

BOOK ANNOTATIONS

The Human Right to a Healthy Environment. Edited by John H. Knox and Ramin Pejan. Cambridge, United Kingdom: Cambridge University Press, 2018. Pp. xvii, 290. \$29.99 (paperback).

REVIEWED BY ANNA D'AGOSTINO

The Human Right to a Healthy Environment consists of thirteen chapters, each comprised of an essay by a different contributing author, and an introductory chapter by editors John Knox and Ramin Pejan, which all consider the right to a healthy environment. In the introduction, Knox and Pejan discuss the interdependent relationship between human rights and a healthy environment, explaining how the protection of each is essential to the achievement of the other. They present a dual conception of the international right to a healthy environment as both a capstone and a cornerstone: As a capstone, the right would be a marker of the progress and maturity of this area of law. As a cornerstone, it would be a way to fill in the gaps in existing human rights schemes and an avenue through which to impose obligations on states.

The overarching theme of the book is that different formulations of a right to a healthy environment already exist in the majority of national and regional legal systems, but not yet under international law. However, despite the apparent consensus that the adoption of the right under international law would be a good thing, few contributors seem optimistic about such a development occurring in a timely manner. The book properly frames in a positive light the adoption by many nations of a human rights-based approach to environmental issues, but would have benefitted from stronger arguments in favor of the immediate or timely creation of a right to a healthy environment under international law.

The first four essays of the book examine the conceptions of a right to a healthy environment that already exist in various national and regional fora, and discuss how current practice and legislation may affect such a right under international law. The first and second essays, "Catalyst for Change: Evaluating

Forty Years of Experience in Implementing the Right to a Healthy Environment” by David R. Boyd and “Learning from Constitutional Environment Rights” by Erin Daly and James R. May, survey the existence of the right in countries around the world. The third and fourth essays, “The Right to a Satisfactory, Healthy, and Sustainable Environment in the African Regional Human Rights System” by Lilian Chenwi and “The European Court of Human Rights and International Environmental Law” by Ole W. Pedersen, focus on the presence and formulation of the right in Africa and the European Court of Human Rights, respectively. Boyd considers the impressive presence of a right to a healthy environment across the globe (he notes that at least 155 nations have recognized some form of the right) a strong argument that the right should be adopted under international law.

In the sixth and seventh essays, “Reasoning Up: Environmental Rights as Customary International Law” by Rebecca M. Bratspies and “In Search of a Right to a Healthy Environment in International Law: *Jus Cogens* Norms” by Louis J. Kotzé, the authors consider whether it may be possible to conclude that a right to a healthy environment already exists under international law through custom or *jus cogens* norms. Kotzé agrees with Bratspies’s reasoning that the prevalence of the right to a healthy environment in states’ laws has pushed the right into customary international law, at least procedurally if not also substantively. Both authors theorize that it is probable that some states would object to the idea that the right to a healthy environment exists under customary international law, though Bratspies notes that customary status would make formal adoption of the right a mere codification of custom, often a less drastic and thus more palatable option for many states. The eighth essay, “A Human Right to a Healthy Environment? Moral, Legal, and Empirical Considerations” by César Rodríguez-Garavito, concurs with the notion that a human right to a healthy environment already exists through customary international law, and adds that the benefits of formally adopting such a right in an international legal instrument outweigh the costs.

The fifth and ninth essays explore important factors that must be considered if a right to a healthy environment is adopted under international law. The fifth essay, Dinah Shelton’s “Complexities and Uncertainties in Matters of

Human Rights and the Environment: Identifying the Judicial Role,” is concerned with issues of admissibility, evidence, and other procedural elements that might arise in litigation around this right. The ninth essay, “Quality Control of the Right to a Healthy Environment” by Marcos Orellana, affirmatively determines that implementation of the right would satisfy the U.N. General Assembly’s standards for human rights as well Philip Alston’s procedural safeguards for human rights.

The final four chapters of the book link the right to a healthy environment to the issue the book is implicitly, but clearly, addressing: climate change. The tenth essay, “The Politics of Human Rights, the Environment, and Climate Change at the Human Rights Council: Towards a Universal Right to a Healthy Environment” by Marc Limon, first details the common opposition to policies addressing the problems of climate change, explaining why large developed and developing states have opposed and continue to oppose linking human rights and the environment. Limon then goes on to demonstrate how to overcome such opposition using the Maldives and its allies’ initiatives on human rights and the environment as a successful case study. Daniel Magraw and Kristina Wienhöfer describe the process the Maldives and its allies undertook in greater detail in the eleventh essay, “The Malé Formulation of the Overarching Environmental Human Right.” The twelfth essay, “Human Rights in the Climate Change Regime: From Rio to Paris and Beyond” by Lavanya Rajamani, fills in the gaps of the previous two chapters and expands the examined time horizon by tracing the incorporation of human rights language into climate change agreements from the 1992 U.N. Framework Convention on Climate Change up to the 2015 Paris Agreement. She explains how the explicit reference to human rights in the preamble of the Paris Agreement proves that states are thinking about human rights as they relate to the environment, though the language’s placement in the preamble instead of in an active article indicates that some states presented significant opposition.

Finally, building off the historical and legal framework that the previous contributors established, Sumudu Atapattu discusses the link between climate change and the human right to a healthy environment, and identifies gaps and areas for further research in the concluding essay, “The Right to a Healthy Environment and Climate Change: Mismatch or Har-

mony?” Despite the earlier discussions regarding the right to a healthy environment in national and regional fora and the relative benefits of adopting such a right, it is not until this final chapter that Atapattu articulates how puzzling it is that there has not been more international agreement or movement around adopting such a right. Furthermore, there is no real discussion about ways to encourage or pressure the international community to commit to such a right simply because it is the moral thing to do. Contributors note that there would be substantial stumbling blocks to adopting the right to a healthy environment at the international level, such as differing priorities among developed and developing states, different opinions on obligations and partitioning of responsibilities, and high transaction costs in actually adopting the right. However, most agreed that despite the procedural and substantive difficulties of adoption, recognizing a right to a healthy environment would be important because it would signal that environmental concerns are of the same magnitude as other economic, social, and human rights issues.

One major problem in establishing a human right to a healthy environment is the general lack of clarity surrounding the right. Most states seem to have assented to the idea that they have environmental obligations under human rights law, though Atapattu points out that what this entails needs to be clarified. However, actual state practice may not even need to change that much in order to comply with an international right to a healthy environment, because national and regional courts, as noted in the essays by Boyd, Daly, and May, are already applying more established human rights to environmental issues. Additionally, even without the standalone right, all states have current human rights obligations regarding the actions they take to address environmental issues. It is also important to note that the right to a healthy environment, like other human rights, would not exist in a vacuum. It would be balanced among competing considerations, such as the right to develop, and individual claims would most probably remain secondary to the needs of society at large.

The book’s biggest flaw is the lack of a sense of immediacy to establish a meaningful right to a healthy environment in the wake of fast-accelerating climate change. The book does not discuss past instances of transnational action in international human rights law, such as a state’s invocation of the responsi-

bility to protect as a justification for immediate interference in foreign jurisdictions, as an example of states affirmatively acting quickly to protect human rights. The book also fails to adequately address one important aspect of the debate: state cooperation. Contributors Pedersen, Bratspies, Rodríguez-Garavito, Limon, Magraw and Wienhöfer, Rajamani, and Atapattu mention, but fail to follow up on, state concerns and disagreement about the transborder obligations that might stem from an international human right to a healthy environment. Finally, curiously enough, no author grounds his or her discussion in the idea that it is precisely the role of international law to deal with issues, such as the environment and climate change, that affect the entire global community. Surely this would serve as a useful foundation for establishing the discussion.

