

BOOK ANNOTATIONS

The Temporal Jurisdiction of International Tribunals. By Nick Gallus. New York, NY: Oxford University Press, 2017. Pp. xxix, 158. \$190 (hardcover).

REVIEWED BY RASHMIKA NEDUNGADI

Temporal jurisdiction, or *jurisdiction ratione temporis*, refers to the time when an underlying act or dispute must have occurred before a tribunal may adjudicate a case. Temporal jurisdiction, like subject matter or personal jurisdiction, is a preliminary question. In the book *The Temporal Jurisdiction of International Tribunals*, author Nick Gallus examines how international tribunals approach questions of temporal jurisdiction. Given the ever-expanding number of cases before international tribunals, it is important to clarify limits on temporal jurisdiction for both States bringing claims and tribunals hearing claims. Currently, there is no succinct rule or set of rules of international law regarding temporal jurisdiction. Thus, Gallus's discussion and categorization of historical trends on temporal jurisdiction, in effort to establish clear rules of behavior, aims to allow claimants and tribunals to know where and when a case can be adjudicated.

Gallus centers his analysis on two goals: first, to reduce confusion by clarifying the limits on the temporal jurisdiction of international tribunals and any distinctions between those limits; and second, to determine common principles between different tribunals' assertions of temporal jurisdiction. Gallus achieves his first goal fairly well, as he defines categories of questions a tribunal typically considers when its temporal jurisdiction is challenged, and provides a wide range of case law to support his conclusions. However, Gallus falls short in his second goal, failing to identify common principles underlying tribunals' approaches. Throughout Gallus's analysis, in fact, he points to a lack of uniformity in the principles' applications.

Gallus divides his analysis into three main parts: jurisdictional questions based on the timing of the instrument, jurisdictional questions based on the timing of the underlying act, and jurisdictional questions based on the timing of the "dis-

pute.” Regarding the first category, Gallus further divides it into three sub-categories: (1) jurisdiction over acts outside the period that the breached obligation was in force, (2) jurisdiction over acts *before* a State accepted the tribunal’s jurisdiction, and (3) jurisdiction over acts before the period of limitation. The first two categories are similar, in that they define terms under which a State is under a tribunal’s jurisdiction—either the tribunal itself asserted obligations on State parties, or the States parties outlined their own terms at the time of accepting the tribunal’s obligations. The third category also deals with tribunals’ asserted time limits on State claims, but it is slightly more flexible, as it is rarely defined at the outset.

In general, Gallus claims that international law has recognized that a State cannot be held responsible for acts before an obligation was imposed, or after an obligation expires. Gallus effectively illustrates these principles through the *Rainbow Warrior* case, among others, indicating that the most important factor is *when* the breach occurred. If the breach occurred after a State accepted an instrument, even if that obligation since expired when a claim was brought, the State can still be found in breach of the agreement.

A significant part of Gallus’s analysis discussed the “rule against retroactivity,” by which a State cannot be held accountable for treaty obligations that took place before the treaty came into force. Gallus asserts that Article 28 of the Vienna Convention on the Law of Treaties, indicating a rule against retroactivity, is not a general principle of law, but instead may be customary international law. However, in the same chapter, Gallus also discusses situations where the rule against retroactivity is overlooked. In the case *Emilio Augustin Maffezini v. Kingdom of Spain*, the ICSID Arbitral Tribunal found that, while Spain had only entered into an investment treaty with Argentina in September 1992, Spain breached the treaty by transferring funds from Maffezini’s bank account seven months before the treaty came into force. In the *Middle East Cement* tribunal, a decree prohibiting the import of cement was found to breach an investment treaty between Egypt and Greece, even though the decree was issued four years before the treaty came into force. In *Krishna Achuthan and Others v. Malawi*, the African Commission on Human and Peoples’ Rights found that Malawi breached the African Charter on Human and People’s Rights through its trial of political dissi-

dents in the 1980s—actions taken before Malawi ratified the Charter in 1990. Gallus cites instances from the International Court of Justice (ICJ), the Permanent Court of International Justice (PCIJ), and the World Trade Organization (WTO) Appellate Body for a similar proposition. Gallus also points to a commentary from the International Law Commission, which states that “there is nothing to prevent parties from giving a treaty, or some of its provisions, retroactive effects if they think fit.” Instead of explaining this clear departure from a rule of customary international law, Gallus glosses over tribunals’ rejections of the rule against retroactivity, simply stating in the chapter summary that inconsistencies “seem to be accidental rather than arising from a conscious rejection of the rule.” Given the number of cases Gallus cites which have been decided contrary to the rule against retroactivity, this dismissal seems lazy.

Next, Gallus discusses temporal jurisdiction over acts before the acceptance of the tribunal’s jurisdiction. Here, a common refrain of Gallus’s book emerges—the idea that any of the “rules” established vary by tribunal. The main chapter discussing this topic turns to States and treaties’ declarations on the temporal powers of tribunals. According to Gallus, when States accept a tribunal’s jurisdiction, they will often limit its jurisdiction over events that occurred before it accepted jurisdiction—using either the “Belgian formula” to include only jurisdiction over future acts or the “reverse Belgian formula” to *exclude* jurisdiction over all past acts. Where States’ declarations are silent on temporal limits, tribunals vary in their approaches. The ICJ adheres to limits based on the declarations’ dates of acceptance, only asserting jurisdiction over events taking place after the declaration’s date. Both the European Court of Human Rights (ECtHR) and the African Court of Human Rights assert that they have jurisdiction where the declaration accepting its authority was silent on the issue. In contrast, the U.N. Human Rights Commission, the Inter-American Commission of Human Rights, and the Inter-American Court have refused jurisdiction even when the State’s declaration contained no express temporal limits. While it is organizationally logical for Gallus to structure his analysis around the timing of acceptance or acts, based on the amount of variation between tribunals, it might have been more effective if Gallus were to discuss each tribunal’s practice individually.

In the last of the three main organizational categories, Gallus discusses acts before the period of limitation. The period of limitations operates similar to a statute of limitation in domestic cases, barring cases from coming before the tribunal after a certain amount of time has passed. As with other limits on temporal jurisdiction, the period of limitation differs between tribunals. Some tribunals have set limitations—the ECtHR allows six months, the Claims Settlement Agreement allows one year, and NAFTA allows three years. Some tribunals have only a period of limitations for “a reasonable period of time.” The African Court and Commission on Human Rights both have accepted delays of between two and eighteen months, but also have rejected delays between fifteen months and eleven years. Though the decisions to accept a delay of eighteen months and reject a delay of fifteen months seem arbitrary, Gallus does not address what tribunals have considered in assessing “reasonableness.” At the close of this chapter, again, Gallus notes that the period of limitations “[is] different in most treaties and there is little commonality in their application.”

While Gallus talks at length about written declarations on temporal jurisdiction—both from the State and tribunals—Gallus does not discuss the impact of claims brought under customary international law, general principles of law, or other instruments that bind States without a signature. Where an obligation has a concrete date, such as an obligation under treaty, there is a clear “start” date when the obligation can be imposed. For obligations under customary law, which frequently result in cases before international tribunals, it is difficult to assess when exactly the law came into force. Where there is no concrete “date” to an obligation, Gallus has not discussed what impact this would have on temporal jurisdiction. Considering customary law binds all States, it is important to address whether asserting temporal limits would essentially be nullified in cases concerning a breach of customary law.

Gallus then goes on to discuss the effects of acts outside temporal limits, within the three categories initially laid out: (1) before the entry into force of the obligation allegedly breached, (2) before the acceptance of jurisdiction, and (3) before the period of limitation. Gallus’s explanation of where acts fall on the temporal line is well done, as he explains very

clearly the differences between the effects of continuing acts, the effect on later acts, and the use of prior acts as evidence for future proceedings. However, Gallus's discussion of acts would best be spliced into the first three chapters. In the sections following the first three chapters, Gallus is often repetitive, mentioning the same cases for the same propositions. For example, Gallus first cites the *Loizidou* case before the ECtHR regarding a State's acceptance of a tribunal's jurisdiction, and begins discussing the case in the context of continuing acts. In the *Loizidou* case, claimant Titina Loizidou and other Greek Cypriots were forced by Turkish troops to leave Cyprus in 1974. In 1989, Loizidou brought her claim before the ECtHR, alleging a breach of property rights. Turkey objected to the ECtHR's temporal jurisdiction, noting that it had only accepted the court's jurisdiction in 1990. However, the court found Loizidou's claim was properly before the court, as the breach of her property rights continued after Turkey became a party to the ECtHR, making it a "continuing act." The *Loizidou* case is again mentioned eleven times in the book, all related to continuing acts, but the chapter defining continuing acts is much later in the book.

In the book's conclusion Gallus outlines a different structure for the book—one that would follow a more readable structure—dividing the sections as follows: (1) acts outside the period that the obligation allegedly breached is in force, (2) acts before the acceptance of the tribunal's jurisdiction, (3) acts before the period of limitation, and (4) disputes that arose before the acceptance of the tribunal's jurisdiction. Dividing the book's analysis by acts/disputes would be more effective at providing a clearer guide to tribunals' behavior.

Gallus's discussion of disputes that arise before the acceptance of jurisdiction is unique from the definite temporal points of acts, and is separated into another chapter. Gallus provides a reasonable definition of a dispute ("a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons") and effectively describes when a dispute is the source of a challenge, and how temporal jurisdiction is established. However, Gallus does not explain tribunals' preference for an *act* versus a *dispute*. Gallus notes that "some states have focused not on the time of the act that is challenged, but on the time of the dispute that is the source of the challenge." In previous chapters, it seems that Gallus uses the

term “dispute” and “act” interchangeably. But here, there is a clear distinction. Despite indicating the importance of deciding whether a dispute or act governs (“because a dispute will not necessarily arise at the same time as an act . . . [t]his distinction between the time of the dispute and the time of the challenged act is particularly important”), Gallus does not make clear which controls when a tribunal is asserting jurisdiction—and *why* it may choose one over the other. It is important for parties to understand this difference because, when a dispute and act arise at different times, tribunals can choose which controls their ability to adjudicate a case. For example, in the *Venezuela Holdings v. Venezuela* case before an ICSID tribunal, Dutch nationals living in Venezuela argued that an investment treaty was breached by an increase in their income tax. However, Venezuela argued that in effort to “abuse [their] rights” claimants in this case restructured their investments under the treaty and became Dutch nationals solely to ensure that the tribunal would have temporal jurisdiction over the dispute. Here, the tribunal found that a dispute arose before the breaching act and declined jurisdiction. In all cases regarding temporal jurisdiction, acts and disputes function like a timestamp, after which the “clock” on the case begins to run. For every claimant, it is important to be aware of the tribunal’s preference for dispute or act—if it has one—so that they know whether their claim can be heard.

In Gallus’s conclusion, the weaker of his two goals is clear—the book fails to identify areas of consistency between tribunals’ approaches. Gallus notes several instances in which tribunals’ approaches diverge, all dependent on the tribunal. If Gallus’s book were instead structured based on acts, and sub-divided by each tribunal’s general approach, it would perhaps be more concise.

Finally, Gallus’s ultimate conclusion is awkward and incomplete. It seems to point to future implications, indicating what treaty drafters could do to expressly address temporal limits. Gallus suggests that drafters could clarify its stance on continuing acts, similar to what was recently done in the ECtHR, and in the U.K. Equality Act, which stated “any conduct extending over a period is to be treated as done at the end of the period.” In other recommendations, Gallus is vaguer, noting that treaty drafters could also address acts outside of temporal limits, specify the effects of continuing

acts, and more, but does not provide examples of language already implemented, or suggest specific language himself. Certainly, based on the diverging approaches between tribunals identified in this book, clear, and more uniform guidance written into treaties would be helpful. However, Gallus's suggestions to treaty drafters stop short of making concrete recommendations and, furthermore, do not say whether treaty drafting is moving in the direction he alludes to.

With the ever-growing body of treaties, and the continuing crystallization of customary laws before the international community, it is important for parties to be aware when their acts can be brought before an international tribunal. Gallus states that his book acts as a "comprehensive treatment" or "guide" to international tribunals on the subject. While Gallus's argument draws from a breadth of case law, State examples, and tribunal history, it falls short of making clear rules, a necessary component of a would-be "guide." Gallus's analysis of temporal jurisdiction is clear, but there are several areas that should be clarified if it is meant to serve as a definitive guide to temporal jurisdiction, rather than a compilation of case law.

The Captured Economy. By Brink Lindsey & Steven M. Teles. New York, NY: Oxford University Press, 2017. Pp. viii, 219. \$24.95 (hardcover).

REVIEWED BY JOHN RUTH

If the 2016 U.S. presidential election made anything clear, it is that a growing number of Americans are fed up with the status quo. Progressives see a system that they believe to be rigged for the top one percent and believe that campaign finance reform and regulation of capitalism's excesses are the best path forward. Conservatives continue to see government as the problem, identifying the symptoms of government intrusion as market inefficiencies and crony-capitalism.

Lindsey and Teles, a libertarian and liberal duo, argue that both are right, to a degree. They argue that progressives are right to focus on the problem of growing inequality, and the source of this inequality comes from a system that is rigged to favor industry leaders. They argue that conservatives are right that the government is creating market inefficiencies,

and these inefficiencies are designed to entrench current market leaders.

Undoubtedly, such an argument may lead to kneejerk reactions on both sides. To progressives this sounds like a creative argument for deregulation, which runs counter to the progressive goals of reigning in corporate influence on society. To conservatives it may be tempting to dismiss the authors' thesis as another complaint about the unfairness of a market-based economy that efficiently distributes resources.

Lindsey and Teles spend the bulk of their 220-page book explaining why these instincts are wrong. They point to financial regulation, intellectual property protections, licensing requirements, and land use laws as examples of regulations serving to maintain the status quo and keep wealth in the hands of the wealthy, instead of allowing for new market entrants. They argue that the lack of new market entrants and creative destruction serves to keep wealth in the hands of the richest people in the United States and prevents disruptors from participating in a competitive market. Such arguments may be familiar due to their resemblance to policies championed by libertarians and small government conservatives. They echo the mantra that deregulated markets bring about prosperity. But, Lindsey and Teles take great care to make the point that they are not encouraging a wholesale deregulation. Lindsey and Teles make strong arguments for reducing incentives for excessive risk-taking in financial markets; narrower application and lax enforcement of patent and copyright law; lower barriers hindering entry into a chosen occupation; and less regulatory interference with matching housing supply to demand.

