy of human rights by linking its origins to the Global South, or countries outside of

Western Europe and North America. She defines legitimacy as a generalized perception that human rights are desirable, appropriate, and authentic. By connecting the origins of human rights to the Global South, she rebuts the prevalent idea that human rights are a neoliberal Western-dominated project imposed upon the Global South. She next evaluates the effectiveness of human rights, positing that “invisible harms,” cognitive biases, and changing standards of accountability lead to incorrect assessments on the progress of human rights.

Sikkink meticulously and convincingly counters the prevailing narrative that human rights are in a state of crisis. Despite this contribution, her analysis on legitimacy and effectiveness does omit several key considerations. In her review of legitimacy, she should recognize that the legitimacy of human rights is limited by the fact that political elites, even if from the Global South, created the architecture for the post-WWII human rights regime. In so doing, the majority of the population most likely to be affected by human right violations was not included in the process. Additionally, the current power structure of the United Nations Security Council gives a permanent seat, and thus an outsized role in deciding human rights issues, to the United States, China, Russia, France, and the United Kingdom. This structure undermines the legitimacy of human rights. As for Sikkink’s discussion of effectiveness, she fails to adequately address rising economic inequality as an area where human rights have failed.

The first part of Sikkink’s book analyzes the legitimacy of human rights. Scholars and activists criticize human rights as illegitimate because they are creations of a Western system imposed upon the rest of the globe. A secondary critique is that human rights hold little relevance outside of elite academic and policy circles. Sikkink rebuffs these critiques by illustrating that individuals from the Global South were central to the creation and implementation of human rights ideas and institutions. In so doing, she aims to globalize human rights.

In the wake of WWII, the newly penned United Nations (U.N.) Charter called on international organizations to promote human rights. To adequately address this issue the international community needed to create an intergovernmental enumeration of the rights. Two such documents, the American Declaration of the Rights of Man (American Declaration) and the Universal Declaration of Human Rights (UDHR) codi-

fied human rights. There are numerous examples of the Global South's involvement in laying the foundations of the human rights regime. While the UDHR is now the authoritative treaty for human rights, the American Declaration heavily influenced the UDHR. Latin American countries were central in forming the American Declaration, and ensured that the declaration included civil, political, economic, and social rights. Chilean jurist Alejandro Alvarez presented the idea of international individual rights to the American Institute of International Law. Alvarez's ideas were foundational to both the UDHR and the American Declaration. Additionally, Sikkink underscores the role that women from the Global South played in establishing the human rights regime. Of the six official female delegates at the San Francisco Conference in 1945, three came from Latin America—two of whom led the fight for language supporting women's rights to be included in the U.N. Charter. Women from the Global South also lobbied for more inclusive language in the UDHR, for example changing "all men" to "all human beings."

Sikkink's thorough review of the diverse origins of human rights enhances the legitimacy of the human rights regime, but she fails to consider two important points in her argument. First, the majority of the individuals from the Global South representing their governments were from elite segments of political society, not representative of those whose rights were most likely to be oppressed. Latin American jurists, lawyers, and diplomats shaped the American Declaration and UDHR, not the common population of their states. While this does not take away from her emphasis on Global South participation, it does demonstrate that only a small and unrepresentative percentage of the population had the opportunity to participate in shaping the post-WWII human rights effort.

Secondly, Sikkink's focus on diverse origins does not adequately address the reality of the human rights regime. The Permanent 5 (P5) of the U.N. Security Council have outsized influence over the global human rights regime. Such a system fails to account for the contributions of the Global South that Sikkink details. This lopsided power dynamic was particularly acute during the Cold War when the United States and Soviet Union competed for global influence and stymied human rights progress. This period of history could portend trouble for the global order with today's resurgence of great power

politics, with China, the United States, and Russia competing for global power. It is unclear what the flawed structure of power in the U.N. paired with a transitioning global order will mean for the legitimacy of human rights. Sikkink's review of the legitimacy of human rights challenges the prevailing narrative that human rights are a creation of the West, but does not address the challenges of tomorrow.