Atapattu's final chapter of the book, to its credit, does go further than the others in utilizing pathos, raising environmental justice concerns, and emphasizing the humanitarian consequences of climate change. He skillfully describes how climate change is already affecting developing countries, endangering their means of subsistence and, for some, their very territory. In addition to states with small carbon footprints shouldering more than their share of the climate change burden, environmental changes will disproportionately impact vulnerable groups, leading to other potential human rights violations which states are obligated to protect against. As the book aptly notes, "judicial oversight is necessary to protect the rights of those in marginalized and minority communities, who often bear a disproportionate burden of environmental harm." Adopting the right to a healthy environment would allow the international community to have a system in place to deal with climate disasters and displacements before the worst occurs; otherwise the world will be left scrambling for solutions while people are suffering.

Overall, *The Human Right to a Healthy Environment* paints an encouraging and insightful picture of individual states becoming more serious about the inherent rights of people to live in a healthy, sustainable, and adequate environment. Although there remain significant hurdles to the adoption of the right to a healthy environment, the book makes it increasingly clear that the international community is properly considering such a right. However, climate change and environmental jus-

tice concerns compel a conclusion that many of the book's contributors seem hesitant to make: The right to a healthy environment should be adopted on the international level sooner rather than later. Of course, getting a large number of states to agree to a course of action is always a prickly task, but given the major consequences of climate change, should not some consensus be reached? Fittingly, Atapattu best captures this dismay at the glacial pace of legal reform and gives the reader something to think about, powerfully concluding, "[i]n an era where even inanimate objects such as rivers and Mother Nature are accorded rights and legal standing, it is baffling as to why there is so much reluctance to accord *human beings* with a right to a healthy environment."

From Revolution to Power in Brazil: How Radical Leftists Embraced Capitalism and Struggled with Leadership. By Kenneth P. Serbin. Notre Dame, IN: University of Notre Dame Press, 2019. Pp. xx, 437. \$60.00 (hardcover).

REVIEWED BY ALEXANDER A. FREY

In *From Revolution to Power in Brazil*, Kenneth Serbin provides an engaging and informative account of the lives of some of Brazil's former urban guerillas. *From Revolution to Power in Brazil* is a good starting point for readers interested in the history of Brazil's transition from dictatorship to democracy and the currents of the country's contemporary political left. Although the book does not provide in the end a unified theory explaining the country's democratization or the trajectory of the institutional Brazilian Left, it offers readers perspectives that are as diverse as the political space that it seeks to chronicle.

Serbin provides a narrative of the resistance to Brazil's military dictatorship (from 1964 to 1985) and the country's subsequent return to democracy. His work is based on hundreds of hours of interviews with nine former members of National Liberating Action (ALN), combined with historical information about the broader trends in Brazilian politics during and after the dictatorship. Serbin emphasizes that the violent, urban guerilla strategy by the ALN failed in its effort to oppose the dictatorship or effect significant social change. Instead, according to Serbin, the nonviolent mass movement

known as the *movimento popular* and the development of a more modern capitalism in Brazil contributed more to the country's social progress and transition to democracy. Serbin's account of the participation of former guerillas in both processes—along with the social and ideological adaptation that brought them into the nonviolent political space—encapsulates the flexibility and evolution of the Brazilian Left and makes a persuasive case for pragmatic, mass politics as an effective answer to authoritarianism.

The first third of the book discusses the unsuccessful guerilla war waged against the Brazilian government by the ALN and other small groups. Serbin argues that the Brazilian Communist Party's (PCB) refusal to resist the military dictatorship following the 1964 coup eroded the PCB's dominance of the Brazilian Left and created space for more radical, militant groups, such as the ALN, to operate. Although the spate of assassinations, kidnappings, hijackings, and robberies by the ALN and similar outfits garnered the attention of the government, they failed to inspire the mass revolution that the militants envisioned. The regime was ruthlessly efficient in its campaign against the guerillas, employing widespread torture of prisoners suspected of "terrorism." By 1974, the ALN had all but been destroyed, at an immense personal cost to its members, most of whom were imprisoned, killed, tortured, or exiled. Serbin's lengthy discussion of his subjects' motivations for joining the ALN provides valuable insight into the mentalities animating the South American urban guerilla phenomenon of the 1960s and 1970s. The interviewees' experiences of repression at the hands of the Brazilian government are especially memorable, since they bring to life the brutality of the dictatorship and its routine use of torture against dissidents. Serbin and his subjects go to great lengths to emphasize the brutality of the government's repression and the futility of the ALN's guerilla war. Serbin superbly preserves the memory of the human costs of the dictatorship through the firsthand accounts of its victims and through recollections of those, like ALN student organizer Alexandre Vannucchi, who did not survive.

Serbin is largely persuasive in his explanations of the causes of the ALN's failures and accurately depicts the subsequent successful transition by its members to nonviolent means. He presents the funeral mass of Alexandre Vannucchi

as a model of a nonviolent resistance movement that could succeed where violent revolution had failed, setting the stage for an analysis of the larger transformations that the Brazilian Left and the ex-guerillas experienced. Along with labor and social activists, the disillusioned ex-guerillas helped to organize a nonviolent resistance to Brazil's dictatorship. The imprisoned guerillas used their incarceration to organize resistance against the government through hunger strikes, intra-group discipline, and socialization with the general prison population. Militants who found themselves in exile experienced profound ideological and personal changes. For instance, Aloysio Nunes Ferreira Filho (Nunes) moved away from his militant disposition as he reentered the PCB through its Paris branch and rejected armed struggle as a vehicle for change, beginning his shift towards political moderation. Other ALN members joined the nascent *movimento popular* by participating in charitable work with the Catholic Church or through the trade union movement. Chapter eight, "Power to the People, Brazilian-Style," is particularly valuable in its detailed history of Brazil's democratic and left-wing political and social movements. Finally, some disillusioned guerillas harnessed their technical skills to start businesses and used the opportunities presented by Brazil's state-led capitalist system to achieve some measure of social transformation in the country.

The ALN members' transition away from militant opposition to nonviolence is compellingly told through the diverse narratives of the interviewees. Serbin's weaving together of these disparate accounts helps give texture to the unevenness with which Brazil approached democratization. The compromises and adjustments former militants made—whether in Nunes's political moderation or avowed socialist Marcio Araujo de Lacerda's business career—serve as microcosms of the large-scale accommodations Brazilian leaders made as the country transitioned back to democracy. Serbin's biographical approach also illustrates the disparate responses of dissidents to the failures of armed resistance and their adaptation to nonviolent political activities. The diversity of the interviewees' post-guerilla experiences gives readers a sense of the cross section of Brazilian social movements during the 1970s and 1980s.

As the book progresses towards more modern times, Serbin documents how most of the former guerillas entered

into politics in some capacity in the early 1980s, through labor organizing, political campaigning, and holding offices at the municipal, state, and eventually federal levels. In general, the former ALN members who remained politically active aligned with the parties of the Brazilian Left, especially Brazil's Worker's Party (PT), the Democratic Labor Party (PDT), and the Brazilian Socialist Party (PSB). One major exception to this trend was Nunes, who became a prominent minister and senator in the centrist Brazilian Social Democratic Party (PSDB) and a perennial opponent of the PT administrations of Lula da Silva and Dilma Rousseff.

Serbin's biographic approach helps humanize the process of Brazil's return to civilian rule and subsequent democratization by showing the disparate responses of individuals on the radical left to the failures of the guerilla strategy and the different paths that they took in adapting to nonviolent politics. All of his subjects emphasize, to varying degrees, the futility of the ALN's attempts at fomenting revolution and repudiate some aspects of the far-left ideology that animated their movement. Nunes in particular represents an extreme case of the political moderation experienced by all of the former ALN members, having gone from committed communist militant to a comfortably centrist senator.

However, the drawbacks of Serbin's largely interview-based approach are most evident towards the end of the book. It is difficult to draw definite conclusions about the processes of democratic consolidation during this period from the various perspectives of the interviewees. While this is partly by design to historicize, rather than comprehensively analyze, the process of democratization, it is not conducive to developing a unified theoretical approach to Brazil's democratization. Serbin does not engage with existing political science work on the topic, choosing instead to focus on the opinions and impressions of his subjects. Indeed, Serbin often returns to ex-guerillas' reflections on the state of contemporary Brazilian politics and the PT's administration under Lula and Dilma. Although this does not detract from the book's historical narrative, it is a missed opportunity to situate the experiences it records in a comparative political analysis. Nevertheless, the end serves as a good primer on the history of the Brazilian Left from the return of civilian rule up to the present.