The authors avoid re-treading the same ground of a familiar binary debate of regulation versus deregulation. Instead, their focus is on the externalities imposed by specific regulatory regimes, particularly those most likely to increase or subsidize rent-seeking behavior.¹ They focus particularly on policies likely to entrench status quo market participants. Preferring the surgical knife to the hatchet, their prescription is primarily focused on cutting down particular regulations and subsidies

1. Here, rent-seeking refers to the economic notion of excess returns beyond reasonable costs of production, like the returns that monopolies seek to receive.

that are over-restrictive, arbitrary, and favorable to current market leaders.

Finance

In the field of finance, Lindsey and Teles point out that the government has subsidized debt through the Federal Reserve's discount reserve and deposit insurance, which serve to decrease the risk of leverage, since they are meant to prevent banks from failing. Furthermore, ad hoc government bailouts in multiple financial crises since the 1980s have subsidized debt by creating the impression that banks will not bear the consequences for increasing leverage. These government subsidies have encouraged the highly-leveraged structure of the financial sector that exposes banks to too much risk.

Lindsey and Teles prescribe that greater capitalization requirements and an increased portion of equity financing in relation to debt would serve to limit these risks and reverse the trend of financialization which has occurred over the past few decades. None of the arguments Lindsey and Teles make here are completely novel, but that serves to prove their point: rent-seekers in the financial industry have impeded any efforts at regulatory reform to decrease debt subsidies. The authors concede that proposed reforms would shrink the financial sector. They also acknowledge that it is possible that a financial sector could be too small. They believe successful lobbying by the financial industry has pushed Congress away from limiting these subsidies to leveraged firms.

Intellectual Property

Regarding intellectual property protections, the authors argue that when enforced too vigorously patents and copyrights tend to create intellectual monopolies and prevent other market entrants from engaging in innovation. They argue that this encourages the build-up of large quasi-monopolistic firms that use IP to obtain rents. Their prescription is to reverse the expansion of IP protections that occurred in recent years, open up judicial review of IP cases, and remove congressional grants of fast-track authority regarding IP provisions of trade agreements.

Judicial review has proven to be an effective means of reducing rent-seeking patent filing, as evinced by the decrease in

“pay-for-delay” deals in the pharmaceutical industry since the Supreme Court decided that branded drug manufacturers’ payments to delay generic drug production may violate anti-trust laws.² The likelihood of removing fast-track authority seems like a non-starter. Opponents will argue that one exception to fast-track authority opens the floodgates for debate on similar exemptions in every area imaginable, and severely hampers the United States’ ability to negotiate trade agreements.

Licensing

With respect to licensing, they argue that the over-licensing of many career fields including barbers, massage therapists, cosmetologists, athletic trainers, bartenders, interior designers, and even florists, prevents qualified individuals from entering these markets. These licensing regimes often include restrictive requirements such as college degrees and a clean criminal record which serve to limit the pool of labor participants. Lindsey and Teles illustrate that there is very little correlation between licenses and quality by citing various comparative studies, and argue that instead these regimes are likely the result of established market leaders colluding to prevent new entrants from getting a piece of their profits.

Lindsey and Teles also convincingly make the less intuitive argument that oftentimes medical licensing regimes are somewhat arbitrary, and are duplicative in light of broader market contexts such as medical malpractice suits and bars to entry imposed by private specialty boards, practice groups, and health maintenance organizations that sufficiently ensure that only qualified individuals are working as doctors. They note that even Supreme Court Justices Antonin Scalia and Stephen Breyer were wrong when they assumed that state licensing regimes decide who may practice a specialty, such as neurosurgery. In fact, medical licenses only allow one to practice

2. See *FTC v. Actavis, Inc.*, 133 S. Ct. 2223 (2013); see also Zachary Brennan, *Pay-for-Delay Deals: FTC Notes Continued Decline Since SCOTUS Ruling*, REGULATORY AFFAIRS PROF’LS SOC’Y (Nov. 1, 2017), <https://www.raps.org/regulatory-focus%E2%84%A2/news-articles/2017/11/pay-for-delay-deals-ftc-notes-continued-decline-since-scotus-ruling> (noting that the FTC’s FY 2015 report notes a decline in pay-for-delay deals).

medicine generally while specialty boards determine who may practice a specialty.

These arguments show that much of the state licensing regimes may be duplicative and arbitrary, but the argument noticeably lacks discussion of how other countries deal with similar problems. Lindsey and Teles do briefly discuss other countries' relatively lax requirements regarding residency and training requirements. They also discuss the relative differences in compensation between U.S. doctors and other top countries. But, they fail to point to the reasons for these differences in compensation. Their discussion of significantly higher wages for U.S. physicians leads to the inference that U.S. physicians uniquely maintain high wages through control over regulatory policy and the implementation of rent-seeking regulation, but the failure to discuss these countries' regulation of medical fields raises a question that is never fully answered. This absence of comparisons to other countries' regulatory regimes is similarly absent throughout much of the book, leaving room for further research.

Land Use

On the topic of land use restrictions, Lindsey and Teles argue that the primary goal of most land use policy is often to "transfer wealth from new buyers to existing owners." In that sense, zoning laws (particularly those of New York City, San Francisco, and San Jose) serve to create rents (in the economic and everyday sense) that enrich current property owners and prevent residents of low-income, low-opportunity areas seeking to move to these high-opportunity areas from doing so. The authors argue that a more open forum would allow for more participation in the process and bring in additional third parties with a greater concern for the community at large. They argue that when combined with third party activist groups, this could create the opposition that would be required to fight against entrenched interests in local real property markets.

Such a reform seems unlikely to occur. The collective action problems associated with trying to lobby for an increase in housing supply would require that some parties lobby on behalf of decreasing the value of land. Furthermore, local politicians will have little incentive to adopt policies that favor peo-

ple who do not yet live in their locale. Perhaps a large firm seeking to expand employment in a locale could effectively argue for the freeing up of housing restrictions, but outside of this type of situation it seems unlikely that local governments would feel pressure to change their zoning laws. Furthermore, a corporation lobbying for changes to zoning laws would create significant backlash in cities concerned with gentrification.

The Noble Search for Common Ground

Notably absent from the book is a serious discussion of mergers and acquisitions which have built large consolidated industries. In an early chapter, the authors note that “the only government policy at issue [in the context of industry consolidation] is one of acquiescence” and that such a discussion “falls outside the scope of this book’s concern.” While the book is focused on active policy by the government which favors such industries, as opposed to policy omissions, the institutional inertia behind government acquiescence in this policy realm seems highly relevant to the core issues discussed in the book. If one of the central arguments of Lindsey and Teles’s book is that industry leaders have successfully manipulated policy to their advantage by providing biased information to politicians and regulators that favor industry protections, it seems possible that acquiescence in the face of consolidation is the result of a similar process.

This exclusion is likely symptomatic of a greater limit of their approach. By seeking common ground between liberals and libertarians, they must tread carefully. Perhaps, this is why their prescriptions to many of the issues cited in the book come across as piecemeal. In seeking common ground between two groups with largely incompatible ideologies, solutions are likely to be limited. Language describing the intersection of policy-space that they are likely to agree upon must be negotiated upon and carefully crafted not to offend either group’s sensibilities. But that is the nature of compromise.

In an era of political gridlock, it is refreshing to see Lindsey and Teles’s ideas for a so-called “liberalitarian” approach to issues that could be the basis of a new era of bipartisan politics. By focusing on the issues that ideological purists on the left and right can agree upon, they have found a policy area where anti-statist conservatives and egalitarian progressives can meet

minds. While some may argue that this hope for cooperation is either imprudent or naïve, some recent (albeit fleeting) meeting of minds between liberals and conservatives regarding criminal justice reform should create some hope that perhaps the two can find common ground while viewing such issues through different lenses. There must be some way out of gridlock in the United States, and Lindsey and Teles should be commended for their pragmatic approach towards common ground.

Culture in Law and Development: Nurturing Positive Change. By Lan Cao. New York, NY: Oxford University Press, 2016. Pp. xi, 552. \$135.00 (hardcover).

REVIEWED BY JOCELYN SHIH

Lan Cao's *Culture in Law and Development* begins with a surprising scene: on her wedding night, a woman "lay lifeless against a bed of bleached white cotton. The following morning, fresh blood, three drops, dotted the pristine landscape of white." If a woman did not shed blood on her wedding night—even if she were a virgin—the villagers cursed her, slashed her family's animals, and torched her family's barn. Is this story relevant to law and development? In a dense, yet comprehensive, clear, and persuasive manner, Cao argues that it is. According to Cao, legal scholars should not only integrate culture into the discourse regarding law and development, but also should recognize that "culture can be changed, should be changed, and has been changed before."

In her introduction, Cao shows that she is hyper-aware of potential criticisms. She recognizes that her discussions of culture may seem fluffy, vague, and even paternalistic. Her cultural approach may fall short as it carries "sensitive ideological and historical baggage" and is more difficult to incorporate than a technocratic approach, which "emphasizes tangible factors such as laws and institutions." Additionally, international law is acultural. Nevertheless, Cao rebuts each criticism and reiterates that "law and development projects must embody and boldly promote deeper, more substantive conceptions that reflect core, liberal values embedded in the discipline, even if doing so involves critically examining and changing certain cultural attributes." In simpler terms, she argues that

culture is central to law and development. Legal scholars should recognize, scrutinize, and change cultural aspects that hinder desired legal development.

The author's central argument is clear, since she rephrases and repeats it throughout the introduction, but her numerous theories and examples are dense and more difficult to understand. Her theories and examples require some background in international law, some knowledge of current affairs, or, at the very least, quick access to Google Search. For instance, she assumes the reader is already familiar with CEDAW when she analyzes the instrument's "willingness to battle culture" through its explicit language to "change customary, cultural, and religious law" that perpetuate gender inequality. Similarly, Cao assumes readers are widely familiar with a variety of development, political science, and international law scholars, and proceeds quickly through their ideas with minimal background. For the non-expert reader, this can be difficult to follow.

Despite its density, Cao's argument is comprehensive, clear, and persuasive because of the author's extensive road maps and constant repetition. Cao deconstructs her argument and summarizes each chapter in her sixty-eight-page introduction. She continues to provide a road map in the beginning of each chapter. In her introduction, she writes that Chapter One introduces the field of law and development, and argues for a cultural framework. In the beginning of Chapter One, she again states that she will "provide a brief history of the field, expose its flaws and blind spots," and will include further analysis in Chapter Two and Chapter Three, when she "appl[ies] this tradition of cultural exclusion in international law to law and development itself." Although it is repetitive, this extensive road mapping is clear and straightforward. It ensures that readers follow her argument at every step.

Chapter Two examines how international law has sidelined culture. Public international law focuses on promoting state sovereignty and managing state power, while private international law focuses on examining economics and protecting market interests. International law scholars thus neglect the topic of culture. This chapter identifies the gap she tries to fill with this book.

Chapter Three illustrates the reasons for this gap. This chapter shows that the law and development has neglected culture because law and development has inherited the international law tradition of isolating culture. Law and development scholars focus on “the worldwide community of human beings,” which highlight global norms rather than individual cultures. Law and development has also neglected culture because these discussions are not confined to one region, while culture is unique to each community. In addition, law and development is connected to economics, and economics has “paid inadequate attention to culture.” For these reasons, law and development has sidelined culture.

Although law and development have paid inadequate attention to culture, Chapter Four shows that international law nevertheless accommodates Cao’s argument that culture is important and adaptable. The evolutionary process of international law is similar to the process of cultural change. According to Cao, international law is ever-changing. International law incorporates transformations in economy, politics, and society. Cao claims that this chapter is “important for [her] thesis because it illustrates that despite their entrenched statism, international law and international relations now have sufficient openings” to incorporate her cultural discussion. By exploring the flexibility of international law, Cao establishes a persuasive foundation for her argument that scholars should incorporate the discussion of culture in international law.

Chapter Five examines specific examples of cultural change in different countries, including Japan, Turkey, Germany, and China to highlight why and how cultures can change. Cultures can change through legal incentives, such as old-age insurance in China. In China, for example, traditional culture values sons, who are able to carry the family name and support the family. To support gender equality and alter the traditional preference for sons, the Chinese Communist Party developed an initiative to provide old-age insurance for families with daughters. The Chinese Communist Party attempted to enact change on a cultural level through legal means. In this case, the cultural preference for sons impeded gender equality. The Chinese Communist Party attempted to change culture for desired development.

Cao’s final chapter, Chapter Six, argues that culture is not in its own separate box. Cultures borrow from one another, so

it is difficult—if not impossible—to distinguish what is “authentic” or “inauthentic” of a culture. Similar strands run through various cultures. For example, “the ideas of feminism, democracy, and egalitarian welfarism are ‘inside’ every society” and are universal values within every society. Cao concludes that law and development should accommodate different cultural values “only if those values do not infringe on other first-order nonnegotiable universal values such as human freedom and human capability.” For Cao, human freedom and human capability anchor the interactions between cultural changes and legal development.

In addition to her extensive road mapping, Cao’s detailed case studies of specific countries illustrate the relationship between law and culture. Detailed examples, such as the practice of female genital mutilation in Africa, illustrate her argument that there can and should be cultural change. Despite rule of law efforts to end the practice of female genital mutilation, the practice is spreading because people believe the “slight pricking of the clitoris, the removal of the clitoris, and even the removal of the clitoris and the sewing together of the labia into a small hole” ensures “female chastity and fidelity” and “enhances male desire.” Outlawing female genital mutilation “has failed to eradicate it” because of its deep cultural roots. While the law is unable to support these women, who often suffer from severe health risks, painful intercourse, infertility, problematic childbirths, and depression, efforts at culture change are more effective. Cultural changes, specifically through understanding the disadvantages of mutilation, may change public opinion. Similarly, Chinese footbinding ended because of cultural changes. The Chinese government attempted to ban footbinding, but footbinding continued because of its entrenched association with honor. With the support of expatriate elite wives and under foreign influence, people began to view footbinding as shameful rather than honorable. Footbinding lost its appeal due to culture changes—not legal changes. With these detailed examples, Cao underscores how law and culture impact one another.

