Recent Publications

Terrorism, Ticking Time-Bombs, and Torture. By Fritz Allhoff. Chicago, IL: University of Chicago Press, 2012. Pp. xii, 266. Price: $35.00 (Paperback). Reviewed by John Calhoun.

The "ticking time-bomb" scenario—by now a philosophical cliché—posits an encounter with an apprehended terrorist suspect who allegedly knows the whereabouts of a ticking time-bomb hidden in a densely populated area. The terrorist refuses to talk. Law enforcement must decide whether to torture the suspect in an attempt to obtain information before the bomb explodes. Would torturing the suspect be moral? Should it be legal? In *Terrorism, Ticking Time-Bombs, and Torture*, philosopher Fritz Allhoff uses this hypothetical to launch an argument that the answer to both of these questions should be "yes" in a broader range of contexts than is commonly accepted. Allhoff's book is an excellent summary of the debates about the morality and legality of torture. However, his argument for the legal permissibility of torture—although novel—is unpersuasive, and his argument for the morality of torture is too tethered to the unrealistic ticking-time-bomb cliché to do any better.

Terrorism, Ticking Time-Bombs, and Torture is clearly structured and thoroughly argued. Allhoff defines carefully all his key terms and concepts before proceeding to the core of his argument. For example, he explicitly defines torture as "the intentional use of force against noncombatants or their property to intentionally instill fear in the hopes of realizing some ideological aim" (p. 5). Although the inclusion of intention and the use of the word "noncombatants" instead of "innocent victims" are both contestable, Allhoff makes a convincing case for his particular definition. The author's clear and logical reasoning is a welcome antidote to cable television's alternately idealistic or jingoistic treatment of torture policy. Although Allhoff spends the first six chapters of his book setting up his argument, the book rewards readers for their patience.

Allhoff's examination of the moral permissibility of torture begins in Chapter 7. All of the discussion in this Chapter revolves around slight variations of the "ticking time-bomb" scenario. Allhoff criticizes the notion that governments should not torture because it is only sporadically effective, and that there are better intelligence-collection tools such as spies and informants (pp. 140-46). He makes a compelling case that the patchy or even unlikely success of torture compared to that of other tools does not in itself prove that governments should never torture. In certain circumstances, with all other options exhausted, torture would make sense.

Allhoff then attacks the position that torture is impermissible because a sanctioned torture regime would corrupt the medical and military professions. According to Allhoff, a legally sanctioned torture regime requires the complicity of medical professionals and the training of skilled torturers. It is

commonplace to assert that using doctors or military personnel during torture sessions would corrupt professionals whom society expects to adhere to their respective moral cores. Allhoff responds that a torture regime would not necessarily require medical staff and that torture sessions could be conducted by a small cadre of Navy SEALs instead of a new, larger unit of specially-trained torturers.

Many readers will not find Allhoff's response particularly reassuring, especially regarding the medical profession. A policy that denies tortured suspects medical treatment does not seem morally superior to a policy that provides tortured suspects medical treatment while nonetheless running the risk that a doctor's ethical sensibilities could be corrupted. Even convicted criminals are afforded treatment, so denying treatment to a *suspected* terrorist fails to accord with basic principles of justice in our legal system. Furthermore, even if law enforcement identified an "actual" terrorist, competent medical personnel on the scene would help ensure that torture does not undermine its own ends by pushing an interrogated suspect into such a state of incoherence or delirium that he or she no longer has the mental capacity to provide useful information. Building a wall between torture and the medical profession is thus questionable both morally and practically. Allhoff does not address either of these objections.

Instead, Allhoff focuses on the fact that in a true "ticking time-bomb" scenario, institutional corruption would be less of a concern than the imminent disaster. On the one hand, Allhoff argues, is the value of averting dozens, hundreds, or thousands of deaths. On the other hand is the chance that the medical profession, despite its size and preexisting mores, could nonetheless be meaningfully corrupted by association with occasional torture sessions. Applying a utilitarian calculus to these two values suggests that institutional niceties should take a backseat to impending disaster. A full accounting of this elaborate trade-off is beyond the scope of this review, but Allhoff raises a stimulating topic for further debate.

What will likely prove to be the most contentious part of Allhoff's book is his response to the slippery-slope argument about torture normalization. The slippery-slope argument states that once we countenance torture in limited circumstances, we will grow to approve the use of torture in an ever-widening range of cases. Allhoff does not necessarily disagree, responding that the slippery slope might not lead to an immoral result, because there is in fact a broader range of morally acceptable torture scenarios than the "ticking time-bomb" scenario alone.

In order to elaborate his point, Allhoff proposes a modification of the standard ticking time-bomb cliché. Instead of informants fingering one bomb-planter, suppose they only provide enough evidence to narrow the range of suspects to ten people. Should the government torture all ten people, certain that nine innocents will be tortured in the process? Allhoff argues that once one concedes that it is moral to torture one person to save a thousand, one must also concede that it would be moral to torture all ten people in order to glean crucial information about the location of a bomb.

Allhoff is certainly not the first author to consider this problem, and his utilitarian response is also nothing new.[1] Even if you grant Allhoff his ten-to-one argument, a reader with any degree of familiarity with the moral philosophy of torture might be forgiven some exasperation at Allhoff's repeated reliance on the "ticking time-bomb" cliché. As Michael Davis and others have argued, not only is the "ticking time-bomb" scenario hackneyed, it is also an extremely unlikely event. Can such a contrivance really help us make the sort of messy decisions we may face in the future? Likely not.

On the moral and practical limitations of torture, Allhoff's book is valuable for its highly methodical and balanced treatment. While this characteristic makes *Terrorism, Ticking Time-Bombs, and Torture* a superb primer on the ethics of torture, it does not make for groundbreaking analysis. A richer account of the morality of torture would venture forth from the safety of the "ticking time-bomb" scenario into the full complexity of reality.

Allhoff's discussion in Chapter 8 of the legality of torture is much more novel than his discussion of the morality, although it, too, is not totally persuasive. Allhoff introduces a variety of proposals before settling on his preferred legal defense of prospective torturers: torturers could claim the necessity defense under § 3.02 of the Model Penal Code. The necessity defense in § 3.02 allows the excusal of illegal conduct undertaken to prevent an even greater "harm or evil" than the illegal conduct itself, so long as (1) there are no other, less harmful courses of action available, and (2) "a legislative purpose to exclude the justification claimed does not otherwise plainly appear" (p. 188).[2] Allhoff relies on his utilitarian argument to satisfy the first condition. For the second condition, he observes that the U.S. Senate's interpretation of the U.N. Convention Against Torture (CAT) does not plainly exclude the necessity defense, because the Senate explicitly refused to condemn torture in all possible circumstances. (The original CAT language, in contrast, does not permit a necessity defense.)

But Allhoff is not out of the woods yet. The most strained aspect of his legal argument is his attempt to show that, the Model Penal Code aside, the federal government would actually adopt the necessity defense to excuse torture. This question poses considerable difficulty for Allhoff, because there is no federal statute to support the necessity defense. Allhoff must somehow bridge the gap between the Senate's refusal to categorically renounce the necessity defense and the absence of any actual legislation adopting it.

In an attempt to overcome this concern, Allhoff discusses a handful of Supreme Court cases. He points out that in *United States v. Bailey*[3] and *Baender v. Barnett*,[4] for example, the Court does not expressly reject a necessity defense (pp. 190-91). However, Allhoff does not offer a single federal

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1. For another critical discussion of this hypothetical, see Michael Davis, *The Moral Justifiability of Torture and Other Cruel, Inhuman, or Degrading Treatment*, 19 INT'L J. APPLIED PHIL. 161 (2005).

2. MODEL PENAL CODE § 3.02 (1962).

3. 444 U.S. 394 (1980).

4. 255 U.S. 224 (1921).

court case that endorses the necessity defense. A philosopher as methodical as Allhoff should recognize the weakness of arguing for a positive proposition by noting the lack of negation.

Terrorism, Ticking Time-Bombs, and Torture is at its best when even-handedly assessing the merits of arguments for and against torture. For readers interested in reviewing the state of the debate thus far, there are few treatments more thorough or balanced. However, for those interested in breaking new ground, Allhoff's book is somewhat disappointing. Allhoff does not extend his discussion beyond variants of the "ticking time-bomb" scenario nor does he propose a convincing new legal theory to defend torturers.

Global Legal Pluralism: A Jurisprudence of Law Beyond Borders. By Paul Schiff Berman. New York, NY: Cambridge University Press, 2012. Pp. xii, 344. Price: $99.00 (Hardback). Reviewed by Philipp Kotlaba.

Suppose a foreign tribunal seeks to enforce an action against an American company whose behavior would otherwise be deemed not only legal, but also explicitly protected by the U.S. Constitution. A French court's battle in 2000 to block access to *Yahoo!*—an American-owned website—from users in Europe, on account of *Yahoo!*'s hosting Nazi and Holocaust-denial materials, is but one of many examples of normative clashes sparked by the transnational interaction of incongruent legal regimes. Was the French court justified in asserting jurisdiction? What does the answer to this question say about the appropriateness of territorially determined sovereignty in an era of transnational law?

These questions grapple with the fundamental problems globalization poses for the view that the nation-state is the dominant actor in international relations. In *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders*, Paul Schiff Berman confronts this issue directly. He disputes the nation-state's role as the exclusive or even dominant source of legal authority. Berman offers, instead, a novel procedural framework for reconciling and resolving the tensions posed by overlapping and often competing sources of law in the transnational arena.

For Berman, territorial jurisdiction—that is, an assumption of unitary systems of law grounded within the physical borders of nation-states—is obsolete in a globalized world. Individuals today, he argues, are influenced and guided by a dizzying array of overlapping, often contradictory systems of governance. Some may adhere to a traditional conception of law. But a world of "normative communities" (p. 8), entirely distinct from legal regimes, lies just beneath the surface of our assumptions about what constitutes "real" law and what governs our everyday behavior. Accordingly, Berman first discredits previous jurisdictional frameworks as ineffective, then proposes an alternative system that better corresponds to today's realities. In doing so, he offers a chance of managing—if not always reconciling—the conflicts created by jurisdictional overlap.

Berman's task in the two introductory chapters is to expose the dissonance between established doctrines of jurisdiction and the changed

realities that render the former not only impracticable, but also normatively undesirable. Thanks to huge transformations in communications technologies, ease of transportation, and increased mobility of capital, exclusive jurisdiction is no longer a useful paradigm within which to interpret law. Multiple legal codes within and among states, as well as increasingly nonstate regimes—including nongovernmental actors, alternative-dispute-resolution tribunals, religious codes, and cultural customs—play significant roles in shaping the legal environment.

In Part I, Berman deconstructs legal scholars' failures to adequately respond to the fundamental changes facing law in a globalized world. Chapter Three addresses the failings of what Berman calls "sovereigntist territorialism" (p. 63), the notion that nation-states exercise exclusive jurisdiction over their sphere of influence, taking measures, if necessary, to keep out foreign influences. Berman singles out Jack Goldsmith and Eric Posner's *The Limits of International Law*[5] for criticism of what he sees as the territorialist mindset's propensity for falsely constructing a nation-state as a single-minded and rational actor whose decisions remain untouched by outside, nonstate norms. If ever were was the case, Berman argues that "the idea that a state could have a single interest," in light of today's competing interests within government and the forces applying pressure from the outside, "is simply unfathomable" (p. 99).

Berman condemns sovereigntist territoriality as both pragmatically unworkable and normatively objectionable. By treating certain norms—the vast majority, if we are to include all but those stemming from institutionalized, jurisdictional organs administered directly by the state—as "outside" and therefore irrelevant, decisionmakers automatically and needlessly privilege the values of one "imagined community,"[6] the domestic nation-state, above all others (pp. 90-92). For example, in *Barcelona.com, Inc. v. Excelentisimo Ayuntamiento de Barcelona*,[7] a Spanish cyber-squatter registered "barcelona.com" and transferred the registration to an American shell company, which the squatter claimed had been set up for financing reasons. As a result, U.S. courts adjudicated the resultant trademark action brought by the City of Barcelona. The cyber-squatter ultimately prevailed when the court disregarded Spanish law and practices—which would have favored the city's claim—and used the shell company's place of registration as grounds for applying the domestic Anticybersquatting Consumer Protection Act[8] (pp. 280-82).[9] This example demonstrates how territoriality fails to adequately account for parties' "actual community affiliations" (p. 284). It also, ironically, fails to reflect the interests of nation-states in being good-faith partners in the "interlocking international network" of domestic regulatory regimes (p. 284).

