

BOOK ANNOTATIONS

Searching for Justice After the Holocaust: Fulfilling the Terezin Declaration and Immovable Property Restitution. By Michael J. Bazylar, Kathryn Lee Boyd, Kristen L. Nelson, and Rajika L. Shah. New York, NY: Oxford University Press, 2019. Pp. xlvi, 521. \$105 (hardcover).

REVIEWED BY CAMERON EWING

Soon after coming to power in 1933, Adolf Hitler and the Nazi Party implemented a series of far-reaching measures to persecute German Jews and dispossess them of their property. By the end of 1937, the total wealth of German Jews had fallen by forty to fifty percent. Over the course of World War II, legal and extralegal plundering of Jewish property intensified and expanded through Europe, resulting in the largest theft in history. Existing law proved inadequate to help victims recover their stolen property after the Holocaust, and the subsequent decades saw international efforts to identify and implement policies to aid in restitution.

Against the backdrop of myriad efforts with varying degrees of success, states convened the 2009 Prague Holocaust Era Assets Conference and issued the Terezin Declaration, the basis of *Searching for Justice After the Holocaust*. Focusing in large part on immovable property,¹ which has generally received less attention than other forms of restitution, the Terezin Declaration is a non-binding agreement to continue the work of righting economic wrongs committed against European Jews and other victims of persecution during the Holocaust. The Declaration was endorsed by forty-seven predominantly European countries and accompanied by the 2010 Guidelines and Best Practices (endorsed by forty-three countries). It also prompted the establishment of the European Shoah Legacy Institute (ESLI) to track the forty-seven signatory states' progress and continue advocating for the Terezin Declaration's principles. In furtherance of this mission, ESLI commissioned

1. The study focuses on three main categories of immovable real property restitution: private, communal, and heirless property.

the Holocaust (Shoah) Immovable Property Restitution Study to detail the restitution efforts of each state party from 1945 until the Study's completion in January 2017. *Searching for Justice After the Holocaust* contains the Study in full, providing an exhaustively researched, effectively presented, and unprecedented resource for understanding the history and current state of Holocaust immovable property restitution. The book also addresses broader trends and concerns within the area of Holocaust restitution law. While several of these trends would benefit from additional exposition, the book's repository of information provides a foundation for future discussion and analysis.

Each of the forty-seven chapters of *Searching for Justice After the Holocaust* is devoted to an individual Terezin Declaration country, with information presented in a standardized format. The chapters begin with an executive summary of the country's role in World War II and commitments it made in post war agreements, as well as the laws and legislation regarding private property restitution, communal property restitution, and heirless property restitution. The summary is followed by an in-depth analysis of those topics, and the final three sections present efforts that have not yet resulted in law and legislation as of the book's printing in early 2018.

The country reports are arranged alphabetically rather than by any common history or pattern of restitution efforts. Croatia, for example, is preceded by Canada and followed by Cyprus rather than grouped with the other former Yugoslavian countries. The immediate effect of this organization is to highlight the breadth of unique historical experiences of each of the Terezin Declaration countries and the wide array of legislation, case law, and debate on the subject of immovable property restitution. Though Estonia might logically be grouped with the other Baltic states, its relatively small prewar Jewish community of 4,500 and its concerted effort to enact far-reaching restitution legislation following its independence in 1991 differs markedly from Lithuania, with a prewar Jewish community of approximately 160,000 and restitution legislation that continues to limit eligible claimants to citizens. Poland, which lost twenty percent of its territory following World War II and has enacted no formal legislation to address Holocaust and Communist-era immovable property restitution, is a particularly unique case compared to other Terezin Declaration

countries. The organization of the country reports also fulfills what the authors describe as the practical purpose of the Study, creating a one-stop resource of self-contained reports for claimants, governments, NGOs, and ESLI to track and monitor the status of restitution legislation in each or any of the forty-seven countries included.

This purpose is further served by the highly standardized structure and language of each country report. Each report contains the same five sections (Executive Summary; Postwar Armistice Agreements, Treaties, and Agreements Dealing with Restitution of Immovable Property; Private Property Restitution; Communal Property Restitution; and Heirless Property Restitution), and the language within these sections is consistent throughout all forty-seven reports. For example, the end of each Executive Summary notes whether the country responded to a questionnaire sent by the Study and whether a country endorsed the Terezin Declaration's Guidelines and Best Practices. Furthermore, the Private Property, Communal Property, and Heirless Property sections all begin by quoting the Declaration's definitions of those terms. When a history is shared among countries, the language is generally repeated word-for-word. The former Yugoslavian countries, for example, all contain the same multi-paragraph description of a 1945 law enacted in Yugoslavia to address property confiscation. While occasionally repetitive, particularly when the same language or statistics are used multiple times within an individual country report, the standardized structure and language and the recurrence of information affecting multiple countries ensures that each individual country report stands on its own and provides a discrete examination of that particular country's progress toward the ideals of the Terezin Declaration.

The book's structure also supports its other stated purpose of promoting discourse by identifying broader trends about the history of Holocaust restitution law and questions about its future. The clear organization and repetition of language brings patterns and recurring gaps among countries' legal regimes to the fore, providing clear support for many of the trends and concerns the authors highlight in the book's introduction and conclusion. While the authors caution that any generalizations risk glossing over the nuances particular to each individual country, their broad distinction of Western and Eastern Europe emerges naturally from the very clear dif-

ferences in the country studies between those that experienced a second wave of property seizures in the Communist bloc and those that did not. The country studies similarly support the authors' identification of key factors for evaluating the success of a property restitution regime, as they allow for easy comparison of the outcomes in, for example, countries that have limited their restitution claims processes to their own nationals versus those that have opened their processes to citizens of any country. In a few cases, however, the broader questions and concerns the authors raise would benefit from additional information or analysis.

In their conclusion, the authors question whether Europe will rise to its challenge of maintaining forward momentum on property restitution legislation. They note that ESLI, the monitoring body that commissioned the Study included in *Searching for Justice After the Holocaust*, was officially closed by August 2017 after losing its funding the previous year. While this news comes as a surprise at the end of the book (it is disclaimed in a footnote in the introduction), it comports with the authors' concern regarding the numerous international conferences that have resulted in little fruitful action. However, the authors' claim that the European Union is failing to do its own monitoring and prodding of member countries is less supported. The European Union's lack of funding for ESLI is noted in the conclusion, but the European Union is referenced elsewhere in the book only twice, in the country study of Bulgaria. First, the study notes that Bulgaria's agricultural land restitution legislation, which initially required any eligible claimants who were foreign citizens to sell property back to Bulgarian citizens within three years, was made inapplicable to E.U. citizens as a requirement for Bulgaria's entry in the European Union. Second, the Study mentions that Bulgaria's preference for restitution of land in rem has created problems with E.U. agricultural funding, and the effect on restitution legislation in Bulgaria suggests that E.U. rules have at least some consequences. The assertion that the European Union has failed would thus benefit from additional evidence and analysis of how E.U. policy neglects to promote countries' efforts to implement effective restitution regimes.

A broader point that *Searching for Justice After the Holocaust* mentions but insufficiently addresses is the relationship between and the functions of restitution and reparations.

Though the authors do not explicitly define either term, they describe the two processes as related but distinct, with the lessons of restitution and the Holocaust substantially influencing the development of reparations. The focus of the Terezin Declaration is on restitution, with the goal of returning stolen assets to their rightful owners or compensating owners where restitution in rem is not possible. Reparations, on the other hand, are intended to provide justice to individuals because they were specific victims of persecution or violations of international human rights law. France's Mattéoli Commission distinguishes between the two concepts explicitly, describing restitution as the return of stolen goods that have been recovered without any "moral connotation" and reparations as compensation "which is chiefly moral and emotional and only secondarily material." While the boundary between the two concepts is porous, distinguishing between them is important for understanding whether laws described as reparations are really doing work that is additional to and separate from restitution regimes that aim to compensate victims for stolen assets. In some cases, the answer seems clearly to be yes. The 1952 Reparations Agreement between Israel and the Federal Republic of Germany, for example, did not compensate Israel for definable losses of property but rather corrected a moral wrong inflicted on Israel, which absorbed 500,000 Holocaust survivors. In other cases, however, the answer is less clear. The Mattéoli Commission, the establishment of which in 1995 signaled the beginning of France's reparations phase, found that in terms of numbers only seventy percent of business and immovable property that had been confiscated were certainly returned and recommended compensating individuals who neither had their property returned nor were compensated. Though this recommendation may have moral connotations, its goal is still to compensate individuals for stolen material goods; rather than serving a separate purpose in France's restitution regime, it seems to be filling in the gaps and attempting to correct the shortcomings of that regime. While it is possible that France's reparations phase involved measures constituting both restitution and reparations, the authors' presentation of the two forms of compensation as distinct and part of two conceptually and temporally separate legislative programs belies this. Given that the Terezin Declaration is primarily focused on restitution, an analysis of reparations law as a separate development

may be outside the scope of this book. However, the authors' references to it in the introduction, conclusion and in several country reports would benefit from additional clarity and exposition.