Lastly, Cao’s argument is comprehensive, clear, and persuasive because she clarifies and qualifies her statements. In the beginning of the book, she states that she “do[es] not mean to suggest . . . that there is uniformity of opinions in the field.” In the conclusion of the book, she again says that she

“make[s] no such claim” that “culture is the ‘root’ cause of poverty or of whichever ailment is at issue.” She clarifies what she does not mean and repeats what she does mean throughout the book.

Culture in Law and Development is a dense, but persuasive, book. The more previous knowledge a reader has, the more information the reader may extract, and the more convincing Cao’s argument may be. Her numerous theories, examples, and allusions require careful reading, but her clear road mapping, detailed case studies, and numerous clarifications help readers understand her ultimately convincing argument that culture can and should be changed for desired legal development.

Enemies Known and Unknown: Targeted Killings in America’s Transnational War. By Jack McDonald. New York, NY: Oxford University Press, 2017. Pp. ix, 318. \$27.95 (paperback).

REVIEWED BY DAVIS TURNER

Drone strikes have come to represent a core challenge that modern warfare presents to the rule of international law. The subject has long lacked an even-handed voice to fully explore the extent to which the United States, the primary utilizer of targeted killings, has engaged legal and societal norms of warfare. Most scholarly discussion instead focuses on the magnitude of civilian harms and casualties. In *Enemies Known and Unknown*, Jack McDonald, a research associate and teaching fellow at King’s College London, takes significant strides to fill this gap in the literature. His thesis is that America’s approach to drone usage has largely been informed by an attempt to comport its targeted killings with the law of armed combat, and that this attempt has paradoxically coincided with America’s concerted effort to avoid accountability. Underlying this central tension are the myriad problems military officials face in trying to reconcile international norms of armed conflict with the amorphous nature of modern combat.

McDonald first lays out the historical, legal, and political concepts essential to an understanding of drone strikes and their legal implications. In his first chapter, he provides a brief yet insightful history of targeted killings, discussing for in-

stance their origins in the World War II killing of Admiral Yamamoto. He then tracks advances in war technology, including the advent of drone strikes, to suggest a fundamental shift over time in the concept of warfare. He mentions, for instance, the shifting role of technology in targeted killings. The first targeted killings utilized technology developed specifically for waging war, while modern day killings rely on more broadly used technologies (apparent, for instance, in the tracking of mobile phone signals). He then connects these modern technological advances to the increasingly transnational nature of armed conflict, noting that the two have coincided to inform the manner in which the second Bush and the Obama administrations spoke of war and terrorism. Specifically, he suggests President Obama's justifications of drone strikes were in part an attempt to reconcile modern notions of international law with Bush-era policies used to combat al-Qaeda. The takeaway from McDonald's discussion is how the historical development of targeted killings has increasingly turned upon a central theme: the tangled dilemma American society has faced in trying to harmonize the law of armed conflict with the mechanized form modern combat has assumed.

This theme bleeds into the next chapter, which lays out how this new form of warfare presents unique legal problems without clear answers. A principal complication arises regarding the extent to which the United States could be considered "at war" with terrorist organizations. "War" traditionally applies only to conflicts between state actors and not to conflicts with non-state actors such as al-Qaeda. After surveying some basic notions of the international law of armed conflict, McDonald discusses how the modern legal understanding of "armed conflict" has gradually incorporated conflicts between governments and "organized armed groups." Even this flexibility, he argues, has been inadequate to address "the type, duration and intensity" of combat between the United States and al-Qaeda. Indeed, the United States has been at odds with many who do not think al-Qaeda classifies as an "enemy in armed conflict."

The third aspect essential to understanding targeted killings is the role of politics. McDonald surveys international and domestic level political disputes over drone strikes, with particular emphasis on the targeted drone killing of U.S. citizen Anwar al-Awlaki in Yemen and the ambiguity of how the

United States classifies “opponents.” He notes the opinions of political dissenters. Some have called for the United States to view the problem more as a “law enforcement” matter rather than as “armed combat” with a foreign enemy. Others have called for the United States to view the threat of Al Qaeda as a “governance” matter, the solution to which lies in greater investment in the infrastructure of local governments rather than reliance on violence. In his synopsis of these hotly-debated topics, McDonald takes caution to remain critical of both sides, lamenting the United States’ lack of accountability while expressing skepticism towards implausible alternatives. The focus of the chapter, though, is not to take a side on policy matters, but rather to discern how to understand the political dynamics of America’s stance on drones. The central tension is between the U.S. government’s attempt to defend the existence of armed conflict and its attempt to shield itself from international norms of warfare. He concludes the first three chapters by merging his discussion of the technological, legal, and political history of targeted killings. Specifically, he concludes that America’s system of targeted killings is a highly specialized and nuanced means of using force, the operations of which have been structured to attempt to comport with international law while simultaneously avoiding domestic and international liability.

McDonald moves on to discuss the practical and moral underpinnings of drone strikes. The fifth chapter delves into how America has formulated its strategy regarding targeted killings. Although the United States has declared the total annihilation of al-Qaeda as its strategic goal and called for a “decisive use of military force,” it has instead relied on targeted killings as a means of waging a war of attrition. McDonald argues that attritional warfare is ultimately an ineffective avenue, a point proven by his well-chosen examples of Israel and Hamas and of Turkey and the Kurdish PKK.

Next, he addresses whether drone strikes are just. After providing an overview of the scholarly debate, McDonald argues that the Obama administration’s purported justifications for drone strikes are unilateral, and so conflict with the cosmopolitan view of universal norms. The Obama administration justified its strikes as highly targeted and designed to avoid civilian casualties, but with wider parameters than international norms of armed conflict generally permit and with a deliber-

ate avoidance of accountability in international courts. As such, the Obama stance can only fit into a pluralist framework, which, instead of universality, prefers a global society with distinct legal norms that coexist as such. The consequence of Obama's position, McDonald argues, is a material loss of soft power. The United States' project of international human rights is hindered when the United States continuously refuses to itself abide by international norms of protection of civilians in armed conflicts. In doing so, the United States only risks harming its ability to forge coalitions in combatting terrorism by undermining the authority of international norms.

This assertion is true, though it is arguably one of McDonald's weaker propositions. There is a counterargument, which he does not fully address, that this risk is quite minor. Given the spread of global, decentralized terrorist networks as well as the intensification of attacks around the world, it is highly conceivable that many nations did not regard America's Obama-era avoidance of international accountability as a significant soft power loss. This is because of their probable sympathy for America's defensive stance against terrorism. Moreover, recent trends in terrorism seem to merit the contention that nations such as the United Kingdom are increasingly willing to adopt more pluralist frameworks in addressing terrorism—a stance that, in mirroring America's, greatly undermines McDonald's assertion of a loss of soft power.

The final three chapters move beyond addressing the conceptual bases of drone strikes into their actual mechanics and the ensuing legal ramifications of targeted killings.

First, McDonald examines the organizational mindset that governs the process of targeted killings. McDonald notes the psychological effects of drone strikes on both strike operatives and affected communities. However, his main focus is on the remarkably specialized manner in which operatives plan strikes and the complex computerized infrastructure with which they work. What becomes apparent from McDonald's overview is the great pains to which operatives go through to ensure each strike is highly tailored to hit the target and not the surrounding community. These pains are a testament to the extent to which the United States military has structured its planning around the rule of law, but it is not without significant detriments, which McDonald explores in the next chapter.

The next part of this dive into targeted killing operations concerns the manner in which the military develops its concept of “enemy” in programming and decision-making. At the core is the way the U.S. military categorizes combatants and non-combatants, or targets and civilians. Here is where, McDonald points out, lawyers play the most important role, demonstrating the power lawyers have over strikes. Lawyers are the ones who define permissible targets. Military lawyers helped formulate the United States’ decision to depart from the International Committee of the Red Cross’ (ICRC) official definition of armed conflict, which provides more inclusive protections for civilians. The United States merely requires that an individual be “integrated into the group such that the group’s hostile intent may be imputed to him or her.” The military has used this definition to justify a wide swath of civilian deaths it has caused through drone strikes. McDonald clarifies that such collateral damage is to be understood in light of the confines the United States has placed, in its concerted attempt to comport its processes with the laws of armed combat. Still, underlying all of this is a fundamental uncertainty within the military’s data processing. This, combined with the fact that lawyers detached from ground operations define the mission’s contours, pinpoints for McDonald a fundamental structural problem with America’s operations of drone strikes.

The third and final part of the author’s operational overview reaches into the effects of drone strikes on civilian populations. One of the problems presented by modern warfare is the loss of the concept of a “battlefield” that differentiates a zone of conflict from one of safety. This makes it difficult or impossible for civilians to perceive whether they are in the presence of an armed conflict and should take precautionary measures. The United States has tried to justify its position by arguing that drone strikes are incredibly precise and so limit the field of conflict to the body of the target. This in effect means that, as McDonald phrases it, “the body becomes the battlefield,” meaning the United States goes to great pains to limit the sphere of “armed conflict” to the body of the individual target. However, McDonald aptly points out the problem with this approach: it does not go far enough to ensure civilian protections in accordance with the Geneva Convention’s principle of humanity. Moving beyond the obvious issue of numerous civilian deaths, McDonald notes the problem of pervasive

intangible harms. Civilians who witness numerous targeted killings experience intense anxiety about death literally hovering over them—a harm which, though documented, has yet to factor into the military’s “precise” calculus. Further, there is no way for terrorists to “cease participation” and so remove themselves from the “battlefield,” in the way participants in more traditional warfare could abandon conflict and thus regain classification for the most part as civilians.

McDonald spends the last chapter discussing shifts in the international politics of targeted killings over the last few years, as well as the influence of prior drone campaigns on current strategies to combat ISIS. Many new issues have arisen over the past few years, such as the growing presence of interstate coalitions and foreign fighters, which have led to an expansion of targeted killing operations. One example is the phenomenon of greater information sharing within coalitions. Concerning this, McDonald focuses on the United Kingdom, which, despite certain historical differences in its approach to terrorism, has come to adopt the United States’ defense of the legality of drone strikes. This partnership has led to a wide increase in information sharing and even to the material involvement of the United Kingdom in targeted drone killings. A possible consequence, McDonald suggests, is the direct clashing of European and American legal systems with respect to drone strikes.

Intensification of drone strikes on the interstate level begs the question of accountability, which occupies the last several pages of the book. Here, McDonald offers understandably muted optimism. He laments America’s failure to hold major actors accountable for torture policies during the Bush era. He also notes the rise of civil society networks and the social backlash after information concerning the government’s use of torture methods in Guantanamo came to light. He further notes the great attention the Obama administration placed on comporting drone strikes with the rule of law as an indicator of a greater fear of culpability. This fear of culpability is indeed something society as a whole, both individuals and government agencies, ought to embrace going forward.

A History of International Relations (Third Edition). By Torbjørn L. Knutsen. Manchester, UK: Manchester University Press, 2016. Pp. x, 532. £24.50 (paperback).

REVIEWED BY ALYSSA V. M. WALL

International Relations is a constantly evolving and changing field of study. Many scholars assert that substantive academic analysis of the relationships between sovereign states began only following World War I. Professor Torbjørn Knutsen, in the third edition of his sweeping and extensive *A History of International Relations*, asserts that the history of International Relations (IR) theory stretches back much further than the beginning of the twentieth century. He traces the foundations of the field through interstate interactions and the scholars who assessed them. Through analysis of dozens of philosophers, military leaders, and politicians, Knutsen establishes a continuous narrative of International Relations thought and theory beginning in Rome and continuing through the fall of the U.S.S.R.

A History of International Relations sweeps through major intellectual movements in Western society. The project is organized chronologically, and reads much like a standard history textbook. Each chapter begins with a summary of the most significant historical developments in the century and then details the theories and ideologies of contemporary thinkers and actors engaged in the discussion and development of International Relations.

The chapters and parts, as well as the theories discussed therein, build on each other to form a massive and occasionally repetitive, but substantively significant project. Knutsen's objective is to identify the ways in which "history and scholarly debates of the past provide the academic IR community with its distinct identity" as well as to identify patterns and regularities. Through painstaking historical analysis, he accomplishes this goal. Nevertheless, the value of the book as an objective historical analysis of the development of IR is lessened by the limited scope of the source material and the occasional gratuitous value judgments of the author.

The undertaking is massive, and overambitious by design. By tracing international relations through political theory and historical events, Knutsen embarks on an analysis of figures

from Augustine to Marx and summarizes the most significant events in the past 500 years of Western society. Spending just a few pages on each of the historical actors and their locations in history, Knutsen successfully traces and articulates a line of thought beginning with the first conceptualization of a sovereign state to the development of the science of International Relations.

Knutsen expertly guides the reader through a fast-paced roller-coaster crash-course of Western history, theology, political movements, and war. Knutsen only introduces the reader to his hypothesis on the interconnectedness of International Relations in the final chapter of the text. Finally, he presents a chart and a wheel of basic IR theories and sorts key figures into each presented category. Knutsen's identification of basic patterns and regularities across geographic, political, and historical moments is a fresh perspective and undoubtedly a useful tool for students of International Relations. However, early integration of the hypothesis and corresponding charts would likely invite the reader to engage with the presented information from a more critical perspective from the beginning of the text. Moreover, without consistent integration of his hypothesis throughout, each chapter could easily stand alone as a summarization of an historical moment and its implications on the development of International Relations—with no mention or allusion to Knutsen's individual contribution to the study.

The early chapters of *A History of International Relations* necessarily focus on the development of consciousness of the state as a political structure. Part I includes discussion of Augustine and Gelasius's theological ideas of divinely-bestowed authority. Knutsen's focus then transitions into the foundations of political state-level theory in the concept of "reason of state" and a discussion of the structure of Italian city-states. Knutsen highlights Machiavelli and Guicciardini. He focuses primarily on Guicciardini, a Florentine author and politician, and particularly the development of the theory of balance of power in the relationships between princes. The thorough discussion of Guicciardini reflects the primary device Knutsen uses to articulate the development of IR theory. By discussing less-well-known theorists and their impact on the field, Knutsen casts a wide net and produces a chronological and plausi-

ble line of development leading to present day's conception of International Relations as a field.