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5. JACK L. GOLDSMITH & ERIC A. POSNER, THE LIMITS OF INTERNATIONAL LAW (2005).

6. Berman relies heavily on BENEDICT ANDERSON, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM (rev. ed. 2006) for the concept of nation-states as imagined communities.

7. 330 F.3d 617 (4th Cir. 2003).

8. Anticybersquatting Consumer Protection Act, 15 U.S.C. § 8131 (Supp. II 2008).

9. 330 F.3d at 628.

Moreover, Berman argues that this positivist and often provincial vision of the law deprives decisionmakers of legitimacy and blinds them to how alternative international, transnational, and nonstate legal norms do in fact influence and shape pre-existing doctrine.[10] "Naturalizing" jurisdiction geographically thus obscures "the constructed nature of the enterprise . . . from analytical purview" (p. 67).

Yet, in Berman's analysis, the "international law triumphalism" of universalists, who might unhesitatingly embrace one uniform world law and do away with the nation-state altogether, is equally mistaken. Universalism, as the author frames it in Chapter 4, is based on the premise that individuals are fundamentally alike despite differences in culture and background. Whereas territorialists reify and exclude the "other," universalists assume the other "is not truly other at all" (p. 129). In response to cultural female mutilation practices in Africa, for instance, universalists might insist on the imposition of contravening and supposedly universal human rights values. This perspective manages competing norms by erasing difference, embracing familiarity, and codifying a regime of international law that embodies and enforces shared norms among cultures. The intent of universalism may be admirable. Berman, however, dismisses such harmonization as neither feasible, since each of us has multiple community affiliations and allegiances not readily rejected (p. 136), nor appealing, since erasing diversity would exaggerate power asymmetries and serve to marginalize less powerful groups (p. 131).

Accordingly, an open discussion and evaluation of the diverse sources of legal and extra-legal norms—for Berman, a meaningless distinction—cannot proceed either when territorial sovereigntists exclude the alien or when universalists assume the alien away. Berman dedicates the remainder of his work, Parts III and IV, to presenting what he terms "cosmopolitan pluralism," an alternative theoretical lens that allows decisionmakers to acknowledge, manage, and resolve tensions between competing legal norms.

Historically, legal pluralism was associated with either European colonialism, in which imperial law necessarily interacted with indigenous legal systems, or the interactions between canon law and secular state law (p. 13). Berman's cosmopolitan pluralism extends this line of thinking to the unprecedented interactions and conflicts between entirely distinct legal regimes. In this context, he endorses eight common mechanisms as "means for managing" pluralism: "dialectical legal interactions, margins of appreciation, limited autonomy regimes, subsidiarity schemes, hybrid participation arrangements, mutual recognition regimes, safe harbor agreements, and regime interaction" (p. 152). In the French *Yahoo!* case, for instance, a cosmopolitan pluralist approach would use a conditional "mutual recognition regime,"

10. Examples of the intrastate effects of nonstate norms include the process by which the Nuremberg trials developed the concept of crimes against humanity (p. 106) and the Bush Administration's endorsement of the Security Council's referral of the Darfur crisis in Sudan to the International Criminal Court (ICC), despite its initial opposition to the creation of the ICC just a few years earlier (p. 126).

whereby courts recognize foreign laws and standards in certain circumstances so long as those outside norms are "compatible" with local ones (p. 179).

The same would hold true for interactions with nonstate actors. State actors might extend to nonstate actors a margin of appreciation, for example, to allow health officials to carve out an exception to an international DDT ban for the purposes of combating malaria (p. 185). Here, state decisionmakers determined that such an exception was compelling, sufficiently narrow, and compatible with the desire to reduce DDT's environmental pollution, and therefore allowed its use subject to review from an independent third party, the World Health Organization. Likewise, a state adhering to a cosmopolitan pluralist framework might defer to an indigenous tribe's insistence on using peyote in religious ceremonies, reasoning that the religious norm justifies deference and is not incompatible with the law's broader desire to prevent the spread of controlled substances.

Cosmopolitan pluralism does not demand this kind of accomodation under all circumstances. In some cases, the normative clash might be too great to tolerate hybridity under any of Berman's eight criteria. In *Bob Jones University v. United States*[11]—in which the Supreme Court held that the IRS could withhold a tax exemption from Bob Jones University due to its prohibition on interracial dating—Berman assures readers that a cosmopolitan pluralist approach would still compel the Court to unambiguously articulate its profound normative commitment to anti-racism by rejecting the university's legal argument and the alternative norm it represented, rather than find for the university on a technicality (pp. 287-90).

In short, Berman calls for creating space for decisionmakers to evaluate their constituents' legal and nonlegal governing norms and then to choose for themselves which combination of principles is best suited to meet the specific needs of the situation. This approach neither dictates outcomes nor guarantees success, but offers a procedure that is more likely to lead to satisfactory results than either territorial sovereigntism or universalism. If we are forced to acknowledge the hybridity of systems governing our everyday lives, Berman reasons, at a minimum we must foster a transparent dialogue about which foreign values we can accept and which represent such an affront to our native norms that the state must use its coercive monopoly to reject them.

Berman's work is ambitious and eloquently presented but not without its faults. Although understandable, the way in which Berman constructs the two adversarial schools of thought in Part I is somewhat dubious. Casting his cosmopolitan pluralism in stark opposition to territorial sovereigntism and universalism is helpful for demonstrating the need for a framework more capable of mediating between overlapping legal norms. Unfortunately, the dichotomy is neither particularly accurate nor reflective of the actual diversity of approaches to the problems of law and globalization that his thesis is designed to address.

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11. 461 U.S. 574 (1983).

More importantly, most of the examples Berman offers to illustrate the problem of conflicting legal systems are interstate ones, rather than conflicts between entirely distinct, nonstate systems of governance. The author's perhaps misplaced focus on state law robs Berman's thesis of some of its force, as it is all too easy for the reader to continue to adhere to the state-oriented jurisprudential outlook of which the author presumably wishes to rid him. Although Berman's arguments themselves are robust, too much of his book focuses on all-too-familiar interstate conflict, giving only limited attention to conflicts among nonstate legal norms that are the raison d'être for his thesis.

Finally, Berman's positive suggestions are couched almost exclusively in the language of procedure, not substance. However, by the time the reader finishes the book's final sections, the question naturally arises as to what metrics one might use in the actual exercise of the eight "mechanisms for managing pluralism" (p. 152). For instance, at what point does our margin for appreciation of minority legal norms expire? Additionally, even procedure, presumably neutral on its face, masks hidden value judgments that impact the outcomes they dictate. Whatever means one uses to evaluate competing systems of law will necessarily also influence the way in which the laws are reconciled. Berman's thesis might have been strengthened if it had included corrective devices for maintaining a neutral space for resolving this legal cacophony.

Nevertheless, what does fall within the scope of *Global Legal Pluralism* is convincing, comprehensive, and remarkably accessible. The reader comes away with an enhanced appreciation for the difficulties created when starkly different normative assumptions come into contact with one another and compete for primacy in different jurisdictions. This is a lucid introduction to the subject and a robust call for a more nuanced understanding of the transnational legal world in which we live. After reading Berman's book, readers should feel more empowered to navigate this terrain.

The New Continentalism: Energy and Twenty-First-Century Eurasian Geopolitics. By Kent E. Calder. New Haven, CT: Yale University Press, 2012. Pp. xxxiv, 377. Price: $35.00 (Paperback). Reviewed by Jordan Chandler Hirsch.

Kent Calder's new book, *The New Continentalism: Energy and Twenty-First-Century Eurasian Geopolitics*, claims to "bring geography back into international political analysis" (pp. xxvii-xxviii). Despite commentators such as Thomas Friedman "[telling] us confidently that 'the world is flat,'" Calder argues, "remarkably little attention has been given to the impact of location" (pp. 15-16). He promises to demonstrate that geography retains special utility by exploring the rebirth of the Silk Road through energy trade.

Calder's work joins a burgeoning genre of books dedicated to resurrecting geography. The trend began fifteen years ago with Jared Diamond's *Guns, Germs, and Steel* (1997) and has continued with works such as Parag Khanna's *The Second World* (2008), Harm de Blij's *Why Geography Matters* (2005), and Robert Kaplan's *The Revenge of Geography* (2012). Those books remind

readers that despite the borderless communication, travel, and trade of the post-Cold War era, the world has not escaped the atlas. Instead, geography, like gravity, is pulling us back into a time when nations mustered battleships and cavalry in a Risk-like struggle for plots and passes. In arguing that geography, through its impact on the energy trade, has reunited the East to a degree not seen "since the arrival of Vasco da Gama at Calicut in 1498," Calder sprinkles this familiar narrative of ancient spices with modern crude (p. 29). The result is sometimes enchanting, but mostly a mirage.

Calder, a professor at Johns Hopkins University, argues that Eurasia—which he defines as "all the nations of the Asian continent, plus the territory of the former Soviet Union" (p. 305)—is returning to the world of the Silk Road. That route once tied Eastern China to the Mediterranean coast through foodstuffs and fabrics. But today, according to Calder, "energy is to the New Silk Road what silk was to its ancestors" (p. 1). In the endnotes, he explains that his Silk Road is not a "precise geographical expression" but a "figurative expression" used "interchangeably" with Eurasia—an early sign of his tendency to blur the map with exoticism (p. 306 n.10).

Along this metaphorical route, Calder argues, energy is siphoning nations from their previous alignments into a new continental order. As East Asian consumers grow hungrier for fuel, the Russian and West Asian producers next door—who claim over sixty percent of the world's proven oil and gas reserves—happily provide it (p. 31). Asia's share of Middle Eastern energy exports, he notes, has risen from twenty percent in 1980 to nearly half by 2010. In fact, the Middle East now "exports substantially more to East Asia than to Europe or America" (p. 6). The Middle East and the rest of Eurasia are, in Calder's words, "fated to be enmeshed in an ever-tightening mutual energy embrace" (p. 2) that will have "momentous, potentially disturbing, implications for all the world" (p. 11).

In hailing a "New Silk Road," Calder adopts the latest in diplomatic slang. Parag Khanna, a star among the cosmopolitan elite who frequents global gatherings such as the Davos World Economic Forum, recently pronounced the advent of a "rapidly integrating Eurasian super-continent" converging around a New Silk Road "made of iron" and stretching "from Scotland to Singapore."[12] Governments are using the same language. The U.S. State Department has a "New Silk Road" initiative calling for a regional network of economic and transit connections.[13] And Chinese Premier Wen Jiabao recently declared that "the ancient Silk Road has regained its past vigor and vitality."[14]

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12. Parag Khanna, *The New Silk Road Is Made of Iron—and Stretches from Scotland to Singapore*, QUARTZ, Sept. 30, 2012, http://qz.com/6140/the-new-silk-road-is-made-of-iron-and-stretches-from-scotland-to-singapore.

13. Robert D. Hormats, Under Sec'y for Econ., Energy & Agric. Affairs, U.S. Dep't of State, The United States' "New Silk Road" Strategy: What Is It? Where Is It Headed?, Address to the SAIS Central Asia-Caucusus Institute and CSIS Forum (Sept. 29, 2011), http://www.state.gov/e/rls/rmk/2011/174800.htm.

14. Robert Olsen, *Arabia-Asia: China Builds New Silk Road, But Is the Middle East Ready?*, FORBES, Oct. 21, 2012, http://www.forbes.com/sites/robertolsen/2012/10/21/arabia-asia-china-builds-new-silk-road-but-is-the-middle-east-ready.

Calder demonstrates that such rhetoric may be more than just TED Talk fodder. The rationale behind growing Eurasian interdependence, he argues, is both commercial and geographic: the major consumers and producers of hydrocarbons share an economic need and have "a geographically ordained complementarity that cannot be ignored" (p. 197). While Eurasian countries trade easily over traditional ocean routes, major consumers would rather circumvent the "strategic uncertain[ties]" posed by terrorism, piracy, and, in China's case, the U.S. Navy (p. 35). And, as Calder documents, they are already working toward that goal. Oil and gas pipelines now flow into China from Kazakhstan and Turkmenistan, while others snake from the Caspian Sea to the Mediterranean (pp. 36-37). Eurasian states have boosted traditional seafaring trade as well. The United Arab Emirates, Kuwait, and Qatar each ship over eighty percent of their oil to Asian markets (p. 105). Eighty percent of Iran's hydrocarbon exports flow to China, Japan, India, and South Korea (pp. 81-82). And over three times as much oil from Saudi Arabia travels to Asia as to the United States (p. 138).

