

Recent Publications

International Order and Empire

A New World Order. By Anne-Marie Slaughter. Princeton: Princeton University Press, 2004. Pp. 341. Price: \$29.95 (Hardcover). Reviewed by D. Matthew Baugh.

International relations theory has not had a major shake-up for nearly thirty years. At the end of the 1970s, a pair of landmark books—*Theory of International Politics* by Kenneth Waltz and *Power and Interdependence* by Robert Keohane and Joseph Nye—radically redefined the field, articulating two theories of world politics that have set the terms of debate for a generation: neorealism and neoliberalism. *A New World Order*, which reworks the assumptions of neoliberalism for the twenty-first century, now promises to reshape the field yet again.

At issue is whether, and in what form, cooperation is possible in the international realm. Anne-Marie Slaughter, a Keohane protégé and the current Dean of the Woodrow Wilson School of Public and International Affairs at Princeton University, agrees with neoliberals that networks of interdependence are the key to international cooperation. But she does not consider the most significant networks to be the traditional intergovernmental institutions identified by Keohane and Nye, such as the United Nations or NATO. Rather, Slaughter focuses upon the increasing linkages among officials in every branch of government and their counterparts in other states. In contrast to traditional state-to-state negotiation at the highest level, transgovernmental networks put relevant officials from different countries in direct contact with one another in order to resolve issues of common concern.

Other scholars have challenged the assumption that states operate as unitary actors in the international realm, but none so thoroughly and persuasively as Slaughter. This book makes a clear contribution to scholars just in the sheer volume of evidence it provides of how twenty-first-century officials deal directly and regularly with one another across borders. Far more controversial and less convincing is the way in which Slaughter equates so-called “horizontal networks” between officials of different governments with “vertical networks” between officials of national governments and supranational institutions (p. 13). In eliding these two concepts, Slaughter makes it clear that her project is normative. Underlying her conflation of horizontal and vertical interaction is a radical new conception of sovereignty that many will no doubt find objectionable, but which represents a significant contribution to international relations theory.

There is no question, at least, that horizontal networks are becoming increasingly important in international relations, and Slaughter aims to demonstrate their proliferation “in every place we have eyes to see” (p. 11). Links between executive branch officials, she acknowledges, are not a new phenomenon. The day-to-day business of foreign policy has long required that

diplomats and policymakers cooperate with their counterparts in other states. But these days, “the scope and substance of that business has expanded; the range and intensity of transgovernmental ties have increased and in many cases become institutionalized; [and] the advantages of transgovernmentalism have become more prominent while the disadvantages of many more formal international institutions have become clearer” (p. 44). Officials from every administrative agency and department of the modern regulatory state—finance, health, drug enforcement, environmental protection, agriculture—collaborate across borders.

Indeed, this horizontal process is becoming increasingly formalized, as many inchoate transgovernmental networks have emerged into standing organizations with budgets, staff, and regular meetings. This evolution is particularly striking in the financial regulatory sector, with such bodies as the Basel Committee on Banking Supervision, the International Organization of Securities Commissioners, and the International Association of Insurance Supervisors overseeing crucial sectors of the financial services economy. Most networks, though, are less formal and exist within the broader context of established international organizations, executive agreements, or spontaneous contacts between national administrative agencies. Some simply provide a channel for information exchange, while others enhance law enforcement through capacity-building. The most powerful, but also most rare, serve to harmonize regulatory standards across countries.

Perhaps more surprising to some readers, and certainly more novel, are the networks of judges and legislators that Slaughter documents. She notes that members of the U.S. Supreme Court regularly meet their peers from the European Court of Justice and have visited the highest courts of the United Kingdom, Germany, France, India, and Mexico. Members of the U.S. Congress not only conduct regular junkets to other parliamentary bodies but also have established a formal partnership with the Russian Duma to “help address key bilateral issues” (p. 114). These kinds of judicial and legislative associations are even more common among the European countries, Canada, and South Africa.

Moreover, while legislative networks have largely remained consultative, many judges have begun to concretize their interactions through the mutual recognition of foreign judgments. As Slaughter puts it, these judicial officials are “constructing a global legal system” (p. 65). The constitutional courts of Canada and South Africa, for example, regularly cite precedent from other countries. But in the United States, the effort to look to foreign cases, even as merely persuasive, non-binding authority, has ignited fierce debate. Justices Stephen Breyer and Ruth Bader Ginsburg have both cited foreign judicial views in recent opinions—and have elicited fierce rebuke from both their colleagues on the Court and outside critics.