Part II of the text centers on "Philosophies of war and peace," with particular attention paid to absolutism, the Enlightenment, and the growth of mass participation through the development of democracies. Again, the subject is extremely broad. The part is divided into logical chapters, and each follows the same formula of summarizing the history and then highlighting concurrently forming theories through the introduction of individuals. Chapter 5, which focuses on Enlightenment politics, spans the eighteenth century. It begins with an overview of the historical context, and then a country-by-country analysis of theories. It ends with an in-depth discussion of the theories of Jean-Jacques Rousseau. Rousseau, who believed in the law of the strongest and also the potential of a federation of Europe, is a perfect example of a theorist Knutsen draws upon in every consequent chapter and discussion of International Relations' conceptual development. While as a reader of more than just an excerpt this organizational decision feels repetitive, it undoubtedly drives home the point that International Relations theory is composed of scholars who "have . . . stood on each other's shoulders."

Part III spans 200 pages and everything from World War I through the collapse of the U.S.S.R. Dividing the part again into chronological chapters, Knutsen sketches contemporary history and discusses figures including Marx, Hitler, Wilson, Martin Wight, Hans Morgenthau, and Kenneth Waltz, among others. The massive number of scholars introduced means that for some a paragraph or two is all the space available for discussion. The narrative around International Relations theory begins to swim with dozens of names and their different viewpoints. For an audience not specialized in International Relations or familiar with the specific academics mentioned, the names quickly lose meaningful significance. Fortunately, the theories are generally grouped into three major approaches—Realism, Rationalism, and Revolutionism. This analytical tool is extremely helpful and furthers Knutsen's overarching theme of a historically rich International Relations tradition. However, the brevity with which some topics are covered makes for uneasy reading. For example, Knutsen introduces, in a footnote of the final chapter of the part, what he claims is "a new, fourth approach to International Relations—

an ‘ecological paradigm.’” He never develops or acknowledges this fourth approach outside the note.

The final part of the book discusses the development of a “unipolar world” and what Knutsen foresees as the future of International Relations. In this part, Knutsen finally introduces his hypothesis and, in a flurry of names, matches previously discussed figures to their categories in his chart and wheel. The analytical work here is presented only briefly—in less than twenty pages, but comprises the most substantively analytical portion of the book. Knutsen then finally presents IR as a fully acknowledged field of study and discusses the developing disciplinary history, in which he includes *A History of International Relations* itself.

As a comprehensive presentation of International Relations theory, *A History of International Relations* supplies a well-rounded summary of Western perspective while severely neglecting integration and consideration of alternative perspectives. The jarring lack of discussion around the Silk Road as well as China’s complicated territorial boundaries and the political and theoretical context thereof is merely one example. Knutsen fails to address the existence of International Relations theory in Africa, Asia, Australia, and Latin America. A more appropriate title for the book would be: *A History of International Relations from a Western Perspective*. Under that title, Knutsen accomplishes a significant feat in detailing the long and extensive history of theory throughout the past 500 years. As the book purports to be a sweeping summary of global International Relations, it feels as though a significant portion of the story is missing. In a footnote, Knutsen acknowledges that “although regrettable” he cannot include non-Western scholars (aside from mentions of China’s Mao) nor their theories for analysis. Although he disclaims responsibility by referring the reader to other texts, a more pronounced or earlier recognition of the clear Western-focus of the text would be welcome.

Knutsen writes in jargon-free, easy-to-follow language. However, he does not attempt to hide his personal preference for certain geographies and schools of thought. For example, he refers at one point in the text to the “social theories of Soviet communism” as “stale and disingenuous,” and to the Eastern bloc in general as “a dry desert” of political theory. These and similar comments present a perspective atypical of objec-

tive historical texts, but disguise themselves as statements of fact. This problematizes certain sections of the text, particularly those focused on the development of (or lack thereof) IR theory in the former U.S.S.R.

For university students specializing in International Relations or Western philosophers, excerpts from *A History of International Relations* provide an excellent snapshot of historical moments and their key scholars and politicians. Although repetitive, the presentation of theories accompanied by their historical backgrounds accomplishes what Knutsen intended from the first page. He successfully proves that from the earliest inception of the state as an entity, initially attached to and then separate from the ruler, to present day—International Relations is a field built on substantive history and the theories of scholars and actors stretching back to Augustine and potentially beyond. Ultimately, Knutsen presents an extraordinarily comprehensive and readable text on political, social, and International Relations theory throughout the West.

The Dual State: A Contribution to the Theory of Dictatorship. By Ernst Fraenkel. Translated by E.A. Shils, Edith Lowenstein & Klaus Norr. Introduction by Jens Meierhenrich. Oxford, UK: Oxford University Press, 2017. Pp. xvi, 253. \$59.95 (paperback).

REVIEWED BY YAEL WILLNER

In the globalized, technologically advanced, (relatively) intellectually open society of 2017, we should be able to protect ourselves from foreseeable threats to liberty. With today's resources, technology, and human capital, we should be able to root out threats to important democratic ideals. But in 2017, are we able to recognize the rise of a dictatorship before it is too late?

The 2017 republication of Ernst Fraenkel's *The Dual State: A Contribution to the Theory of Dictatorship* adds one more tool to the world's anti-dictator toolbox. The work teaches the reader that the Third Reich rose in incremental threats to liberty that created two states functioning as one: the administrative state that seems to make the rules, and the prerogative state that actually does. Fraenkel originally wrote *The Dual State* illegally in Germany between 1936 and 1938. As a German Jewish law-

yer, Fraenkel's law license was revoked in 1933 under legislation passed to exclude potential political enemies of the National Socialist Party from the German economy. As a veteran of World War I, Fraenkel was able to appeal the license revocation—until his name on a Gestapo list forced him to flee Germany in 1938. Between 1933 and 1938, Fraenkel studied the changes in the German legal system that allowed for the rise of the Third Reich's political apparatus. The result is an interdisciplinary legal-sociological review of court cases and political decisions leading to Fraenkel's thesis of the dual state. The academic and theoretical nature of the subject matter lends itself to a clear, if a bit dry, writing style. While the main points and overall themes are accessible to any audience, readers with a comparative understanding of legal systems as well as familiarity with the court system of 1930s Germany will better understand the nuanced meaning of each of Fraenkel's cited legal decisions.

The thesis of *The Dual State* is that a confluence of political, governmental, and judicial decisions in Germany in the early 1930s orchestrated two separate modes of government for the National Socialist Party. The Prerogative State (*Maßnahmenstaat*) literally translates into “state of measures,” referring to the Prerogative State's role of taking measures against civilians in furtherance of the National Socialist Party's political agenda. The Prerogative State was tasked with enforcement, and was characterized by the notion that any action taken by the police or the military was legal by virtue of the fact that they were the ones who carried out the action. The Normative State (*Normenstaat*) was tasked with the administration of state governance institutions—the legislature, the judiciary, and administrative government institutions. The Normative State was where victims of the Prerogative State might have looked to for help, but would have been hard pressed to find it.

As Fraenkel explains, “[t]he jurisdiction over jurisdiction rest[ed] with the Prerogative State”—the Prerogative State controlled what fell within the scope of the Normative State's responsibility and what did not. Fraenkel's study goes through example after example of ways the Normative State, rather than protecting minority citizens, enhanced the authority of the Prerogative State against them. Courts voluntarily abdicated their duty to review police actions and removed con-

straints on police actions that were in “self-defense of the state.” The National Socialist Party used “protective custody” to imprison people who had become targets of civil unrest because the National Socialist Party had identified them publicly as political opponents, and therefore threats to the state. Religious freedom was found in a court decision to be limited by the “discretion of the authorities.” The principle of “double jeopardy” (*ne bis in idem*) was suspended in cases of “high treason.” Another court found that “the evaluation of a person’s political character was the exclusive prerogative of the District Leadership of the National-Socialist Party.”

Fraenkel’s dual state argument was revolutionary when it was originally published in 1941. Printed in English and meant for an American audience, *The Dual State* carried the hope that an in depth understanding of how Germany had gotten to its current state could inform a successful dismantling of the new German legal order. It was meant solely to relate to the status of Germany at that time, with no aspirations for further or future application. The republication of the work in German in 1974 was a testament to the continued scholarly value of the work itself and was beyond Fraenkel’s wildest dreams. The 2017 English version, with a new introduction by international political and economic scholar Jens Meierhenrich, serves yet a new purpose: to use the chronicling of the rise of one dictatorship in order to identify, prevent, and if necessary, dismantle future ones.

But despite the contribution of *The Dual State*, it is not without opportunities for critique. One of the core tenets of Fraenkel’s argument is that the Prerogative State operates arbitrarily or wantonly. This means that the authority of the Prerogative State was not cabined by rules, thereby withholding from the public any guidance on the line between legal and illegal behavior. The Gestapo, under the auspices of the Prerogative State, could choose in any given situation whether someone had committed an illegal act and deserved imprisonment, and citizens were subject to the police’s determination of the law in that situation. However, this view of the Prerogative State’s method of wielding authority seems somewhat extreme. The “arbitrary” and “wanton” characterizations evoke an emotional cause, as if legality were determined based on whether the police officer had had a good night’s sleep the night before or had fought with his wife at breakfast. It seems

more accurate to express the methodology of the Prerogative State as politically discretionary—that the discretion of police officers operating under the authority of the Prerogative State was cabined by a political agenda rather than by black letter law.

In today's increasingly polarized political landscape across the globe, it would be easy to find confirmation of one's political views in *The Dual State*. Those on the left would point to the National Socialist Party's vilification of specific groups within society—due to a “fancied emergency”—to show that current populist, nationalist, exclusionary policies foreshadow the rise of right-wing dictators. According to Fraenkel, this vilification painted these groups as enemies of—or at least risks to—the National Socialist State and its platform of ideals. This, in turn, cleared the way for legislative and judicial decisions excluding these groups from the German economy (e.g., preventing them from getting jobs, punishing their employers, relegating them to specific sectors). Given that the decline of the German economy after World War I increased the appeal of the National Socialist platform as one of economic growth, excluding the aforementioned societal groups from the economy meant that their vilification and the ensuing deportation and genocide did not detract from the functioning and growth of the German economy—in fact, it created more room for economic growth for the German people. On the other hand, right-leaning readers would likely point to Fraenkel's description of the expansion of state power to link current reliance on governments to address social ills with the potential for broad government power to define social ills along political or ideological lines. Fraenkel's explanation of the expanded mandate of the Emergency Decree of February 28, 1933 (also known as the Reichstag Fire Decree) could be particularly helpful in this argument. The decree was intended to broaden the President's authority to protect public safety, but a purposivist reading allowed for a broad enough definition of public safety to encompass the imprisonment of political opponents (i.e., any activity opposed to the National Socialist Party could potentially augment the Communist threat and give rise to violence), thereby leading to the rise of the Prerogative State. If *The Dual State* supports the points of both sides of the political spectrum, then the work as a whole supports neither.

In truth, *The Dual State* illuminates something even more important than the study of dictatorship: the socially crippling effect of the extreme politicization of the state. The American political landscape today provides a prime, though not unique, example. Though the average American person likely hopes that their elected officials make choices based on political values and ideology, often at the top levels of government choices are made based on the needs of the official's affiliated political party. National party committees and caucuses take a long-term view and promote decisions that are gamed out to ensure the long-term survival of the party. Governance decisions become about the preservation of the political platform for its own sake, rather than the use of that platform for the betterment of society. In his earlier writings, Fraenkel described this as "the transition from 'the bureaucratization of politics' . . . to 'the politicization of the bureaucracy' . . . characterized . . . by the 'primacy' ('*Primat*') of the political over the technical apparatus of the state." Even before the Emergency Decree, judicial abdication of police review, deportation and concentration camps, and the dual state, the protection of the National Socialist agenda became a state priority. The National Socialist Party was no longer one of multiple political platforms, each espousing a vision and strategy for the future of Germany. Rather, the National Socialist Party was the state, it was the future of Germany. As Fraenkel wrote, "The guiding principle of political administration is not justice; law is applied in the light of 'the circumstances of the individual case,' the purpose being achievement of a political aim." It is interesting to note that *The Dual State* includes very little mention of Adolf Hitler or other Nazi leaders whose names have survived history; the focus, instead, is on the influence of the National Socialist Party in shaping a legal order that preserved the party's power.

Fraenkel emphasizes that *The Dual State* was not necessarily generalizable, and that it looks only to the rise of the Third Reich in Germany. Dictatorship can arise in different ways, taking advantage of specific political, global, technological, sociocultural, and economic circumstances. *The Dual State* is a rich academic contribution to political theory, but it is not an instructional manual for rooting out dictators. Rather, it is a cautionary tale of the risks of letting a political agenda become a governing force: dictatorship, yes, as a result, but also incremental risks to freedom and civil liberties.

Abducted in Iraq: A Priest in Baghdad. By Saad Sirop Hanna, with Edward S. Aris. Notre Dame, IN: University of Notre Dame Press, 2017. Pp. xii, 168. \$25.00 (hardcover).

REVIEWED BY JADE YOO

Is Iraq better now, or under Saddam? Such was the question posed to Father Saad Sirop Hanna by his captor. “Better under Saddam,” responded Father Hanna. “Because if Saddam were still present, you would not be able to come to the church and take me.”