Searching for Justice After the Holocaust is a comprehensive compilation of the major legal developments in the field of Holocaust immovable property restitution in the forty-seven countries that have endorsed the Terezin Declaration. It is an invaluable and unprecedented resource for evaluating the major developments in restitution law up to the Study's publication and for monitoring future progress in the field. It also raises new questions and concerns about the future of restitution law. While several of these broader issues would benefit from further analysis, the multilayer, effectively presented research in *Searching for Justice After the Holocaust* provides an important framework with which to further monitor and grapple with these questions.

China: The Bubble that Never Pops. By Thomas Orlick. New York, NY: Oxford University Press, 2020. Pp. xii, 228. \$29.95 (hardcover).

REVIEWED BY JULIA KANG

China: The Bubble that Never Pops offers a comprehensive overview of China's economic history through its balanced focus on the past, present, and future. The author, Thomas Orlick, aims to position China as a country that can move beyond obstacles to achieve growth. Despite the issues plaguing its economy, Orlick posits that China will continue to grow through a combination of political prowess and unique traits. This unrelenting optimism could paradoxically make the reader ponder if China's path will really be that smooth, yet Orlick manages to take readers on a dubiously hopeful and extensive journey through China's economic history. His apt examples satisfy curiosity in China's current economic standing and even allow the reader to hope that this standing will continue.

Orlick begins by explaining the current big problem China faces: a debt crisis. He touches on how, like Japan and other Asian neighbors who navigated crises that toppled their economies, China must grapple with the potential negative

repercussions of poor lending habits. Orlick spends the first three chapters outlining this issue by describing the characteristics of the crisis's main actors, the lenders and borrowers. However, he highlights the aspects that are in China's favor, namely a high domestic savings rate that can act as a liquidity buffer, lower average incomes that have more room to grow, powerful political tools as a result of an authoritarian government system, and leadership experience navigating economic problems.

When detailing China's present debt crisis, Orlick properly sets the scene by building out the relevant actors. On the borrowing side, state-owned enterprises, local governments, and the real estate sector comprise the trifecta. On the lending side, these actors include unexpected players from the technology industry like Alibaba and Tencent as well as shadow lenders actually funded by banks who want to cut costs when loaning to lower-quality borrowers. Not only does Orlick patiently explain the particular situation of shadow lenders in China, he distinguishes them from the traditional understanding of shadow lenders as informal lending networks. The specific example of such a network in Wenzhou convincingly draws on the many unique characteristics of the Chinese economy.

Orlick then transitions into a historical background on China's development and how it has weathered other problems. He views China's recent history as a progression of four cycles. The first began when the People's Republic of China appeared and began interacting in the international sphere. This cycle revealed lessons and potential causes for a downturn, as the country experienced growing pains under Mao Zedong when transitioning from an agriculture-based economy to one based on industry during the Great Leap Forward. More growing pains followed in the same cycle under Deng Xiaoping, after a period of economic expansion and high inflation. When Deng implemented the removal of price controls, social unrest increased, and China realized it needed to approach reforms gradually. The second cycle saw Jiang Zemin at the helm when the Asian Financial Crisis hit. This revealed the importance of internal reform, beginning with public ownership characterized by state-owned enterprises and banks. The third cycle occurred under Hu Jintao and was marked by the origins of the 2008 financial crisis. While there

were more losers in the second cycle, this cycle saw unbalanced growth with the one-child policy and land grabs, along with the Shanghai stock market crash. This cycle taught China about the benefits of decisive action in administering stimulus but also of the challenges in leaning away from that stimulus after the results have been achieved. The fourth and current cycle positions Xi Jinping in the leadership seat to deal with modern issues. With the lessons of the previous cycles in mind, Orlick argues that China can better tackle the current debt crisis.

Following this timeline to the present day, Orlick proposes deleveraging to mitigate the debt crisis. Combining this strategy with incentivizing people to move into the ghost towns caused by the real estate boom and scoring banks on their performance will help prevent defaults. But Orlick also weaves in other problems, from the effects of a focus on developing the technology sector to moral hazard due to government support. Specifically, he discusses the brewing new Cold War between the United States and China over technological development, along with anecdotes about Japan and Korea during their economic collapse.

Despite success at describing China itself, Orlick misses an opportunity to connect the experiences of China with that of its Asian neighbors or other countries. He could better synthesize the facts about Japan and Korea that he peppers throughout the chapters. Indeed, it seems a puzzling stylistic choice to plop in information about other countries without explicitly showing the reader why that information matters. For example, when he mentions the “prominent role” real estate plays in financial crises and lists various examples from countries like Japan, Thailand, and the United States, he could directly compare these scenarios to China’s situation instead of leaving the reader to contemplate the connection. It may be impractical to pinpoint the exact cause of a crisis; as Orlick says himself, “success has many fathers; failure is an orphan.” But identifying and comparing triggers can provide useful information on what to avoid.

Orlick actually nicely ties in Japanese and Korean experiences of failure in chapter ten, so earlier absences are not a matter of missing skill. In the case of Japan, he emphasizes the similarities with China leading up to crisis before focusing on the differences that have allowed China to avoid “a lost decade

that segued into a lost generation.” Interestingly, Orlick points out that the similarities are not surprising because “China consciously followed Japan’s development model, paving its path to prosperity with a combination of industrial planning, state-directed credit, and an undervalued currency.” Thus, similar negative market effects arose, from moral hazard to wasted public spending on unused roads and credit misallocation as a result of government direction to banks. Further drawing on the similarity between Japan and China, Orlick notes how both countries implemented monetary stimulus when exports trickled off in 2009, leading to “overinvestment in industry and bubbles in stocks and real estate.” When China’s stock market bubble popped in 2015, it was less dramatic than Japan’s situation because the stock market was less important to China’s overall financial network. Crucially, China also had a lower GDP per capita, less urbanization, and a massive domestic market to weather a decrease in export demand.

Following that comparison, Orlick runs through a similar exercise with Korea. First, he notes the similarities: a reliance on exports, “manag[ing] rapid industrialization through a nexus of closely controlled banks and corporates,” and the proliferation of nonperforming bank loans. Then, he focuses on the important differences that will allow China to avoid a similar fate to Korea, including China’s assertiveness in responding to problems, punishing irresponsible executives, and lending to other countries instead of borrowing.

Orlick concludes with possibilities of future scenarios, ultimately returning to his thesis that China can overcome the challenges it faces because it has more space to grow. These future hypotheticals also emphasize China’s impact on the global economy and its capacity for change. As Orlick summarizes, “[b]ets against China ignore how good the country has been at solving problems. They also ignore how successful it has been at creating and seizing opportunities.”

Because of the dearth of direct synthesis aside from chapter ten, China through Orlick’s lens seems like a floating island whose position does not depend on any other country. But the reality is that the modern era features a more interconnected global economy. With China becoming more of a presence in the international sphere, greater expectations for its role will arise. Orlick mentions China’s entry into the World Trade Organization along with its Belt and Road project, yet

he does not elaborate on how these global positions will play out. While he does map out the effects of a negative downturn on the global economy in a possible future scenario, he largely skirts international ties in most of the book. Since China reopened to the world during its first cycle under Deng Xiaoping, the lack of exploration of international effects disappoints. Otherwise, Orlick thoroughly depicts a self-sufficient China with the ability to circumvent hurdles that have waylaid other countries in a similar position, producing an informative account of its economic history in the process.