This energy commerce, Calder argues, has strengthened a variety of other ties among Eurasian nations. To begin with, it has improved overall trade. "[T]he rate of increase in virtually all major bilateral intra-Asian trade relationships," Calder writes, "has been more rapid over the past decade than that of world trade in general" (p. 206). China and India have boosted trade with central Eurasian states such as Iran and Kazakhstan. In 2010, Russia supplied nearly $2.9 billion in weaponry to India and over $400 million to China (p. 209). Rising commerce has in turn led to a proliferation of multilateral organizations. These bodies, from the Collective Security Treaty Organization to the Eurasian Economic Community and the Shanghai Cooperation Organization, have coordinated efforts against drug trafficking and terrorism (p. 225). Such connections, Calder meticulously demonstrates, have made Eurasia "a more interactive . . . and cohesive continent" (p. 245).

The question is what this convergence means for the future of Eurasia. Will its bonds remain solely economic? Or will it cohere into some kind of political force? In searching for an answer, Calder discards his sober analysis for romantic flair. He draws inspiration from the legacies of American naval strategist Alfred Thayer Mahan and British geographer Halford Mackinder. Mahan emphasized the importance of naval strength, arguing that land powers such as imperial Russia were unavoidably dominant in northern Asia but that sea powers dominated below the thirtieth parallel (p. 17). Mackinder, meanwhile, "stressed the strategic centrality of the vast Eurasian heartland" as a "geographical pivot" (pp. 17-18). "Who rules the Heartland controls the World-Island," Mackinder once said, "and who rules the World-Island commands the World" (p. 18).

The prose of this chess-piece diplomacy seems anachronistic at best, but Calder succumbs to it often. The Silk Road, in his words, "snakes among teeming masses of the world's most numerous and aspiring energy consumers" and constitutes a "figurative highway, bounded by geography and animated by the still-living shadows of a venerable 2,000-year history" (pp. 1, 100). Eurasia

is becoming "a vast interactive political-economic entity" (p. 13). The Middle East and Asia are the "two great pillars of the pre-Columbian world" (p. 5). Iran represents the "Land of the Two Seas" astride the Caspian and the Persian Gulf (p. 32). Saudi Arabia adopts a "Look East" policy while India pursues "Look West" (p. 276). Section and chapter titles hail "The Unavoidable Geoeconomic Attractions of Iran" (p. 43) and "Emerging Ententes Amid Complex Continentalism" (p. 199).

The book's reliance on what Calder calls the "critical-juncture framework" underscores his affinity for the drama of the Great Game (p. 49). He defines a critical juncture as "a historical decision point at which there are distinct alternative paths to the future" (p. 53) in which "individual decision-making . . . profoundly shapes the ultimate institutional product" (p. 49). According to Calder, these moments of crisis necessitate "decisions and actions" by world leaders that change the status quo (p. 54). Six such junctures, in Calder's view, have freed the forces of energy economics, setting "powerful forces . . . in motion on both the demand and supply sides of the Old World energy equation" (p. 113): the 1973 Arab oil embargo, China's Four Modernizations, the 1979 Iranian Revolution, the Indian economic reforms of the early 1990s, the collapse of the Soviet Union, and the rise of Vladimir Putin (p. 58).

For Calder, these cataclysmic events occurred at the level of high politics, with world-historical figures acting in crisis and unlocking the natural course of Eurasia's geopolitical destiny. Here and elsewhere, Calder flirts with the notion that economic integration will inevitably lead to political convergence. Eurasia, he argues, is headed toward "continentalism," with countries adopting "social and economic policies that encourage and advance economic and political integration of territorially contiguous nations on a continental scale" (p. xxviii). "At a minimum," Calder writes, Eurasian countries "are trying to create an autonomous space . . . where American superpower is not determining" (p. 246). The "age-old tyranny of location" (p. 46) continues in the energy sphere, "leading us gradually toward an intra-Eurasian interdependence that . . . has sobering future implications for international affairs" (p. 266).

Yet Calder's survey of possible "ententes" between Eurasian powers is highly speculative. In one instance, he contemplates the idea of a grand strategic alliance between China, India, and Russia, which together "occup[y] the bulk of Mackinder's 'world island' at the epicenter of human civilization" (p. 213). He provides little evidence of shared interest in such an alignment and hardly mentions the many obstacles in its path. In another, he essentially conjures up the notion of a transnational natural gas grid, arguing that a "powerful rationale" exists for such a project but offering no indication that Eurasian countries have considered it (p. 229). The trade that does exist may subside as new technologies, such as bioenergy, fracking, and horizontal drilling, spearhead an energy revolution beyond Eurasia. This past November, for example, the International Energy Agency predicted that by 2020, the

United States would surpass Saudi Arabia as the world's largest oil producer.[15] Calder is right to note that post-Cold War technological evangelism has diminished appreciation for "geography and physical circumstance" (p. 26). In setting out to correct that imbalance, however, he overcompensates, too easily neglecting how innovation can alter the map.

Perhaps for that reason, Calder makes all the necessary caveats to avoid being trapped, Jumanji-like, in his board game. He concedes that these emerging relationships "by no means create . . . a cohesive Eurasian economic, political, or geostrategic entity" (p. 200). Thus far, he writes, "trade and finance have not been principal drivers of political integration between the east and west of Asia" (p. 245). "Divisive rivalries," meanwhile, "continue to exist" (p. 248). Even so, the overall tone of the book is one of geopolitical giddiness: pipelines laid here, high-speed railways constructed there, all pathways to Eurasian unity. The result is a heady brew of Hegel and geography.

In the end, Calder resorts to the Silk Road because his case for Eurasian continentalism cannot sustain itself without some imagination. The image of the ancient path encourages readers to view Eurasia as reverting to some kind of natural order in which geography controls the fate of nations. Yet while trade may reduce violence, it does not necessarily lead to political cooperation. The countries of Eurasia divide along many lines besides borders, and they are defined by more than their oil fields and mountaintops. Maps, in the end, can be flat, too.

Advancing the Rule of Law Abroad: Next Generation Reform. By Rachel Kleinfeld. Washington, D.C.: Carnegie Endowment for International Peace, 2012. Pp. xi, 281. Price: $19.95 (Paperback). Reviewed by Jasmeet K. Ahuja.

Every year, the U.S. government sends millions of dollars overseas to promote democratic governance and respect for human rights, a constellation of international programs and commitments called rule-of-law reform. But this funding comes with its share of controversy. Critics often brand rule-of-law reform as a money-sink and contend that it should be abandoned (pp. 5-6). That rule-of-law reform is often wholly ineffective is an open secret in Washington. As a result, proponents turn to justifying the programs on philosophical grounds rather than practical ones. Even if rule-of-law reform is not perfect, they argue, its normative goal is worthy of U.S. investment: every nation has a right to a functioning government that respects the rule of law. In other words, rule-of-law reform is often good policy even if sometimes bad politics. For those of us rooting for rule-of-law reform's success despite the inadequacies of our "first-generation" efforts, Rachel Kleinfeld's second book, *Advancing the Rule of Law Abroad: Next Generation Reform*, offers a refreshing new take.

15. Ronald D. White & Tiffany Hsu, *U.S. To Become World's Largest Oil Producer by 2020, Report Says*, L.A. TIMES, Nov. 13, 2012, http://articles.latimes.com/2012/nov/13/business/la-fi-us-saudi-oil-20121113.

Not only can rule-of-law reform itself be reformed, but doing so may not be as onerous as one might expect.

Kleinfeld's approach is as simple as it is reasonable. She argues that rule-of-law reformers have become too myopically focused on means over ends. We need to push the reset button by asking ourselves: What are "the goals that led [reformers] to undertake rule-of-law reform in the first place?" (p. 13). In answering this question, Kleinfeld artfully guides the reader on a journey through the history of rule-of-law reform and the deficiencies in current rule-of-law efforts, before ultimately laying out a blueprint for "second-generation" rule-of-law reform.

Kleinfeld begins by explaining that, given our foreign policy ideals, rule of law is often described as a top priority. When our neighbors, allies, and friends are governed transparently and impartially, the United States benefits—or so the argument goes. Though Kleinfeld acknowledges that such a position often reeks of American self-indulgence and, worse, cultural imperialism,[16] she is logical in her dismissal: "[T]he United States is surely going to continue to engage in efforts to build the rule of law in other countries . . . . The realistic choices are to try to do this better, or to do it worse" (p. 77). On the one hand, Kleinfeld acknowledges that justifying rule-of-law reform on these grounds smacks of a certain kind of realpolitik, but she reasons that it need not be a zero-sum game. When implemented correctly, rule-of-law reform should simultaneously improve the United States' global position *and* benefit local populations. Rule-of-law reform, in other words, ought to improve "[our] own security, [our] desire to spread human rights and democracy, and [our interests in] economic development abroad" (p. 56).

Moreover, Kleinfeld understands that these three goals—though sometimes overlapping—can often be at odds. For example, some U.S. companies might prefer to pay bribes to operate overseas if it means they can avoid a country's unpredictable regulatory system. In that case, U.S. efforts to curb corruption might impede America's economic self-interest. Similarly, Kleinfeld notes that spreading the rule of law can sometimes make it more difficult for the United States to influence the governance of other nations. For example, "the desire for security against the communist threat clashed with growing concerns about human rights abuses caused by the 'death squads' trained by the United States" (p. 40). Thus, even when effective, rule-of-law reform can be a mixed bag.

Kleinfeld makes the case that successful rule-of-law reform requires immediate attention to "laws, institutions, power structure, and cultural norms" (p. 107) *before* reform programs are implemented, not later, as is often the case with current, first-generation reform efforts. These problems—what one might

16. Critics of rule-of-law reform and U.S. foreign aid often argue that such programs are focused more on U.S. interests than on the interests of the target nation. For example, in the heat of the 2008 Congressional debates over aid to Pakistan, Pakistanis took to the streets, marching that Pakistan and not the U.S. government should decide what programs are funded. More problematic, the mere idea that the United States thinks another country can benefit from U.S. aid rubs some as arrogant: who is to say that U.S. values are the best values?

call "programmatic deficiencies"[17]—can be overcome if rule-of-law reformers define their goals early on and appreciate the potential secondary and tertiary effects of their actions. In other words, reformers need to be aware that in moving toward one goal, we might be taking steps backwards from another. To fully grasp the interaction among laws, institutions, power structures, and cultural norms, Kleinfeld creates a new taxonomy for thinking about rule-of-law-reform with four primary categories: (1) top-down reforms (funding and technical assistance to rule-of-law institutions); (2) bottom-up reforms (funding and technical assistance to civil society groups); (3) diplomacy (pressure to force the government to institute change); and (4) enmeshment (pressure and socialization via enmeshing a country in rule-of-law norms) (pp. 150-51).

This novel way of thinking about our approaches to rule-of-law reform not only brings to light the disproportionate role that top-down reforms have played in first-generation efforts, but also underscores the holes in current U.S. reform programs. By ignoring the significant sway of civil society groups and the influence of enmeshment in affecting rule of law, for example, current efforts to reform rule of law are tantamount to showing up to a fight with one hand tied behind your back. More significantly—as Kleinfeld discusses in detail—first-generation reform too often fails to account for the sheer number of U.S. governmental agencies that now operate in the development community. This is a fact wholly underappreciated in today's rule-of-law reform debate. While the United States Agency for International Development (USAID) is still the titular figurehead of the U.S government's rule-of-law reform efforts abroad, the Department of Defense (DOD) and other agencies now play a disproportionate role. Kleinfeld deserves kudos for taking the Pentagon to task for the fact that its programs often undermine USAID's rule-of-law efforts.