Father Hanna was born in Baghdad in 1972 and ordained to the priesthood in 2001. His tenure as a priest would have been relatively unremarkable but for his harrowing abduction by a militant group associated with al-Qaeda amidst the turbulence in Baghdad following the fall of Saddam Hussein in 2003. In August 2006, Father Hanna was kidnapped not far from his church in Dora, a district in southern Baghdad described by American soldiers at the time as “the most dangerous place in Iraq.” Indeed, the first few pages of Father Hanna’s memoir introduce the reader, almost casually, to the regularity of gunfire close to checkpoints neighboring his location. Despite the volatility of the region, Father Hanna remained in Dora, committed to assisting Christians and Muslims alike. *Abducted in Iraq: A Priest in Baghdad* is a jolting recollection of Father Hanna’s abduction, torture, and eventual release from the hands of the al-Qaeda affiliate. Readers will not find here a comprehensive treatise on the West’s war against fundamental Islamic violence or broad commentary on the plight of Iraqi Christians. Father Hanna’s memoir is much subtler, as it is a deeply personal story of his struggles—physical, emotional, and spiritual—while in captivity. Though not a scholarly publication, *Abducted in Iraq* is a worthy read for anyone interested in a closer look at the ripple effects of foreign policy decisions, in the plight of those facing challenges to their freedom of religion, or in the strength of one man’s faith even in the threat of death.

In the first few chapters, Father Hanna provides readers with a contextual introduction to the geopolitical circumstances that would provoke his abduction. Father Hanna depicts an Iraqi nation ridden with fear and increasingly divided along religious and ethnic lines. “Men and women were slowly

being stripped of their individuality, reduced to headlines of belief and birthright,” he writes. The tensions in Iraq, if they had been simmering before, boiled over in the aftermath of the 9/11 terrorist attacks in the United States and Saddam Hussein’s removal from power. Father Hanna recounts the moment he knew the world would never be the same again. He was in Italy studying for the priesthood when he watched on television the second plane crashing into the World Trade Center. “The world is turning upside down,” he exclaimed to his friend. “The Americans will not let this be.”

Most of Father Hanna’s memoir is an autobiographical retelling of his abduction, which reads, as one might expect, much like a story. In a rare moment of socio-political commentary, in Chapter 2 Father Hanna observes that although many died in the United States on September 11, “many more died in Iraq as a consequence.” He delicately posits that the American deaths that day were, by “some grotesque measure of tragedy,” vastly outweighed by subsequent events. Father Hanna notes that he does not fail to recognize the scope of the tragedy in the United States; he only means to argue a “defense of what appears to be a lack of empathy on the parts of people who fail to mourn for those who do not share their birthplaces and ethnicities.” Father Hanna recognizes that one cannot possibly empathize with all of the world’s tragedies for one would “grow mad with grief.” Yet, he cannot help but feel “there is a madness in not grieving.” This tension, between the practical impossibility of caring about all the world’s suffering and the inherent moral selfishness of limiting one’s empathy to one’s immediate community, is an unresolved one not only on an individual level, but also on a broader nation-state level. In an era where countries are increasingly looking inward, where the U.S. President declares a foreign policy strategy based on the idea of “America first,” is there room for such broader considerations? In an international legal and political system that inherently respects an individual state’s sovereignty and that sanctions the use of force under certain circumstances, is Father Hanna’s dilemma merely an abstract one or an issue that is specific to individuals? Father Hanna provides no more insight, and readers are left to grapple with these questions on their own.

Father Hanna returns to tell the details of his abduction in Chapter 3. Driving back to the seminary from his church, he

was suddenly surrounded by two cars, blindfolded, handcuffed, and shoved into the boot of one car. Any doubt in Father Hanna's head that these men must have mistaken him for someone else quickly disappeared. One of his captors chillingly told him, "soon you will be one of us, you will be a Muslim." Father Hanna then knew why he was captured. "This was no mistake," Father Hanna recalls. "Perhaps they thought me more important than I was, but still they knew me, they knew that I was Christian, and no doubt they knew me to be a priest."

In later chapters, Father Hanna reflects upon his fear and confusion surrounding the abduction. Father Hanna met the "Chair Man," the presumptive leader of the group, who informed Father Hanna of his intentions to use Father Hanna as a bargaining tool, to exchange him for another prisoner. Initially, Father Hanna doubted that he, a simple man of peace, would be valuable at all in a prisoner exchange. He learned quickly, however, that word of his capture had spread. Father Hanna's release had been petitioned for by everyone from the President of Iraq to the Pope. "No, you are not a simple man," the Chair Man said. "The world has turned upside down because of you." In the ensuing days, Father Hanna was increasingly terrorized and abused by his captors. From the doldrums of being blindfolded and handcuffed all day to being threatened with death for refusing to convert to Islam, Father Hanna's capture becomes a nightmare. In later chapters, Father Hanna recounts how his captors would beat him for his refusal to convert to Islam. He surmised that he was also being beaten for their amusement or from pure hatred. The abuse continued, more forcefully after Father Hanna's attempted escape, until the day his captors released him.

Father Hanna's story is not meant to demonize Muslims, although someone in Father Hanna's position could easily have done so. Father Hanna was captured to further a radical fundamentalist Islamic cause. His captors tortured him for his refusal to convert to Islam, justifying their behavior because he was a *kafir*, an infidel. But Father Hanna recognizes that his captors were the exception, not the rule. A scholar of religion, Father Hanna notes that the Koran states that no one can be forced or obligated under threat to become a Muslim, for the threat invalidates the commitment to Islam and makes it meaningless. He also highlights characters of Islamic faith who

extended kindness to him during his capture. He acknowledges that these individuals were most likely just as coerced by the militant al-Qaeda group as he was. One of those individuals was a young student named Abu Hamid who stood guard over Father Hanna during his captivity. In addition to making sure Father Hanna was as comfortable as possible under the circumstances, Abu Hamid, at great personal risk, procured medication for Father Hanna at his request. Father Hanna suspected that Abu Hamid was only “a watchman with few alternatives, who did as he was told.” Father Hanna also introduces us to a man named Ali. Ali himself went to lengths to contact American forces to rescue Father Hanna, although such attempts ended up being entirely unfruitful. Finally, more than once, Father Hanna encountered Iraqi Muslims who expressed their disturbance at Father Hanna’s capture: “Why would they take you? This is *haram* [sinful].”

In the final chapter, Father Hanna reflects on the decade that passed between his abduction and his writing the memoir. He states a newfound purpose to

tell others that faith need not wilt in the face of difficulties but can blossom, offering greater clarity, that a belief in the love of God compels us to see the love in one another; to not separate those who believe from those who do not; to not judge one faith to be above another but to see that some people can find a rationale for violence from religion, while others find a rationale for unity.

In his closing remarks, he concludes that love must be the driving force for all people to connect on a level of shared humanity. Acknowledging that love is “the hardest thing of all,” he still maintains that “it will always be the only answer.”

Although one might categorize *Abducted in Iraq* as a book written specifically for a religious audience, Father Hanna’s account offers a glimpse of the far-reaching effects of conflict, in particular the collateral damage that can ensue after major geopolitical events. In Father Hanna’s story, such events were the removal of Saddam Hussein from Iraq and the rise of violent religious fundamentalism. This memoir introduces its readers to a deeply human experience. International law and foreign policy is often contemplated in terms of overarching grand strategy or articulated within the abstracts of legal analy-

sis. Here, Father Hanna's goal in sharing his experience is to add a wrinkle to how one thinks about and engages with conflict and its costs. More importantly, his goal is to share a story of how his faith, in his God and in humanity's capacity to love, remains steadfast.

The World Blind Union Guide to the Marrakesh Treaty. By Laurence R. Helfer, Molly K. Land, Ruth L. Okediji, and Jerome H. Reichman. New York, NY: Oxford University Press, 2017. Pp. xxv, 207. \$33.61 (paperback).

REVIEWED BY HONG BAO

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled ("Treaty") is an international agreement negotiated under the auspices of the World Intellectual Property Organization (WIPO) and was adopted at a diplomatic conference in Marrakesh, Morocco, in June 2013. The Treaty marks a breakthrough in enabling the blind and other print-disabled people (e.g., people with dyslexia) to access printed works by allowing people to translate and distribute printed works without the authorization of the copyright holders to enable print-disabled individuals to read. The overarching goal is to enable print-disabled people to participate fully and equally in political, economic, and cultural life. Before the Treaty, only about one-third of the world's nations had exceptions to local copyright laws to assist print-disabled people to obtain books and other materials in accessible formats. Moreover, even where these exceptions existed, books in accessible formats could not cross international borders. Therefore, the Treaty can be called a landmark in the history of both copyright law and human right law. *The World Blind Union Guide to the Marrakesh Treaty* ("Guide") offers a comprehensive framework to interpret the Treaty and gives recommendations to government officials, policy makers, and disability rights organizations involved with implementing the Treaty's provisions domestically.

The Guide comprises three principal parts, which respectively introduce the guiding principles of the Treaty, legal and policy choices regarding the Treaty, and practical advice. Aiming at providing practical policy-making guidelines to ratifying states' legislators, the Guide uses very narrative and luminous

writing style rather than over-academic language. Overall, the Guide does an overarching job in analyzing the policy rationale behind the Treaty, as well as providing advice on how to ratify the treaty and implement it domestically. On the flip side, the Guide also has setbacks—it fails to consider the protection of copyright holders.

The Guide begins by introducing the policy rationale behind the Treaty. The Treaty came out of two different regimes of laws: human right law and copyright law. The Guide suggests that these two regimes coexist rather than conflict with each other. This novel view departs from previously wide-held belief that human rights and copyright protection were not harmonious. Some scholars believe human rights sometimes can override copyright because they are generally regarded as more fundamental. This Guide negates that view, arguing that even though some laws or treaties try to protect human rights over copyright, it does not mean those laws recognize human rights as primacy over copyright. Nor do they recognize human rights as more fundamental. Individual innovation and creativity—goals pursued by the intellectual property system—are also essential to the fulfillment of human rights. Copyright is just a means rather than an end. It is a mechanism to foster people's creativity and innovation and thereby contribute to more social good. Therefore, copyrights and human rights actually share the same goal. Accordingly, the policy rationale behind the Treaty and other similar laws is not giving preference to human rights over copyrights. Instead, the goal is to try to combine the two regimes to promote social good—an important element for policymakers to understand when passing laws to adopt/implement the Treaty. It is a matter of compromise rather than priority.

The Guide's explanation of why the Treaty is of great importance among both the copyright and human right fields is also noteworthy. Previously, there has been a focus on stronger enforcement mechanisms to protect intellectual property through treaties at the international level, which has led some states to emphasize intellectual property protection without sufficiently considering its impact on human rights. Economic threats are often imposed as incentives for states to enact copyright laws with fewer exceptions and limitations than may be needed to fully realize human rights. The Treaty, which creates exceptions for print disabled individuals to have access to

copyright works, is an important tool to add some weight to human rights protection.

The Guide also offers a very detailed guideline for ratifying and transposing the Treaty into domestic laws. From a macro perspective, the Guide recommends that different institutions get involved in the legislation process, including human rights institutions, intellectual property institutions, and the Marrakesh Treaty Assembly. It also urges the judicial branch to create legal remedies once there is a violation of the Treaty.

From a micro perspective, other than bright-line rules, the Guide interprets the Treaty as providing flexibility for legislators. To reach the coexistence mentioned previously, the Treaty creates exceptions and limitations (E&Ls) for print-disabled people to have access to books and cultural materials outside of copyrights protection, which means print-disabled individuals and related organizations can reproduce and distribute copyrighted works enabling those individuals to have the same access as non-print-disabled people without the authorization of the copyright holder. There are mandatory E&Ls and non-mandatory E&Ls. For mandatory E&Ls, domestic laws must incorporate E&Ls to the following exclusive rights of copyright owners: the right of reproduction, the right of distribution, and the right of making available to the public. These E&Ls authorize two types of activities: the creation of accessible format copies and the transfer of those copies to print-disabled people. For activities which satisfy the scope of mandatory E&Ls, Article 4 of the Treaty has some strict and specific executive requirements. As for non-mandatory E&Ls, there are not many restraints in the Treaty. Ratifying states are given more discretion.

There are two modes to implement E&Ls. The first mode is the safe harbor model. This model incorporates the requirements of the three-step test (TST), which requires that the E&Ls enacted to implement the Treaty shall be limited to special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the copyright holder. Article 4(2) thus creates a "safe harbor" for ratifying states because legislation that follows the suggested approach presumptively meets the requirements of the TST. Otherwise, a State may pursue the *sui generis* option, which permits a ratifying state to fulfill the obligations by pro-

viding or relying upon “other” E&Ls in its national law. Obviously, the *sui generis* mode gives ratifying nations’ legislatures significant discretion to tailor national laws to their specific policy goals and the needs of domestic beneficiaries. However, too much variation between national laws of countries will be costly to coordinate and regulate. Therefore, the Guide highly recommends the safe harbor approach over the *sui generis* option.

To reiterate, the policy rationale behind the Treaty is not prioritizing human rights protection over copyrights protection. It is creating some E&Ls from copyrights protection for human rights and trying to reach a compromise to promote social good. However, while giving interpretations to the concepts discussed and providing recommendations for enactment, the Guide unintentionally presents a tendency of preferred treatment of human rights protection. As mentioned previously, the Treaty actually has the TST as the baseline for copyright protection. A copyright holder’s interest cannot be arbitrarily infringed. However, the Guide seems not to care a lot about this point. For example, the Guide provides that a state that already extended access and shared rights to individuals with other disabilities is not required to change that law before it can ratify the Treaty. That may create potential copyright infringements by not corresponding to the TST.

Despite claiming to be a comprehensive manual, the Guide fails to provide practical advice on how to avoid copyright infringement while enacting E&Ls. For example, regarding the issue of defining beneficiary persons in implementing legislation, the Guide explicitly says that “states may choose to harmonize laws that implement the Treaty with laws that implement broader definitions of disability in international agreements or regional legislation.” However, if all states adopt a very broad definition of “print-disabled” people, that may lead to potential abuse of the Treaty. For example, people with near-sighted problems could potentially claim to fall under the category of “print-disabled.” However, it is obviously unrealistic to grant all these people the right to access copyrighted works without the copyright holder’s permission. The Guide can definitely play a better role in helping ratifying states to avoid such potential problems.

In conclusion, the Guide gives nations a very helpful explanation of the Marrakesh Treaty. Instead of acting as a mo-

notonous interpreter of the law, the Guide focuses on explaining the rationale behind the Treaty and providing ratifying countries with practical policy advice. However, by placing too much emphasis on how to protect human rights, the Guide fails to provide a roadmap for how to reach the balance of enhancing the coexistence of human rights and copyright protection. Therefore, when implementing the Treaty according to the Guide to ensure print-disabled people have access to publications, legislatures of ratifying nations should also pay attention to the potential for abuse. Notwithstanding this omission, the Guide serves as a strong tool for nations to implement the Treaty. From an international law perspective, treaties like the Marrakesh Treaty are vital to unify the power across nations to protect human rights. Having an accompanying guide to help put the law into practice plays an important role in ensuring these efforts materialize.