The second part of the book asks if human rights, as codified in global treaties and countries' domestic laws, are effective. Sikkink states that the biggest source of disagreement among human rights scholars and within human rights movements is how to measure effectiveness. Sikkink convincingly argues that the disagreement about measurement depends on if an individual compares human rights to the ideal—i.e. the poverty rate should be zero—versus an empirical comparison—i.e. poverty rates have dropped twenty percent in the past year. Comparison to the ideal disguises progress in human rights, because even if there is a notable increase in girls attending school globally, millions of girls could still be without schooling. The increase could wind up unreflected in the data.

The nature of human rights scholarship and certain psychological factors make it difficult for academics and the public to see the effectiveness of human rights. First, human rights scholars and policymakers must make what Sikkink calls "invisible harms," such as torture, disappearance, and rape, visible. In so doing, however, human rights violations appear more prominent relative to the past, when such data was unavailable or underreported. This "information paradox" diminishes the perceived effectiveness of human rights. While not discussed in the book, social media is the newest vehicle that provides the globe with an onslaught of information. Social media allows activists to use the platforms to identify and pressure governments engaging in human rights violations. Additionally, human rights scholars and practitioners use changing standards of accountability. For example, beginning in the mid-1980s, the U.S. State Department and Amnesty International broadened their human rights reporting from focusing on violations directly attributable to governments, such as death and torture, to reporting on a broader set of rights, such as the right to be free from police brutality. These reports can make it appear that a country's human rights situation is deteriorat-

ing, when in reality the country is maintaining the status quo or progressing.

Second, psychological factors influence empirical comparisons. Humans disproportionately focus on negative information. This cognitive bias, exacerbated by the media's attention to negative news, leads individuals to believe that things are getting worse even when there is empirical evidence to the contrary. With greater access to media than at any point in human history, it is clear why many view human rights policies as ineffective.

To rebuff these biases, Sikkink offers empirical measures showing that human rights violations are decreasing. The two biggest factors correlated with human rights violations are war and authoritarianism, both of which are declining globally. Data also shows decreases in genocide and politicide, use of the death penalty, child mortality, and an increase in the number of women and girls in school around the world, and access to healthcare.

Sikkink's empirical analysis is compelling but limited by inadequate attention to economic inequality. Economic inequality among countries has decreased, in part because of the economic rise of large countries like China and India. However, inequality within individual countries has increased. Responding to rising intra-country economic inequality, Sikkink asserts that human rights have helped reduce "status inequality," or inequality based on "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Sikkink argues that status inequality is not separate from economic inequality since status differences often lead to disparities in economic equality.

Human rights may limit "status inequality" but economic inequality continues rising. Sikkink proposes solutions including progressive taxation, a global tax on capital, and increasing access to education for the whole population. These policies would reduce inequality, but how they would influence the human rights regime is unclear. Her analysis elucidates important biases that lead academics and the population to view human rights as unsuccessful. While providing convincing data to counter these perceptions, she should devote more attention to economic inequality.

Sikkink's book contributes to human rights literature and effectively reframes common assumptions about the subject. By analyzing the perceived legitimacy of human rights, she shows that human rights are rooted in the Global South. However, she fails to address that the architects of the post-WWII human rights treaties were almost exclusively political elites. She also does not address the flawed power structure of the U.N. In discussing effectiveness, she uses empirical methods to show that human rights have improved and demonstrates how biases lead us to think otherwise. One scale on which human rights have not improved is economic equality, which Sikkink should develop further in future works. A final consideration is the sustainability of human rights development. As it stands, it is unclear if Sikkink's arguments can be extrapolated to make a prediction for the future of human rights.

*The Despot's Accomplice: How the West is Aiding and Abetting the Decline of Democracy.* By Brian Klaas. New York, NY: Oxford University Press, 2018. Pp. xiii, 274. £20.00 (hardcover).