Having served as a staffer on the House Committee on Foreign Affairs—and having seen the rule-of-law tempest from the inside—I can say that this is a bigger problem than even Kleinfeld argues. The reason why USAID so often fails is because it is underresourced. Congress's penchant for decreasing USAID funding is matched only by its tendency to concomitantly increase the Pentagon's budget for "humanitarian" initiatives. This exacerbates programmatic deficiencies because programs are implemented poorly in order to serve DOD's goals, rather than rule-of-law goals.[18] Moreover, the cutbacks in USAID's funding create a vicious cycle: USAID's programs are ineffective because USAID programs are underfunded—but USAID programs are underfunded because Congress sees them as ineffective. The failure to appreciate the need for a steady hand in reform is a significant "political constraint"—as I call it—on current reform efforts.

Rule-of-law reform efforts ultimately suffer at the hands of the beast that is U.S. bureaucracy—which itself is a product of an equally dysfunctional U.S.

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17. This term is mine, rather than Kleinfeld's.

18. For example, just as U.S. rule-of-law reformers began supporting local, Romanian civil society groups determined to unseat their communist-inspired government, the DOD began building military bases across Romania, flushing its leadership with money (pp. 147-48).

Congress. From my experiences in both the executive and legislative branches, I am acutely aware of the difficulties of working with a Congress ever hungry for results. Although it plays only an ancillary role in foreign policy and rule-of-law reform,[19] Congress nonetheless demands that all agencies, including USAID, provide timely reports on the success of each of their programs. After all, members of Congress—who are up for election every two years—need to be able to explain to their constituents why millions of dollars are spent overseas to fight crime when the crime rates in their own districts often remain high.

This creates the need for performance metrics: quantitative measurements signaling the success or failure of particular practices. The problem with these metrics, however, is that it is nearly impossible to measure easily or quickly—at least, quickly enough for the electoral cycle—the safety of a particular city or how U.S. funding has improved that safety. As Kleinfeld explains, what we need to do is to count the number of murders and violent crimes over time, but, instead, we count the number of officers we graduate from the police academies we have created: it is simply quicker and easier for us (p. 184). The same problem arises in the context of our war in Afghanistan. With the 2014 withdrawal deadline looming, some policymakers tend to want to measure success in Afghanistan not by asking whether the Afghan government is ready to manage its own security but instead by counting the number of Afghanistan National Security Forces we have trained.[20]

Rule-of-law reform is also beholden to Congress's budget cycle. When the leader of a particular country begins shooting its citizens or is deposed by the military, USAID and the State Department are often caught like a deer in headlights—they simply don't have the financial agility to move around large pots of money quickly enough to affect change on the ground. Since Congress authorizes and then appropriates funding a year in advance for administrative agencies, rule-of-law reform must often wait several months to receive funding and begin work. This, understandably, also inhibits effective rule-of-law reform.

Tackling political constraints is an even greater challenge than tackling programmatic deficiencies, since political constraints are embedded in the way that Congress negotiates and passes legislation. Kleinfeld readily acknowledges

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19. Arguably, this can be attributed to the fact that it is easier for Congress to abdicate responsibility, do nothing, and then blame the Executive branch *and* because the Executive would rather control all foreign affairs. *See, e.g.*, H. Jefferson Powell, *The President's Authority over Foreign Affairs: An Executive Branch Perspective*, 67 GEO. WASH. L. REV. 527, 531-35 (1999) (discussing the Executive Branch's justification and motivation for exercising authority over foreign affairs).

20. *See, e.g.*, Ahmad Majidyar, *A Major Setback in Afghanistan*, REALCLEARPOLITICS, Sept. 19, 2012, http://www.realclearpolitics.com/2012/09/19/a_major_setback_in_afghanistan_290649.html ("More than 150,000 additional soldiers and policemen have been added, and the ANSF is currently leading more than 50% of operations across the country."); Rod Nordland, *Afghan Army's Turnover Threatens U.S. Strategy*, N.Y. TIMES, Oct. 15, 2012, http://www.nytimes.com/2012/10/16/world/asia/afghan-armys-high-turnover-clouds-us-exit-plan.html ("Now at . . . 195,000 soldiers, the Afghan Army . . . has to replace a third of its entire force every year . . . . The attrition strikes at the core of America's exit strategy in Afghanistan: to build an Afghan National Army that can take over the war and allow the United States and NATO forces to withdraw by the end of 2014.").

this 800-pound gorilla (pp. 200, 220), but it is ultimately beyond the scope of her study, which focuses on the serious programmatic issues facing rule-of-law reform rather than on the fundamentally political ones.

To overcome programmatic deficiencies and improve the efficacy of rule-of-law reform, Kleinfeld recommends a straightforward and methodical second-generation approach: Step one, start with the problem; step two, determine the institutional, political, and cultural components of the problem; step three, locate opposition and support; step four, determine evaluation targets and measurement goals; and step five, design the reform program. (pp. 186-202). In noting that a second-generation reformer must "start with the problem," Kleinfeld reminds law-reform practitioners that today's efforts are often doomed to fail before they even begin. For example, rather than asking what the problem is, local USAID implementers often try to implement cookie-cutter reforms more grounded in Washington's "interest of the week" than a country's actual needs. Standardized solutions and, worse, mirror images of programs and policies that have succeeded in the United States are not always effective means of rule-of-law reform elsewhere, Kleinfeld points out (pp. 185-87).

Rather, the key to second-generation reform is an acknowledgment that every country is—by definition—different. Every country has its own unique politics and social norms. In thinking about the needs of the nation in which they seek to operate, second-generation rule-of-law reformers must identify the institutional, political, and cultural components of the rule-of-law problems it faces. Is a particular civil society group to blame? Success and failure for any program, but particularly for rule-of-law reform, depends on stakeholder interests. If all of the in-country stakeholders are opposed to an effort, the effort is doomed to fail. Further, a program designer must determine whether the problem it is addressing is already getting better or worse. This is crucially important, Kleinfeld reasons, because it allows the program manager to decide how to evaluate a program's success before the program is designed: that is, to "measure the end, not the program, which is the means" (p. 199).

Kleinfeld closes by recommending that program designers look beyond the four corners of their offices to all of the tools of the U.S. government. Is USAID best equipped to handle this project or should the Pentagon be involved? Integrating interagency rule-of-law reform efforts is crucially important; the U.S. government all too often sends mixed messages. Given that uniformity and equality is essential to the rule of law, hypocrisy in our rule-of-law reform efforts is counterproductive.

The poignancy of Kleinfeld's argument ultimately rests in its simplicity. Kleinfeld's recommendations are neither esoteric nor unreasonable. And, yet, efforts to improve rule-of-law reform continue to lag. *Advancing the Rule of Law Abroad* is a fascinating and easy read, a wonderful effort to demystify U.S. rule-of-law reform and perhaps even take it mainstream. The book is a must-read for Congress and foreign-aid practitioners alike. If the U.S. government is ever going to fix our rule-of-law efforts, Kleinfeld's insightful recommendations provide a helpful start.

Illegal Peace in Africa: An Inquiry into the Legality of Power Sharing with Warlords, Rebels, and Junta. By Jeremy I. Levitt. New York, NY: Cambridge University Press, 2012. Pp. xi, 301. Price: $99.00 (Hardcover). Reviewed by Rachel Dempsey.

On December 24, 1989, a group of rebels led by Charles Taylor invaded Liberia and overthrew the military rule of President Samuel Doe, marking the beginning of the Liberian Civil War. In March 1991, in neighboring Sierra Leone, a rebel group that called itself the Revolutionary United Front (RUF) began attacking diamond-rich villages in the east, kicking off a civil war that would ravage the country for the next decade. Just to the north, the citizens of Guinea-Bissau were living through a series of coups that exploded into armed conflict in 1998 with the overthrow of democratically elected President Bernardo Nino Viera.

More than two decades into the earliest conflict, Liberia, Sierra Leone, and Guinea-Bissau are still struggling to forge a sustainable peace. In *Illegal Peace in Africa: An Inquiry into the Legality of Power Sharing with Warlords, Rebels, and Junta*, Jeremy I. Levitt examines the power-sharing agreements that form the basis for peacemaking efforts in all three countries. These agreements generally involve "transitional political power sharing between contesting groups (warlords, rebels, and junta) and democratically constituted governments for a fixed and impermanent period of time, until elections take place" (p. 1 n.1).

Challenging the prevailing status quo, Levitt contends that Liberia's 2003 Accra Agreement, Sierra Leone's 1999 Lomé Agreement, and Guinea-Bissau's 1998 Abuja Agreement are all fundamentally illegal and therefore invalid. (pp. 120-21, 144, 166). He takes issue with the popular wisdom of political scientists and policymakers for whom power sharing has emerged as the mechanism of choice for attempting to rebuild conflict-torn African states. According to Levitt, no peace built on a foundation that violates domestic and international law can last. Levitt makes a convincing argument that extra-constitutional peace built on the supposition "that warlords can become democrats once they are sanctioned with state authority" will be inherently fragile and easily broken (p. 18). Unsettlingly, however, he fails to come up with a coherent alternative.

The book can be informally divided into three sections. The first section introduces Levitt's proposed "neo-Kadeshian" framework for a legal peace, tracing the historical and normative arguments for and against power sharing while outlining the contours of a proposed new model for post-conflict rebuilding. The next section looks at how power-sharing arrangements emerged and were enacted in Liberia, Sierra Leone, and Guinea-Bissau. The final section examines the developments in West Africa in the aftermath of the Accra, Lomé, and Abuja accords, and offers potential alternatives to power sharing as currently understood.

In the first section, Levitt argues that political scientists have systematically overlooked the role of both national and international law in

peacemaking in favor of political expediency. His central premise is that this compromises the peace this practice seeks to create by flouting international obligations to hold human rights violators accountable for their crimes and by ignoring national constitutional checks and balances intended to control and legitimize government.

Instead of the largely political approach that dominates the current norm of conflict resolution, Levitt proposes a neo-Kadeshian model (NKM) of analysis that uses the 3000-year-old Treaty of Kadesh as a framework for crafting a legal peace. The Treaty of Kadesh (1280 B.C.) incorporated "three ancient sources of international law": international conventions, international custom, and general principles of law (p. 9). In modern Africa, the NKM would rely upon domestic and regional legal norms as well as international institutions including the African Union, the United Nations, and the Economic Community of West African States. Using this model, Levitt identifies seven principles of modern international law, including a "recognition of and respect for preexisting agreements and rules" (p. 11) that ought to undergird any peace agreement that aspires to be both enduring and just.

Levitt's normative argument in this first section is powerful. In the face of the many complex forces at play in contemporary Africa, law provides an objective and enforceable claim to authority that can provide a solid foundation for a stable government. When power sharing allows those in power to ignore or rewrite existing agreements, statutes, codes, and even national constitutions, it replaces the solid foundation of the law with the moral quicksand of political pragmatism.

At the same time, Levitt's neo-Kadeshian framework is vague in a way that only becomes apparent as his argument moves on to examine the practical application of his normative claims. Recognizing and respecting preexisting agreements and rules, for example, is a noble and important ideal, but not necessarily a practicable step towards peace. Refusing amnesty to war criminals, which is one of Levitt's greatest concerns, becomes complicated when no one agrees on what a war criminal is.

In the next section, Levitt attempts to ground his discussion by looking at the power-sharing framework in the context of Liberia, Sierra Leone, and Guinea-Bissau, tracing the countries' fraught recent histories up to implementation of their respective peace accords. After decades of civil and political unrest, repeated coups, and violence from both the government and rebel groups, all three countries developed peace agreements that included provisions for temporary power sharing pending legal elections. To varying degrees, the Abuja, Lomé, and Accra Agreements all provided amnesty for warlords and rebels. None provided a judicial remedy for war victims.

Levitt suggests that these failures place all three treaties in violation of regional and international law, which guarantee a basic level of human rights protections and accountability. The Accra and Abuja Agreements, and arguably the Lomé Agreement as well, fare worse on a domestic level. The Accra Agreement went as far as to purge the upper levels of Liberia's existing government entirely, creating a brand new legislative assembly and a new

executive including twenty-two ministries and twenty-two public corporations. It also included a provision that dismissed the entire sitting Supreme Court. Those radical steps required a suspension of the Constitution, with the specification that the rules suspended under the Agreement would be reinstated with the inauguration of an elected government. The Lomé Agreement kept the upper levels of Sierra Leone's government mostly intact, but expanded the government's cabinet to include positions for rebels. While not nearly as sweeping as the Accra Agreement, it nonetheless violated the Sierra Leonean Constitution because it was not ratified by Parliament before it went into effect.