Does Torture Prevention Work? By Richard Carver and Lisa Handley. Liverpool, UK: Liverpool University Press, 2016. Pp. xxvi, 633. \$22.99 (paperback).

REVIEWED BY GABBY HASSAN

The use of torture remains prevalent globally, despite its public denunciation, by society and governments worldwide, as an inhumane and immoral practice. Its continuous use in select states has given rise to the implementation of preventative measures to lessen and, eventually, eradicate its existence. *Does Torture Prevention Work?* examines the effectiveness of these preventative measures through a qualitative and quantitative approach. Richard Carver and Lisa Handley, the independent researchers who conducted this analysis, aim to develop a method to measure the results of preventative actions, determine whether these preventative actions are effective, and highlight key factors that drive their overall success. The study was conducted on behalf of the Association for the Prevention of Torture (APT). While the study itself appears both unbiased and academically rigorous, the language used in outlining the background motivations and describing the findings maintains a rhetoric that is partial to the success and continued implementation of preventative measures.

Carver and Handley examine sixteen different countries over a thirty-year period with a control for democracy, conflict, and economic development—as all the countries examined differ in these three categories. The countries are then classified into four categories: (1) areas where prevention has been sustained, (2) areas where prevention has been stalled, (3) areas where prevention is expected, and (4) areas where prevention has been denied. Each country differs with respect to its geographical location, cultural norms, and rule of law, each of which has some effect on the incidence of ongoing torture. Some countries have been stable for decades, while others are currently undergoing wars or hostility within their own or with other countries. To determine each country's status with regard to the prevention of torture, the book first lays out specific key factors that serve as indicators of a successful torture prevention scheme.

Does Torture Prevention Work? narrows down the many factors that can contribute to torture prevention into four core criteria. These include the circumstances of detention, prosecutions for the crime of torture, monitoring under the Optional Protocol to the Convention against Torture (OPCAT) standards, and the processing of detainees' torture complaints. However, the most important contributing factor in preventing torture was found to be the time frame in which safeguards are granted to a detainee. Cases in which individuals are held in lawful and documented places of detention with prompt access to lawyers, independent doctors, and access to family members and friends have proven to lessen the incidence of torture. However, regardless of what laws are on the books in any given country, it is the actual practice itself and the compliance to the existing laws that determine whether preventative measures can take effect. In the book, the existent gap between law and practice is studied in each of the sixteen countries where factors such as training and skills, as well as social and political contexts, are considered. Although Carver and Handley attempt to document the gap between practice and law, this proves to be extremely difficult to do. Methods related to this measure, including documentation of the prosecution of violators and the monitoring of torture complaints, fall short, mainly due to a lack of available information and government cooperation.

Analysis of each country was highly dependent on criteria such as access to information, geopolitical diversity, and high quality researchers. Some countries, such as the United Kingdom (classified as a country that has sustained prevention), were more open and willing to provide information and had local researchers willing to participate. In contrast, some countries, such as Kyrgyzstan (classified as a country in which prevention has been denied) were less cooperative and provided only limited information on the ground. Despite these inherent difficulties, the combination of the qualitative and quantitative approach taken by Carver and Handley works to form a well-rounded conclusion, superior to the approach garnered by only one of the stand-alone research methods. Gaps varied based on whether torture was forbidden under law but permitted under specific circumstances, allowed under law—which contributes to its continued practice—or silent about the subject altogether. Cases where preventive measures or the practice of torture were already in place were especially difficult to measure, as the separation between cause and effect were intertwined and not easily distinguished.

Carver and Handley succeed in organizing the data in a way that can be easily understood by an audience who is neither familiar with the subject of torture, nor the criteria or formulas that go into a scientific study. The purposes of the study, the intended audience, and the results of the study are all disclosed within the introduction and first chapter of the book. This ordering allows for a better understanding of the material that follows. The motivations and formulas behind the differing qualitative and quantitative scientific studies are divulged, providing a basic instruction on how to read the results. After the introduction, which alludes to the conclusion of the study in a brief summary, the individual case studies for each country are analyzed per chapter, ordered by clusters based on the prevention classification mentioned above. This is followed by a conclusion, which expands on the summary introduced in the first chapter to answer the original question posed. In addition, the definition of torture and its possible variations are explained, which enables the reader to form a better idea of some of the variables across countries that needed to be adjusted. *Does Torture Prevention Work?* does not try to hide the challenges and potential confounding variables faced by the scientific analysis, but rather outlines them in de-

tail. Some of these challenges include the stigma and potential legal consequences attached to the practice of torture which result in secrecy and denial regarding its occurrence, the reluctance of some countries to reveal sufficient information, as well as the struggle to develop a way to measure the degree of torture across countries. Despite the acknowledgment of these obstacles, their remedies and overall effects are not sufficiently outlined in the results or the conclusion. Carver and Handley admit that while there is no one-size-fits-all approach applicable to all countries—especially those in different political and social circumstances—they insist that patient application of the basic preventive measures listed is likely to yield positive results.

The modest number of countries (sixteen) allows for a closer examination of the individual political, social, and economic situations, and their relation to the practice of torture over the past thirty years. However, the sample size may not be big enough to yield a statistically significant result that can be broadly applied. As Carver and Handley concede, many countries had to be excluded from the study as the political and social circumstances were not conducive to a proper and accurate analysis. With countries unwilling to participate and provide information, there is no way to know whether the results regarding certain preventative measures and indicators found in the studied countries will apply to situations in countries worldwide. Moreover, the detailed analysis of each country which stresses the unique conditions and cultures of each society further support the inability to apply the study's results on a broad scale, as each of the differing underlying causes and rules of law that contribute to torture require different preventative measures.

The measures of torture prevention and classification of each country only remain accurate if the social, political, and economic statuses of each country remain unchanged. Despite admitting the inability to create a one-size-fits all solution, Carver and Handley do not lay out a clear mechanism in which the progress of each country can be re-evaluated in another timeframe or environment. While specific information and further research is undoubtedly still required, *Does Torture Prevention Work?* succeeds in answering the most basic question posed by donors of APT as to whether torture prevention does indeed work. The book not only answers this question in the

affirmative, but also lays out the evolution and progress of torture prevention over the past few decades, alerting NGOs and governmental organizations of how their efforts can be sustained or improved. More importantly, Carver and Handley's work stresses the importance of increased attention to state compliance with torture prevention mechanisms already in place, along with the need for constant evaluation of their progress. Lastly, *Does Torture Prevention Work?* opens the pressing topic for much needed further attention and research toward the ultimate abolition of torture.

Assessing Constitutional Performance. Edited by Tom Ginsburg and Aziz Z. Huq. New York, NY: Cambridge University Press, 2016. Pp. xiii, 431. \$39.99 (paperback).

REVIEWED BY CAITLIN HUTCHINSON MADDOX

In most countries, constitutions sit atop the legal pyramid as the “supreme law of the land.” Theoretically at least, they channel and constrain government action. Many of them further protect the citizens of a given country by endowing them with a set of rights—though their nature and robustness varies significantly. In fact, there seems to be unlimited variability among constitutional orders: some remain unwritten (as in the United Kingdom and New Zealand), though the vast majority are written; some entrench autocratic regimes, though most encourage some form of democracy; and some, such as Saudi Arabia's, substitute the Qur'an and Sunna for constitutional texts. And this should not be surprising since, of course, countries promote different ideologies and value systems.

Yet, in spite of such plurality, scholars “often implicitly” assume that there is a “convergent consensus on what constitutes ‘success’ in constitutional design.” Accordingly, the field of comparative constitutional analysis has been lacking in scholarship on this front.

In their book, *Assessing Constitutional Performance*, Tom Ginsburg and Aziz Huq attempt to fill this scholarly void. At its core, the book—a collection of fourteen essays—explores a set of elusive and puzzling questions: How should constitutional success be understood? How (and when) should it be measured? Is a single coherent answer to these queries—a “universal benchmark” against which all constitutions, regardless of

local circumstances can be evaluated”—even possible? Or is constitutional design as “idiosyncratic as a person’s choice in neckties”?

In pursuit of the answers, Ginsburg and Huq convened a conference in 2015 at the University of Chicago (where both are professors of law) and invited prominent constitutional scholars to provide their perspective on these issues. *Assessing Constitutional Performance* was then compiled from the papers presented on, though the editors never refer to the event itself within the introductory chapter. The book could have benefited from a brief overview of the conference’s discussion to flesh out and contextualize the academic dissent evident within the essay collection. To be fair, Ginsburg and Huq take care to flag the lack of consensus as the contributors grapple with these admittedly “open” questions. Their responses are as rich in variety as the constitutions which they write about—including those of South Africa, Afghanistan, Iceland, India, Kenya, the United Kingdom, the United States, Israel, Indonesia—and as many would argue, rightly so. The essays also employ vastly different methodologies (normative standards, rigorous statistical analysis, and case studies), at times with mixed results.

To some extent, the collection’s cohesiveness is lost as one is bombarded with *too many* ideas and approaches. However, the core aspiration of the book is to stimulate further deliberation, scholarship, and even constitutional “check-ins” by countries’ governing bodies. The book may be more successful as to these purposes. We have entered a time when many countries are revamping their constitutions (as during the Arab Spring), while others with exceptionally old structures appear on the verge of a constitutional crisis (as in the United Kingdom—see Eleanor Delaney’s essay entitled *Stability in Flexibility*—and arguably the United States). Perhaps, constitutional reverence should thus give way to the more critical scrutiny of constitutional success advocated by Huq and Ginsburg.

Assessing Constitutional Performance is divided into three sections, a useful way to focus a diverse array of essays. Part I centers on “defining constitutional performance.” In this set of articles, the contributors lay out general formulas with which they conceptualize and judge the success of a constitution. So, for instance, Huq and Ginsburg consider four goals as relevant

to measuring competent constitutions: they must (a) create public legitimacy; (b) channel conflict into political, rather than violent, venues; (c) reduce agency costs associated with government; and (d) facilitate public goods. They judiciously observe that their criteria are “external” in nature—or *not* based on the original intent of the constitutional drafters.

The editors then proceed to evaluate the constitutions of South Africa, Afghanistan, and the United States based on the factors identified. All three constitutions rank relatively well in terms of their legitimacy—the authors notably remark that in the United States, there is “no popular movement to rethink the Constitution”—and channeling conflict away from violent solutions. But, according to Huq and Ginsburg, they diverge markedly on the other two fronts. For example, in Afghanistan, the government has been unable to provide two key public goods: human security (undermined by the ongoing war with the Taliban) and a stable national economy (overshadowed by the black markets). At the other end of the spectrum, the United States has excelled in this realm. South Africa stands comfortably in the middle, despite failing to equalize the economic position of the black majority with the white minority.

Other essays in the section take an entirely different approach to understanding success in the constitutional context. In her essay on the Icelandic “crowdsourcing” Constitution (which has stalled in Parliament), Helene Landemore points to nine (or ten) factors comprising her benchmark for a “good constitution.” Roberto Gargarella, meanwhile, looks at “internal” criteria, considering whether Latin American constitutional drafters responded logically to what they perceived as the greatest “drama” of their day. So, for example, he might ask: did the drafters of Venezuela’s constitution correctly respond to “the need to consolidate independence” from Spain by endowing the President with near-unlimited power? (His answer is *no*). By emphasizing “internal” criteria, Gargarella introduces the importance of country-specific evaluations, which runs throughout the rest of the book.

Yet overall, the scholars in Part I of *Assessing Constitutional Performance* are united in their belief that there *is* a cohesive way to evaluate constitutions, even though they disagree about the normative standards to apply.

Part II slightly fractures this mentality since it consists of essays addressing provisions and problems unique to specific structures. The book thus begins in earnest to highlight the impact of context in constitutional examination—merely hinted at in Gargarella’s piece from Part I. One of the most compelling essays in Part II explores the ways in which countries, from Egypt to Brazil, have handled the transition from military to democratic rule. During this transitional period, the main concern is preventing a backslide to military rule through an outright coup or subtle power-grab. Ozan Varol emphasizes the finesse required in this endeavor, using the evocative metaphor of the lambs (i.e., democratic leaders) among the wolves (i.e., military leaders) to buttress his point. After examining both successes and failures, he *recommends* provisions which (1) build in temporal limits to military involvement in political life and (2) strengthen the institutionalized political marketplace. The subsequent essays follow a similar pattern, but look at an assortment of different issues, such as clauses restricting or encouraging free speech, as well as the effects of time and judicial independence on the enforcement of constitutionally-entrenched rights. These essays were particularly rigorous in their statistical analysis, and as such, could be a tedious read.

In general, the middle section was hard to get through, especially since it felt out of step with the rest of the book. It contrasted sharply with the “Marco-level” normative approach of Part I, but did not quite delve deep into the context-specific weeds as in the case studies of Part III. Instead, these essays consisted of careful provision-by-provision examinations, perhaps akin to regular comparative law essays.

Additionally, while the rest of the book is “evaluative”—in that the scholars assess the performance and success of enacted constitutions—Part II appears more proscriptive, as the contributors dole out recommendations to better order future constitutions. Evaluative and proscriptive approaches are not necessarily in opposition with each other. For the most part, they are complementary. However, this difference may lead to a slight loss in cohesion with the rest of *Assessing Constitutional Performance*. These essays likely add legitimacy to the book because of their data-driven—rather than normative or descriptive—nature. But when grouped together, they ended up be-

ing a bit of a slog. The case studies thereafter were a much-welcomed respite.

The final portion of the book consists of case studies, assessing the constitutional regimes of India, Kenya, and the United Kingdom, as well as those resulting from the Arab Spring. These were far-and-away the most engaging read—especially those of Erin Delaney and Martha Nussbaum, who are clear and effective writers. These pieces allow non-experts, with no background in these countries' socio-political or constitutional systems, to feel relatively conversant on key concerns of the day.