Rescuing Human Rights: A Radically Moderate Approach. By Hurst Hannum. Cambridge, MA: Cambridge University Press, 2019. Pp. CLXXIII, 173. \$32.99 (paperback).

REVIEWED BY PATRICK KENNELLY

In *Rescuing Human Rights: A Radically Moderate Approach*, Hurst Hannum advocates for a narrow scope of international human rights law as the most practical means of enacting positive global change and preserving the fundamental human rights first recognized on a global scale in the 1948 United Nations Universal Declaration on Human Rights. Though Hannum's thesis would benefit from empirical evidence showing that more acutely-focused human rights law initiatives would further government adherence to fundamental human rights, his argument that the continuing expansion and obfuscation of international human rights law delegitimizes it and decreases its power is thoroughly considered. However, Hannum too often lets his sharp critique of modern human rights activism interfere with the development of this "radically moderate" approach, resulting in an effective dismantling of the current regime, yet a relatively hollow argument for an alternative.

Hannum begins with a cautiously optimistic tone, recognizing that despite its many flaws and criticisms, human rights law has been a positive force since its inception. After a quick overview of the "Human Rights Revolution," the book turns towards its thesis. Though supportive of international human rights law as a means of protecting individuals, *Rescuing Human Rights* quickly begins to excoriate the many different uses of the term "human rights" today, particularly the confla-

tion of human rights law with other beneficial, but markedly different initiatives.

The first chapter of *Rescuing Human Rights* explores the growing emphasis on international criminal prosecution and its increasing presence in human rights law. Hannum's most persuasive argument is here in his examination of the United Nations' attempt to bring former members of the Khmer Rouge to justice through an international tribunal for the deaths of 1.7 million people during their reign in Cambodia from 1975–79. Hannum posits that the protracted negotiations and desire for prosecution were the underlying causes of the United Nations' failure to address the human rights violations that were being carried out by Hun Sen, the head of the Cambodian government since 1985. Noting an issue of causation here, Hannum nonetheless effectively shows that a focus on "combating past impunity in Cambodia" may have led the United Nations and other actors to ignore human rights violations in the present.

The next two chapters, like much of the book, focus on showing that attempts to expand the definition and pervasiveness of human rights law has been misguided. Businesses and civil society, Hannum argues, have become the focus of far too many human rights initiatives. Both transnational corporations and non-governmental organizations lack the governmental capability to protect individuals from human rights violations, and therefore these initiatives often result in the proliferation of guidelines and principles which seem to have very little tangible benefits for the populace and confuse "binding international law with voluntary platitudes." For instance, Hannum examines the United Nations' Guiding Principles, a compact explicitly addressing human rights which over 10,000 enterprises have accepted. The Guiding Principles are the most significant articulation of the connection between business activities and human rights, but their imprecision and lack of applicability has, Hannum argues, severely undermined the creation of clear standards for businesses and fundamental international human rights law. The efforts appear to have generated more self-congratulation among businesses than marked improvements in their actual practices. Hannum's skill through these arguments is his ability to maintain that while these initiatives are well-intentioned, they may be misusing resources and efforts that would be more effec-

tively employed in a different capacity. However, he never clearly connects this critique with an offering for where and how this focus could be better spent, undermining his argument.

Hannum spends the next three chapters critiquing specific instances of the creation of new rights or the expansion of existing ones, a phenomenon he refers to as “human rights inflation.” Rights that come under criticism include environmental human rights, the right to development, the right to live in a society free from corruption, women’s rights, other gender- and sex-based rights, and the rights of targeted peoples such as rural farm workers. Hannum is painstaking in his approval of the intention behind many of these initiatives, and he is targeted and nuanced in his approach to each individual right. Yet the argument for each essentially arrives at the same point: the creation of many different rights takes away from the implementation of existing rights and can be destructive to the very group or goal that the right hopes to serve. To illustrate this point, Hannum looks to the United Nations’ role in rights inflation. U.N. special procedures, which are experts or groups of experts focusing on specific human rights issues, have expanded from focuses on physical security, civil rights, and some socioeconomic rights such as access to water in the 1980s to forty-four narrower categories such as “people with albinism” and “defenders of human rights.” As the special procedures have expanded, so have the many U.N. declarations that follow, far outpacing any increase in funding. The result is too many initiatives and a focus on the creation of rights rather than their implementation. This allows nations to work on declaring rights for certain groups while sidestepping more tangible and immediate protections.

Hannum’s argument presents an insightful critique of the proliferation of human rights, but it never suggests an alternate way to approach these rights which he effusively supports from a normative standpoint. The book comes closest to doing so in the discussion of rights based on sexual orientation. Raising the question of whether a broad assertion of LGBT rights has actually enflamed tensions surrounding homosexuality in certain areas of the world, Hannum argues that advocates should ground their arguments in more widely-accepted assertions. The right of citizens to state protection from violence or the threat of violence based on sexual orientation may be a

more palatable assertion than the right to same-sex marriage, yet Hannum fails to truly consider the negative outcomes that may follow. The analysis is lacking, as he fails to consider what sort of symbolic effect it would have if advocacy groups abandoned pushing aspirational human rights law in favor of human rights that are more universally-accepted. In arguing that limiting human rights will make for a better world overall, Hannum is far too brief in his analysis of how these more universally-accepted rights may actually be employed to achieve the aspirational goals of the rights he criticizes.

Hannum then moves on to argue for a more flexible interpretation of human rights principles, attempting a balancing act that has been tried by many and achieved by few. He advocates for a more localized understanding of human rights by positing that human rights law has become overly westernized. The flexible interpretation of human rights begins with an analysis of human rights as a broader concept which may have wide consensus, to a particular nation's conceptualization of human rights based on history and culture, and finally to the implementation of human rights in domestic law. By breaking down human rights individually using this analysis, Hannum shows that rights which may be broadly agreed upon at the higher, conceptual level, may result in very different state practices at the implementation level. Therefore, through a more flexible interpretation of human rights that is sensitive to regional variations, cultural differences, and procedural mechanisms, Hannum argues that human rights may actually be more effectively achieved.

To illustrate this point, Hannum looks to the repudiation of the Taliban for their abuse of women's rights, as well as the reluctance to accept women's rights demands into the mainstream platform during the Cairo protests. Hannum states that by focusing on a subsection of the population, protestors may have missed a chance for broader social change that would have benefitted all. This is a fascinating proposition, and one that deserves exploration, yet the analysis simply stops there. There is no further conversation or evidence offered to show that such a strategy may have resulted in broader change, other than the fact that it may have been less inflammatory. Hannum argues that human rights law depends on the participation of the state, but this does not necessarily mean that human rights will be achieved in a greater capacity by setting

the bar lower. Without any further evidence as to how one may get more protection and positive change by asking for less, Hannum's argument may be taken by many as an apologetic rather than "radical" approach.

In the last chapter of *Rescuing Human Rights*, "The Way Forward," readers may hope to see how this new approach to human rights will lead to greater equality and protection of peoples around the globe, the primary goal of even the narrowest interpretation of human rights law. Evidence and more concrete examples of the benefits of a narrow approach are again scant, yet Hannum's argument presents several considerations that are very much worth exploring. While the book may fail to deliver on its promise of a new approach, its visceral attack on the existing conflation of all issues as human rights issues, the focus on the creation of new rights rather than implementing existing ones, and the application of westernized concepts to sensitive issues are all arguments worth serious consideration. The end goals of Hannum's narrower approach may still need elaboration to draw serious support, but the critique on these current practices should cause human rights advocates to reconsider many strategies that are pervasive today.

Multi-sided Music Platforms and the Law: Copyright Law and Policy in Africa. By Chijioke Ifeoma Okorie. New York, NY: Informa Law from Routledge, 2020. Pp. xxiii, 301. \$150.00 (hardcover).

REVIEWED BY STEVEN SKLYAREVSKIY

In the modern digital age, most people have likely come across a multi-sided music platform, even if they were not aware of the terminology. A multi-sided music platform is an online hosting service that either allows users to upload music and other content or uploads the music and content itself. Common examples of these platforms are YouTube, SoundCloud, Facebook, and Spotify. These platforms, and their African competitors, NotJustOK.com, TooXclusive.com, and 360nobs.com, are the central subject of Chijioke Ifeoma Okorie's *Multi-sided Music Platforms and the Law: Copyright Law and Policy in Africa*. Okorie breaks down the legal frameworks

that regulate these platforms as well as the business models underpinning their operations.