The country-specific discussion suffers from Levitt's attempts to shoehorn the highly individual cases of Liberia, Guinea-Bissau, and Sierra Leone into the same analysis. He differentiates the Abuja, Lomé, and Accra Agreements as "moderate," "soft," and "hard" power sharing respectively, but these distinctions fail to capture the wide range of changes that the Agreements made to the existing governments. It is difficult to comfortably equate the extra-constitutional nature of Liberia's complete overhaul of all branches of government and Sierra Leone's addition of a handful of seats to the cabinet. Nevertheless, Levitt's fundamental concern is compelling: all of the Agreements "permitted *pirates de la loi* to transform into political parties or partisan leaders" (p. 93).

The final third of the book, which addresses the aftermath of each agreement, is the least cogent. The overarching goal of this section is to demonstrate that West Africa's power-sharing arrangements have failed, but, once again, Levitt's attempts to equate the situations in Liberia, Sierra Leone, and Guinea-Bissau feel forced. In the years since the 1998 Abuja Agreement, Guinea-Bissau leads the world in coups and political killings. Liberia, on the other hand, has been led by the democratically-elected President Ellen Johnson Sirleaf since 2006. While Levitt emphasizes that the situation in Liberia remains unstable, plagued by "endemic poverty, chronic illiteracy, contempt for the rule of law, rapid corruption, and a general lack of infrastructure" (pp. 171-72), these problems were deeply entrenched long before the Accra Agreement in 2003. In fact, the six years of Ellen Johnson Sirleaf's presidency mark one of the longest periods of relative stability in Liberia in decades. While Liberia's situation remains precarious, Levitt provides no convincing evidence that the country is destined to slide back into civil war, and offers even less proof that Liberia's persistent challenges are because of—and not in spite of—the Accra Agreement.

In fact, the "hard" power sharing of Accra seems to have had a more positive effect overall than the "moderate" power sharing of Abuja in creating a measure of stability and peace. This is just one of the inconsistencies Levitt fails to address when it comes to disentangling the countless strands of influence that have shaped modern West Africa. If power-sharing agreements foster a disdain for the law, then how could the Accra Agreement, which violated existing laws more aggressively than either of the other two Agreements considered, have led to the most lasting stability?

More importantly, Levitt avoids the most interesting and controversial argument regarding power sharing: the question of necessity. Levitt condemns the Accra Agreement for having "recklessly surrendered [the rule of law] at the altar of political expediency and necessity" (p. 181) and makes similar complaints against the Lomé and Abuja Agreements. This raises an unanswered question: how does necessity affect legality? In other words, if power sharing is necessary, then should—or *must*—that trump normative legal concerns?

Although he never confronts the tension directly, Levitt approaches a compromise between the conflicting pulls of necessity and legality in the final Chapter. However, the measures he proposes to bring power sharing within the limits of existing law are, by and large, more theoretical than practical. While the author's recommendations, such as "sending consistent messages," (pp. 239-40) are important, they are not practicable, particularly in moments of extreme stress and urgency when the author would have them deployed.

The most interesting and practical suggestions Levitt puts forth appear to back away from an inherent condemnation of many of the principles of power sharing. Despite a proposed law of power sharing that would prohibit unconstitutional changes of government, bar warlords and coupists from holding public office, and foreclose amnesty for those suspected of violating international law (pp. 240-41), Levitt's more careful analysis reveals an understanding that there may be room for negotiation. For example, he proposes that power-sharing agreements include a provision to educate rebels in "legal, legislative, and governance processes" (p. 240)—a step that seems to represent a turn away from his earlier contention that *pirates de la loi* cannot be a legitimate part of a functioning government.

As a new framework for conflict resolution, Levitt's central principle is normatively useful, but practically flawed. He makes a convincing case that power sharing undermines sustainable peace by allowing politics to trump law. At the same time, he provides no real alternative, and fails to acknowledge power sharing's successes or to weigh its costs against its benefits. The focus on the rule of law provides an important counterpoint to a purely political approach, and Levitt's proposal that existing laws should be followed to the fullest extent possible should be a central consideration in future power-sharing arrangements. However, *Illegal Peace* ultimately has limited real-world applicability: it lacks simple and clear guidelines for maintaining the rule of law in post-conflict societies, and fails to acknowledge the unavoidable pressures of political and practical necessity.

Levitt was recently appointed as a senior member of the International Technical Assistance Committee (ITAC) of the Truth and Reconciliation Commission (TRC) of Liberia, which will provide a key testing ground for applying the principles he sets forth in this book. Only in action will it be clear if a legal peace can withstand the urgency of the post-conflict environment. Internal inconsistencies notwithstanding, Levitt's ideas will rise or fall on the ground.

The Slave Trade and the Origins of International Human Rights Law. By Jenny S. Martinez. Oxford, UK: Oxford University Press, 2012. Pp. 254. Price: $29.95 (Hardcover). Reviewed by Conrad Scott.

The United Kingdom and the United States proscribed the transatlantic slave trade by law in 1807, but neither the Slave Trade Act[21] nor the Act Prohibiting Importation of Slaves[22] ended the trade in practice. Slave ships continued to ply the Atlantic, sailing illicitly to the British Caribbean and the United States and legally to other New World colonies. Approximately 3.2 million enslaved men, women, and children were loaded onto ships on the African coast between 1808 and 1866; some 2.8 million landed alive in the New World.[23]

In *The Slave Trade and the Origins of International Human Rights Law*, Jenny S. Martinez chronicles the role of international law in extirpating the transatlantic slave trade by the mid-nineteenth century. Slave trade abolition, she argues, was the first international human rights campaign, and it was implemented in part by international courts constituted under bilateral and multilateral treaties. She makes a compelling case that the history of slave trade abolition challenges the prevailing notion that international human rights law was conceived in 1945, suggesting alternate conceptions of international human rights law focused on individual actors and necessitating a rethinking of the "relationship between power, ideas, and international legal institutions" [24] (p. 165).

British attempts to interdict illicit traffic in human beings began with "unilateral action based on vague conceptions of natural law," but the exercise of jurisdiction over slave traders as *hostis humani generis* (enemies of the human race) rested on uncertain legal ground (pp. 36-37). As Britain emerged from the Napoleonic Wars as the dominant naval power of the Atlantic world, it channeled its power into building international enforcement mechanisms that were backed by positive law and formally respectful of other nations' sovereignty. British diplomats bullied and bribed weaker colonial powers into

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22. 2 Stat. 426 (1807).

23. *Assessing the Slave Trade: Estimates*, TRANSATLANTIC SLAVE TRADE DATABASE, http://www.slavevoyages.org/tast/assessment/estimates.faces (last visited October 20, 2012).

24. *See, e.g.*, JACK DONNELLY, INTERNATIONAL HUMAN RIGHTS: DILEMMAS IN WORLD POLITICS 3 (2d ed. 1998) ("Before World War II, human rights were rarely discussed in international politics."); OLIVIER DE SCHUTTER, INTERNATIONAL HUMAN RIGHTS LAW: CASES, MATERIALS, COMMENTARY 1 (2010) ("[H]uman rights have migrated to international law since the Second World War."); DAVID WEISSBRODT & CONNIE DE LA VEGA, INTERNATIONAL HUMAN RIGHTS LAW: AN INTRODUCTION 3 (2007) ("Many observers regard the formation of the United Nations in 1945 and the promulgation of the Universal Declaration of Human Rights in 1948 as the beginning of the modern struggle to protect human rights."); Felipe Gómez Isa, *International Protection of Human Rights*, *in* INTERNATIONAL HUMAN RIGHTS LAW IN A GLOBAL CONTEXT 22 (Felipe Gómez Isa & Koen de Feyter eds., 2009) ("The key date on which we begin to witness the internationalization of human rights is 1945, after the Second World War and on the creation of the United Nations Organization."); *see also* Ed Bates, *History*, *in* INTERNATIONAL HUMAN RIGHTS LAW 17, 28-9 (David Moeckli, Sangeeta Shah & Sandesh Sivakumaran, eds., 2010) (describing slave trade abolition as "one of the earliest, if not the first, human rights related British foreign policy initiatives" while noting that international agreements prohibiting the slave trade lagged behind states' domestic law).

accepting treaty clauses providing for mutual rights of peacetime search and seizure of ships suspected of engaging in the slave trade. Seized ships were tried before mixed courts composed of two judges, one British and one from another signatory nation (p. 36). Condemned ships were auctioned off, with proceeds benefiting signatory nations and rewarding the captains who captured the prizes. The mixed courts lacked jurisdiction to try slave traders criminally, and crews were released, sent back to their home countries to be tried for piracy, or occasionally abandoned on the African coast (p. 77).

The system had terrible weaknesses. Slavers exploited treaty loopholes and switched flags to evade search and seizure. Critics alleged that the risk of capture and condemnation led slave traders to maximize profits by packing their captives even more tightly into ships' holds (p. 113). Banned from going onshore for "security" reasons in some jurisdictions, individuals held in interdicted ships died of disease pending adjudication of the ships that held them (pp. 72-73). Until 1842, Britain's treaty with Portugal provided for the interdiction of traffic in slaves only in areas north of the Equator, rendering Portuguese slavers in the Southern Hemisphere immune from condemnation (p. 75). In 1833, the HMS *Snake* detained the barque *Maria da Gloria* off Rio de Janeiro, which was carrying more than 400 slaves loaded in present-day Angola. (p. 110). The court in Rio de Janeiro held that the *Maria da Gloria* was Portuguese, not Brazilian, and refused jurisdiction (pp. 110-11). A British crew navigated the ship back across the Atlantic to Sierra Leone, where a mixed Portuguese-British court acquitted it on the grounds that it had been captured below the Equator, and sent it back to Brazil (pp. 111-12). After three transatlantic voyages spanning more than five months, only 150 of the more than 400 Africans on the *Maria da Gloria* disembarked alive in Brazil to be sold as slaves (pp. 112-13). Elsewhere, individuals freed by the courts sometimes found themselves in positions not dissimilar to slavery, trapped in repeated "apprenticeships" and subject to brutal corporal punishment (pp. 100-08).

Less tangibly, the courts silenced those whose rights they sought to protect. Courts catalogued basic information about the human beings who were slave ships' cargo but rarely allowed them to testify (p. 73). Martinez succeeds in pulling individual narratives from court records and diplomatic correspondence (as with the harrowing account of the *emancipada* Matilda and her daughter Isabel Marina) (pp. 103-08) and draws compelling parallels between the courts' silencing of individual Africans and contemporary international human rights courts' failures to give adequate voice to victims (p. 151).[25]

These courts nevertheless saved tens of thousands from bondage. They freed nearly 80,000 captives and condemned unloaded slave ships capable of carrying approximately 90,000 individuals (p. 79). When the mixed-court

25. *See also* Jenny S. Martinez, *Antislavery Courts*, 117 YALE L.J. POCKET PART 160, 161 (2008), http://yalelawjournal.org/images/pdfs/633.pdf ("One of the criticisms of modern international criminal courts is that they afford too little role and respect for the victims of human rights abuses. The same appears to have been true of these much earlier courts.").

system later broke down, the existence of international treaties against the slave trade helped legitimize Britain's unilateral use of force against, and exercise of jurisdiction over, slavers (p. 82). The example of international slave trade abolition, Martinez writes, rebuts arguments that international human rights law is impracticable or ineffective: "People did care. Nations did cooperate. And in the span of a human life, the transatlantic slave trade was extinguished" (p. 165).

Martinez draws a number of parallels between the mixed courts and contemporary international human rights law. Most explicitly, she details how international efforts to interdict the slave trade were undermined by American constitutional and sovereignty concerns. The United States cooperated closely with the British for a time but was notably reluctant to constitute mixed courts, both on Article III grounds and for fear that granting the British peacetime search rights would offend American dignity and resurrect the contentious issue of impressment (pp. 43-54, 62-63). American reluctance to constitute mixed courts or to prosecute foreign slavers enabled ships outfitted for the slave trade to sail safely under the American flag and delayed the eradication of the slave trade to Cuba.[26] Martinez analogizes the United States' reluctance to sign anti-slave trade treaties to its contemporary resistance to International Criminal Court jurisdiction—an imperfect analogy, she notes, but one that suggests that international courts' ability to advance human rights goal does not necessarily rely on American support and participation (p. 171).