The authors also reveal themselves to be quite prescient. Delaney, who writes about the origins of the current constitutional crisis in the United Kingdom, predicts the use of referendums to help buttress legitimacy. And of course, Britain's most recent referendum resulted in the infamous break from the European Union, colloquially known as Brexit. James Gathii, discussing Kenya after the enactment of the 2010 Constitution, points to presidential elections as indicative of constitutional health. Kenya's most recent elections revealed the lingering corruption of the political system with rumors of ballot-stuffing and other behind-the-scenes impropriety. Yet, the opposition leader has not called for widespread post-election violence, instead challenging the results in the Supreme Court. In doing so, Kenya's constitutional legitimacy may be preserved—for now.

The case-study contributors unsurprisingly advocated against the wisdom, or even possibility, of a blanket standard for constitutional success. Zaid Al-Ali forcefully questions its utility on two bases. First, constitutions may be enacted for divergent purposes. Unlike the contributors of Part I, Al-Ali does not believe that constitutions have a single goal. Second, a unitary standard is inherently inbred with the scholar's own biases. A Western constitution likely diverges significantly from the Middle Eastern ideal. Delaney similarly questions the efficacy of a universal benchmark, noting that the "paradox [of] the coexistence of success and crisis" in the British constitution "suggests that Ginsburg and Huq's categories have failed to capture some additional dimension of success." She may envision more context-specific, culturally relevant standards.

Huq and Ginsburg were wise to include dissenting opinions in the book since Delaney and Al-Ali's concerns nagged at the reader from the beginning. By acknowledging them through these essayists, the editors increase their credibility and the value of their own scholarship.

Ultimately, the book itself might end up being more confusing than illuminating. The scholars jump from idea to idea without landing on a solid answer or solution. But perhaps this is the point: to stimulate original thought about how societies do—and should—order their most important legal instruments. If this is in fact their goal, Huq and Ginsburg are certainly on the right track.

The Horn of Africa: State Formation and Decay. By Christopher Clapham. New York, NY: Oxford University Press, 2017. Pp. xiii, 224. \$23.88 (paperback).

REVIEWED BY PAULA KATES

Christopher Clapham has a straightforward goal in his book *The Horn of Africa: State Formation and Decay*: to explain the history and current state of the various governments found in the Horn of Africa. This task is complicated, however, by the varied conditions of each country in the region: Somalia is often described as a “failed state”; Eritrea is considered one of the more repressive regimes currently in existence; Djibouti and Somaliland remain stable; and Ethiopia has gone through a period of remarkable growth over the course of the last two decades. The author suggests that the unique, non-colonial experience of the Horn has led to the current success or failure of each of these countries. Unfortunately, the breadth of experiences that each country has had and the stark differences between their current situations belie so elegant an explanation.

The author begins by providing a geographic and cultural overview of the Horn of Africa, and then goes on to provide a history of the region until 1991 and the end of the conflict between Ethiopia and Eritrea. This becomes the jumping-off point for analyses of the Ethiopian state, the Eritrean state, and the hodgepodge of Somali states which are grouped together in one chapter.

The Ethiopian section focuses on the establishment of government after the end of the war in 1991. Crucially, as the author notes, the new government inherited an established state, arguably the distinguishing factor between Ethiopia and its neighbors. The analysis then examines Ethiopia's federal system, which is notable for allowing each ethnic group a certain level of autonomy. While the author speaks critically of this decision to define the government on a basis of ethnic identity, he provides a persuasive argument for its effectiveness in Ethiopia, and how it crucially supports the stability and economic growth there.

The discussion of Eritrea turns its attention to the struggles of the new government to create a state from scratch, after winning independence from Ethiopia in the war. The author explores the development of the oppressive regime that now exists in Eritrea, and the relationship between the strong national service doctrine and corresponding refugee crisis. He concludes that for Eritrea to thrive, a significant, if not complete, rebuilding of the current governmental institutions would be required.

Regarding the Somali states, the blame for the lack of effective government is placed heavily on the pastoral tradition from which these governments have been developed. Unhelpfully, the chapter then goes on to explain that attempts by external powers to establish a strong Somali state have proven ineffective. This combination of fatalistic statements leaves the reader with the impression that Somalia will never achieve stable governance. In contrast, the example of Somaliland is provided, an entity—though not formally recognized as a state—that is considered a model of success for the region. It is noted that Somaliland has succeeded because of a strong grassroots tradition. Three reasons are identified for Somaliland's success: the lack of external interference, the lack of any one dominant group, and the presence of local businessmen who were willing to invest in state building exercises. Djibouti is mentioned quickly at the tail end of this chapter to round out the Somali states, and is mostly noted for its stability and commercial role in the Horn.

For the most part, the book is an engaging and succinct history of the Horn of Africa. Certainly, it would serve as an excellent introduction for anyone who is looking to learn more about the region. The author describes three separate,

yet frequently intertwined, storylines which faces the danger of devolving into a confusing mush. Nevertheless, the lines between the three narratives remain clear. A particularly satisfying element is the fact that when conflicts occur, the reader is presented with each group's perspective of the disagreement and rationales in turn.

The book is weakest, however, when it attempts to graft a thesis onto the facts in question, namely that the unique non-colonial history of the Horn of Africa has led to the lack of development in the region's states. The connection is never clearly established and appears to be undermined by the fact that both Eritrea and the Somali states were all, at one time or another, under some degree of colonial rule. Perhaps their "brand" of colonial rule happened to be different than on the rest of the continent, but this distinction is not explored in great depth at any point.

The one argument made based on the Horn's non-colonial past is that states in that area missed out on the benefits of colonialism. In one striking passage, the author states that

an internal colonialism was in some ways more problematic than an external one. The colonized peoples of the European empires were all broadly equal in their subjection, despite the tendency of the colonial rulers to favor some groups over others, whereas conquest by an indigenous power carried with it a premise of inequality.

This premise is, to put it lightly, debatable. The list of African countries that suffered due to colonialism is long; but to specifically rebut the author's thesis, one could point to Rwanda, where in fact the elevation by colonial powers of one group over another eventually led to a genocidal backlash.

At the end of the chapter on Ethiopia, the author attempts to make this point in the context of the history he has just described. This argument fails to make sense within the historical context that he previously provided. The end of the chapter details Ethiopia's economic growth and position as one of the more successful states in its region, with its failings consisting mostly of a not-quite-liberal democratic system and low "ease of doing business" ratings. At this point, the author reminds the reader of his thesis—though how colonial rule would have improved the situation in Ethiopia is never fully

explored, nor is a comparison provided with an African state that developed in the aftermath of colonialism.

Critiques with insufficient support are plentiful throughout the text. For example, the ethnic politics that undergird Ethiopia's federal system are described as a "genie" that cannot "be put back to its bottle." But from the preceding discussion of Ethiopian politics, it appears that the system is working and has led to twenty-five years of stability and economic growth. The author argues that some groups in the population are marginalized: "ethnic identities have become increasingly entrenched within a system that was intended to nullify them. A new politics of identity has emerged . . ." It would be difficult, however, to find any state that does not marginalize at least some section of its population through political exclusion. It just so happens that in Ethiopia, societal rifts are defined by ethnic history rather than race, class, religion, etc.

Another critique that gets contradicted shortly thereafter is in the discussion of the Somali states, where in the same chapter the author both faults Somalia for the government's ties to its pastoralist traditions, but then later lauds Somaliland for successfully leveraging a grassroots movement that draws upon the region's traditions. It is unclear whether the lesson should be that state building should avoid looking to the local ways, or embrace them completely. Additionally, while examining Somalia's shortfalls, the author notes that a movement towards isolationism would strengthen the state by turning away from misguided, foreign influences. However, in the discussion on Eritrea, the author emphasizes the need for that state to open its borders to the world, to move towards a more liberal state order. The author tries to provide a tidy solution for the difficulties facing the states of the Horn, but lacks any consistency across his analyses of the different countries.

The attempt to apply a universal thesis to the Horn is the book's most glaring weakness. Clapham argues that what really makes the Horn unique is "the nature of the subjection" that occurred there during the period of colonialism. How that argument relates to the current reality of the Horn is not satisfactorily explained. In fact, Ethiopia is generally considered the one African state to avoid colonialism, and it is at the current time the strongest state in the Horn. The differing subjection would seem to be a positive, as opposed to the curse the

author makes it out to be. Unfortunately, he never gives a strong enough reason to reject the conventional wisdom.

Perhaps the takeaway should be that any single answer for how to build a strong state is doomed to fall short, even if all the states in question are in the same region, with similar traditions and a shared history. The lesson could be that these fledgling governments have stumbled, and while some have found their way over the last quarter century, others are still trying, and their various weaknesses require a multitude of solutions.

The Road to Somewhere: The Populist Revolt and the Future of Politics. By David Goodhart. London, UK: Hurst, 2017. Pp. vii, 233. \$18.09 (paperback).

REVIEWED BY NICHOLAS PHILLIPS

The West's recent turn to right-wing populism has generated a cottage industry of cultural analysis. Commentators search for the true motivations of the average Trump or Brexit voter and relay them to liberals seeking explanations for these political transformations. In the United States, these interpretive exercises have often taken the form of ethnography, with authors like J.D. Vance and Arlie R. Hochschild putting out well-regarded books about their time living among the much-scrutinized white working class. In the United Kingdom, David Goodhart takes the opposite approach, and in *The Road to Somewhere*, he produces an aerial view grounded in poll data, which he believes shows a fundamental split of British society into two tribes: the "Anywheres" and the "Somewheres." Goodhart thinks that the Somewheres' grievances are legitimate, and that the Anywheres ignore them at their own peril.

The Anywheres are cosmopolitan liberals who love the open society they have created. They "[place] a high value on autonomy, mobility and novelty and a much lower value on group identity, tradition and national social contracts [like] faith, flag and family." They are fans of immigration, European integration, and human rights. They make up twenty to thirty percent of the British population. They are also the likely readers of this book—Goodhart has clearly written for an Anywhere audience. Opposing the Anywheres are the Somewheres, a group who are socially conservative and com-

munitarian, and who “place a high value on security and familiarity and have strong group attachments, local and national.” For them, an open society is more likely to feel threatening than exciting. They make up fifty to sixty percent of the British population. The remaining twenty-five percent get the unsatisfying moniker “Inbetweeners,” suggesting that British society is more a fuzzy spectrum and less two warring camps, as presented by Goodhart.

Goodhart spends relatively little time showing us that this neat divide is real, although it feels intuitive enough, and the 20-30% Anywhere vs. 50-60% Somewhere split does seem to show up often in polling data. Chapters 1 and 2 introduce us to that data. We learn about the following breakdowns: twenty-two percent of Brits want the rate of immigration to stay the same or increase (the Anywheres), twenty-two percent want it slightly reduced (the Inbetweeners), and fifty-six percent want it greatly reduced (the Somewheres). Twenty-one percent are enthusiastic about the European Union, but sixty-seven percent believe Britain only benefits a little or somewhat. Sixty percent agree with the proposition that Britain will begin to lose its identity if more Eastern Europeans move in; twenty-four percent disagree. Sixty-two percent agree with the proposition that Britain “sometimes feels like a foreign country”; thirty percent disagree. Sixty percent agree that “people led happier lives in the old days”; thirty percent disagree. This maps on imperfectly to the Leave vs. Remain divide (fifty-two percent and forty-eight percent, respectively), but it does help in visualizing the unpopularity of many policies prized by Anywheres.

Indeed, Goodhart is strongly motivated by a feeling that Anywheres “have counted for too much in the past generation.” The rest of the book consists of commentary on issues that matter to Somewheres, with the aim of convincing the reader of the legitimacy of Somewhere grievance. Goodhart is unique in arguing that these grievances are both largely cultural and legitimate. This is a rare pairing: most who urge empathy toward the populist turn of the white working class strain to couch it in economic rather than cultural terms. At any rate, Goodhart has strong evidence for the claim that Anywhere policies get enacted far more often than their democratic popularity would suggest. For example, in 2013 a combined 4.2% of the British public wanted the number of immi-

grants to increase “a little or a lot.” The 4.2% got their wish when net migration exploded following the European migrant crisis. Goodhart sees Anywhere policy decisions like this as stemming less from humanitarian commitment and more from self-interest: Anywheres support values like openness, meritocracy, autonomy, and change because they are the ones poised to benefit. They have the education and resources to take advantage of the opportunities these values create.

Chapter 3 seeks to understand how the center-left Blairite formula that seemed to own the future in Europe suddenly collapsed in the face of energized populism. Goodhart argues that center-left parties pushing E.U. integration and the free movement of people failed to understand how culture moves people. For him, populism is about “a quest for meaning and collective identity in a secular, individualistic, economic modern world.” When the Remain campaign grounded its appeal in economic efficiency, it was done for. Leave could position itself as “a vote for something more than money: for pride, belonging, community, identity, a sense of ‘home.’” Goodhart is no fan of populism—he voted Remain—but he convincingly argues that neglecting the emotional attachments that people have to established ways of life will produce backlash. The best evidence for Goodhart’s cultural explanation is that populism is ascendant on both sides of the E.U. economic equation: British companies are outsourcing to Poland and Polish workers stream to Britain, and populism won the day in both countries.

Chapters 4 and 5 attack the idea that globalization and immigration in their current forms are inevitabilities that we must simply learn to live with. Rather, they are discrete policy choices arising out of the view that bounded nation states are hindrances to efficient market outcomes. For Goodhart, one of the most impactful policy choices has been the dismantlement of citizenship preference, brought about by the non-discrimination principle at the heart of the international trade system and E.U. law. This principle guarantees that non-British citizens of E.U. countries will be treated like British nationals in the queue for public goods, despite the fact that most people believe that national citizens should get preference. The danger is that moderate national feeling, embodied in citizenship preference, is necessary to sustain the legitimacy of the welfare state, because redistribution requires trust and a feel-

ing of common identity between citizens. The European Union made itself the enemy of even moderate nationalism, but did not replace it with anything that could create the fellow-feeling necessary to make a political union work. Hardly any Brits identify as European first—just three percent. As a result, when stresses came in the forms of European debt and migrant crises, the European Union lacked sufficient capacity for collective action, and a vacuum was opened for immoderate nationalism.