Okorie is largely concerned with the development of laws regulating these platforms in South Africa and Nigeria, as to more broadly examine laws across the entire African continent would be too unwieldy a task for a succinct book. Okorie argues that observing South Africa and Nigeria in particular is instrumental as the former is among the more developed countries in Africa while the latter has elements of both developed and developing nations. The perspective that the book provides is a welcome one in the international legal discourse, as African law is not always given such weight and focus in legal texts. Unfortunately, some laws governing issues discussed in the book have yet to be enacted or are in their infancy. For these situations, Okorie examines the text of the proposed or newly enacted laws and makes educated assumptions about how they would be interpreted by courts or other regulating bodies based on similar interpretations in the European Union and the United States. This is a tool Okorie frequently uses, even when she examines laws that do have a history of interpretation in South Africa or Nigeria. With established E.U. and U.S. law serving as a normative framework, readers have a backdrop against which they can evaluate South African and Nigerian law rather than learning these about these laws in a vacuum.

Okorie starts with an explanation of the business models for multi-sided music platforms. These companies typically operate in one of two methods: a revenue-sharing model or a freemium model. In the revenue-sharing model, platforms run advertisements on songs or videos and allot a share of that revenue to the copyright holders. In these circumstances, platforms do not always have an explicit copyright license for the music. Instead, there is a presumption that the uploader is the copyright owner or a licensed party. A freemium model provides a free product to users, with the option to pay in exchange for certain benefits within the platform. Platforms that upload the content themselves typically seek copyright licenses to avoid liability, but Okorie focuses on the platforms that do not have express licenses and evaluates the copyright regimes that govern liability in those scenarios. In cases of infringement, these platforms can raise a safe harbor defense, which limits liability unless they were made aware of the infringe-

ment or knew facts that indicated infringement. This concept is paired with the value-gap proposal, which argues that there are grounds for competition law to step in and correct the imbalance between some firms spending time and money securing copyright licenses and other firms that do not and shield themselves with the safe harbor defense.

While Okorie does give well-reasoned analysis from the perspective of the platform firms, her analysis from the perspective of copyright holders could be more robust. In arguing for a limitation of the safe harbor regime, Okorie does not consider the indirect impact on copyright holders. The analysis would be more comprehensive if Okorie discussed whether a greater imposition of liability on these platforms would cause these companies to react to reports of infringement more severely and stifle the rights of copyright owners. It is possible that bad actors could take advantage of platforms' fears of liability and the platform firms' lack of ability to directly oversee millions of users and uploads by filing false claims against videos that either have copyrights or fall within statutory exceptions like fair use. In this way, increasing liability for the platform firms could actually harm the very creators that such a change would seek to protect. Mentioning this paradox would give readers a greater understanding of the complex role that the safe harbor regime plays in copyright.

The book's legal analysis consists of three main sections: copyright, privacy, and competition. In each section, Okorie discusses both general doctrine and specific application to multi-sided music platforms. However, as she points out, it is nearly impossible to discuss the application of one of these branches of law to multi-sided music platforms without also mentioning the others. These laws overlap and, in some cases, contradict each other's goals. For example, privacy law centers around the rights of users to have their personal data protected when they use services such as music platforms. However, if privacy laws prevent platforms from sharing user data with copyright owners, the music creators lose extremely valuable metrics by which to judge their existing content, hampering production of new content. Not only does copyright law aim to encourage the creation of new content, the resulting imbalance of power between copyright holders and platform firms that produce their own content is directly within the domain of competition law. While Okorie does a fantastic job of

highlighting the interrelation of these laws, it often results in the same concepts and explanations recurring throughout the chapters, which can feel a bit repetitive.

The interrelation of copyright, privacy, and competition law is also highlighted by frequent reference to the two central cases of the book: *PRS v. SoundCloud* (United Kingdom) and *Attrakt v. Google* (Italy). The subject matter of these cases make them good examples for explaining how the law interacts with multi-sided music platforms. As Okorie introduces concepts relating to each type of law, she connects many of those concepts to the cases to give real-world examples of the doctrine and further the theme that they are commonly inseparable in multi-sided music platform disputes. However, while Okorie does reference a large number of examples from South Africa and Nigeria, the book would feel more cohesive and focused around African law if the central cases were from those jurisdictions, rather than only from Europe.

Generally, the structure of the book is a bit unorthodox. The majority of the book presents doctrine, case law, and proposed legislation with minor commentary from Okorie. Problems and goals of these particular laws are developed as the reader is given more information, but Okorie shares little of her personal view on these issues. As a result, the book can feel like a law school casebook at times. Patient readers are rewarded in the final chapter, which delivers the commentary missing from the rest of book. In approximately a dozen pages, Okorie lays out her ideas for the regulation and reform that she feels would best suit the competing interests of copyright holders, platform firms, and data subjects. While it may be that Okorie wanted to guarantee the reader would understand her ideas before presenting them, the book would feel more complete if it was anchored by a strong thesis laid out in the introduction that readers could keep in mind as they are given a guided tour through the doctrine.

Okorie's model for reforming laws regulating multi-sided music platforms in South Africa and Nigeria consists of three main ideas: legally clarifying the right of communication for copyright owners, expanding copyright limitations and exceptions, and addressing the dominance of certain platforms under a competition framework. Copyright law in these countries is currently focused more on the right of reproduction, but the proliferation of massive digital music platforms de-

mands that the right to communicate a copyrighted work to the public be legally secured. While the right of communication would expand liability for platform firms, Okorie argues that codifying new limitations and exceptions for copyright liability would curb liability to a desired degree. These limitations would consist of the “new product” and “innovation balance” tests adopted from European law as well as an established licensing rate set by a tribunal to be paid by the platform firms to copyright holders. Okorie argues that fixing the licensing fee via tribunal would limit the coercive effect that copyright holders would be able to exert on platform firms. While the new product and innovation tests seem well reasoned, it seems counterintuitive that copyright holders are in an unjustifiably high bargaining position once imbued with an established communication right. Surely their interests to have their content viewed would bring them to the negotiating table with platforms that boast the highest user base. Ultimately, it would stand to reason that the copyright holders need a platform more than the platforms need any particular music creator. However, due to the existence of massive copyright license conglomerates, a single corporate entity can collectively negotiate on behalf of countless copyright owners, giving them significant negotiating leverage. Although Okorie mentions these entities in reference to Nigeria, which requires them to obtain federal certification in order to operate within the country, it would be germane to hear her opinions on if and how these license conglomerates should be regulated.

Okorie presents a meticulously researched survey of law related to multi-sided music platforms in Africa. While copyright, privacy, and competition law intertwine to create a regulatory framework, South Africa and Nigeria have definite gaps in their laws regulating these platforms. Okorie presents suggestions for reform as well as reasonable assumptions on where the law is trending based on proposed legislation. Ultimately, this book would likely be an instructive guide for interested professionals, especially in jurisdictions that are seeking to update their regulations for the digital age.

EU Powers Under External Pressure: How the EU's External Actions Alter its Internal Structures. By Christina Eckes. Oxford University Press, 2019. Pp xxxii, 262. \$100 (hardcover).

REVIEWED BY ZAIN SYEDAIN

The European Union occupies a unique place in the international order, surpassing other international organizations in terms of the integration of its member states. Yet there is a tension between the European Union's internal affairs, in which Union law is supreme, and its external affairs, in which the Union is treated as an international organization and its member states are regarded as the true international actors. As the Union becomes more involved in international relations, the structure of the organization is affected; the Union requires certain amounts of primacy and autonomy from national governments for the European project to work. In *EU Powers Under External Pressure*, Christina Eckes examines how the external actions taken by the European Union affect its own internal structures and the issues that may arise out of those effects.

Eckes structures the book into six chapters that address particular issues and provide an understanding of the effects of the European Union's external actions. Her thesis is that because of the structure of the Union's foundational treaties and the legal hierarchies necessary for its function, the Union's external acts increase integration between member states and further promote the power of E.U. institutions at the expense of national governments. Overall, Eckes succeeds in supporting her thesis and *EU Powers Under External Pressures* showcases the reality of how the Union's external actions have an integrative effect on its constituent nations. Eckes makes a strong argument that the legal instruments of the European Union may in fact be the best way for it to interact with the rest of the world, and that the integrative effects resulting from the Union's external actions are for the best.