The mixed courts, Martinez argues, offer more than interesting parallels to contemporary issues; they suggest alternate conceptions of international human rights law. International human rights law is commonly described as beginning with the Nuremberg Trials, but the concept of "crimes against humanity" was deployed in reference to the slave trade as early as 1842, and nineteenth-century abolitionists attempted to extend universal jurisdiction over slavers as enemies of humanity (pp. 114-15). Martinez demonstrates that the courts were known to international law specialists in the early twentieth century, though the evidence for their influence on the modern international human rights framework is tenuous (pp. 151-52).[27] The reasons for these courts' absence from modern histories of international human rights law are complex, and Martinez advances a number of insightful explanations for why contemporary histories of international human rights law have started with 1945 and not 1807 (pp. 155-57).

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26. Martinez discusses at length the case of *The Antelope*, in which Chief Justice Marshall held that the slave trade was not contrary to the law of nations and that the United States could not unilaterally reclassify slave trading as piracy under the law of nations. 23 U.S. (10 Wheat.) 66, 66, 77 (1825).

27. Martinez observes that two influential pre-Nuremberg texts on international law, 1 INTERNATIONAL ADJUDICATIONS: ANCIENT AND MODERN HISTORY lxxxi (John Bassett Moore ed., 1929), and MANLEY O. HUDSON, INTERNATIONAL TRIBUNALS: PAST AND FUTURE 4, 23, 181, 183 (1944), noted the existence of international tribunals to adjudicate captured ships engaged in the slave trade (pp. 152-53). Other early twentieth-century international criminal law proposals discussed the slave trade as an international crime (p. 154).

Locating the origins of international human rights law in the mid-nineteenth-century suggests an alternate vision of international human rights law focused on crimes committed by individual, non-state actors, including terrorists, human traffickers, and corporate human rights violators (pp. 163-64). Contemporary international human rights law has focused on abuses committed during periods of armed conflict by individual actors affiliated with extant or aspiring states; tracing the pre-Nuremberg origins of international human rights law "highlights the possibility of making international legal mechanisms a more central tool for addressing human rights violations by private actors today" (p. 163).

Moreover, the history of the mixed courts suggests a complex relationship between international human rights law and the use of force. Britain's military power in the early nineteenth century encouraged weaker powers to sign treaties that advanced British humanitarian goals for decades afterwards and legitimized its subsequent unilateral exercise of force. Martinez suggests that "powerful countries should consider the extent to which international courts can be a vital tool for adding legitimacy to their actions and entrenching norms they support." (p. 170). The United States, she notes, might consider international courts not as threats to its sovereignty but as tools for channeling and sustaining its power (pp. 170-71).

The Slave Trade and the Abolition of International Human Rights Law is an innovative and thought-provoking contribution to the history of international human rights law. As a history of slave trade abolition, its focus on legal institutions imposes certain limitations. Emphasizing the role of treaties and courts in bringing about the end of the slave trade risks minimizing the extralegal means by which the enslaved themselves sought freedom and made slaving more dangerous and costly. This book might benefit from a discussion of shipboard revolts and a more-than-passing mention of the Haitian Revolution.[28] It is nevertheless an engaging account of one significant aspect of slave trade abolition and a worthy addition to the historiography of the subject. It will be of interest to historians and scholars of international law alike.

Governing the World: The History of an Idea. By Mark Mazower. New York, NY: The Penguin Press, 2012. Pp. xix, 475. Price: $29.95 (Hardcover). Reviewed by Adam Goldenberg.

International institutions are designed in retrospect; they aim to shape the future by preventing a return to the past.

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28. Martinez notes that the Haitian Revolution removed a major supplier from the sugar market, reducing competition to British commercial interests and thus enabling passage of the Slave Act of 1807. For more on the complex relationship between the Haitian Revolution and abolition movements, see, for example, David Brion Davis, *Impact of the French and Haitian Revolutions*, *in* THE IMPACT OF THE HAITIAN REVOLUTION IN THE ATLANTIC WORLD 3, 4 (David Patrick Geggus ed., 2001), which states that "[t]he Haitian Revolution impinged in one way or another on the entire emancipation debate from the British parliamentary move in 1792 to outlaw the African slave trade to Brazil's final abolition of slavery ninety-six years later"; and David Patrick Geggus, *Preface* to THE IMPACT OF THE HAITIAN REVOLUTION IN THE ATLANTIC WORLD, at ix (David Patrick Geggus ed., 2001), which details the complex and at times contradictory impacts of the Haitian Revolution on abolition movements.

Two world wars in four decades impelled the creation of the League of Nations, then the United Nations, and then the various organs of European integration.[29] Humanity's failure in Rwanda—and its near miss in the Balkans—begat the Responsibility to Protect.[30] The Holocaust and its progeny produced a new name for an old crime ("genocide")[31] and an often-repeated promise ("never again").

Some survey this sweep and see hindsight bias.[32] By looking backward, they argue, we have leaned too much on sunny counterfactuals and optimistic assumptions about what might have been.[33] In reacting to our own history, critics claim, we have invited everything from mistakes of policy,[34] to catastrophic errors in judgment,[35] to outright abuse.[36]

Mark Mazower takes a different view. Rather than focus on the mess of retrospective moments that make up world history, *Governing the World*

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29. *See generally* Jürgen Habermas, *Why Europe Needs a Constitution*, *in* DEVELOPING A CONSTITUTION FOR EUROPE 17, 18 (Erik Oddvar Eriksen et al. eds., 2004) ("The first generation of dedicated Euro-federalists set the process [of European integration] in train after World War II . . . to put an end to the bloody history of warfare between European nations . . . .").

30. INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT (2001) [hereinafter ICISS, RESPONSIBILITY TO PROTECT]; *see also* 2005 World Summit Outcome, G.A. Res. 60/1, ¶¶ 138-40, U.N. Doc. A/RES/60/1 (Oct. 24, 2005) (endorsing the Responsibility To Protect).

31. *See* SAMANTHA POWER, A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE 42-45 (2003); Steven Leonard Jacobs, *Genesis of the Concept of Genocide According to Its Author from the Original Sources*, 3 HUM. RTS. REV. 98 (2002).

32. Hindsight bias "refers to a biased representation of events or facts once they are viewed in hindsight, with knowledge about the outcome." Hartmut Blank et al., *Hindsight Bias: On Being Wise After the Event*, 25 SOC. COGNITION 1, 2-3 (2007). *See generally* Baruch Fischhoff, *Hindsight Is Not Equal to Foresight: The Effect of Outcome Knowledge on Judgment Under Uncertainty*, 1 J. EXPERIMENTAL PSYCHOL. 288 (1975) (pioneering the concept of "hindsight bias").

33. *See, e.g.*, Stephen Wertheim, *A Solution From Hell: The United States and the Rise of Humanitarian Interventionism, 1991-2003*, 12 J. GENOCIDE RES. 149, 154-58 (2010).

34. *See, e.g.*, Christoph O. Meyer et al., *Recasting the Warning-Response Problem: Persuasion and Preventive Policy*, 12 INT'L STUD. REV. 556, 564 ("With the benefit of hindsight comes a tendency to focus on failures of preventive action, while successes remain invisible both in terms of cognitive impact and action on the ground.").

35. *See, e.g.*, Wertheim, *supra* note 33, at 165-67 (describing support for the 2003 Iraq War among "humanitarian interventionists," including Michael Ignatieff); Michael Ignatieff, *Getting Iraq Wrong*, N.Y. TIMES, Aug. 5, 2007, (Magazine), http://www.nytimes.com/2007/08/05/magazine/05iraq-t.html ("Many of us believed, as an Iraqi exile friend told me the night the war started, that [the war] was the only chance the members of his generation would have to live in freedom in their own country. How distant a dream that now seems.").

36. *See* ANNE ORFORD, INTERNATIONAL AUTHORITY AND THE RESPONSIBILITY TO PROTECT 72 (2011) (describing Belgium's purported "humanitarian intervention" into the Congo in 1960); *id*. at 134 ("The deprivations of liberty in the absolutist states of early modern Europe, the police actions of colonial powers and the terror inflicted by the security forces of fascist Germany were all explained as exercises in institutionalizing protection."); Joelle Tanguy, *Redefining Sovereignty and Intervention*, 17 ETHICS & INT'L AFF. 141, 147 (2003) (reviewing ICISS, RESPONSIBILITY TO PROTECT, *supra* note 30) ("[I]n the 1990s, humanitarianism was used as a fig leaf for political neglect or for self-interested intervention. In the coming era, the rights discourse is likely to be further instrumentalized."); *see also* Adam Goldenberg, Book Note, 37 YALE J. INT'L L. 219, 221 (2012) (reviewing ORFORD, *supra*) ("At last fall's General Assembly session . . . Zimbabwean President Robert Mugabe invoked [the Responsibility to Protect] even as he denounced the NATO mission in Libya, and Syrian Foreign Minister Walid Al-Moualem proudly described his government's 'responsibility to protect its citizens.'" (quoting Walid Al-Moualem, Minister for Foreign Affairs and Expatriates of the Syrian Arab Rep., Address at the General Debate of the Sixty-Sixth Session of the United Nations General Assembly (Sept. 26, 2011))).

locates the primary theme: "Somewhere . . . between world government and no government, lies a vision of organized cooperation among nations . . . of the kind that has inspired the United Nations, the European Union, and other such multilateral organizations" (p. xiii).

Mazower's central characters are the Great Powers. He begins with the nineteenth-century Concert of Europe, which "survived because too much was at stake [for Austria, Russia, Britain, Prussia, and France] for it not to" (p. 9). Later chapters proceed chronologically, presenting subsequent developments—from the early twentieth-century international arbitration movement (p. 90), to the League of Nations (pp. 117-53), to the modern United Nations (pp. 191-213)—as similar products of power calculations by self-interested states. Even the Responsibility to Protect, to Mazower, "looks like nothing so much as the return of the civilizing mission and the 'humanitarian' interventions of previous centuries . . . [such as] Fascist Italy's cynical rationalization of its invasion of Ethiopia in 1935 as an intervention in the name of civilization . . ." (p. 395).[37] Might makes rights, too.

Though Mazower describes more than merely the moves of the major powers, he mostly understands history through the rational, national interest-based politics of state actors.[38] The result is an overwhelming focus on power itself; in writing a history of internationalist idealism, Mazower seems to have convinced himself that such idealism is ultimately illusory.

But what, then, of international law? Mazower asserts that a "robust international law regime" is antithetical to the diplomatic paradigm of the League of Nations and the United Nations because both reflect "the preference of [their] founders to preserve the political discretion of [their] members" (p. 153). After a century of conflict between "wise statesmen" and "well-meaning but impotent lawyers" (p. 238) the outcome has been "[l]aw's demise" (p. 256).

But this is so only if "international law" is reduced to what Mazower presents as its mid-nineteenth-century ideal type: "a complete alternative mode of conducting relations between states," one that would "transform[] the conservative order . . . and challeng[e] the authority of diplomats" (p. 66). More than a century later, Mazower laments, the dreams of the earlier epoch remain unrequited: "Despite the endless invocation of the 'rule of law' by American administrations and international agencies . . . what international law in particular really stands for today is not at all clear" (p. 402). We are left, instead, with a pessimistic view of international law as the systematized

37. For a more optimistic take on the role of U.S. power in sustaining the human rights movement, see ARYEH NEIER, THE INTERNATIONAL HUMAN RIGHTS MOVEMENT: A HISTORY 317 (2012), which states that "[n]o government, and no intergovernmental body . . . now plays a role comparable to that of the United States in the quarter-century prior to the [September 11, 2011] terrorist attacks on New York and Washington"; and Michael Ignatieff, Op-Ed., *Is the Human Rights Era Ending?*, N.Y. TIMES, Feb. 5, 2002, http://www.nytimes.com/2002/02/05/opinion/is-the-human-rights-era-ending.html, which argues that "[t]he humanitarian interventions of the 1990s . . . [were] made possible because Western militaries had spare capacity and time to do human rights work."

38. *See* GRAHAM ALLISON, ESSENCE OF DECISION: EXPLAINING THE CUBAN MISSILE CRISIS 4-7 (1971) (distinguishing "Model I" analysis, which examines "Rational Actor" behavior at the state level, from "Model III" analysis, which "focuses on the politics [within] a government").

aggregation of states' rational preferences—the set of rules by which rational state actors *choose* to live.[39] Despite the best hopes of its founders, international law does not check power; if anything, Mazower posits, the converse is the case.