Even more hotly contested in the United States, but increasingly supported elsewhere in the world, are the new supranational courts. Slaughter properly distinguishes the “horizontal” relationships between national courts from the “vertical” relationships between national and supranational courts. But she confuses the issue by labeling both as “networks” of judges. The

distinctive feature of supranational organizations is that they hold some measure of power over the state, whereas every other network she describes exists among representatives of (at least nominally) equal sovereigns.

Slaughter resolves this seeming contradiction in the second half of *A New World Order*, but only by supporting a novel, “disaggregated” approach to sovereignty. She interprets the proliferation of cross-border networks as evidence that the unitary state is breaking up into its component functions. Sovereignty, she reasons, must follow the same path. “If the principal moving parts of [world] order are the agencies, institutions, and the officials within them who are collectively responsible for the legislative, executive, and judicial functions of government, then they must be able to exercise legislative, executive, and judicial sovereignty” (p. 268).

From this perspective, it is entirely possible to equate horizontal and vertical relationships of power; in each functional domain, the officials meet as fellow sovereigns. But this idea will no doubt strike many U.S. readers as deeply troubling. As evidenced by U.S. objections to the International Criminal Court (ICC) and often-voiced U.S. sensitivities to the compulsory jurisdiction of the International Court of Justice, a world order based on supranationalism garners little public support in the United States.

The progressive integration of postwar Europe, by contrast, most nearly approximates the supranational ideal, and Slaughter makes it clear that she believes “[t]he model for [disaggregated] world order in many ways is the European Union” (p. 134). This assertion is significant for two reasons. First, the father of neoliberalism, Robert Keohane, recently expressed the same sentiment in a widely discussed article in the *Journal of Common Market Studies*. If this convergence between two of the field’s premier scholars is any indication, therefore, *A New World Order* may become the authoritative treatise for a new generation of neoliberalism. Second, Slaughter’s argument points to the coming conflict between the United States and Europe over the key institutions of world order. The United States has already clashed with its European allies over one such institution, the ICC. If Slaughter is right about the ascendancy of the European model in the wider world, more such conflict is on the way.

America’s Inadvertent Empire. By William E. Odom & Robert Dujarric. New Haven: Yale University Press, 2004. Pp. xii, 285. Price: \$30.00 (Hardcover). Reviewed by Mihailis E. Diamantis.

“The line of applicants now seeking membership in the American empire is long” (p. 40), William E. Odom and Robert Dujarric write in *America’s Inadvertent Empire*, as they offer gratuitously optimistic impressions of the international response to United States power. The authors, a retired U.S. Army General and Hudson Institute Fellow, and a Visiting Scholar at the Research Institute of Economy Trade and Industry in Tokyo, respectively, have put together a well-researched though not overly academic book, which speaks well of U.S. international involvement yet remains somewhat thin with respect to the less glorious aspects of its hegemony. By

the “empire” (the supposed “inadvertence” of which receives far less attention than its hegemony), Odom and Dujarric mean those loose economic, military, or cultural associations, primarily composed of Western and Pacific Rim countries, which today control all the manifestations of modern power. That empire is attributed possessively to the United States as its architect and ultimate source of power.

The opening chapters of the book are the most engaging. Using generalized terms and arguments that gesture toward lines of reasoning that would each require an entire chapter for satisfactory explication, Odom and Dujarric sweepingly identify the prominent sources of U.S. power. The analytical core of their argument focuses upon internal diffusion of power—both political and economic—among many hands in an effort to lower the costs involved in acts of commercial and governmental exchange, what the authors refer to as transaction costs. Liberal institutions secured by successful “constitutional breakthroughs” (p. 41) are the hallmarks of such diffusion; they guarantee individual liberties against those elites, monarchs, and tycoons who would otherwise monopolize the state’s resources.