REVIEWED BY NITHYA SWAMINATHAN

In *The Despot's Accomplice*, Brian Klaas provides a comprehensive and convincing account of how Western governments aid and abet authoritarian leaders across the world. Arguing that the world is in the midst of a global crisis of democracy, Klaas profiles democratic decline in various countries and focuses on misguided foreign policy decisions by Western states. The analysis is supported by roughly 250 interviews with political actors, including former prime ministers and presidents, as well as by the author's experiences as an election observer in a variety of locations. *The Despot's Accomplice*, however, offers more than just a critique of Western foreign policy; Klaas counters the stark picture he paints with concrete policy recommendations providing a guide to the possibility of an eventual resurgence of democratic ideals. Although his recommendations are not always plausible, he provides a compelling initial framework for tackling the decline of democracy around the globe.

The book is framed around ten key recommendations intended to provide sustainable, stable mechanisms for Western governments to support democracy abroad. Klaas begins with

a brief survey of the history of democracy, then proceeds to discuss the West's involvement in promoting despots and dictators around the world. He provides a cogent set of examples, including the CIA's role in bringing down democratically elected governments in Iran, the Democratic Republic of the Congo, and Chile. While Klaas does not explicitly define what he means by the "West," the bulk of the book focuses on foreign policy decisions by the United States and the European Union. Governments in London, Paris, Brussels, and most of all Washington, Klaas argues, have repeatedly undermined democratic governments in order to further short-term geostrategic concerns. For instance, Washington's support of the military dictator General Musharraf in Pakistan was largely motivated by the desire to secure Pakistani cooperation after the September 11th attacks. On some occasions, Western intervention meant direct interference in elections, as with American funding of Fatah in the 2006 Palestinian elections, and in other cases overthrowing elected governments, as in Guatemala.

Each subsequent chapter focuses on a policy recommendation, accompanied by case studies that demonstrate policy missteps that run counter to the author's core principles. Klaas's second principle, for example, recommends that Western governments should stop waging war to impose democracy. He justifies this principle with examples of counterproductive conflicts originally begun to promote democracy, namely Iraq and Libya. While outlining the possibilities for the reinvention of Western foreign policy, Klaas provides a key caveat: the success of his recommendations heavily depends on Western governments hindering Russia and China's direct attempts to prop up despotic regimes as a means to inhibit the growth of liberal democracy. Ultimately, the book posits that the United States and other Western governments must invest in confronting dictators and advocating for substantive democratic changes rather than cozying up to despots for strategic reasons.

The warning at the heart of *The Despot's Accomplice*—that the world is becoming less stable and prosperous due to the rapid decline of democracy—is compelling and well-supported by contemporary examples of populist political movements. Yet the book is fundamentally hopeful, offering a way forward that preserves the benefits democracy provides. Some

of these solutions seem obvious and pragmatic, such as the recommendation that Western governments should not directly intervene in foreign elections. Others are more cumbersome, such as the proposition that the United States and the European Union undergo a systematic review of every dollar spent in foreign aid to ensure that funding has a reasonable chance of catalyzing meaningful democratic change.

For the most part, the book is a highly readable and accessible critique of Western foreign policy, coupled with a vigorous defense of liberal democracy. Klaas's analysis is engaging and lively. He describes complicated political events concisely and with dark humor. For example, his account of American support of the Pakistani dictatorship describes General Pervez Musharraf appearing on *The Daily Show*, "where he was offered a Twinkie, contrasted against the backdrop of an appropriate but pointed question about public enemy number one: 'Where is Osama Bin Laden?'" Understanding his arguments does not require substantial background knowledge of political science or international relations.

Klaas's analysis is also well-supported by personal experiences. The book contains interviews with diverse characters such as the former Thai Prime Minister Abhisit Vejjaviva, an Islamist political leader in Tunis, and advisors of Frederick Chiluba, the former president of Zambia. He provides an insightful glimpse into contemporary issues facing democratic growth that often are overlooked, such as the potential application of information technology to level the playing field between the people and state power. These new insights and interesting anecdotes make for a refreshing and compelling narrative that subverts mainstream Western government rhetoric purporting to promote democracy around the world.