Indeed, there are broader lessons about democratization and anti-authoritarianism that readers may find in *From Revolution to Power in Brazil*. Serbin credibly shows that democratization was achieved thanks to a softening of past radicalization through a combination of mass, nonviolent, popular organizing combined with the ascent of relative moderates within the military regime. This “softening” of the Brazilian Left took place along both political and economic dimensions. Economically, the former ALN members abandoned the rigid socialist doctrines to which they had adhered, as did more mainstream left-wing formations such as the PT. Some erstwhile radicals, like Nunes, have come to fully embrace modern capitalism and its neoliberal economic prescriptions as essential to the process of modernization and democratization. Others, like Adriano Diogo—a PT official in Sao Paulo—reconciled their socialist leanings with the trappings of capitalism, going as far as promoting public-private partnerships between city and state governments and the business community. Brazilian leftists’ accommodation with capitalism is shown to be another decisive factor in the country’s democratization and the eventual ascent to power of the left-wing PT. Politically, this softening was demonstrated by the ex-militants’ participation in nonviolent political organizing for the labor movement, the PT, and other leftist parties. Others, such as Nunes, abandoned the core economic tenets of the Brazilian Left while nonetheless retaining their commitment to liberal democracy.

One irony of the Brazilian Left’s transition to more “pragmatic” stances (this includes both the ex-guerillas and PT) was its assumption of responsibility for the country’s perennial structural problems, especially corruption and socioeconomic inequality against which the Brazilian Left had fought so hard. While Serbin—and many of his subjects—ostensibly consider a moderation of past ideologies to have been necessary for the Brazilian Left to achieve power, the narrative that Serbin distills from his interviews illustrates the potential shortcomings of this approach. The Brazilian Left’s transition to a more pragmatic notion of “socialism” arguably made it easier for the PT to assume power and diffused some of the potential social conflicts that might have arisen had the Brazilian Left adopted a more confrontational approach to capitalism. Indeed, the Lula administration largely followed an orthodox macroeconomic policy that assuaged international investors

and the Brazilian business community. Although many were lifted out of poverty in the 2000s under the Lula administration, Brazil's emphasis on commodities exports—as opposed to state-led industrialization—created a situation in which a later decrease in foreign demand generated an economic slowdown that damaged the prospects of the country's new middle classes. The result was the growing perception that Brazil's government had sold out to foreign corporate interests as well as the wealthy.

The PT's failure to tackle the corruption endemic to Brazil's political system exacerbated the backlash to these economic problems. Serbin and his interviewees acknowledge that the PT was able to take power in part by moderating its stances and making accommodations with the political establishment. Presented as necessary to attain popular support and elector success, this set of choices incurred a penalty on the PT and associated political formations later on as they became associated with Brazil's structural social and economic problems. This in turn opened up the institutional Brazilian Left to criticism from across the political spectrum, a sampling of which is found in some of Serbin's concluding interviews. From the center, Nunes regards the “stain” of the PT's corruption as afflicting the entire Brazilian Left. From the left, Marcio Lacerda regarded the scandals of the Lula and Dilma era as having “demoralized” the Brazilian Left, and as feeding the recent surge in conservatism and right-wing politics. While ample space is devoted to lamenting and analyzing the shortcomings of the empowered Brazilian Left, there is little attention given to the possible alternatives that the PT and associated political formations might have taken. Carlos Eugenio Paz is briefly quoted as wishing that PT had been more confrontational towards global capitalism, but Serbin and his subjects make little further mention of potential economic alternatives that were not adopted by the Brazilian Left in its path to power. This limitation may be due to Serbin's reliance on interviews with ex-ALN members who generally adopted more moderate views over the years.

Overall, while the moderation of the ALN members and other would-be revolutionaries was an important factor in Brazil's movement for democracy, it is possible that the lessons of the dictatorship and the transition from it were overlearned. While only hinted at by some of his interviewees, Serbin does

not explore the possibility that some of the compromises and accommodations of the institutional left in Brazil weakened the appeal of the democratic left—and perhaps even liberal democracy itself—in the eyes of the public. In doing so, the stage was set for a revanchist, right-wing backlash in a political climate in which the institutional left and other democratic formations had been tarnished and demoralized. While inconclusive on causes of—and solutions to—the most recent developments in Brazil, Serbin makes a persuasive argument that a mixture of mass politics, nonviolent organizing, and adaptability made the Brazilian Left a formidable political current that significantly contributed to the country's transition to democracy.

Political Islam in Tunisia: The History of Ennahda. By Anne Wolf. London, UK: C. Hurst & Co., 2017. Pp. v, 269. \$97.99 (hardcover).

REVIEWED BY HELEN HAFT

In 2011, in the wake of the Arab Spring, protesters toppled Tunisia's president Zine El Abidine Ben Ali. In the aftermath of this political revolution, Tunisians placed a new emphasis on the fusion of politics and Islam, and the once repressed Islamic political party Ennahda found itself at the fore of Tunisian politics. Anne Wolf's *Political Islam in Tunisia*, seeking to provide context for these headline-grabbing events, traces the development of Ennahda and provides an incisive analysis of Tunisian culture and the historical role of both religion and secularism in Tunisian society. Wolf argues that though the West touted Tunisia as an example of secularism, this image of secularism was a façade that masked Tunisia's deep Islamic roots, all of which continued to spread underground during Ben Ali's reign. The result was a fertile ground for Islam's reemergence in the post-Ben Ali political order. Wolf's book provides an in-depth historical account of Ennahda as a political party, as well as the context within which it developed, examining its evolution in light of not only Tunisian politics, but also the larger Arab world. Her criticism and rebuke of the current Tunisian political order, reserved for what she views as a false secularism that has only enabled Islamism, is compelling. However, while overall an objective and

well-researched account, Wolf would have done well to question more closely Ennahda's narrative of its rise to power and its complicated relationship with Islam.

After giving readers a brief historical overview of Tunisia in the 1800s and the internal tensions regarding political Islam during the 1960s and 70s, Wolf launches into a discussion of the Islamic Tendency Movement (MTI), Ennahda's predecessor, founded in 1981. Many viewed MTI as the Tunisian equivalent of the Muslim Brotherhood, and in its early years MTI enjoyed broad support on university campuses. Wolf argues that in some sense, the rise of an Islamic movement in Tunisia was a reaction to the secular policies of the then-leader, Habib Bourguiba. Wolf quotes Douglas K. Magnuson, who has written on Islam in Tunisia: "[T]he problem from [MTI's] perspective [was] the decadence of the Islamic state and society, the waning influence (or noninfluence) of Islam in legal, political, cultural, economic and educational domains.' To counter this trend, many students openly came to embrace the all-encompassing political Islam."

Ideological tensions, however, abounded within MTI between the competing factions of conservatives and progressives. Disagreements regarding strategy reached a tipping point when Islamists took a university dean hostage. In the words of Rachid Ghannouchi, cofounder of Ennahda, this was a "stupid, irresponsible act" that triggered a "terrible crisis." In response to the attack, Bourguiba cracked down on all Islamists, jailing hundreds, and an article in *Le Monde* argued that "by preventing the Islamists from freely expressing themselves, Bourguiba underestimated the political maturity of Tunisians." The fluctuation in Bourguiba's policy between tolerance and repression of the Islamists was a pattern that would repeat itself when Bourguiba's successor, Ben Ali, came into power in 1987.