Among such institutions, those underpinning market capitalism and free enterprise are the most important, according to Odom and Dujarric. Indeed, the authors assert that “[p]rivate property clearly must enjoy first place among the individual liberties” (p. 15) in America’s empire. Private ownership of property is the *sine qua non* of a functioning capitalistic economy of competing individuals; moreover, only U.S.-style capitalism can manage the ever-increasing pace and number of exchanges in a modernizing economy by diffusing those transactions across innumerable actors. A more centralized economy, such as that of the former Soviet Union, is soon overburdened by the unnecessary transaction costs that arise when all exchanges must first pass through a single governmental entity. In the United States, the most liberal of the liberal democracies, this diffusion substantially reduces the private and public costs of doing business and accounts for the country’s supreme economic advantages—the ultimate basis of its power.

These considerations further explain the global dominance of the U.S. empire and suggest why so many countries are, as the authors see it, clamoring to join. The empire is unique in world history: “unipolar, based on ideology rather than territorial control, voluntary in membership, and economically advantageous to all countries within it” (p. 36). To ensure that trade flows freely, the members (or subjects) of the empire must themselves be mature liberal regimes, characterized by market economies with low transaction costs.

Further, though, for trade between nations in the empire to function efficiently, Odom and Dujarric argue that the empire itself must be modeled after an efficiently functioning nation-state. Liberal ideologies must be enforced on an international scale in order to protect property rights and, with them, decentralized competition and trade. Within a single state, a constitution and legitimate government can enforce liberal property principles. Similarly, an international association of nations requires a third-party enforcer. Herein lies the role of the United States in its empire. Enforcement of liberal

principles requires corresponding military might, which the United States obligingly provides and controls as an international public good. The authors' admiring view of this imperial role becomes clear when they offer an apocalyptic scenario of the disastrous consequences that would ensue if the United States ever ceased to perform its enforcement role.

Though the United States is limited by no constitution in its exercise of imperial power (indeed, Washington has rejected attempts to bind U.S. freedom of action under international law), its liberal ideologies, the moral character of its leaders, and its own long-term interest in assuring a freely functioning international market constrain it nonetheless. The authors call this dynamic a "quasi-constitutionalism based on self-restraint"—a phenomenon that, in this reviewer's opinion, is not entirely reassuring. Why would the United States reject legitimate international fetters to its own power, while encouraging others to comply, if not to permit future illegitimate incursions into the rights of other nations? A brief glance at the sordid recent history of covert (and sometimes not so covert) abuses of foreign sovereignty by the United States in South America and the Middle East should unsettle even the staunchest of patriots. Yet Odom and Dujarric seem little troubled by such events.

Following the exposition of the theoretical framework, Odom and Dujarric move on to (overly) detailed accounts of the gaps between the United States and its subjects—and between America's empire and those parts of the world that have not yet joined it—in terms of military power, demography, economic performance, university education, scientific research and knowledge, and media and mass culture. Each topic occupies its own chapter, and each chapter follows the same basic structure: establish the dominance of the United States (or its empire) and set up a contrast with the feeble contenders to U.S. power (or the power of its empire); consider how the United States (or its empire) has come to its position of supremacy; make policy suggestions for retaining that supremacy; and suggest how the rest of the world benefits from U.S. hegemony. Though these chapters constitute the bulk of the book, readers not particularly invested in a given topic may find some pages mildly tedious. All will find some of the material in these chapters unnecessary or tangential as the authors delve into the intricacies of the Japanese university system or discuss antagonisms between the U.S. Navy and Air Force. Few would deny U.S. hegemony in the areas that these chapters discuss or need the bulk of a book to convince them that the United States will likely retain its dominance for at least a few decades.

The authors' most provocative conclusion, fully articulated only in the final pages of their book but alluded to throughout, is also that which most touches upon current events: "the most serious danger to the American empire [is that] the power of its leaders is limited primarily by their ideology—that is, by the liberal norms that guide their use of that power. No other means exists of checking them" (p. 207). Citing worrying recent commitments to U.S. unilateralism (particularly President George W. Bush's invasion of Iraq, and the resultant tensions between the United States and many of its allies), Odom and Dujarric note that presidential and legislative decisions in the United

States may undermine the empire. If not careful with how they wield America's usually benevolent hand, the nation's leaders may rouse the resentment of its closest allies. Such hard feelings can have no place in a voluntary empire. Poignantly calling up many Americans' deep fears of the terrorism President Bush allegedly sought to combat in Iraq, Odom and Dujarric assert that "[t]errorists have never destroyed a Liberal regime, but acts of parliaments have ended a few" (p. 86). Yet despite these solemn warnings, the authors afford disappointingly little analysis to an account of international antipathy, both past and present, toward the United States from causes as varied as increasing international economic disparities, abhorrence of U.S. social values, or mounting international pride in the face of U.S. might.