Another strength of the book is Klaas's refusal to confine his critique to Western foreign policy. Turning his attention to the problems at home, he notes that the United States has never been a pristine model of liberal democracy. American democracy, as Klaas observes, faces challenges that include unethical campaign financing, gerrymandering, and gridlock—all of which should be addressed so that nations stalled between democracy and dictatorship can look towards the United States as an example. Without attempts to strengthen domestic politics, promotion of democracy abroad seems hypocritical.

Klaas's project, however, may frustrate those looking for in-depth analysis of individual cases because his ideological agenda necessarily limits the scope of his work. This book is an attempt to identify and classify Western policy writ large in establishing liberal democracy. As a result, he does not give domestic considerations or competing interest groups within each individual country a comprehensive analysis. Experts who are familiar with a given country's history may be frustrated with Klaas's wide-ranging scope and the resulting cursory attention paid to key political events. While Western governments have been implicated in the overthrow of democracies world-wide, the causes and consequences of democratic decline in a given individual country are complex and multi-faceted. Each country is afforded a few pages of coverage, which may leave those looking for a closer glimpse dissatisfied.

Additionally, for large portions of the book, the "West" is treated as a monolithic, static identity, rather than a moniker for a set of countries with differing abilities to interfere on the international stage. Klaas argues that there are four players powerful enough to shape global affairs and influence government structure around the world: the United States, the European Union/United Kingdom, Russia, and China. After acknowledging that Russia and China are not invested in democracy promotion, his analysis centers on the effects of the United States and the European Union on the global order. While Klaas largely draws attention to policy decisions by the United States and the United Kingdom, and adeptly mentions key players in Washington, the book's general focus on a nebulous "West" rather than on the foreign policy decisions of discrete nation-states can feel a little simplistic.

Similarly, the book's vision of the global stage is fairly state-centric with little discussion of the role of influential international organizations, such as the Bretton Woods institutions. Klaas does briefly mention non-governmental organizations and for-profit businesses, but primarily to critique their short-term priorities that often run counter to sustainable democracy promotion. He also briefly examines Russia and China's establishment of government-organized Non-Governmental Organizations (NGOs), but only to highlight their responsibility for undermining other NGOs that combat government abuses. Regardless, most of his solutions are directed towards Western governments without any serious consideration

of the capabilities of corporations, international organizations, and NGOs in influencing democratic growth. This is an oversight that seems particularly glaring given that NGOs, multinational corporations, and international organizations are capable of dramatically impacting international law and shifting global norms. The International Monetary Fund, for example, has notably been accused of supporting military dictatorships that are friendly to American and European companies, thus suggesting that Western governments may not be the only actors implicated in the decline of democracy.

Finally, it is easy for a reader to question the pragmatism of some of the suggestions presented in *The Despot's Accomplice*. Klaas admits that domestic constraints often incentivize ill-advised decisions. He notes that democracies like the United States have to be responsive to constituent concerns that may be knee-jerk reactions to global events, rather than adhere to a sustained, clear-eyed foreign policy. It is hard to imagine how or why politicians would commit to some of his more radical propositions, such as the creation of a "League of Democracies"—a free trade zone comprising of all established liberal democracies. Without structural changes that remove the constraints facing politicians in Western governments, it is hard to see some of his recommendations as practicable.

Despite its flaws, *A Despot's Accomplice* is a hopeful book in a trying political time characterized by rising populism and democracy in retreat. With the admission that the West has actively subverted liberalism, the book urges those committed to democracy to recognize the errors of the past and not abandon democratic ideals. Klaas paves the way to a realistic defense of democracy, one premised on a strong theoretical foundation informed by practical considerations. While not exhaustive, *A Despot's Accomplice* is a compelling introduction to contemporary democratic theory.

*Of Friends and Foes: Reputation and Learning in International Politics*. By Mark J. C. Crescenzi. New York, NY: Oxford University Press, 2018. Pp. xiii, 192. \$29.95 (paperback).