In 1989, the newly renamed Ennahda applied for party status, which Ben Ali ensured was rejected despite the fact that candidates had won seats in parliamentary elections. The new regime under Ben Ali commenced a flurry of repression, seizing passports of Ennahda members and conducting arbitrary arrests and torture. The state's heavy-handed approach to Ennahda pushed the movement underground into exile. Yet these harsh tactics only served to embolden Ennahda and fuel

the fiery narrative of victimhood that would eventually prove resonant with large swathes of Tunisia's population.

In 1991, following a series of protests and demonstrations on university campuses, activists burned down an office belonging to Ben Ali's party, the Democratic Constitutional Rally (RCD). These activists had ties to Ennahda, provoking mass reprisals against Ennahda as a whole. This incident spurred Ben Ali's regime to imprison members of Ennahda. Ennahda denied any connection to the incident, though other members have subsequently admitted that there was in fact Ennahda knowledge and involvement in what is now known as the Bab Souika affair. By the end of 1992, between 2,000 to 8,000 activists were behind bars. Within the movement itself, a split was emerging, as central figures broke from the movement in denouncing the use of violence under any circumstances. This moment in Ennahda's history has been shrouded in secrecy, with Ennahda currently imploring its members in their internal charter to "guard the party's secrets." Wolf notes that this mythmaking has prevented Ennahda from acknowledging the darker elements of its history and continues to contribute to a self-identity of victimization.

The movement was crippled. Ben Ali's regime had effectively stifled Ennahda through its brutal tactics against Ennahda members and their families, the mass incarceration of Ennahda members, and the fact that its leaders were in exile. The remnants of Ennahda, along with the now London-based Ghannouchi, were forced to deal with how to address the question of the use of violence. Wolf writes that Ghannouchi, "first and foremost, a political strategist," was inconsistent in his stance on violence. Though he nominally opposed the use of force, throughout his political life he made many statements to the contrary.

In addition to the question of violence, Ghannouchi also began to formulate a more comprehensive political conception of society, and believed it possible to form an:

Islamic democracy, believing that "socio-economic and political reforms occur best in the framework of the Islamic state . . . [and] a key problem with Western democracy is that it separated body and soul, then ignored the soul, killed it, declared war against God and fought ferociously to put the human being

in His place.” Because of this dynamic, Ghannouchi concluded that values such as secularism, nationalism, and consumerism are not fundamental to democracy Ghannouchi insisted that he accepted Western-style multi-party politics as long as it did not marginalize or reject religion, a stance which set him apart from more conservative Islamic movements.

Wolf here captures the contradictions of Ghannouchi and Ennahda. While fundamentally Islamic, it began to seek democratic outlets, in part for its survival, and in part to temper some of the more extreme tendencies of its members. Ennahda began to collaborate with the similarly oppressed secular opposition and made itself palatable enough to receive support from the European countries where its members were in exile.

In the early 2000s, Ennahda’s collaboration with other parties continued, but its attempts to weaken the Ben Ali regime proved unsuccessful. Ben Ali, no longer viewing Ennahda’s members as quite as serious a threat as before, began allowing exiles to return on an individual basis, which many in Ennahda interpreted as a way to divide the party and its leadership itself by making those granted the right to return indebted to the regime. By the mid-2000s, “the Islamist movement [had] become no more than a phantom of itself, bloodless after twenty years of fierce repression and weakened by the numerous defections of some of its historical leaders and activists.” The rhetoric of Ennahda also softened, and the movement highlighted “moderation,” “reconciliation,” and “compromise.” They focused on their role as a national movement so as to “disassociate” themselves from the Muslim Brotherhood. As Wolf notes, this softening of Ennahda “facilitated the emergence of a new generation of religious activists whose social and economic marginalization pushed them towards more conservative ideologies.”

The moderation and perhaps even dilution of Ennahda’s original ideology occurred during the concurrent rise in Salafism and a demonstrable upsurge in Islamic identity. For example, there was an increased number of women throughout Tunisia now wearing headscarves. The Middle East expert Alison Pargeter describes this Salafism as “ultra-conservative, introspective and seemingly a form of escapism that has buried it-

self in the past and in the humdrum details of what is halal and what haram.” Salafis became increasingly involved in jihad. In 2002, al-Qaeda directed a Tunisian to carry out a bombing next to Tunisia’s Djerba synagogue. Additionally, Tunisians were overrepresented in the number of foreign volunteers to fight in Iraq. These events pointed to a rise in Islamic extremism within Tunisia at a time when Ennahda had grown less radical.

Within this context, Ennahda appeared to the Ben Ali regime to be the better alternative, and thus Ben Ali slightly relaxed his stance on Islam and “adopted a double strategy, consisting first of reaffirming its monopoly on Islam at a time many Tunisians were turning to religion.” This manifested itself in the establishment of a highly curated Islamic radio station, Radio Zaitouna, and Ben Ali highlighting his own ties to Islam.

While there were significant socioeconomic problems during this period that may partially explain the draw of Islamist groups, the shift towards religious extremism was not confined to the lower class or marginalized groups, and the explanations for its success are much more complicated and ideological. Well-educated youth began to sympathize with extremist groups, leading a U.S. diplomat to state that “if educated and privileged Tunisians inside the regime cannot prevent their children from supporting extremism, one has to wonder about the future of the less fortunate.” As a counter to the more extreme versions of political Islam, Ennahda began rebuilding itself, emphasizing collaboration amongst various opposition parties. Al Jazeera and other stations covered information regarding government repression of Ennahda, creating an “information flow challenging official state rhetoric.” This led to mass discontent and, coupled with Ben Ali’s tenuous grip on power, laid the groundwork for protests against the regime.

In 2010, protests swept Tunisia, forcing Ben Ali to flee to Saudi Arabia. Beji Caid Essebsi, who had previously served as the minister of foreign affairs and parliamentary spokesman, was appointed as interim prime minister and took the step of legalizing Ennahda and freeing political prisoners. Rachid Ghannouchi returned to Tunisia in 2011 and found that Ennahda still enjoyed widespread support. Due to the persecution faced during the Ben Ali years, Ennahda became a symbol

of the fight against repression. In the post-Ben Ali order, fragmentation amongst secular parties led Ennahda to emerge as a dominant political force. Its leaders, who had lived for decades in exile, had observed democracy in action while abroad. This witnessing of democracy tempered and influenced the movement itself.

Finding itself in a position with political support, Ennahda was no longer just looking for acceptance, but was forced to grapple with how to unify Tunisian society. This meant wrestling with the question of the role of Islam in politics at a time when Ennahda was looking for alliances across Tunisian politics. Given the fact that political Islam was associated worldwide with extremism, Ennahda had to act with care. In 2012, after much debate, the term *shariah* was not included in Tunisia's constitution, much to the dismay of hardline elements within Tunisian politics. The ratified constitution, however, still left room for "Islamising society in more tacit ways." The niqab was allowed in universities, which would have been "unthinkable under Ben Ali," and protests against blasphemers led to a strong sense that Islam still deeply influenced Tunisian society. Despite these changes, the leaders of Ennahda declared that "political Islam is out-moded" following the overthrow of Egypt's Morsi in 2013 and the backlash against political Islam that it represented. Ghannouchi sought to define Ennahda as a "Tunisian party," and was "one of the champions of the idea of the compatibility between Islam and democracy."

Ghannouchi also hoped to move from religious questions onto more practical social and economic issues. This resonated with Tunisians, and in October 2014, Ennahda won a parliamentary majority. In 2016, Ghannouchi was reelected as Ennahda's president and declared that Ennahda had "left political Islam behind to embrace Muslim democracy." Wolf cautions that despite Ennahda's tendency to compare itself to Western Christian democratic parties, "there are important differences between them. Indeed, Christian democratic parties evolved during a decline in religious observance in the West and thus became absorbed into social democracy, but Islamic belief and practice in Tunisia is stronger than ever."

Wolf concludes her story by painting a complicated picture of Tunisia. Despite Ghannouchi's attempt to temper the religiously conservative elements in his party, Ennahda is now

finding itself faced with some of the same issues that earlier regimes confronted. Salafism remains a strong force within society and although Ghannouchi is the president of Ennahda, one might ask whether the party's composition really reflects his will. There is a risk that Ghannouchi is just attempting to cement Ennahda's place within society and then ultimately revert to more conservative interpretations of Islam, based on Islam's steady creep back into the Tunisian constitution and society at large.