Finally, sobering warnings and recommendations for policy changes cannot keep Odom and Dujarric from the natural conclusion of their work: "The durability of the American empire cannot ultimately be predicted, but the resources and other advantages at U.S. disposal and the unique character of this international regime provide an encouraging prospect that it will be long lasting" (p. 218). The longevity of America's inadvertent empire is unquestionable; that such endurance is encouraging remains doubtful.

From '9-11' to the 'Iraq War 2003': International Law in an Age of Complexity. By Dominic McGoldrick. Oxford, U.K., and Portland, OR: Hart Publishing, 2004. Pp. 380. Price \$36.00 (Paperback). Reviewed by Benjamin Paul Clinger.

Part survey, part analysis, Dominic McGoldrick's *From '9-11' to the 'Iraq War 2003'* attempts to facilitate discussion of the contemporary function of international law. From the collective antiterrorism efforts of the world community post-9/11, to Washington's sudden willingness to subordinate the capture of Osama bin Laden to the removal of Saddam Hussein, McGoldrick chronicles the major international political events of the past three years. As Professor of Public and International Law at Liverpool Law School, McGoldrick is particularly interested in the institutional and international legal context within which the United States and United Kingdom marched to war. At the same time, however, he warns of the danger of writing about crises while in their midst—and his book suffers from several analytical shortcomings, perhaps the inevitable result of attempting to contextualize events before history has been able to take its course.

Considering McGoldrick's approach, it is difficult to discern for whom he is writing. Many of the events and documents he details—especially the extended treatment of the U.N. Security Council resolutions prior to the Iraq invasion and the domestic political fallout over Prime Minister Tony Blair's Iraq policy (e.g., the Hutton Report on the government's prewar intelligence and the "sexed-up dossier" investigation)—have already been widely discussed and debated in the newspapers and among academics. If McGoldrick's goal is simply to round up what he deems to be the relevant facts, he has done an adequate job. If, on the other hand, he wishes to

contextualize and evaluate these developments, he has left this reader disappointed.

Finding the occasional bit of insight in this volume requires work on the part of the reader. McGoldrick's discussion of President George W. Bush's rationale for regime change is a ready example. Having originally predicated the invasion on Saddam Hussein's alleged weapons of mass destruction, the Bush administration began improvising when no weapons were found. Besides insinuating that Iraq had ties to Al Qaeda (and in their more brazen moments, the 9/11 attacks), U.S. officials spoke of the moral necessity of intervening in what was a brutally oppressive autocracy. Though such sentiment was completely absent *ex ante*, to have conservatives (neo- or otherwise) justifying the war *ex post* as a human rights intervention could bolster support for future humanitarian intervention in places such as Sudan. Depending on how Iraq turns out, however, this precedent could just as likely shut the door to humanitarian intervention for a least a generation. Such thinking goes to an analytical model that McGoldrick introduces early: complexity theory. This model essentially argues that small causes can have large effects, and it urges scholars to identify these "tipping points" (p. 8). Unfortunately, McGoldrick applies the theory sparingly; so much so, we are left to wonder why it was introduced in the first place. Is it just a fancy way of asking if 9/11 changed everything?

The legal and moral issues McGoldrick identifies do make for compelling reading. But his demarcation of two visions of world order is cumbersome if not simplistic. Moreover, the essential philosophical differences between what he sees as the competing ideologies could have received more substantive analysis. McGoldrick insists that a "tenable" legal case (p. 66) existed for the Iraq invasion, endorsing a complex argument the British put forward which relies on Security Council Resolutions 678, 687, and 1441. Construed collectively, these declarations purportedly gave the coalition the authority to use force without an additional U.N. resolution (although even the U.S. Ambassador to the United Nations openly admitted such a need, just moments after signing Resolution 1441). After failing to convince the other Security Council members of this claim, Washington and London then argued that Resolution 1441 independently sanctioned the use of force. Despite his agreement with their reading of international law, McGoldrick warns that normalizing such auto-interpretation would be counterproductive. It would essentially turn international law on its head, as every country—including, for example, Iran and North Korea—would then have the right to interpret Security Council edicts to their liking. If this outcome is the logical result, what makes the legal argument tenable?