Nowhere have discrete policy choices by Anywhere elites created more backlash than immigration, which Goodhart acknowledges was the “paramount reason” for the Brexit vote. In the span of several years, Britain became a “‘mass immigration’ society” after the Blair administration made a decision to nearly double migration inflows. In 2004, Britain became the only large E.U. country to grant immediate entry to newly minted E.U. citizens from Eastern Europe; the Blair administration said a few thousand would arrive per year, and the number now stands at 1.5 million. This was a change that “never appeared in an election manifesto and was never chosen by anyone,” and indeed the places that saw the highest rates of increase in immigration were the places most likely to vote Leave. Goodhart sees a dangerous gap between the Anywhere-enforced taboos on discussing immigration openly and the issue’s deep unpopularity with seventy-five percent of the public. Of course, Goodhart himself is an interested party—he became a pariah in the Labour Party after penning a 2004 article called “Too Diverse?” in which he argued that immigration could eventually undermine the citizen solidarity required to support economic redistribution.

Goodhart does not delve deeply into the thorny moral problems that this anti-immigration stance poses, and in fact tends to treat talk about human rights as a distraction from the rights conferred by membership in a national community. He provocatively argues that “as the human rights lobby works to reduce the distinction between national citizens and outsiders . . . it unwittingly undermines the national solidarity on which most rights continue to be based.” He succeeds in forcing a skeptical reader to take this argument seriously. Goodhart aptly marshals data to show that immigration has led to a significant diminishing of opportunity for those who fall into the Somewhere camp: social housing availability has plum-

meted, wages for the bottom twenty percent have come under strong downward pressure, and there has been major disinvestment from training programs due to the availability of fully trained workers from abroad. For instance, becoming an NHS nurse was once a stable Somewhere option, but today a third of London's nurses are recruited, fully trained, from overseas, and NHS London has eliminated a quarter of its training places. Still, none of this ultimately matters if maximizing the flow of migrants is simply the right thing to do, and Goodhart fails to engage with the question of moral justice.

Chapters 6 and 7 extend the economic argument, but not by beating the drum about widening income inequality, which Goodhart thinks is an exaggerated story. He points out that income inequality has actually been falling in Britain since 2007, and that mobility has only dipped by a few percentage points since its mid-twentieth century high point. Rather, Goodhart is interested in the psychological effects of the shift from an industrial to a knowledge economy, which "has left many of the Somewhere people in the bottom half of the income and education spectrum feeling demoralized and disrespected." Somewheres are getting a persistent message from society that their livelihoods aren't relevant to the country's future. In one telling example, Goodhart reports that university budgets were protected from austerity-related budget cuts, but vocational programs popular with Somewheres were axed. Here, Goodhart brings out another provocative argument: meritocracy, perhaps the most popular social ideal in modern history, has foundational problems, and in some limited respects may be inferior to the old British system of social hierarchy. In a functioning meritocracy, there will be losers, and those losers will feel that their failure is their fault. There has been a massive value shift accompanying the move to an "achievement society" where educational credentials and success in the knowledge economy replace more stable forms of self-worth provided by religion and traditional communities. In one of the most interesting passages of the book, Goodhart writes:

The tearing down of prejudice and unjustified hierarchy also means the end of the stable, class-bound, pre-achievement society that many people found comfortable. As settled, group-based identities have given way to more individual and mobile experiences

of the journey through life, the promise of greater freedom has brought with it greater responsibility for one's own destiny. Stronger class identities in the past provided some protection from feelings of personal failure—people could understand their relative lack of success as a function of their position in the social hierarchy.

Goodhart ultimately calls the meritocratic ideal “unassailable in principle,” so what should Anywheres do to adjust and limit the potential for Somewhere backlash? Goodhart offers no shortage of policy ideas: he wants increased public prestige and investment for technical education and apprenticeships; a rebalancing of transportation investment away from London and toward regional economic hubs; a more proportional system of representation in Parliament that can create outlets for populism; restricting public sector employment and public housing to British citizens; the restoration of tax subsidies for married couples; and a reduction in immigration following Brexit. He warns that “if decent populist sentiments and interests are not better accommodated by our Anywhere dominated society we will experience more Brexit-style political instability.”

This argument of course depends on the existence of such a thing as decent populism, which many are not disposed to credit. Goodhart describes Anywheres and Somewheres as “two halves of humanity’s political soul,” but for many minorities, the Anywheres are the people that defend their humanity, and the Somewheres are the ones who want to take it away. Goodhart is fairly contemptuous of moral universalism: he ruefully recounts a conversation with then-Cabinet Secretary Gus O’Donnell who told him, “When I was at the Treasury, I argued for the most open door possible to immigration . . . I think it’s my job to maximize global welfare, not national welfare.” The Anywheres feels that this is objectively true, because all lives have the same value. It may be impossible to argue with this, but Goodhart is ultimately persuasive in demonstrating that voters continue to find deep meaning in the national community, and a politics that treats this as backward is a politics that will eventually be defeated by a far more vicious backwardness.

Small and Medium-Sized Enterprises in International Economic Law.
Edited by Thilo Rensmann. Oxford, UK: Oxford University Press, 2017. Pp. xxxix, 366. \$105.00 (hardcover).

REVIEWED BY NICHOLAS PREY

Small and Medium-Sized Enterprises in International Economic Law provides a wide-ranging view of the challenges facing small and medium-sized enterprises (SMEs) as they enter the international market, as well as potential solutions that could allow greater access to the global stage. Although SMEs constitute a large portion of the global marketplace and are central to many domestic economies, there is little scholarship analyzing SMEs' place in the international economic legal scheme. Given the significant economic role of SMEs, the importance they have in providing employment worldwide, and their vital role in global value chains, increased scholarship could be useful in facilitating a more efficient global economy. The book is broken down into a collection of articles by different authors, each focusing on ways in which SMEs interact with international economic law. Ultimately, Rensmann argues that as more inclusive economic entities—and as major vehicles of employment across the globe—SMEs could ease the liberalization of global trade by increasing participation. However, this can only be done by balancing domestic and international economic interests. This book attempts to remedy the lack of scholarly attention and, in doing so, to see how international economic law can help level the global playing field by increasing the participation and presence of SMEs.

The wide array of topics discussed in the book gives a colorful background for readers both familiar and unfamiliar with SMEs and international law. The majority of the essays directly address recurring problems that plague SMEs in the international market place—lack of finances, lack of information, and vulnerability to burdensome regulatory systems, just to name a few. Present throughout is also the tension between state interests in protecting domestic SMEs and in fostering increased SME presence internationally. This echoes the central argument that while SMEs can be drivers for a more inclusive global economic system, domestic SME concerns cannot simply be ignored. While the correct balance is not identified,

the book lays a convincing groundwork for why such a balance should continue to be studied.

It is impossible to look at small or medium enterprises and their struggles without addressing the role played by larger multinational entities. While larger entities are mentioned, the book does not offer a thorough, satisfactory comparison of smaller and larger entities. While perhaps this is because larger entities receive more academic attention, a section detailing how the difficulties faced in international trade are different for large and small enterprises would nonetheless have been a valuable addition. It is also frequently noted throughout the book that SMEs make up much of the global workforce. But once again, as the assumption underlying the premise of the book is that international economic law can and *should* increase SME participation on the economic level, it would have been helpful and illuminating to have a section directly comparing the social and economic benefits of SMEs to their larger competitors. However, given the massive amounts of SMEs globally, and the increasing presence of global value chains, the book establishes a defensible rationale for increasing SME participation in international trade, such that the lack of a satisfying comparison to larger firms does not create a fatal problem to its overall analysis.

The book is broken down into four parts, each containing multiple articles. The first part is titled “International Trade Law,” and sets up the general framework of the interaction between SMEs and international economic law. The second essay, “Leveraging Trade Facilitation Reforms for Increased SME Competitiveness,” is particularly helpful in outlining core concepts that hinder SMEs in international trade, connecting each barrier to the ultimate problem—higher transaction costs relative to larger competitors. The article posits that because SMEs are disproportionately disadvantaged by higher barriers, reducing barriers for everyone would disproportionately benefit SMEs. This discrepancy in ability is due to the relatively higher per-unit cost of exports, thinner capital, and the tendency for SMEs to be risk averse. Practically, barriers can take the form of tariffs or of complex import/export procedures that require particular information and expertise.

Another article of particular interest in this section is “The South African Walmart/Massmart Case: SME-Friendly Domestic Competition Laws in the Light of International Eco-

conomic Law.” This article stands out for two reasons: first, it is one of the few articles that is not Eurocentric; second, it provides an in-depth look into a single legal dispute that involved most of the central issues of the book. While much of the other articles excel at providing a broad look at SMEs and legal systems, this article’s focus on a single case provides depth that balances the horizontal focus of much of the rest of the book. Furthermore, this article provides the most in-depth exploration of the domestic/international tensions regarding competition and the treatment of SMEs. It analyzes the type of balance that Rensmann posits as being of central import, and does so in the context of a merger between Walmart and a domestic South African retail chain. In order to balance out the potential harmful impact on domestic SMEs, Walmart agreed to create a fund to benefit local SMEs as a precondition for approval of the merger. This solution provides an example not only of how domestic SMEs can be protected from increased international economic globalization, but also exemplifies how they can benefit from the effects of globalization in the form of direct economic funding.

The second part of the book is titled “Regional and Trans-regional Trade Law.” The articles in this section continue looking at how international economic law can help lift the logistical, informational, and financial burdens that hinder increased international market access of SMEs. However, instead of looking at global treaties and trade organizations such as the WTO, the section focuses on various regional agreements and partnerships. The first two articles examine SMEs in the context of the Transatlantic Trade and Investment Partnership and the Trans-Pacific Partnership. The latter article presents another break from the largely European focus of the book. The final article in the section examines European state aid to SMEs, successfully illustrating how a group of states can provide grants to offset the financial and informational disparities discussed above that hinder SME entry to the international market.

The third section, “International Investment Law,” focuses on the problems faced by SMEs as investors. Many of the issues dealt with in this section are similar to those analyzed previously: lack of information, low finances, and scale of the enterprise. Furthermore, the section also posits that international agreements ensuring heightened protection for small

enterprises would increase SME participation. A unique theme highlighted throughout this section is the importance of dispute resolution to investors, and how once again the size of SMEs can thwart international ambitions. Stable international dispute resolution, such as arbitration, is a necessity for foreign investment. But, access to such a remedy is compromised when small enterprises cannot afford lengthy legal procedures, and cannot match the financial power of states with whom they are contending. Furthermore, in some instances, the small size of an investment in and of itself can preclude it from the jurisdiction of an arbitral body. The International Centre for Settlement of Investment Disputes (ICSID) has held that only investments that contribute to the economic development of host states fall under its jurisdiction, which potentially blocks many small investors from qualifying. While the size of an investment may be small relative to the host country's economy, it can be make-or-break for the investor. While this section exclusively deals with investment law, the issues highlighted here reflect the basic problem facing SMEs across the board—their size and subsequent lack of resources preclude them from entering global markets.

The fourth and final section is titled “Human Rights, Development, and Entrepreneurship.” At the beginning of almost every article throughout the book, it is noted that SMEs represent a major portion of the global market, and are the largest source of employment across the board. This section notes the potential that SMEs and entrepreneurial ventures present for allowing disadvantaged groups to meaningfully participate in the global economy, and how SMEs currently have little voice in creating international business and human rights guidelines. It argues that SMEs are not simply scaled down large firms, but have a unique structure that is conducive to bringing about real social change. By nature of being smaller and more flexible, they are more in touch with the needs of their stakeholder groups, thus making them more sensitive to social needs. These social needs include local human rights issues, as well as the general concerns a working populace might have with regard to increased globalization. They are better bellwethers of social change than their larger competitors. Many SMEs are also family owned, and therefore more likely to be concerned with ethical or philanthropic concerns.

Interestingly, one article suggests that in some situations, the very local structure of the SMEs that makes them useful mouthpieces in the global corporate human rights conversation is what prevents them from being heard, as they are sheltered from international dealings. Not only does this make sense, but it ties together two of the central themes that appear throughout the article—the need for balance between domestic and international SME concerns, and the higher effect barriers of any kind can have on SMEs trying to engage in global trade. This is perhaps especially true when domestic governments directly control SMEs. While this section does not provide as many concrete examples of ways to increase SME participation as others, it does go a long way to answering the question of why it is so important to increase the presence of SMEs in the global economy in the first place. This is a question that many other sections do not address—or if they do, it is simply to note that SMEs constitute much of the global economy. However, it is a shorter section, consisting of only two articles. A more in-depth, example-based look into the interesting questions raised here would be beneficial to the development of the work's central thesis.

All in all, this book presents a highly informative, broad view of SMEs and their role in international economic law. The fact that most articles identify the same or similar problems, as well as similar solutions, is not repetitious. Rather, it reinforces the notion that there are identifiable and consistent problems, and that there are recognized solutions that could counter these problems in multiple sectors. The book does an admirable job of highlighting its own limitations, such as the lack of a consistent definition of small or medium enterprise across nations and international organizations. Given the lack of academic literature on the subject, the choice of breadth over depth is understandable—especially given that certain articles still provide a surprisingly deep analysis of specific issues. It would be helpful to have a clearer understanding of why SMEs deserve special measures to help them compete against larger multinational entities on the global playing field. However, given that the stated scope of the volume is to analyze how international economic law can increase the presence of SMEs, this comparison could be (and perhaps is) the topic of further scholarly work.

This is a well-edited volume, consisting of well-written articles covering a broad range of topics. Initial (and perhaps inevitable) confusion regarding the swarm of agreements, acronyms, and entities is dispelled quickly enough, and the reader is left with a solid understanding of core inefficiencies that plague internationally-inclined SMEs, as well as possible solutions to these problems through the application of international economic law. While the tension between policies directed at protecting domestic SMEs and those favoring global participation are not thoroughly scrutinized, and large multinational entities are hardly mentioned, this book more than adequately prepares readers to engage in further research on those subjects. In all, it provides readers with a sound understanding of SMEs in international economic law and succeeds in establishing that this is a topic worthy of further study.