Wolf is skeptical that Ennahda might serve as an example for other countries seeking to democratize. She cautions that:

Ennahda's real challenge nowadays is to translate some of its supposedly avant-gardist policies into ideological tenets accepted more widely amongst its grassroots, and to promote inclusive economic growth and security. Only then can it become the liberal, tolerant, and successful party its leaders claim it is, which can serve as a 'model' for the wider Muslim world.

Moreover, within Ennahda itself, there is a process of mythmaking regarding its own history, and Wolf implies that this white-washing of the past could have similar consequences in the future. She cautions against overreading into Ennahda's rejection of "political Islam," suggesting that it has not been fully rejected, but rather sidelined by Ennahda.

Implicit in Wolf's examination of Ennahda's development and attempt to fit an Islamic political movement into a democratic framework are the larger questions as to the compatibility between Islam and democracy, or really between any politicized religion and democracy. It seems that Ennahda has realized the limitations of combining religion and politics and is refocusing itself on a Muslim identity, rather than an Islamic identity. This may ultimately prove more workable, though the focus on identity politics may itself be risky and become conflated with religion. Rachid Ghannouchi's agility in adapting himself and Ennahda's political agenda to suit the current environment are cause for skepticism, and Wolf suggests that there is some question as to the sincerity and sustainability of Ennahda's transformation away from political Islam. However, if this reformation is sincere, then it is a sign of the party's ability to be democratically accountable and evolve. If En-

nahda truly confronts its violent past, this may serve as an example for the rest of the Muslim world, as well as for individual extremists who themselves hope to find their way back into mainstream society.

In writing this account, Wolf interviewed over 400 people, including the current leader and founder of the Ennahda movement, Rachid Ghannouchi. This provides for an in-depth and dynamic portrayal of events. Yet the book sometimes reads as having been slightly colored by the views of those she interviewed. Although Wolf's depiction provides a detailed view of the situation, at times she seems too sympathetic to Ennahda's narrative of victimization (in fairness, she does later characterize this narrative as part myth). While Ben Ali's crackdown on the Islamists was absolutely brutal, Wolf perhaps buys too much into the idea that overt secularism, repression and economic problems led to the rise of Islamic extremism. Whatever the case may be, however, Wolf provides a fascinating, comprehensive, and objective description of the rise and evolution of Ennahda. Wolf successfully equips the reader with the historical background necessary to analyze contemporary Tunisian politics on a deeper level.

Protecting Animals Within and Across Borders: Extraterritorial Jurisdiction and the Challenges of Globalization. By Charlotte Blattner. New York, NY: Oxford University press, 2019. Pp. 520. \$85.00 (hardcover).

REVIEWED BY NATHALIE KUPFER

In an incredibly ambitious volume, Charlotte Blattner tackles one of the thorniest issues in animal law—the global race to the bottom in animal production methods—with care and precision. *Protecting Animals Within and Across Borders* takes a systematic approach to international law and jurisdiction, building a comprehensive framework for analyzing extraterritorial jurisdiction through the lens of animal protection. Blattner's contribution is invaluable as a scholarly exploration of the international implications of animal exploitation, but given the controversial and politically charged nature of extraterritorial jurisdiction, it does not make a convincing case that international law will be a particularly effective tool for animal protection. Blattner is perhaps most successful in illustrating

the bleak reality of industrial animal cultivation and the difficulty of changing that landscape with a top-down or regulatory approach.

In the first chapter, Blattner sets out to describe the current landscape of international animal protection. While the sentience of nonhuman animals and their capacity for pain and suffering is broadly recognized, the staggering scale and intensity of animal suffering required to meet global demand for poultry, meat, dairy, and egg products may be incomprehensible to the average consumer. In 2016 alone, seventy-three billion land animals were killed for meat, not including those killed in dairy and egg production. Leading up to their slaughter—typically within their first year of life—the vast majority of those animals suffered in severely confined and unsanitary living spaces. They were fed an unhealthy diet, subjected to castration and other forms of bodily mutilation without anesthetic, and were “forcefully molted and strained” to the point of psychological and physical breakdown. Many of them suffered from abscesses; lameness; skin infections; cardiovascular, skeletal, and respiratory diseases; and lethal stress syndrome. For those that survived long enough to see the slaughterhouse, they were electrocuted, gassed, or shot in the head with captive-bolt guns, in production lines moving so quickly that many were left fully conscious during extremely painful deaths.

Blatter adds to this troubling picture that even if one does not recognize the horror of intensive animal agriculture from an animal rights or an animal welfare perspective, the environmental and public health impacts of the industry are impossible to ignore:

Animal agriculture uses 70 percent of the global freshwater and 38 percent of global land in use, and produces 14 percent of the world’s greenhouse gases, making it the single most disastrous industry for the environment. By confining animals inside and importing feed to fatten them, animal agriculture generates enormous amounts of manure that pollute soil and groundwater, overwhelm ecosystems, and cause more greenhouse gas emissions than the global transport sector Ever-increasing production of animal goods devours larger and larger portions of the world’s crops, reducing the amount of grain for di-

rect consumption by humans or animals . . . [and] the widespread use of antibiotics and antimicrobials to increase animals' performance causes antimicrobial resistance to bacteria, which often directly transfer to humans . . . and pose significant risks to public health.

Against this backdrop of global-scale animal suffering and environmental degradation, Blattner makes her case for the expansion of animal welfare through international law. She argues that while the protection of animals has been an increasing concern for many nations, domestic efforts are thwarted when multinational corporations threaten to move production abroad. Many countries have refused to abandon some of the most abhorrent practices, such as gestation crates, veal and *foie gras* production, and chick-shredding, due to fears that the industry will simply relocate. According to Blattner, it is imperative that there is some mechanism through which states can shield their animal protection initiatives from the global market. However, while a multilateral treaty supporting animal welfare may be desirable in principle, it is unlikely to be successful due to an inability to compromise, lengthy negotiations, and a convergence on lowest common denominator understandings. Thus, Blattner turns to international trade law and the international laws of jurisdiction as a means to expand animal welfare domestically and abroad.

In the second chapter, Blattner builds a theoretical framework that places international animal law within a definitional structure. Territorial boundaries have been the traditional limits of state jurisdiction under international law, but Blattner shows that extraterritorial and extra-jurisdictional are not synonymous. There are many situations in which the extraterritorial exercise of legal authority is accepted within international legal regimes and thus is not considered extra-jurisdictional, and Blattner takes a systematic approach in order to better understand how territoriality affects jurisdiction. First, she dissects the normative structure of domestic legislative and judicial processes. A domestic law's "anchor point"—the object of the regulation, i.e., a corporation or a specific class—may be separated from its "content regulation," or the law's *purpose*, i.e., protection of the regulated class. For example, a law regulating animal treatment by foreign branches and do-

mestic corporations that operate abroad could have an anchor point based on the allegiance of the domestic parent company to the issuing state. At the same time, the content regulation of the law would be the facts and events concerning animals and their treatment abroad. The law's ancillary effects or repercussions may also be bifurcated along the idea of territory; for example, when a trade restriction regulates domestic activity but affects foreign markets.

Because both a law's anchor point and a law's content regulation can be intra-territorial or extraterritorial, there are three types of *stricto sensu* extraterritorial jurisdiction: intra-territorial anchor point with extraterritorial content regulation, extraterritorial anchor point with intra-territorial content regulation, and extraterritorial anchor point with extraterritorial content regulation. There is also indirect (*non-stricto sensu*) extraterritorial jurisdiction, when a law with an intra-territorial anchor point and content regulation has extraterritorial ancillary effects. Placing animal law within this framework, Blattner further divides intra-territorial and extraterritorial content regulation and intra-territorial and extraterritorial anchor points into "animal-related" and "non-animal-related" subcategories. This creates seven variations of extraterritorial jurisdiction with an animal-related anchor point or content regulation. These seven variations are the focus of the wider study on animal law and jurisdiction.