As Oona Hathaway and Scott Shapiro have argued, this basic criticism of international law is misguided in its simplicity.[40] Yet Mazower leaves us with a picture of international law as a tool of moral subjectivity, a sort of useful idiocy for darker diplomatic schemes. He takes pains to remind us that modern international law was born out of imperialist beliefs in "the superiority of European civilization" (p. 70), and he highlights in particular the role of the South African Jan Smuts—an apostle of Apartheid—in the founding of the League of Nations (pp. 131-35). Mazower draws a straight, simple line between the legal language used to legitimate colonial occupation—the "language of responsibilities, care, and duties"—and "the vocabulary with which a postcolonial 'international community' now validates rule by its own executive organs, in the shape of the United Nations" (p. 73). This is an increasingly familiar line of argument—that the rhetoric of protection is suspect because it has been deployed for deplorable purposes in ages past.[41]

Mazower has written elsewhere that "[w]e live in an age in which the so-called international community, driven by the west's ethical concerns, no longer respects the sanctity of state sovereignty or the inviolability of borders, and intervenes more readily on humanitarian grounds than at any time in the past century."[42] He may be right. But why is that for the worse? True, international law now permits intervention to prevent atrocities. But is such moral objectivity really objectionable just because its rhetoric is superficially similar to some sinister antecedents? Perhaps, Mazower suggests, but persecuted populations might beg to differ.

Mazower seems to see the pretexts of the past in the pretentions of the present, and his retelling of the history of international law suffers for it. Out of his focus on state-level power politics emerges a deep suspicion with international institutions—a degree of skepticism that is more appropriately applied retrospectively than prospectively. Here, Mazower's contribution is as much hypothesis as history; whether internationalism will yet atone for its

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39. For elaboration of the argument that international law "can be binding and robust only when it is rational for states to comply with it," see JACK L. GOLDSMITH & ERIC A. POSNER, THE LIMITS OF INTERNATIONAL LAW 202 (2005). For a statement by a then soon-to-be U.S. diplomat that lends support to this view, see John R. Bolton, *Is There Really "Law" in International Affairs?*, 10 TRANSNAT'L L. & CONTEMP. PROBS. 1, 48 (2000). *But see* TAI-HENG CHENG, WHEN INTERNATIONAL LAW WORKS: REALISTIC IDEALISM AFTER 9/11 AND THE GLOBAL RECESSION 119 (2012) ("Legalism confers stability to international relations and manages change according to shared expectations of appropriate conduct.").

40. Oona Hathaway & Scott J. Shapiro, *Outcasting: Enforcement in Domestic and International Law*, 121 YALE L.J. 252 (2011) (arguing for the legitimacy of international law by presenting the threat of exclusion—"outcasting"—as a means of coercive enforcement).

41. *See* ORFORD, *supra* note 36 (making this argument).

42. Mark Mazower, *'From the Ruins of Empire,'* FIN. TIMES (London), June 27, 2012, http://www.ft.com/intl/cms/s/2/421c4c26-d4bd-11e1-9444-00144feabdc0.html (reviewing PANKAJ MISHRA, FROM THE RUINS OF EMPIRE: THE REVOLT AGAINST THE WEST AND THE REMAKING OF ASIA (2012)).

original sins remains to be seen. But when the time comes to take the measure of modern international institutions, *Governing the World* will serve as a useful benchmark. As a work of history, though unfinished, it is an impressive achievement.

People, States and Hope: Cosmopolitanism and the Future of International Law. By Trevor Redmond. Nijmegen, the Netherlands: Wolf Legal Publishers, 2012. Pp. 465. Price: $53.75 (Paperback). Reviewed by Trinity Brown.

In her 1994 essay *Patriotism and Cosmopolitanism*, Martha Nussbaum invokes the oft-cited account of Diogenes, the fourth-century B.C. Greek philosopher who famously proclaimed himself to be "a citizen of the world."[43] Noah Feldman's more recent 2007 piece, *Cosmopolitan Law?*, takes up that anecdote to similar effect.[44] Both Nussbaum and Feldman suggest that this moment was the beginning of a continuing conversation around a cosmopolitan ideal, one that emphasizes "the role of the individual and the moral responsibilities he or she may have beyond the boundaries of his or her own state" (p. 17). Trevor Redmond's *People, States and Hope: Cosmopolitanism and the Future of International Law* furthers that dialogue, envisioning how citizens, nations, and an improved international law regime might engage proactively with the crisis of transnational economic inequality.

With this central question in mind, Redmond frames his project broadly, as an "explor[ation of] the role of international law in transforming a minimal order between states into a cosmopolitan community of humankind" (p. 17). Redmond focuses on the application of Andrew Linklater's "manifesto for international relations theory"—including Linklater's principles of inclusion and exclusion—to the context of international law (p. 17). *People, States and Hope* is largely descriptive and deeply rooted in theory; Redmond devotes sizeable portions of the book to presenting and unpacking existing scholarship on cosmopolitan and international relations theory. Perhaps because it is so broad in scope, he is able to engage only briefly with practical mechanisms for realizing transnational distributive justice. Despite that broad focus, Redmond makes strong and nuanced arguments for cosmopolitanism as a legitimate and "intellectually respectable" (p. 397) guiding principle for addressing the shortcomings of international law.

Redmond seems especially conscious of the need to account for popular critiques that cite potential shortcomings of cosmopolitan theory. He actively addresses the opposing viewpoints of legal realists and of those who defer to a communitarian, or state-centered, ordering of the international legal landscape. Notably, he preempts criticism even in the title of his book, which is inspired

43. Martha C. Nussbaum, *Patriotism and Cosmopolitanism*, BOS. REV., Oct./Nov. 1994 http://bostonreview.net/BR19.5/nussbaum.php.

44. Noah Feldman, *Cosmopolitan Law?*, 116 YALE L.J. 1022, 1027 (2007).

by Barry Buzan's work on national security in *People, States and Fear*.[45] Redmond is appropriately strategic in responding to these criticisms, advancing his argument incrementally and in a way that makes it difficult for skeptics to summarily dismiss his ideas as "idealistic utopianism" (p. 48). Redmond rigorously historicizes and contextualizes his argument as a logical product of an ongoing dialogue between diverse political and international relations theories. This contextualization makes his argument accessible to readers outside of an international law context, but also serves his work by giving it the strong theoretical basis that an argument for a paradigmatic shift demands. Chapter Six, for example, which considers Kant's and Redmond's idea of "The New Cosmopolitanism," literally proceeds in "steps" rather than traditional sections. In this Chapter, Redmond's framing of his argument is especially effective insofar as he is able to recast Kant's international reform project and theory of liberal internationalism as precursors to his own conception of cosmopolitanism. That effective framing allows Redmond's argument to have some traction, even with those readers who might otherwise see his views as radical.

Redmond is also particularly adept at framing his argument historically, restructuring our perceptions of historical moments in cosmopolitan terms. For example, while Redmond readily highlights the inability of the United Nations to fully implement its stated economic development goals in its 1949 *National and International Measures for Full Employment* (pp. 32-33), he challenges the popular notion that resistance to cosmopolitan values by political powers necessarily drives such failures. Redmond goes on to present U.N. policy failures alongside statements from political leaders: President Harry Truman's 1949 Inaugural Address, in which he refers to a "decent, satisfying life" as "the right of all people" (p. 32), and President John F. Kennedy's 1961 address to the U.N. General Assembly, in which he prioritizes the need to confront "poverty and illiteracy and disease" over self-determination and sovereignty (p. 34). In juxtaposing moments like these, Redmond insinuates cosmopolitan values into popular historical narratives. Accordingly, the book effectively situates cosmopolitanism as a realistic, and even familiar, concept.

In keeping with Kennedy's comments, *People, States and Hope* suggests that it is the very notion of state sovereignty that partially accounts for the failure of international law to embrace cosmopolitanism and, by extension, to take seriously the problem of transnational inequality. Redmond does not advocate abandoning the nation as a unit of organization, but instead takes issue with the centrality of the idea of the sovereign state in our international legal scheme. Redmond refers to this problem as indicative of "international law's foundational assumption, namely the communitarian sovereign state" (p. 103). In devoting a chapter to the consideration of the problem presented by such an assumption, Redmond calls international law to task for subjecting itself to the so-called "law of statehood" in such a way that the entire

45. BARRY BUZAN, PEOPLE, STATES AND FEAR: THE NATIONAL SECURITY PROBLEM IN INTERNATIONAL RELATIONS (1983).

international law regime is impaired. Redmond's argument successfully challenges both the historical narrative of the sovereign state and the underlying political theory that allows for its perpetuation. By substantively challenging several of the prevailing theoretical frameworks, such as contract theory, which privilege the concept of the state in keeping with a communitarian ideal, *People, States and Hope* forces us to recognize the limitations of these ideas and prompts realization of the extent to which such limitations restrict the potential for distributive and transnational economic justice.

Redmond correctly recognizes that these limitations have potentially far-reaching implications for individuals, or citizens, living within states. In speaking to the problem of citizenship within a communitarian system, Redmond's argument is particularly compelling. By highlighting the inability of states to respond to individual needs as a key indicator of the need for a new paradigm, Redmond presents the fundamental failures of the state as evidence of a need for change.

However, although Redmond correctly identifies migration and globalization as factors underlying the increasingly complex notion of citizenship, his argument ultimately suffers from his incomplete engagement with the topic. Redmond does not address how the problem of citizenship might be addressed if the ideal he advocates is adopted. This omission is particularly salient because he argues for "a moderate form of cosmopolitanism," in which "the state is recognised as a legitimate source of obligations and loyalty, so long as a minimum degree of welfare or capabilities is first guaranteed to all persons everywhere" (p. 406). Lacking from Redmond's analysis is a discussion of the tension that would result between the state's external duty to non-citizens in need and its internal obligations to its own citizens. Under a moderate cosmopolitan system, it is unclear how a state might evaluate the relationship between the expectations of its citizens and its obligations to them in the event that external duties affect existing national norms. Similarly, we are left to wonder how less developed states might reconstitute citizenship if the needs of their citizens are largely being met by other states. While Redmond's overall argument is strong, these ambiguities render his vision somewhat incomplete.

Similarly troubling is Redmond's relatively brief discussion of viable mechanisms for realizing distributive justice. Although he grounds cosmopolitanism as a potential theory, he does not sufficiently articulate what a cosmopolitan social justice framework would look like in practice. In one of the final chapters, Redmond does provide several examples of distributive justice initiatives, such as the Monterrey Consensus (pp. 383-84) and Garrett Wallace Brown's concept of a cosmopolitan constitution (pp. 391-92), but it remains somewhat unclear how these structures map onto Redmond's moderate cosmopolitanism. Since Redmond argues that transnational economic inequality may be best remedied by institutional—rather than individual—means, his readers would certainly benefit from a more detailed analysis of these structures. Thus, while Redmond pushes international legal structures to

invest in a cosmopolitan theory and vision, his mechanisms for reimagining these structures are not entirely clear.

That being said, *People, States and Hope* provides much-needed direction in envisioning a cosmopolitan system, particularly for international law scholars and practitioners. While Redmond emphasizes the need for identification with cosmopolitan principles on an individual level, he ultimately makes a strong argument for institutional change. The author advocates the reorganization of institutional global structures around a cosmopolitan system and calls for individuals and nations to hold those structures accountable to a social justice agenda. Most importantly, Redmond does more than simply suggest that such a system is possible. Towards the end of the book, he invokes Charles Beitz's example of the international trade scheme as an existing space of social cooperation, one that could potentially be instrumental in implementing a larger distributive project (pp. 367-68). Redmond does not provide a well-defined path to transnational economic justice, but he is clearly invested in taking the project beyond mere theory. In this way, *People, States and Hope* is most useful in providing a strong theoretical framework and a starting point for implementation. Redmond is a compelling advocate for cosmopolitanism as a basis for distributive justice, and he vehemently pushes for a legal system that moves beyond the restrictions of strict communitarianism so that it might begin to address the global poverty crisis. In doing so, Redmond most convincingly advocates for hope, challenging practitioners of international law to carve out spaces for its realization.

Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815-1914. By Davide Rodogno. Princeton, NJ: Princeton University Press, 2012. Pp. 391. Price: $39.50 (Hardcover). Reviewed by Will Smiley.

Writing in March 2011, as the United States, Britain, and France debated intervention in Libya, Davide Rodogno suggested that those states would "probably be faced with a stark choice between waiting until massive numbers of lives have been lost or reaching rushed agreement on forceful action in response to ambiguous evidence before tragedy strikes" (p. 274). That insight comes at the end of Rodogno's new book, *Against Massacre*, which addresses nineteenth-century interventions in the Ottoman Empire—a topic as timely now, with questions about Syrian intervention looming, as it was during the Libyan conflict.

The backdrop for Rodogno's discussion is the "Eastern Question" in nineteenth-century European diplomacy: how were the great powers to deal with the military weakness of the Ottoman Empire? More pointedly, what was to be done about the domestic violence unleashed in the Ottoman Empire as independence movements, shrinking borders, economic dislocation, and state attempts at centralization collided, often resulting in atrocious brutality against unarmed Ottoman subjects? On a number of occasions, France, Britain, and Russia invoked their concern over atrocities against Ottoman Christians as they took action within the Ottoman Empire. Rodogno asks why the powers acted in some instances of massacre, but not others, and to what extent these actions

were motivated either by imperial expansion, or by "humanitarian intervention"—a term which he defines as "a coercive diplomatic and/or armed (re)action against massacre undertaken by a state or a group of states inside the territory of a target state" (p. 2).

Rodogno's topic is not only timely and fascinating, but also remarkably unstudied. The only major work to cover similar ground is Gary Bass's 2008 book *Freedom's Battle*.[46] Bass drew lessons for the present day from nineteenth-century interventions—that democracy and a free press in Western countries can propel beneficial humanitarian interventions, and that such interventions are best pursued multilaterally.[47] Rodogno covers much of the same factual ground, though in greater historical depth—and he emerges less encouraged by the past, and less optimistic about the future.

Rodogno uses his first two chapters to lay down the background of nineteenth-century intervention in theory and practice, and to place the Ottoman Empire in (or rather, outside) the international legal system. European powers, he argues, did not intervene in the affairs of sovereign states, unless those states were seen as beyond the pale of civilization—which the Ottoman Empire was, according to many Europeans. But that seems too sweeping of a conclusion. Rodogno does not account for more nuanced work suggesting that in the late eighteenth and early nineteenth centuries, the Ottoman Empire *was* part of the European system of "diplomatic relations and international legal institutions,"[48] and was a signatory to treaties which British Ambassador to Istanbul Robert Ainslie called "hitherto respected as sacred, and accounted binding by all civilized Nations of whatever Religion."[49] More broadly, both chapters seem to flatten historical changes over the course of the nineteenth century. The authors Rodogno cites in his intellectual history of Ottoman exclusion, and the international legal scholars he references who discussed intervention, almost all date to the end of the nineteenth century, leaving one to wonder whether the early- and mid-century events Rodogno discusses in the following chapters were shaped by these views—or whether the events helped to create them.

In Chapters Three through Ten, Rodogno takes up a number of case studies of French and British interventions within Ottoman territory, which sometimes involved Russia as well. The character of these European interventions varied widely; some were violent (as at the 1827 Battle of Navarino), and others were not (as with efforts in Macedonia); some led to

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46. *See* GARY J. BASS, FREEDOM'S BATTLE: THE ORIGINS OF HUMANITARIAN INTERVENTION (2008).

47. *Id.* at 6-8, 31-38.

48. İlber Ortaylı, *Ottoman-Habsburg Relations and Structural Changes in the International Affairs of the Ottoman State (1740-1770)*, *in* TÜRKISCHE MISZELLEN 287, 288 (Jean-Louis Bacqué-Grammont et al. eds., 1987).

49. Letter from Robert Ainslie to London (Jun. 22, 1791) (on file with The National Archives of Great Britain, Foreign Office Papers Collection, Series 78, vol. 12A, letter #15). The context leaves it unclear whether the words are Ainslie's, or whether he was translating the statement of an Ottoman official. For a number of recent studies of Ottoman diplomacy, see OTTOMAN DIPLOMACY: CONVENTIONAL OR UNCONVENTIONAL? (A. Nuri Yurdusev ed., 2004).

wider wars (as in the 1820s and 1870s), and some did not. Perhaps most interestingly to modern legal scholars, many interventions were justified by appeals to treaty law and were undertaken with Ottoman consent—suggesting they might have been considered legal even in today's post-U.N. Charter world.

What unifies these case studies is Rodogno's view that they are all "interventions," and not "wars"—even when violence was involved. He considers some "humanitarian," and others not. He judges, for example, that Navarino was not a humanitarian intervention because it "did not save strangers or bring immediate relief to Greek civilian populations" (p. 83), and that the 1877-1878 Russo-Turkish War, justified by atrocities in Bulgaria, was disqualified as "humanitarian" because it involved Russian territorial expansion (p.164). The basis for these judgments, however, is somewhat slippery. Although Rodogno provides his own definition of "humanitarian intervention," he often leaves the reader unsure whether he is classifying particular actions based on that definition, on contemporary views, or on late nineteenth-century legal perspectives.

Throughout, Rodogno bases his discussion on extensive British and French archival documentation, along with an impressive array of printed work from the second half of the nineteenth century. Unfortunately, for linguistic reasons, Rodogno was unable to access Ottoman archives, newspapers, or memoirs, leaving both Ottoman officials and the survivors of massacres voiceless in his narrative. This is an unfortunate omission, especially because Rodogno does not consistently draw upon Ottomanist secondary literature—a field that has grown enormously in recent decades, since the opening of the Ottoman Başbakanlık archives in Istanbul.[50] Rodogno recognizes his resulting limitations, noting that histories "of the interventions from the perspective of the target state (which can only be written by an Ottomanist) or from the perspective of the victims of massacre and atrocities" are yet to be undertaken (pp. 2-3). In the meantime, he offers the caveat that, rather than searching for the truth of each incident on the ground, he "starts from the accounts of massacres as European observers and diplomats reported them" (p. 3). Such methodological caution is commendable, but as the book goes on, Rodogno at times seems nonetheless to take European accounts at face value.

Such accounts are almost entirely French and British; despite the important role of Russia in Rodogno's narrative, the view from St. Petersburg is largely absent. This is regrettable because the threat of Russo-Ottoman war was at the core of the "Eastern Question." It was fear of such wars—invariably ending in Russian victories—that led the British to favor intervention in the 1820s, and to oppose it in the 1870s, but on both occasions, the Russians ultimately deployed humanitarian arguments as they went to war with the Ottomans. This leaves the reader wondering whether, from the Russian viewpoint, Navarino appears simply as the opening battle in one of the

50. Among Ottomanist works conspicuously absent from Rodogno's bibliography are M. ŞÜKRÜ HANİOĞLU, A BRIEF HISTORY OF THE LATE OTTOMAN EMPIRE (2008); REŞAT KASABA, A MOVEABLE EMPIRE: OTTOMAN NOMADS, MIGRANTS, AND REFUGEES (2009); and DONALD QUATAERT, THE OTTOMAN EMPIRE 1700-1922 (2d ed. 2005).

numerous eighteenth-and nineteenth-century Russo-Ottoman wars,[51] rather than as a separate instance of intervention. Likewise, Rodogno quickly dismisses the possibility that the 1877-1878 Russo-Turkish War was "humanitarian," invoking the later opinion of Yale legal scholar Theodore Woolsey (p. 164)—but was this the Russian view? More broadly, the Russian Empire had a history of legal innovation in its relations with the Ottoman Empire. For example, late eighteenth-century treaty law, contrary to popular myth, did not give the Russians a general right of intervention on behalf of Ottoman Christians[52]—but the Russians *did* gain, and then quickly relinquish, a right to demand the liberation of all Christian slaves in the Ottoman Empire.[53]

This unique history of Russo-Ottoman legal relations is invisible in Rodogno's French- and British-centered story. This is regrettable because, when official Ottoman voices do filter through in Rodogno's French and British sources, they suggest that Russia was central to the Ottomans' own view of their situation—and to their objections to intervention. For example, Ottoman Grand Vizier Ali Pasha complained in 1867, in the midst of debates over unrest on Crete, that Russia should not speak about "the outraged rights of humanity[,] when to maintain her rights in Poland, she crushed a nation which also demanded its independence . . . [and] when she exiled to Siberia women in mourning for their fathers and brothers (p. 118).[54] The Ottomans, on other words, contested the application of international law, arguing that the French and British held a double standard based on target states' power, or their perceived civilizational level. And this was precisely the point, Rodogno contends: European states *did* sometimes have humanitarian motives, but power politics and cultural biases constrained their actions. Russia was untouchable; the Ottomans were not.

Uneven responses, Rodogno argues, still characterize intervention today. His book closes by putting twentieth- and twenty-first century interventions in conversation with nineteenth-century events. He notes the continued complexity of post-intervention rebuilding (p. 267), the role of press coverage for atrocities (p. 269), and the persistent tendency to ignore atrocities against groups perceived as themselves being "guilty" of massacres. In the nineteenth century, the "guilty" groups in western European eyes were Ottoman Muslims; in the twentieth century, they were Hutus, Iraqi Sunnis, and most prominently, Serbs.[55] Rodogno could have taken these observations further, and readers may find that the historical data he provides can address other theoretical questions.

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51. For these conflicts, see generally VIRGINIA H. AKSAN, OTTOMAN WARS 1700-1870: AN EMPIRE BESIEGED (2007).

52. Although it is not clear from the body of his work (p. 29), Rodogno's footnotes (for example, p. 287 n.37) show that, unlike Bass, he is aware of Roderic Davison's research demonstrating that the 1774 Treaty of Küçük Kaynarca was *not* originally understood to include such a right. *See* BASS, *supra* note 46, at 354, 360-61; Roderic H. Davison, *"Russian Skill and Turkish Imbecility": The Treaty of Kuchuk Kainardji Reconsidered*, 35 SLAVIC REV. 463 (1976).

53. *See* Will Smiley, *Let* Whose *People Go? Subjecthood, Sovereignty, Liberation, and Legalism in Eighteenth-Century Russo-Ottoman Relations*, 3 TURKISH HIST. REV. 196 (2012).

54. Reviewer's translation.

55. *See* Deana Kjuka, *Madeline Albright's Scrap with Pro-Serbian Activists in a Prague Bookstore*, ATLANTIC, Oct. 29, 2012, http://www.theatlantic.com/international/archive/2012/10/madeleine

Ultimately, Rodogno is less optimistic about the future than Bass was, though he rejects reductionist views of both past and present interventions as nothing more than naked imperialism. For Bass, the 1999 Kosovo conflict inspired hope that Western media and political freedoms would propel future multilateral interventions.[56] Rodogno, in contrast, sees that intervention as only "an exception rather than a meaningful precedent for a new international practice" (p. 261). He concludes that, despite the proposed norm of "Responsibility to Protect," "the current paradigm of humanitarian intervention is not entirely different from that of the nineteenth century" (p. 274). Intervening states will continue to act with mixed motives, inconsistently, selectively, after the fact, and only against weak target states.

From a legal perspective, Rodogno raises at least as many questions as he answers. His own definition of humanitarian intervention begs to be disaggregated into a number of historical and legal questions about its components. Given that the concept of humanitarian intervention itself seems to have changed over the course of the nineteenth century, to what extent did law shape practice, and practice shape law? In other words, what, in legal terms, did European policymakers think they were doing at the time they did it? How important was, and is, the distinction between an "intervention" and a "war"? If most interventions were authorized by Ottoman consent, where does this leave our understanding of the historical development of one of the most hotly contested issues in current international law: the use of force *against the wishes* of a sovereign state?

In summary, Rodogno brings a welcome historical perspective to a vital topic, enriching the debate with archivally-based arguments. Although his archives could have benefited from more diversity, and his arguments could have been more pointed, the book breaks new ground and provides a fascinating narrative that will be of great interest to historians, legal academics, and international relations scholars alike.

-albrights-scrap-with-pro-serbian-activists-in-a-prague-bookstore/264245/ (reporting on an altercation in which Albright referred to protesters against U.S. actions in Kosovo as "disgusting Serbs").

56. *See* BASS, *supra* note 46, at 42, 342.