In addition to its questionable reliance on a purported Security Council mandate for war, the United States made an even more dangerous case for preventative intervention by invoking the self-defense provision found in Article 51 of the Geneva Conventions. In so doing, it effectively expanded the definition of "imminent threat" to include potential future threats. Though one gets a sense that McGoldrick sides with *New York Times* columnist Thomas Friedman in his optimism that a democratic Iraq will change the dynamics of

the Middle East for the better, he does admit that a preventative war doctrine is almost certain to lead to conflict escalation and instability. Furthermore, he emphasizes that most countries (with the major exceptions of Japan, Australia, and Israel) have not accepted the Bush administration's expansive self-defense rationalization.

Given McGoldrick's stated goals, it is striking how quick he is to disparage French and German resistance to the use of force in Iraq. Considering that supermajorities in both democracies were vehemently opposed to the war, is McGoldrick suggesting that French President Jacques Chirac and German Chancellor Gerhard Schroeder should have ignored the political will of their people? If so, he would be wise to remember that many rotating Security Council member countries were, despite intense diplomatic and economic pressure, prepared to vote "no" on Iraq. Perhaps "Old Europe" considered the potential consequences of endorsing an arguably illegal war and determined that the costs outweighed the benefits? In light of the chaos since the Iraq occupation, is McGoldrick so sure these dissenters were wrong? In reasoning that the United States is better off with international law than without it, McGoldrick is certainly practical; but he excuses too quickly the Bush administration's contempt for the Anti-ballistic Missile Treaty, the Kyoto Protocol, and the International Criminal Court. What is more, his contention that the Bush doctrine places long-overdue responsibility on complacent nations lacks measure and is perhaps the most generous reading of Bush's "you're with us or against us" position.

There are moments when McGoldrick seems to lose his focus and digress from his stated aims. It is unclear whether he accepts Bush's claim that the Iraq war is indeed a continuation of the war on terror. At one point he asserts that one of the terrorists' objectives is the destruction of the modern Western order. Not all experts would agree. The most recent book by CIA counterterrorism expert Michael Scheuer (publishing under the pen name Anonymous), *Imperial Hubris*, identifies six tangible political goals that have been consistently articulated by the Al Qaeda organization—none of which includes changing the way Western states manage their affairs internally or destroying the abstract concept of freedom. Though not examined by McGoldrick, the point is critical. Misunderstanding the enemy's endgame may result in misunderstanding the utility of international law and multilateral institutions. Speaking with a neoconservative voice, McGoldrick also parrots the possibilities of creating a liberal society in Iraq. But he never stops to consider that there may be significant differences between grass-roots democratic revolutions and democracy imposed *vi et armis*. Likewise, his assessment of the trend in the Middle East as a whole since the invasion of Iraq as "arguably positive" (p. 174) appears premature and will be hotly contested.

Power and Principle

Arguing About War. By Michael Walzer. New Haven: Yale University Press, 2004. Pp. xv, 208. Price: \$25.00 (Hardcover). Reviewed by Aryeh Weinstein.

Arguing about War is an original and illuminating work, written so lucidly as to engage anyone with a general interest in the conduct of war. In this collection of essays, Michael Walzer, Professor at the School of Social Science at the Institute for Advanced Study, accomplishes a feat rarely seen in philosophy—he presents theoretical claims and then makes clear their compelling practical significance. Walzer excels both in identifying interesting theoretical questions about the justice of war and in showing how his conclusions yield tangible policy recommendations. Nevertheless, the answers he provides to some of these questions are ultimately unsatisfying.

Walzer's insightfulness into both theory and policy is exemplified in his discussion of the justice of postwar occupation. One of Walzer's central insights is that traditional just war theory—as articulated in part in his own 1977 landmark work, *Just and Unjust Wars*—is insufficient because it focuses on the origins and the conduct of war. Given the seemingly increasing tendency toward wars aimed at regime change, philosophers need also to develop a theory on the justice of occupation after the fighting ends. Walzer takes up this task, identifying three critical features of a just occupation: it must instill confidence that the old regime will not return, it must allocate power to the locals, and it must distribute the benefits of peace widely.