In the third and fourth chapters, Blattner looks to international trade law as a means to expand animal protection. This is a form of indirect extraterritorial jurisdiction because internal measures such as labels, tariffs, taxes, and quantitative restrictions must always have an intra-territorial anchor point and intra-territorial content regulation, while they have only ancillary effects in other territories. It is not the customary law of jurisdiction, but rather the World Trade Organization trade regime, that presents an obstacle and makes it illegal for states to employ these forms of trade restrictions. Blattner analyzes the *lex lata* legality of various trade restrictive measures, first under the General Agreement on Tariffs and Trade (GATT), and then under the Agreement on Technical Barriers to Trade (TBT), the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), the Anti-Dumping Agreement (ADA), the Agreement on Agriculture (AoA), and the Special Treatment Clause. This analysis, informed by treaty

text and a largely disparate and ambiguous body of case law, often hinges on definitional and factual intricacies: whether animal products that are humanely raised are categorically similar to animal products that are not for purposes of competition; whether animal health is sufficiently connected to animal welfare; whether animal welfare is a legitimate public policy goal; whether a nation's pursuit of animal welfare has been sufficiently robust to constitute a genuine national prerogative; whether import bans are subject to GATT Article XI or GATT Article III; and whether process and production methods can differentiate products under those articles through consumer behavior.

Blattner makes the case that import restrictions based on moral prerogatives, such as the protection of a state's domestic population from unwittingly participating in cruel animal treatment, are subject to GATT Article III. These measures could potentially be justified using the GATT Article XX(a) exception. Interestingly, the classification of humanely raised animal products as in direct sales competition with non-humanely raised animal products is harmful under GATT Article III, but necessary to apply the ADA. This is because GATT Article III may allow member states to invoke Article XX exceptions when foreign products are not in direct competition with domestic ones, but the ADA works as a backstop to prevent excessive product dumping in the case where they are directly competitive. Such labels and import restrictions will also likely be subject to the TBT, in which case similar justifications may be invoked. However, the territorial and definitional scope of that agreement is much less clear. Although this analysis is tentative, Blattner's discussion of international trade law shows that the possibilities and limitations of indirect animal protection can be measured against a system focused on liberalization as opposed to regulation.

The fifth and sixth chapters examine the *lex lata* state of extraterritorial jurisdiction within the parameters of the definitional structure. Looking to the customary principles of territoriality—protective, and active and passive personality—Blattner makes a case for exerting jurisdiction over multinational corporations with branches or subsidiaries operating cross-border. Although asserting jurisdiction over a subsidiary is nearly impossible, it may be done under exceptional circumstances when states invoke more flexible theories of corporate

nationality or when they pierce the corporate veil. There is also a focus on forms of “extended jurisdiction”—foreign policy, soft law, and self-regulation—as a means to promote animal welfare through investment rules, export credits, BITs, FTAs, impact assessments and other forms of reporting, corporate social responsibility, and various international codes of conduct.

Blattner then turns to a *lex ferenda* analysis of extraterritorial jurisdiction in animal law. Chapter seven makes the case for direct extraterritoriality through the passive personality, effects, and universality principles. Passive personality could be invoked by granting forms of nationality to animals, while effects jurisdiction could be invoked when reputational damage to a nation occurs through the effects of a national’s behavior abroad. The universality principle could be invoked if it can be shown that some of the worst crimes against animals are universally condemned. However, Blattner acknowledges that because a high degree of violence against animals is typically legitimized and accepted, the character of such a universal crime would be incredibly narrow. The final four chapters of the book expand on the concepts of passive personality, effects, and universal jurisdiction in the context of animal law. They deal with the moral and practical implications of direct extraterritorial jurisdiction, including the problem of concurrent jurisdiction.

Concurrent jurisdiction, or “conflict of animal laws,” is where Blattner substantively examines the glaring issue of Western cultural imperialism. Indeed, she readily admits that, as long as minority world and majority world practices are not measured “by the same yardstick,” we can expect that extraterritorial jurisdiction will only serve to “reinscribe Eurocentric thinking to impose laws on people who may have never had the opportunity to participate in any democratic form in the formation of that law.” Yet this problem is deeper than animal law; it is true of the very foundations of international law itself. International trade law and international criminal law in particular have been widely criticized as instruments of Western neo-imperialism. Furthermore, nearly all animal-related jurisprudence at the international level has been driven by the United States or Europe, and the “moral consistency” required to uphold animal protection measures under the GATT regime does not seem to accept multicultural exceptions—in the

Seals case, for example, the European ban on seal products was recognized as having a legitimate public interest goal, but was found to be inconsistent due to the ban's stated exceptions for Inuit cultural practices.

Ultimately, this “conflict of animal laws” is the inflection point for Blattner's entire thesis. Although Blattner herself conforms to an animal rights perspective, she was required to take a more modest “animal welfare” approach because the current framework of animal law recognizes animals as resources that may be used and exploited for human consumption. Industrialized agriculture is the only way to meet high global demand for animal products. Yet as long as we practice methods of confined and intensive agriculture—methods that we recognize are unimaginably cruel—any extraterritorial jurisdiction asserted by Western countries will likely exert some form of cultural imperialism. How can we criticize any form of animal slaughter when we are responsible for the most large-scale animal suffering and destruction this planet has ever known? This point is especially clear when examining the principle of universality. Extreme acts of cruelty against animals are typically accepted when they serve human interests, and farmed animals are exempted from most animal cruelty statutes. There is thus no clear universal condemnation of animal cruelty, only that which is culturally informed.

Protecting Animals Within and Across Borders is an impressive and necessary survey of animal law within international frameworks. Despite wide ethical, environmental, and public health implications, the destructive practices of industrial animal agriculture have been largely overlooked by social justice campaigns centering around environmentalism and human rights; Blattner's work is an attempt to fill some of these gaps. Blattner's outlook is ultimately a pragmatic one—she does not make the claim that working to improve animal welfare will end excessive animal cruelty. Indeed, Blattner makes clear that the “animal welfare” perspective will never truly eradicate industrial-scale cruelty to animals. Through careful illustration of the nearly insurmountable difficulty of facilitating minor improvements in animal welfare, *Protecting Animals Within and Across Borders* ultimately forces one to conclude that the only real solution to this global problem is large-scale change in consumer habits and the replacement of animal products with plant-based alternatives.

Life Imprisonment: A Human Rights Analysis. By Dirk van Zyl Smit and Catherine Appleton. Cambridge, MA: Harvard University Press, 2019 Pp. xvi, 447. \$45 (hardcover).

REVIEWED BY CHANEL THOMAS

In an expansive study on life imprisonment in various nations, authors Dirk van Zyl Smit and Catherine Appleton display the complexities of a universal move to classify life imprisonment as a human rights violation. While Smit and Appleton acknowledge that certain implementations of life imprisonment can serve to protect human dignity, they conclude that any form of imprisonment that eliminates a reasonable prospect of release is a human rights violation and should never be imposed. They commendably imagine a world in which nations move towards eliminating the concept of life imprisonment altogether, but do not always provide the legal doctrine to ground their vision. Their analysis, moreover, does not reflect upon the real-world limitations to eradicating life imprisonment, and would be further strengthened by including social, cultural, and economic assessments that would account for variations in the implementation of life sentences. Overall, while their argument is thoughtfully crafted, it is perhaps too optimistic given that their vision could only be recognized in a system in which the overriding penological goal is rehabilitation.