Chapter one focuses on the concepts that underscore the European Union's legal order and illustrate the issues and challenges that crop up later in the book: autonomy and legitimacy. Eckes emphasizes the need for the European Union to maintain links with its populace and allow them to participate in its institutions to create and maintain a sense of identity and

foster democratic principles. The need for identity—along with duties and loyalty to said identity—stands out due to the lack of an easily identifiable ethno-linguistic character of the European Union. Furthermore, by highlighting the Union's need for autonomy in order to have both internal and international legitimacy, Eckes sets a solid foundation for later understanding how external action can affect the Union's "self-referential" image and reduce its power and ability to impose legal obligations on its members. For instance, Eckes describes how the Court of Justice of the European Union (CJEU) jealously guards its sole ability to interpret the law and legal obligations of the European Union.

Chapter two tackles the idea of E.U. loyalty and the legal relationships between the European Union and its members. Eckes does a particularly good job explaining how the European Union's treaty framework creates legal relationships and imposes obligations on member states. Chapter three elaborates on this theme by focusing on the three key principles that allow the European Union to function: subsidiarity, primacy, and coherence. Eckes demonstrates how the framework outlined in chapter two relies on these principles to keep member states in compliance and allow the Union to exercise the power its member sovereign states have ceded to it. She then notes how each of these principles are threatened by the Union's increasing role in external relations. For example, the scale of the European Union makes it a better external actor but also increases the distance between citizens and decisionmakers, jeopardizing subsidiarity. These ideas and the theme of legal relationships defining the power dynamics between the Union and member state are also relevant in chapter four, where Eckes describes how external action affects the division of competencies between the European Union and its member states. For Eckes, this structure is a key factor in maintaining the fine balance between providing integrative, community-building initiatives such as common security and open borders, and allowing constituent states to maintain their sovereignty and autonomy so as to not create a "Federated States of Europe." This theme of European Union powers versus member state powers is further addressed in chapter five, where Eckes discusses how institutional competences are divided between the European Union and national institutions. She points out that the Union requires coherence among

members' actions and policies, and thus in engaging externally, the European Union blurs the lines of responsibility. Greater delineation is accordingly necessary to achieve coherence and preserve the division of power. These chapters constitute the majority of the book, and Eckes is very persuasive in her argument. She draws clear lines of causality from legal decisions to their effects on legal structures. Moreover, her explanation of the rationales behind these decisions from the perspective of international and national actors adds to the understanding of the ways in which legal structures and duties react.

Chapter six discusses international courts and tribunals (ICTs), the autonomy of the European legal order, and how ICTs create an issue within the European legal hierarchy. Eckes explains how the primacy of E.U. law within the internal hierarchy can be threatened by international legal obligations resulting from accession to ICT instruments, which in turn allow member states to challenge E.U. agreements and directives if they conflict with international obligations. However, considering the activity of E.U. member states in embracing international institutions, it seems strange that the obligations of international law would conflict with the regional order that they themselves created. Eckes recognizes this contradiction as one of the main obstacles to the European Union's ability to further engage in its goal of developing a rules-based international system. Eckes does not suggest a solution for this problem, but highlights that it will be a key challenge for the Union.

The idea that the European Union may be better suited than its member states to represent its citizens is another interesting idea that Eckes brings up over the course of the book. She notes that the increased role of the European Parliament in the Union's external relations, in conjunction with national representation, allows for better representation of the citizen. This scheme further legitimizes the Union, though whether that is normatively a positive thing is a question beyond the scope of the book. Additionally, there is no mention of the important ramifications of increased European integration on external relations and the sovereign-centric international order, even though these are important considerations that scholars of international law and politics should keep in mind.

One of the weakness of Eckes' work is its density. Although a slim volume, the book throws a large number of concepts, cases, and other legal material at the reader, making comprehension difficult for those unfamiliar with the subject matter. Additionally, while the author's pro-European integration view is not a weakness, she did not strengthen her arguments on scale and the European Union's ability to better represent the citizens of Europe in external actions with rebuttals of the pitfalls of increased integration, such as the apparent removal of power from citizens.

Whether the European project can move past its geopolitical and international legal struggles is not something the book addresses. However, by highlighting the potential ways in which the European Union can overcome issues arising out of increased integrative effects and by showcasing the potential negative reactions from member states pushing for greater autonomy, *EU Powers Under External Pressures* gives readers something to keep an eye on in the development of pan-European institutions.

Complementarity, Catalysts, Compliance: The International Criminal Court in Uganda, Kenya, and the Democratic Republic of Congo.
By Christian M. De Vos. Cambridge, UK: Cambridge University Press, 2020. Pp. xxxv, 339. \$125.00 (hardback).

REVIEWED BY STEPHANIE WILLIAMS

The principle of complementarity—the notion that the International Criminal Court (ICC) is intended to supplement rather than supersede national jurisdictions—plays a critical role in defining the ICC's relationship with states and its ability to organize international justice. Based on a decade of research and reflection, Christian De Vos' *Complementarity, Catalysts, Compliance: The International Criminal Court in Uganda, Kenya, and the Democratic Republic of Congo* is an innovative and engaging exploration of complementarity that bears directly on current opportunities and challenges in national accountability efforts for international crimes and the future of the ICC. The book considers how complementarity and the ICC came to be regarded as catalysts for domestic accountability and examines the effects of this framing and the role of state and non-state actors. The overarching argument is that local

politics and global asymmetries influence ICC interventions and objectives at the national level. While this argument is crucial, this review highlights two additional aspects of *Complementarity, Catalysts, Compliance* that augment the significance of its scholarly contribution: its approach to and engagement with a tension embedded in complementarity. Through a multidimensional, process-oriented account, De Vos deciphers the dynamics of complementarity, highlighting a key tension between complementarity's coercive aspects and cooperative aspirations. In doing so, he locates a systemic problem in the principle of complementarity that exists across multiple contexts and that scholars and practitioners of international justice must address in pursuing a comprehensive approach to impunity.

De Vos's approach to the question of complementarity is significant because it allows him to glean hidden insights and reveal themes in complementarity's operation across contexts. As De Vos indicates, outcome-oriented analyses of complementarity and domestic accountability only produce a superficial inspection, wrongly suggesting that the ICC has done little in the titular countries. A process-oriented approach, on the other hand, opens up a world of dynamic links, demonstrating the magnitude of domestic activity around the "idea of the ICC" and complementarity. De Vos also foregrounds the role of legalism—understanding moral relationships and conduct as determined by legal rules—in driving complementarity. While the process-oriented approach allows De Vos to dig deep and show complementarity in action, the variety of sources and examples allows him to broadly identify and trace core aspects of complementarity at the international and national levels. As a result, a complex and multifaceted picture of complementarity emerges.

At the outset, De Vos observes that complementarity is predominantly understood as imposing legal obligations on states to investigate and prosecute international crimes and to domesticate the Rome Statute. Two strategies derive from this duty-based understanding: a coercive strategy that seeks to promote national prosecutions by threatening ICC intervention, and a cooperative strategy in which the ICC supports domestic jurisdictions. De Vos then demonstrates how these strategies—and the tensions between them—involve local politics and global asymmetries that impact international justice. He

does so in two parts: the first surveys the evolution of complementarity and its treatment by the ICC, while the second explores the relationship between the ICC and national efforts to implement the Rome Statute and adjudicate international crimes in the Democratic Republic of the Congo (DRC), Kenya, and Uganda.

In Part I, De Vos describes how complementarity has evolved over time from primarily a rule of legal admissibility into a policy of positive complementarity. While complementarity as an admissibility rule constitutes a jurisdictional constraint under Article 17 of the Rome Statute, positive complementarity frames the ICC and the Rome Statute System as active supporters of domestic accountability. De Vos argues that norm entrepreneurs and a transnational “community of practice” drove this metamorphosis through a teleological interpretation of complementarity as imposing duties on states. This in turn bolstered a move to require states to mirror the content of the Rome Statute and procedural aspects of the ICC in their domestic legislation and adjudication. Thus, complementarity developed multiple meanings with cooperative and coercive dimensions, often operating in tension with one another.