REVIEWED BY TAYLOR M. WETTACH

In framing his book, Mark Crescenzi suggests that although reputations abound in world politics, we know little

about their formation and evolution. *Of Friends and Foes: Reputation and Learning in International Politics* presents a theory of reputation dynamics to identify when and how reputations form. Crescenzi argues that a reputation for escalating conflict exacerbates crises, while a reputation for cooperating makes future cooperation more likely. *Of Friends and Foes's* impact on the reader is limited, however, by its incomplete response to competing theories and its reliance on an unclear and flawed argument against the "peace through strength" philosophy. That being said, Crescenzi presents a finetuned model and theory of reputation dynamics. Furthermore, his central thesis that conflict-begets-conflict and cooperation-begets-cooperation is, for the most part, effectively reasoned.

The book's first part establishes a theory of reputation dynamics and reputation's impact in world politics. Crescenzi begins chapter two with a brief overview of the history of reputation in the field of international relations and examines the concept of reputation in the social and natural sciences more broadly. He then presents a model of reputation formation and evolution. To illustrate, given three countries, such as North Korea, the United States, and Iraq, North Korea can learn about the United States by looking at how it has historically interacted with Iraq. The more similar North Korea and Iraq are in terms of policy and/or power, the more that North Korea is able to treat Iraq as a relevant proxy for its own relationship with the United States.

Chapter three establishes a theory of reputation and politics that draws on present knowledge about the problems of credible commitment and bargaining. Crescenzi distills this theory into hypotheses which present what he describes as a new and unique interpretation of the role of reputation in world politics: "[r]eputation affects both conflict and cooperation, it matters most when the source of information is temporally proximate, and it is most useful in the absence of direct streams of historical information."

The book's second half evaluates historically the implications of the reputational learning model developed in its first half. In chapter four, Crescenzi examines the relationship between reputation and conflict between states. Drawing from the implications of the reputational learning theory, the author hypothesizes that reputations for using force and going to

war encourage and heighten interstate conflict, supporting the hypotheses with empirical analysis.

Chapter five applies the book's reputational learning model to answer the question of how reputations for credibility and reliability influence international political cooperation. In particular, Crescenzi's focus is on whether a state's reputation for alliance reliability influences its likelihood of being sought by other states as an ally. The author presents empirical analysis providing support for his hypothesis that reputations for reliability can affect alliance formation choices.

Chapter six addresses the policy implications of the reputational learning model, discussing possible extensions of the model and its applicability to puzzles in world politics. The key policy result, Crescenzi argues, is that the Cold War logic of peace through strength is flawed. "[A] violent reputation can trigger the conflict spiral, rather than produce peace through deterrence." The author concludes with a reflection on the policy implications for the United States in what he describes as "a post-nuclear, post-Cold War world."

Crescenzi makes a strong case that reputation is influential in international politics. The author develops his argument in a clear way that effectively draws the reader's attention. Beginning with the big picture and useful context, he builds up to and nicely explains his model, its accompanying theory, the cases through which it is to be applied, and their outcomes and implications. The components of his argument are generally well-reasoned, including the development of theory, the structuring of the model for examining reputation's significance, and—without running the numbers—the application of statistical analysis. Crescenzi usefully incorporates historical illustrations that help the reader understand his model and theory and also bolster his argument. For example, he explains how instead of fostering Russian compliance, Napoleonic France's aggressive posture ultimately encouraged Russia to commit to a conflict that stymied Napoleon's expansionist aims. In sum, *Of Friends and Foes* provides both an informative read for the interested reader and a plausible theory of reputation for the field of international relations.

The positive qualities described above cement concerns with the book's flaws. First, the book's impact is reduced by its incomplete response to competing theories on the signifi-

cance of reputation in international politics. Second, and more problematically, it relies on a fuzzy argument against the philosophy of “peace through strength” which seems to stretch the author’s analysis.