Smit and Appleton begin with an overview of why states implement life imprisonment as a mode of punishment. They first present the five purposes of punishment relevant to their discussion: deterrence, retribution, incapacitation, rehabilitation, and incorrigibility. In this introduction, the authors analyze various human rights arguments surrounding life imprisonment and the stances taken by different nations. Examples include the United States, which the author describes as having a “profound skepticism about rehabilitation,” and European nations such as Germany, which “recognize the right of prisoners to have some prospect to fully engage freely in society.” They highlight the role of international human rights standards in European cases and contrast it with the stark lack of integration of such standards in the United States, which has largely refrained from using international human rights norms to shape any domestic policy. Smit and Appleton, im-

plicitly relying on rehabilitation as the primary norm for characterizing life imprisonment without parole as a human rights violation, ultimately conclude that U.S. exceptionalism to international standards contributes to the prominence of life imprisonment without parole in the country.

In the following chapters, Smit and Appleton discuss the wide-ranging implementation of life imprisonment. They distinguish formal life imprisonment (which includes life without parole and life with parole) from informal life imprisonment (de facto life imprisonment which includes lengthy fixed term sentences). Such delineations emphasize the complexities of life imprisonment as a punishment and the difficulties in advocating for its abolition. Smit and Appleton provide examples of foundational judicial decisions on life imprisonment throughout various nations and include comparisons in national implementation. However, the authors typically only compare the United States against Europe, with Europe serving to emphasize the ways in which the U.S. life imprisonment sentences fall short of human rights standards. Such comparisons serve the authors' purposes of highlighting the shortcomings of the United States, but improperly reflect negatively on non-Western nations' progress to safeguard human rights for those imprisoned. Some comparison between Western nations and non-Western nations would be welcome, as it would provide a more global context. For example, the authors do not mention that Europe, the area that is often credited with promulgating human rights principles, actually has a lower percentage of nations that have abolished life sentences than South America. Nonetheless, the inclusion of some practices by non-Western nations does help to illustrate the perplexing nature of life imprisonment practices—they are not easily categorized along lines of shared histories, global power, or even national wealth, as we see no clear pattern amongst nations that have abolished life imprisonment sentences.

Smit and Appleton do, however, make sure to include a lot of the statistical research they relied upon in their breakdown of the preponderance of life imprisonment sentences throughout the world. While this research is complicated by various forms of life imprisonment, the authors highlight that the core issue is whether an individual has an actual prospect of release after being imprisoned for a stated period of time. Smit and Appleton frame such statistics in a manner that al-

lows readers to see the full scope of issues relating to implementation of life imprisonment. For example, the authors present data indicating that the United States has the highest amount of life sentences per 100,000 people, allowing for more accurate comparisons with nations that have less residents and will therefore have a lower population of prisoners. The authors also note that data from many countries, particularly those in less developed nations, is missing. The lack of such empirical assessments adds to the idea that the lack of information on life imprisonment in some nations makes it easy for human rights abuses in the incarceration system to go unnoticed.

One problem with these chapters, though, is that Smit and Appleton frame them primarily as an empirical analysis. As such, the reader is left with a desire to further understand the principles and international law sources the authors rely upon in their arguments that life imprisonment violates human rights principles. While a thorough empirical analysis of life imprisonment is necessary to fully understand its complexities, the authors' points could have hit harder had they examined more closely the international law from which certain human rights values are derived.

Additionally, a discussion of the various international treaties that cover imprisonment would further strengthen the notion that life imprisonment constitutes a human rights violation. The inclusion of international standards, including how a nation is bound to such laws if it is not a signatory to an international treaty, would make it clear to readers why a nation like the United States does not implement the same practices as other nations. The authors do not expressly state it, but differences in implementation may also be caused in part by a nation's rationale for punishing because there is no universal standard for determining which penological goal takes precedence. Even within a nation, emphasis varies on which purpose should be more prevalent when examining the person being charged and the nature of the crime. This is an important complexity that limits the authors' vision of a world in which life imprisonment is reformed.

Smit and Appleton then shift their focus from statistical data to qualitative data in the final chapters, where they discuss the experiences of prisoners sentenced to life imprisonment. Inclusion of personal testimonies from prisoners

presents their humanity and allows readers to see them as people first and foremost, without the crime attached to them. The chapter emphasizes that prisoners are also entitled to certain rights, the most significant being the right to rehabilitative programs that give prisoners a sense of worth and hope for a life after incarceration. Such a view rightly rejects the idea of retribution as a goal of punishment. Perhaps Smit and Appleton believe that any life sentence that is solely based on retribution violates international human rights norms that guides nations. However, readers are again left wondering which laws or principles are violated. The arguments in this chapter could be further grounded in human rights law through greater discussion of the international standards on the rights of prisoners. Inclusion of such a legal principle would better provide a mechanism for articulating that prisoners are entitled to rehabilitative rights.

Smit and Appleton's legal analysis is strongest in their discussion of categories of persons that are exempt from life imprisonment and the legal justifications for such exemptions. The exclusion of children as candidates for life imprisonment is grounded in the Convention of the Rights of the Child, which classifies life sentences without the possibility of parole as cruel, inhuman, or degrading punishment. They explain that the rationale for restricting children from such severe punishments is because children are considered a corrigible, or redeemable, category of persons. The authors note that the United States is not a party to this Convention and still permits children to be sentenced to life without parole, reasoning that it is a suitable alternative in lieu of capital punishment. Through this emphasis on children, the reader sees another instance of the authors attempting to shift global society's understanding of punishment's goal from retribution to rehabilitation. The chapter also includes international views on the exemption of life sentences for the elderly and women. While Smit and Appleton may not necessarily agree with the sexist notions for why women shouldn't be so severely punished, they believe that such restrictions demonstrate a step towards the gradual elimination of life sentences as a whole. This connection, however, mitigates the authors' thesis that life imprisonment should be banned on the basis of international human rights law. Abolishing life sentences for women is grounded in paternalistic beliefs about an individual's capabil-

ities of punishment instead of scientific or legal rationale based on development and mental capacity.

Generally, while the authors thoroughly present data and explanations for various themes on life imprisonment, the text oftentimes feels fragmented, with readers left unconvinced by their argument because they fail to see the full picture of implementation within a country. Smit and Appleton's overall analysis could be strengthened by in-depth case studies that provide readers with context to shape their understanding of life imprisonment within a country. Setting the stage for the kinds of crimes that carry life sentences, how often such sentences are imposed, and the kinds of people who receive such sentences would help clarify the disparities in implementation. Perhaps what may have been necessary to form a fully coherent picture of life imprisonment would have been focus on the legal norms, political climate, and cultural disparities within a nation. Yet the authors make no explicit attempt to reconcile the various implementations with the social histories of these nations, and so leave something to be desired.

Overall, the book serves as a solid baseline for presenting the case for an international prohibition on life sentences. The research demonstrates the debilitating effects of life imprisonment on the prisoner as well as the potential for over-punishment of an individual who may no longer be a threat to society. However, without a solid international law in place, it is hard to qualify life imprisonment as a kind of legal violation. Instead, the authors must rely on the belief that life imprisonment violates the essence of what it means to be a human. While the authors do not explicitly state this, the text highlights one of the biggest problems with human rights "law"—it oftentimes is not actual law even when it should be. Perhaps what Smit and Appleton are really calling for is international reform on the purpose of punishment—a purpose that primarily considers the human dignity of the prisoner. The arguments that Smit and Appleton present might indeed serve as a foundation for the articulation of a standard in which incarceration is meant to be reintegrative. The sceptic in this reader, though, believes such a conception would only prevail in a world in which rehabilitation of the prisoner outweighs society's thirst for retribution.

Jurisdictional Immunities of States and International Organizations.
By Edward Chukweumeke Okeke. New York, NY: Oxford University Press, 2018. Pp 408. \$90 (hardcover).

REVIEWED BY SEEMA VITHLANI

In *Jurisdictional Immunities of States and International Organizations*, Edward Chukweumeke Okeke provides a detailed overview of the state of the law with regard to the jurisdictional immunity of sovereigns and international organizations in various states, including the United States. This overview culminates in the argument that the rationales for granting immunity and the forms of immunity granted to the two types of entities are categorically different, and courts should not confuse them. The author argues that the creation of exceptions to state immunity is a sensible evolution, but the immunity of international organizations should remain absolute. Although the author sets out a helpful foundation for understanding his argument, the argument is only partially satisfactory because it leaves readers with the impression that international organizations are, and should remain, untouchable in national legal systems. This weakness may be remedied through an examination of ways in which states may keep such organizations in check.