Within the ICC itself, coercive aspects of complementarity as a courtroom rule of admissibility oppose cooperative elements of positive complementarity as an Office of the Prosecutor (OTP) policy. Ultimately, complementarity-as-coercion has dominated ICC activities, frustrating a more efficient and effective approach to international justice. In order to render a case inadmissible under Article 17, ICC jurisprudence requires states to investigate effectively the same conduct under investigation by the OTP. This “same case” test is problematic because it imposes a burden that states may be unwilling to meet and contradicts a flexible approach to complementarity. At the same time, the Court has given minimal judicial support for direct assistance to states under Article 93(10), which provides the textual basis for positive complementarity. Instead, it has insisted on bifurcating Article 93(10) requests from admissibility challenges. De Vos sees this insistence on bifurcation as a misguided product of legalism that ignores the deep interconnection between the two strategies of complementarity. As the book demonstrates, it would behoove ICC judges and offi-

cially to better appreciate the policy implications of courtroom decisions on international justice's larger goals.

Similarly, despite the OTP's rhetoric supportive of positive complementarity, preliminary examinations and investigations have also tended toward coercion as the Office seeks to shape state behavior. De Vos argues that the ICC's ability to coerce or partner with states "depends on the office's capacity to inhabit these dual roles and to mediate amongst various national-level actors." In Kenya, preliminary examinations exemplified coercive complementarity as the Waki Commission on post-election violence unsuccessfully sought to provoke the establishment of a special tribunal by threatening referral to the ICC. In the DRC and Uganda, the OTP has failed to take a more cooperative approach toward investigations, relying instead on intermediaries and understaffed teams with minimal field presence. As such, the OTP's actions have fallen short of its ambitious rhetoric. Although the Office has evinced change in its investigative approach under Fatou Bensouda's leadership, lack of political and financial resources have plagued such efforts. If the Office is to be successful in its preliminary investigations, it must reconcile its coercive and cooperative tactics.

Part II examines the relationship between the ICC and national implementation of the Rome Statute, creation of specialized domestic courts and chambers, and national proceedings for international crimes in the DRC, Kenya, and Uganda. In each instance, De Vos traces the ways in which local politics and global asymmetries influence implementation and adjudication while the dual logics of complementarity play out. National implementation of the Rome Statute is mediated by local politics and informed by a desire to "perform" complementarity for the international community. In Kenya, domestication of the Rome Statute as a "global script," tracking the coercive approach, came at the expense of considering other forms of accountability. In the DRC, suspicion among political actors about ICC intervention and political contestation enabled a syncretic approach to implementation, such as direct application of the Rome Statute by military courts. Across these developments, De Vos underscores the need to understand implementation as a political process and warns against the stifling of democratic deliberation where state actors place a premium on mirroring the Rome Statute and or-

ganizations advocate a duty-based reading of complementarity. Here too, coercion contradicts flexibility and cooperative aspirations.

With respect to adjudication, the threat of ICC intervention spurred the actual or attempted establishment of special courts or chambers for atrocity crimes in Kenya and Uganda. Commentators have increasingly described these developments as complementing, rather than displacing, the ICC. In the DRC, non-state actors have placed military courts at the heart of domestic adjudication for international crimes as complementary to the ICC's work. Reflecting on these developments, De Vos makes a critical observation about complementarity's tendencies toward conformity between specialized courts and the ICC and competition between these exceptional institutions and the long-term health of ordinary justice systems (*la pérennité*, according to Congolese interlocutors). For instance, the exceptionalism of specialized courts may disadvantage the ordinary criminal justice system, paralleling global asymmetries and raising serious questions about sustainability. De Vos further suggests the idea of a "justice meme," an instrument of cultural replication, to explain the transmission of ICC structures and practices. As the justice meme perpetuates conformity and parallels coercive aspects of complementarity, it creates challenges for achieving a more systemic form of cooperative complementarity that abandons legalism and appreciates context.

ICC intervention has also generated an environment enabling state and non-state actors to advocate for accountability through domestic proceedings. In the DRC, state fragility alongside ICC intervention produced opportunities to pursue domestic accountability, especially in relation to gender violence. However, this fragility and the intervention of non-state actors also aggravated concerns about *la pérennité*. In Kenya, the adoption of a new constitution was arguably the most important factor in spurring domestic litigation, though the Court also played a role. Finally, in Uganda, De Vos illustrates how coercive and cooperative aspects of complementarity can create troubling incentives at the national level, sometimes producing perverse outcomes. This "dark side of complementarity" appears in the Ugandan state's effort to make an example of Thomas Kwoyelo, a former member of the Lord's Resistance Army. The Ugandan government has thereby privileged

prosecution and compliance over legitimacy in order to advance the purposes of accountability.

The book concludes with a series of recommendations. De Vos believes the current state of affairs is too narrow and compliance oriented. He rejects the focus on compliance and legalism as inadequate to understand the legal and political processes of complementarity. Indeed, an outcome-based approach ignores the tensions at play and complicates a holistic understanding of complementarity. De Vos instead questions the ICC's coercive potential and favors a cooperative approach. Similarly, the requirement of mirroring, including the "same case" test in admissibility proceedings and procedural mimicry at the national level, is counterproductive. A margin of appreciation that embraces legal pluralism would better advance international justice. De Vos supports departing from the Hague-centric approach and the singular focus on the ICC atop the hierarchy of international justice. Instead, there should be more investment in creative avenues of accountability in which the ICC is but one institution in a network of processes and actors. Ultimately, these recommendations support a cooperative vision of complementarity in which a global, pluralist network of justice institutions is more sustainable and effective.

Complementarity, Catalysts, Compliance is a welcome and significant contribution to the literature on the International Criminal Court and international justice more broadly. It not only explains the tensions embedded in the principle of complementarity, but also begins to chart the way forward. Adopting a multidimensional approach that surveys complementarity at various levels and in different contexts, De Vos draws insights that would be difficult to attain through a narrower approach. Indeed, it is the expansiveness and process-oriented approach of this well-researched study that make it so significant and instructive. As the ICC stands at a crossroads, it is clear that change and reflection are needed. As such, it would be wise for practitioners of international justice to read *Complementarity, Catalysts, Compliance*, draw on its lessons and insights, and direct their efforts accordingly.

Child Perpetrators on Trial: Insights from Post-Genocide Rwanda. By Jastine C. Barrett. Cambridge, UK: Cambridge University Press, 2019. Pp. vii, 351. \$110.00 (hardcover).

REVIEWED BY ELIZABETH D. WISEMAN

In *Child Perpetrators on Trial: Insights from Post-Genocide Rwanda*, Jastine Barrett examines how Rwanda addressed the issue of child participation in offenses committed during the Rwandan Genocide. The book acknowledges that its focus is on the practical rather than the theoretical; it asks how Rwanda's decision to pursue maximum criminal accountability for perpetrators of the Rwandan genocide unfolded for child offenders, rather than if Rwanda should have held child perpetrators accountable. The book broadly lays the foundations for analysis by describing the applicable national and international laws for both the crime of genocide and the treatment of child offenders, as well as the ravaged state of the Rwandan justice system post-genocide. Barrett then analyzes the efficacy and influence of international actors on juvenile justice and the range of outcomes for child perpetrators in both the official Rwandan courts and the informal *Gacaca* court system. Particular attention is given to UNICEF's advocacy on behalf of child offenders and their policy decisions. At times, the conclusions related to UNICEF come across as defensive against perceived criticism of UNICEF's involvement in certain initiatives, such as supporting detention for child perpetrators. However, Barrett's conclusions regarding UNICEF and the need for pragmatism in policy choices as well as preservation of institutional knowledge seem both underrepresented in current literature and entirely appropriate.

Two of the most salient issues Barrett raises are how to define childhood for the purpose of categorizing perpetrators and how to manage cases where the child offender is an adult by the time of their trial. Children are accorded special protection under international human rights law, premised on their lower level of mental and emotional development and the presumption that rehabilitation is more achievable and desirable for children than adults. Children accused of international crimes such as genocide are entitled to the same special protections as children accused of ordinary crimes. While the threshold for adulthood in Western countries is often age-

based and set at eighteen years old, this conception of the boundary between childhood and adulthood is not necessarily transferable to non-Western societies. In Rwanda, while there may be delineated age categorizations on paper, the public perception of the threshold for adulthood tends to be based on a social maturity inquiry. Social maturity can be determined by marriage or financial independence from ones' parents.