Walzer rightly seizes on the last two ideas to criticize the United States for the cronyism and lack of transparency with which it has allocated Iraq reconstruction contracts to a limited number of almost entirely American firms. He further criticizes the lack of oversight of these companies' activities, noting that U.S. corporations will be unlikely simply to cede to Iraqis the power and monetary benefit involved in reconstruction of their own free will.

Here, while echoing some of the complaints issued by the European nations that opposed the Iraq invasion, Walzer also takes the European Union to task for its failure to ameliorate the situation. If Europeans were willing to share some of the cost of reconstruction, they could assure greater oversight and, thereby, justice, in the reconstruction effort. These countries, Walzer writes, want power with no payout; they prefer to criticize U.S. injustices costlessly, rather than to provide funding that would allow them to insinuate themselves into the process and thereby make it more just.

In discussing another timely concern, the propriety of humanitarian intervention, Walzer is particularly adept at giving his theoretical claims practical relevance. Nevertheless, his theory here is ultimately less than convincing. In an essay entitled "The Politics of Rescue," Walzer argues for a general presumption against intervention "even when the process of self-determination is something less than peaceful and democratic" (pp. 68-69). Only where "cruelty and suffering are extreme" and a government is taking "actions that . . . 'shock the conscience' of humankind" would he favor

forcible intervention (p. 69). Walzer then crisply applies these principles, in a subsequent piece "Inspectors Yes, War No," written before the recent Iraq war. He argues that while "[t]he Baghdad regime is brutally repressive and morally repugnant . . . it is not engaged in mass murder or ethnic cleansing" (p. 149). The latter acts, it seems, would be necessary for Walzer to countenance humanitarian intervention. On the eve of the Iraq invasion, Walzer did not think the regime was bad enough to warrant a war for humanitarian reasons.

Unfortunately, the brevity of the articles results in insufficient argument to supplement Walzer's theoretical claims for restraint in humanitarian intervention. One might agree with Walzer that intervention is justified only where actions that "'shock the conscience' of humankind" are at stake, but at the same time conclude that the presence of a "brutally oppressive and morally repugnant" regime makes such actions only a matter of time. It would be perverse to wait for a dictator to shock the world's conscience before acting, especially if other states can see a tyrannical government headed in the direction of such atrocities. In some circumstances, intervening in advance in order to prevent such atrocities will be preferable to waiting for an explicit and horrific invitation to intervene.

The uncertainty involved in preemptive actions will always, however, cast doubt on such interventions. Ultimately, one would need to balance the possibility of wrongfully oppressing a foreign nation through war against the potential devastation and oppression that would result from inaction.

Tensions arise among Walzer's different theoretical claims when he considers whether merely discussing the justice of war has the effect of making acts committed in wartime seem more justified. Critics of Walzer's work have claimed that discussing the conditions under which war might be just could potentially make horrible wars seem like good, or at least acceptable, activities. Walzer deftly responds to this attack by noting that just war theory does not endorse war—in a sense, war is always bad. Rather, when one calls a war "just," that is merely to say that it is justified, that it is the proper course of action given the circumstances. Nevertheless, giving the label of justice to a war might have the psychological impact of making it easier to engage in such a war, or to lay to the side the horrors that war imposes.

A concern with just this sort of psychological impact is central to Walzer's treatment of a related question. Would it ever be acceptable to engage in unjust war practices, such as deliberately attacking innocent civilians? In addressing this question, Walzer aims to reconcile two opposing intuitions. On the one hand, the rights of innocent civilians are inviolate. On the other hand, in certain *very* extreme situations—"supreme emergencies" (p. 33) that put society's deepest values and continued existence at stake—a utilitarian calculus would suggest that these rights may be violated. Walzer criticizes such a rationalization as inviting overly hasty claims of a supreme emergency, or leading decision-makers increasingly to devalue the lives of others in weighing the costs of intervention against the dangers of inaction.