The author begins with a general discussion of the jurisdictional immunity of foreign states, a principle animated by sovereign equality and the subsidiary notions of independence, equality, and dignity. He explains how globalization has caused most states to adopt a restrictive—rather than absolute—formulation of the doctrine, creating exceptions to the application of state immunity in various situations. Okeke goes on to explain that jurisdictional immunity is grounded in several sources. One major source, customary international law, has long recognized sovereign immunity, as evidenced by national legislation, court decisions, statements from states, and other forms of *opinio juris*. Another major source, treaties, speaks to immunity agreements between groups of states, such as the European Convention on State Immunity and the U.N. Convention on Jurisdictional Immunities of States and Their Properties (not in force as of this writing). Additionally, several states have passed national legislation pertaining to immunity, including the U.K. State Immunity Act and the U.S. For-

eign Sovereign Immunities Act (FSIA), which was intended to formally adopt the restrictive theory of immunity, depoliticize immunity decisions, and limit the floodgates of foreign litigation in U.S. courts.

Okeke then discusses which acts and actors are covered by the general theory of sovereign immunity. With respect to individuals, immunity can be status-based (*ratione personae*), in that all actions of individuals holding certain offices—such as Heads of States—are covered by immunity only for the duration of their position; after such an individual has left their position, they can be held responsible for the private actions they undertook during office. On the other hand, conduct-based immunity (*ratione materiae*) extends only to *official acts* taken by individuals holding certain offices, and applies even after the individual has left office. The scope of immunity with respect to both individuals and entities can also vary by state.

Regarding restrictive State immunity, which most States have adopted in lieu of the absolute version of state immunity, the book explains several common exceptions. For instance, some states do not allow immunity to apply when the claim involves a state's commercial activities, certain torts, and terrorism—a controversial and, some argue, political exception. Different states have varying exceptions, and even similar exceptions may be defined differently. For instance, in defining the commercial exception, the United States looks solely to the nature of an activity to determine whether it is commercial, and other states look only to the purpose of the activity, while others still look to a combination of the two.

Okeke also effectively describes issues surrounding and influencing sovereign immunity, including human rights and the judicially applied Act of State doctrine. With regard to human rights and *jus cogens* violations such as acts of torture, Okeke juxtaposes the universal condemnation and intolerance for such acts with the fact that their mere existence has no bearing on whether sovereign immunity applies to the underlying claims. Okeke also takes notes of developments and progress towards cracking the sovereign immunity wall; for instance, while the U.S. Torture Victim Protection Act and the Alien Tort Statute do not allow for suits against foreign states in instances of torture, they do allow for suits against foreign individuals who were acting under the color of law. In other cases, treaties to which relevant states are party may bear on

determining whether certain individuals can be subject to prosecution. For instance, the *Pinochet* case, wherein the former Head of State of Chile was arrested in England on a Spanish arrest warrant for torture, is a prime example of a treaty serving as a basis for overcoming sovereign immunity. As for the Act of State doctrine, which urges courts to refrain from judging sovereign acts (i.e., executive and legislative formal actions) of foreign states within their respective territories, Okeke traverses the application of the doctrine through a broad look at case law. Okeke reflects on the uncertain nature of this doctrine and explains that, while it is a substantive defense rather than a jurisdictional (and hence procedural) immunity, the Act of State doctrine can also serve to keep states outside the jurisdiction of other states' judicial systems.

Okeke goes on to discuss international organizations, which typically hold privileges and immunities that their constituent treaties conferred to the extent necessary for them to carry out their functions. Treaties may shape the immunities of these organizations. For example, in some cases, European courts extend jurisdiction over international organizations when no alternative remedies for the plaintiff exist. This is consistent with a provision in the European Convention on Human Rights providing for a "right of access" to court. National laws, such as the U.S. International Organizations Immunities Act (IOIA), can also shape the immunities of international organizations. For instance, the IOIA, which was enacted at a time when foreign states enjoyed absolute immunity in the United States, gives international organizations in which the United States participates the same immunities from suit and other judicial process as those given to foreign states. Additionally, the act allows the U.S. President to limit or revoke their immunities. Since the adoption of restrictive immunity in the United States, many have argued that international organizations should be granted a restrictive form of immunity as well. Lower courts are divided on this point, as some have noted that the IOIA links immunity of organizations to that of states, while others have decided that international organizations should be granted absolute immunity, consistent with the parameters of immunity granted when the IOIA was enacted.

Okeke, in detailing the concept of sovereign immunity as it pertains to international organizations, makes several arguments in favor of absolute immunity, noting that the jurisdic-

tional immunities of States and international organizations are distinct and should remain wholly separate. First, the rationales for granting immunity to both entities are different. For states, immunity is rooted largely in the idea of equality among sovereigns. Thus, when sovereigns are acting as private parties, such as by engaging in certain commercial activities, it makes sense not to grant immunity. International organizations, on the other hand, are granted immunity out of functional necessity—to enable them to carry out their responsibilities across the globe. Second, States have their own territories and citizens, and as sovereigns, they have the option to retaliate against other sovereigns. Members of international organizations, on the other hand, are nationals of states, and the organizations serve to benefit member states. They must be granted immunities and privileges, as they are unable to reciprocate against states in the way that other states can. These differences, according to Okeke, “should militate against the assimilation of the scope of immunity of States to international organizations.” Okeke also argues that while the IOIA is a reference statute, it is the product of “lazy and hurried legislation.” If Congress wanted to restrict the immunities of international organizations, it would have made that clear in the FSIA.

While Okeke’s reasoning for preserving absolute immunity of international organizations makes sense given the unique features of statehood as compared to those of international organizations, his argument in favor of maintaining an absolute version of immunity for international organizations is unsatisfactory, as he does not explore deeply enough how states could temper and prevent such organizations from abusing their powers under an absolute immunity system. By contrasting the self-interested motivations of states with international organizations’ aims to benefit all their member states, the author hints that given the goals and structures of such organizations, abuse of power is not typically an issue. To this extent, he vaguely assures the reader that there are means other than resort to national courts to keep international organizations in check. For instance, he mentions that such organizations may be held responsible in international tribunals and, sometimes, through arbitration if the organization includes an arbitration clause in its commercial contracts. But the idea of absolute immunity, particularly for entities that are able to op-

erate globally and with the support of powerful governments, is unsettling. Readers may believe that international organizations have, for reputational or other reasons, incentives not to abuse their powers, but the author's argument would benefit from more specific explanations of tools for keeping these organizations in check.

Also, despite the book being repetitive at times, it glossed over matters that warranted deeper discussion. First, while the book gave accounts of the status of immunity law in various states, a comparative look as to how immunity law in a given state has shaped parties' success and affected the behavior of the foreign entities (whether it be foreign states or international organizations) toward that state's citizens would serve the reader well. The book should also have examined the international political repercussions of immunity choices. In addition, while Okeke hinted at issues of execution in the case of a successful judgment, readers would be served by a more in-depth look into this issue, because even if a private party successfully overcomes immunity constraints, enforcing a favorable judgment can be a significant hurdle.

Ultimately, Okeke provides a detailed overview of how the United States and various other states define and apply jurisdictional immunities of sovereigns and international organizations. Okeke brings to the fore serious issues regarding the global legal community's conception of sovereign immunity for both states and international organizations. Okeke rightly makes clear that the two are not the same and should be treated differently. While his suggestion of absolute immunity for international organizations is intriguing, a more in-depth exploration of how private parties can be protected under such a regime would have strengthened the author's argument. Nevertheless, Okeke accomplishes his task of providing a strong framework for the discussion and inciting the reader to contemplate meaningful change in our understanding of sovereign immunity and international organizations.