During the Rwandan genocide, children as young as five years of age were implicated in genocidal acts including beatings, killings, torture and degradation of bodies, rape, looting, and denouncing those in hiding. There appears to have been a deliberate policy by those leading the massacres to use children to kill other children and babies and to "finish off" the dying. The commission of such acts led many people in Rwandan society to no longer consider child perpetrators to be children. Additionally, public opinion regarded the children who participated in the genocide as more dangerous than adults because of their perceived lack of fear and high levels of active energy. These factors led to difficulty in achieving social and institutional buy-in for special protections for children perpetrators. Existing age-based protections, such as the setting the threshold of criminal non-responsibility at fourteen years old and younger, were sometimes circumvented by individual actors in the system who had a different view of childhood. For example, children of all ages were arbitrarily arrested and held in pre-trial detention for lengthy periods of time in deplorable conditions. Further, some perpetrators struggled to prove they were below the adulthood threshold at the time of the genocide due to the destruction of government records and infrastructure and the subsequent lack of means by which to verify age. Some child perpetrators who were not assisted by counsel during their trials did not know to properly raise age as a defense for criminal responsibility or as a mitigating factor during sentencing. Even for perpetrators who were undeniably children when they committed genocidal acts, Rwandan society was reluctant to grant them special consideration at trials year later, by which time they were adults.

The delay in reaching trial touches on another aspect of the unique difficulties of pursuing criminal accountability in a post-conflict state: the state is often bereft of resources and functioning infrastructure. While the U.N. Convention on the

Rights of the Child (CRC) does not contain any derogation provision allowing states to temporarily relinquish their commitments, it is an undeniable reality that a post-conflict state may not be able to implement or comply fully with its international obligations to provide special protections to child offenders due to limited or no resources by which to implement those protections. Politically, post-conflict states may struggle to justify investing in additional protections for child offenders while other basic infrastructure, such as universal child education and health services, that serves children more broadly, or even child victims specifically, is lacking. As was the case with the post-genocide Rwandan government, the government's desire for international legitimacy and their concern for their international reputation may be at odds with the general populace's desire for criminal accountability and local communities' demands for resources to be used in a certain way. Some of the procedural protections for child offenders enshrined in the CRC, such as the right to legal assistance and the right to full respect for privacy at all stages of proceedings, are particularly resource-intensive, which make them difficult and unpopular to implement.

In Rwanda, the post-genocide government lacked a functioning judicial system: judicial buildings were ransacked during the conflict, lawyers and judicial personnel had been killed or implicated in the killing, and prisons were overwhelmed with alleged genocide perpetrators. Further, private institutions were unable to fulfill their roles in the criminal justice system. For example, criminal defense lawyers were reluctant to represent alleged perpetrators of genocide, either for moral reasons or because they themselves would subsequently face intimidation, threats, and violation for such representation. However, Barrett astutely points out that even in a system with limited resources, juvenile justice should be prioritized over adult proceedings because the effects of continued incarceration and lack of rehabilitative opportunities disproportionately affects children. Unfortunately, as the Barrett shows, there was not consistent or significant evidence of this in post-genocide Rwanda.

International agencies and organizations stepped into the void to support the rebuilding of Rwandan society. UNICEF in particular fought for juvenile justice, but their efforts were at times hampered by the limited avenues of engagement availa-

ble to them. Distrust of “anything international” was rampant due to the international community’s failure to intervene during the genocide. Actions like the reduction in the number of U.N. peacekeepers two weeks after the start of the genocide were emblematic of the perceived disingenuousness of international organizations. However, after the genocide international NGOs provided education and training for the Rwandan judiciary and law enforcement agencies, monitored the genocide trials, sought to improve detention conditions, provided legal aid, supported public sensitization campaigns, and contributed financial, material, and technical support to Rwandan infrastructure. However, Barrett notes that some international initiatives, such as improving detention conditions, led to the local perception that international actors protected and supported the perpetrators of the genocide over the victims.

Particularly for UNICEF, post-genocide Rwanda posed new challenges to the agency’s own conception of its mandate and the policy options available to it. While UNICEF is predominantly a child development agency, it also retains an emergency and humanitarian mandate. The CRC names UNICEF as having a special responsibility to foster the effective implementation of the CRC both within countries in which it operates and broadly in the international community. Thus, UNICEF is the lead U.N. agency for children within the juvenile justice system. UNICEF’s policy in Rwanda was not to engage in an ideological campaign, but rather to assist the Rwandan government in navigating their own way to CRC compliance. Key CRC provisions related to juvenile justice include a child-rights-centric approach to justice, compliance with the fundamental concept of differential treatment as compared to adults, and a focus on rehabilitation and restorative justice over repression and retribution. The CRC dictates that children should be treated in a manner consistent with “a sense of dignity and worth,” and names specific procedural guarantees for children. The CRC further states that deprivation of liberty “shall be used only as a measure of last resort and for the shortest appropriate period of time,” and that actions should be taken with children’s “best interest” in mind. As Barrett explains, these rights are holistic, interrelated, and apply to all children at all times, but not wholly without internal conflict. For example, the Rwandan government explained

its decision to detain children and hold them criminally accountable by pointing out that they faced a significant risk of retributive violence and even extrajudicial killing from survivors and partisans outside of the prison system. Thus, Barrett explains that UNICEF's policy options to improve conditions for children in-country needed to balance the CRC's antipathy towards extended detention for children and its "best interest" principle.

Thus, UNICEF found itself in an unprecedented situation of trying to mitigate poor detention conditions for children through financial and material support for child detention facilities. Barrett emphasizes that UNICEF's internal decision-making mechanisms contributed to this result: UNICEF's country representatives have considerable authority, responsibility, and a significant degree of autonomy and flexibility in formulating policy responses and making decisions. However, not all international organizations active in Rwanda at the time viewed UNICEF's decision to support child detention facilities favorably. Barrett also implies that the out-of-country UNICEF leaders have attempted to distance themselves from this decision in recent years by emphasizing that the approach in Rwanda was a deviation from the preferred focus on diversion and alternatives to detention. However, focus on that detention policy alone detracts from UNICEF's other concurrent policy efforts to create juvenile courts, prioritize children's trials ahead of adults', support reintegration of accused children into society, build political will to operationalize international children's rights law in Rwanda, and more. Such criticism also doesn't fully account for UNICEF's delicate relationship with the Rwandan government and the need to ensure government support for their policies and programs outside of the juvenile justice realm. Ultimately, Barrett characterizes UNICEF Rwanda and their collaborative post-genocide strategy as "pragmatic yet principled."

Child Perpetrators on Trial: Insights from Post-Genocide Rwanda thoroughly and comprehensively analyzes the various actors working in the juvenile justice system in post-genocide Rwanda and how child perpetrators of genocidal acts progressed through this justice system. The picture painted is bleak. Children were arbitrarily arrested and detained, faced long pre-trial waiting periods in deplorable conditions, suffered physical and sexual abuse while in prison, were detained in re-educational camps, and were often held incommunicado.

cation centers even when found too young to be held criminally responsible, and faced retributive violence and other social difficulties when attempting to reintegrate post-incarceration. The only detail wanting from the book is more of Barrett's opinions on what "best practices" should be codified from this decades-long saga in juvenile justice. Certainly, a call for better institutional learning is present. The book ends with speculation about whether similar post-conflict challenges with juvenile justice may appear with ISIS child-fighters in Syria and other terrorist organizations integrating children into their operations. With these intriguing speculations, Barrett leaves readers eager to hear more.

Nationals Abroad: Globalization, Individual Rights, and the Making of Modern International Law, by Christopher A. Casey. New York, NY: Cambridge University Press, 2020. Pp. xii, 303. \$39.99 (hardcover).

REVIEWED BY JEFF WU

In *Nationals Abroad: Globalization, Individual Rights, and the Making of Modern International Law*, Christopher A. Casey explores the relationship between states and persons in the context of international law. The book centers around the tension between mobile people and immobile states, noting that individuals no longer have to rely on their sovereigns to bring claims under international law. The book is a good starting point for readers interested in a general survey of the history of international law. It outlines historical background and modern implications of both public and private international law, and it seeks to reconcile the two spheres into a unified roadmap.