In evaluating reputation’s significance in international relations, the book briefly examines recent literature in which authors argue that reputation is irrelevant. Specifically, Jonathan Mercer argues that it is impossible to reach a categorical conclusion regarding reputation and deterrence. Furthermore, Daryl Press suggests that even when controlling for the problems raised by Mercer, governments are too concerned with present crises to pay attention to the signals of the past. In response to Mercer and Press, Crescenzi highlights the continuing significance of reputation in other fields, contemporary international relations scholarship touching on reputation, and reputation’s role in our daily economic lives, to argue that its conceptual death has been greatly exaggerated. Perhaps most effectively, the author’s empirical analysis supports an understanding that reputation has a significant role to play in international relations. However, Crescenzi’s argument would have been stronger had he addressed the alternative arguments that he presents, rather than solely relying on arguments in support of his conclusion. Assuming the competing arguments of Mercer and Press are also well-made, it is unclear how to distinguish them from *Of Friends and Foes*’s conclusion on the significance of reputation.

There are still greater problems with the book’s analysis, namely Crescenzi’s contrasting of his conclusion that a reputation for conflict-begets-conflict with what he describes as a “classical view of reputation and resolve” emphasizing “peace through strength.” Crescenzi returns several times to the “conventional wisdom” that a reputation for willingness to use violence allows states to maintain their security. This is significant for providing the author’s argument with a counterintuitive *pizzazz*. However, without fully convincing the reader that a more extreme notion of “peace through strength” is actually the “conventional wisdom,” Crescenzi’s core conclusion that a reputation for conflict encourages conflict is underwhelming. It is hardly surprising that a state that is more engaged in conflict with some states is more likely to end up in conflict with other states.

Further, Crescenzi does little to support his understanding of the “conventional wisdom.” This is reflected in his reliance on a reference to General MacArthur’s commitment to use any and all resources against the Communists. MacArthur’s statement represents one military leader’s view, albeit a significant one. Moreover, Crescenzi’s assertion that his argument is incompatible with purely neorealist theories is unconvincing given Crescenzi’s demonstrated poor understanding of neorealism. His description of neorealism robs the theory of its nuance. That is to say, neorealism regards power as *the most important factor* in international relations, but *not the only significant factor*. There are arguments for the importance of demonstrating resolve—through force if necessary—such as in response to Syria’s use of chemical weapons following a statement by President Obama that “a red line for [the United States] is we start seeing a whole bunch of chemical weapons moving around or being utilized.”<sup>3</sup> However, being *willing* to use force is different from developing a reputation for *using* force as analyzed by Crescenzi. Perhaps more importantly, many neorealists would argue that the purpose of military power is to *avoid* conflict or war by having sufficient strength to dissuade a would-be adversary from attacking.

Crescenzi does acknowledge in the book’s conclusion that the “logic and mechanisms of deterrence are still core foreign policy tools for states, and [his analysis’s] results should not be interpreted as a call for demilitarization.” However, he then problematically follows this qualification up with a cautionary tale about the Soviet Union almost dangerously misreading U.S. deterrence efforts based on a supposed reputation for aggression. The elements that the author suggests fomented a reputation for aggression—such as troop basing in Iran and improved relations with China—do not qualify as the sort of conflict behavior that Crescenzi empirically demonstrates to beget further conflict, limiting the effectiveness of his argument. The author’s approach to his conflict-begets-conflict argument makes it seem as though he is attempting to set up a straw man and to stretch its significance further than his analysis warrants.

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1. President Barack Obama, Remarks by the President to the White House Press Corps (Aug. 20, 2012), <https://obamawhitehouse.archives.gov/the-press-office/2012/08/20/remarks-president-white-house-press-corps>.

Ultimately, *Of Friends and Foes's* argues convincingly, if underwhelmingly, that the risks of states behaving aggressively still stand, and that cooperation engenders a reputation that facilitates further cooperation. These understandings may provide reason for states to pursue cooperation and to avoid aggressively entering into and expanding conflict. While these conclusions are less revolutionary than the book may aspire to, the text ultimately provides a useful model and theory for the role of reputation, and a jumping off point for further research into the subject.