The book's central argument is that changing ideas about political belonging and state legitimacy fundamentally altered what nationality meant in international law and politics, and consequently, international legal theories and practices emerged to protect individuals rather than just regulating states. This theme is informed by two terms: nationality and diplomatic protection. Nationality denotes a relationship between a state and a person. Unlike citizenship, nationality is not connected to an implied set of rights; it merely refers to an external, explicit claim of belonging to the state. Diplomatic

protection describes the international legal process through which nationals are protected abroad, or in Casey's language, "the cloaking of a person in the protection of their sovereign state." In discussing these two concepts, this book gives readers a structured account of the effort to give international rights to individuals and to establish international courts and tribunals to vindicate those rights.

The narrative of the book is divided into three chronological parts. The first part, chapters one and two, covers the late nineteenth century through the First World War. It explains the development of a system of legal protection based on the right of states to protect their nationals abroad. In the initial phase of globalization, states were driven by the combination of two social norms to protect their nationals abroad. The first norm held that a sovereign owes strangers temporary hospitality in exchange for temporary allegiance. The second norm was that sovereigns owe their subjects permanent protection for permanent allegiance. Public international arbitration was the primary method for enforcing these norms. This method involved settling international disputes by reference to one or more arbitrators selected by agreement or by a neutral third party. One prominent example is the convention dealing with the claims of British subjects in the Congress of Vienna, which established a commission to fix the amount of compensation distributed to British subjects whose financial instruments had been seized or repudiated by the French government. The convention detailed provisions on standards of evidence and calculation of interest and provided for the restitution of property expropriated by France during the French Revolution. In 1899, the first Hague Peace Conference called for the establishment of a Permanent Court of Arbitration, which supplemented ad hoc tribunals and helped codify a body of international legal precedents that continue to influence modern international law.

Casey also comments on the emerging concept of nationality during this era. Nations, rather than states, were the fundamental unit of the international order. Politico-legal status was disassociated from ethnic, cultural, and historical status. This disassociation was the main cause of tension over the protection of nationals abroad and led to the breakdown of the international legal system in World War I. Despite providing many examples of public international arbitration during this

era, Casey's analysis seems Eurocentric in nature. The Congress of Vienna and the first Hague Peace Conference were both European initiatives, though non-European states like Thailand and Japan attended the latter. Casey's silence on international legal development outside of Europe, such as China's encounter with Western nations following the first Opium War in 1842, leaves this segment of analysis incomplete and undermines his discussion of the theme of "globalization," a central focus of this book.

The second part discusses the conceptions of sovereignty and international rights between World War I and World War II. Casey begins by examining the international community's attempt to place the nation, rather than the state, at the center of international law and the expression of this effort in the form of minority protection regimes. Although claims commissions were established following World War I and heard thousands of cases, the war did not draw a boundary between an old and a new international legal order. Rather, it created new physical spaces for international politics and new imaginative space to rhetorically mark time. The Permanent International Court of Justice (PCIJ), which began operation in 1921, provided a fixed platform for the development of international case law, which helped turn an abstract set of principles and loose practices into a concrete body of precedent. Casey argues that the PCIJ, along with its parent organization, the League of Nations, became visible spaces to publicly debate and discuss international law and politics. Despite Casey's praise of the PCIJ, it is worth noting that the United States, arguably the most important player in the post-World War I order, never joined the PCIJ due to objection in the Senate and widespread skepticism of the League of Nations system. The United States' nonparticipation significantly undermined the legitimacy and effectiveness of the PCIJ, and according to Francis Boyle, contributed to the dissolution of the court. Nonetheless, the United States' nonparticipation was not unexpected because World War I neither drew a boundary between an old and a new international legal order nor marked the beginning of a globalization movement. Despite the establishment of the League of Nations, the nonparticipation of the United States and later withdrawal of Japan and Germany demonstrate the continued opposition to globalization at that time and the fragility of the early international legal system.

Casey then examines the protection of individual persons during the post-World War I era. Wars and revolutions displaced many individuals from their homelands. The League of Nations attempted to internationalize the protection of these stateless refugees through Nansen passports, which were identification documents issued by the League. However, the Nansen passport was a very limited protection to stateless refugees because it only offered the permission to travel; other basic rights traditionally associated with citizenship, such as right of return or right to property, were left out. Casey argues there were three sets of interests that conspired to prevent effective solutions to the problem of nationality. First, nationality was firmly within the sovereign authority of states to police their population. It was inevitably subject to national politics which often made it a vehicle for national claims rather than an instrument of individual protection. Second, states did not want to give individuals access to the PCIJ and thereby allow civil rights disputes to be internationalized. Third, states feared that providing individual protection could potentially undermine the reciprocal relationship between allegiance and protection, because stateless refugees do not automatically owe obligations to their new countries. Casey's analysis remains relevant. Nationality is still a fundamental and often exclusively domestic affair. However, many countries today have robust asylum program for stateless refugees. For example, the European Union, Canada, and the United States collectively took in hundreds of thousands of Syrian refugees following the Syrian Civil War in 2011, sparking fierce political debate about refugee policy. The Trump administration's dramatic restriction of the number of refugees that the United States accepted demonstrated the inescapable domestic focus of nationality.

Casey then shifts the discussion to the plight of businesses and investors during the post-World War I era. The absence of an impartial court to hear the claims of an individual against a foreign government and the lack of a mechanism to hold any government accountable made diplomatic protection impractical in the post-World War I era. Following the International Trade Conference in 1920, the International Chamber of Commerce (ICC) established a system of international arbitration. While the ICC's arbitration system showed promising results between private parties, disputes between states and individuals remained a difficult question.

The third and final part of the book focuses on the period between 1945 and the present. It looks at the emergence of individual international rights as the primary alternative conception of international order and the one least reliant on nationality as a fundamental category. Following the end of World War II, the United Nations replaced the League of Nations, giving up the League's flirtations with alternative bases of sovereignty in favor of reaffirmation of "the principle of the sovereign equality of all its Members." With the emergence of international criminal law, commencing with the Nuremberg and Tokyo trials and culminating in the establishment of the International Criminal Court at The Hague, individuals were increasingly subject to, not just subjects of, international law. This is demonstrated in the shift away from nationality and protection by states to an individualist paradigm in which the protection of individuals consists primarily in the defense of human rights. Casey argues that the shift toward an individualistic system of protection of persons and property has led to a decline in the use of diplomatic protection and intervention. Although Casey presents the emergence of various adjudicatory bodies, such as the International Court of Justice and investment treaty arbitration, as evidence of the decline in the use of diplomatic protection and intervention, the rise of nationalism and retreat from globalization in the past several years continue to cast doubt on the validity of Casey's argument. One needs to look no further than the United States' withdrawal from the Paris Agreement and the World Health Organization and the deteriorating relations between the United States and the European Union and China to see the downfall of the romantic model of international law that Casey envisioned. Casey hedges his conclusion by stating that the individual has not completely displaced the state, which still has the vital duty of enforcing international arbitral awards. The main development since World War I in the context of international law is that an individual now rarely needs the state to serve as their champion when abroad.

Overall, *Nationals Abroad* presents a logical narrative of the relationship between states and individuals in the past two centuries. Its coverage of topics such as war reparations, human rights, and commerce provides a coherent picture of how changing ideologies toward international law affect specific practices in the real world. At the same time, the book's narra-

tive does not ignore the geopolitical realities that confine the reach of international law. For example, it recognizes that, despite the movement away from the state's involvement in international commercial arbitration, the enforcement of arbitral awards is nonetheless heavily influenced by domestic politics because states are in charge of enforcing these awards.

The shortfall of this book is the absence of information and case studies of topics relating to the twenty-first century. It provides detailed information and analysis of the historical development of international law, but ends rather abruptly in the last chapter, only cursorily mentioning some statistics of bilateral investment treaties and international court cases in the present century. The reader is left desiring more information about how the international legal regime continues to evolve and adapt to changing geopolitical realities, particularly in light of the widespread nationalist and anti-globalization movements in the present century. Considering that the book was published in 2020, a chapter or two on the impact of these new political realities on "nationals abroad" would make the book more complete and satisfy readers' curiosity.