If Walzer is correct to note the psychological callousness that would be engendered by employing a utilitarian calculus for supreme emergency, it

seems he is also too quick to dismiss the ways in which any theory of just war can make it easier to convince oneself that a certain act of aggression is justified. Inasmuch as Walzer subscribes to his aforementioned defense of just war theory—that the theory only evaluates when, all things considered, it makes sense to proceed with a war—Walzer should grant the other side a similar response. Violations of the rights of innocents are awful, a utilitarian might note. These rights must weigh extremely heavily in a utilitarian calculus and they must be overridden only in the most dire of circumstances. The fact that a given society might choose to override them would not be, however, an indication that it does not take them seriously. On the contrary, the supreme importance accorded to the rights of innocents would only be underscored by the extremely limited circumstances in which society would be willing to violate them. For such a utilitarian, upholding the rights of innocents could remain, to use Walzer's own words, “(almost) the whole of our duty” (p. 50, emphasis added).

A reader of *Arguing About War* can expect to confront a variety of provocative questions about the justice of war and a clear sense of their significance for policy. That variety, however, sometimes brings with it a series of theoretical claims that are less than fully convincing.

The Lesser Evil: Political Ethics in an Age of Terror. By Michael Ignatieff. Princeton: Princeton University Press, 2004. Pp. 160. Price \$22.95 (Hardcover). Reviewed by Kelly Sarabyn.

The title of Michael Ignatieff's latest book, *The Lesser Evil*, foreshadows its central claim: both security and liberty are of vital importance to liberal democracies, and when nations must sacrifice liberty for security or security for liberty, they at best choose a lesser evil over a greater evil. Though it may be disputed, this position is not novel. Philosophers from theological, deontological, and moral intuitionist traditions have argued that morality may permit or even require the sacrifice of one fundamental value for another. It is the first fault of the book, though not the last, that it does not pay homage to these previous theories.

Ignatieff, Director of the Carr Center for Human Rights Policy at Harvard's John F. Kennedy School of Government, presents his position as a synthesis of two competing viewpoints. He believes he has achieved a compromise between civil libertarians, who refuse to violate individual rights for security purposes, and utilitarians, who allow for as many rights violations as necessary to promote overall welfare. In fact, however, his account is much closer to the former than to the latter. Ignatieff claims that any infringement of an individual's liberty constitutes an evil, and his theory would be better described as a modification of civil libertarianism than as a compromise between the two positions.

Ignatieff misplaces his theory on another level. He believes that liberal democrats are committed to his main ethical claim—that any infringement of an individual's liberty constitutes an evil. Some liberal democrats no doubt hold such a view, but many believe only in a rebuttable presumption that a

deprivation of individual liberty is unjustified. When a justification is available, however, there is no moral remainder. Proportionate punishment of wrongful acts, for instance, arguably involves justified infringement of individual liberty, but it is not thought on all sides to be the lesser of two evils. For many liberals, justified punishment is not evil at all.

Ignatieff's commitment to the inviolability of individual liberty determines the shape of his prescriptions for the war on terror. Though he purports to balance the interests of security and liberty, security earns little concession—further evidence of the thin gap between his position and civil libertarianism. He argues for an absolute ban on psychological and physical torture, the assassination of political leaders, and detention without due process. Unsurprisingly, Ignatieff does not consider the guilt of the individual in question when constructing these absolute bans. The lesser evils that may be justified, depending on the severity of the circumstances, are narrow in scope: depriving potential terrorists of light and sleep, instituting national identification cards, and more closely monitoring scientific research related to weapons of mass destruction.

The Lesser Evil relies mostly on the hope that readers will agree intuitively with the sanctity of individual liberty. In addition, Ignatieff argues that violating liberties to save a democratic liberal nation is almost always self-defeating. Once a nation engages in such acts, that nation is not worth saving: it becomes inhuman and monstrous. The general point is true enough, and Ignatieff details with skill and insight the psychological mechanisms that would cause the degeneration of liberal democracy.

This general point does not, however, justify Ignatieff's asymmetric balancing. To take one example, it does not warrant his blanket ban on torture. Rather, it supports a policy of general restraint, of stopping oneself before one has gone too far. Liberty can concede more to security than Ignatieff supposes.

Overall, *The Lesser Evil* lacks detailed or novel information, and its pithy analysis of major conflicts leaves the reader unsatisfied. This volume will be welcomed by those who already agree with Ignatieff's commitment to the sanctity of individual liberty. Ignatieff's discussion of the psychology of terror and of terrorists is informative, but those who do not accept his fundamental moral premise will find the rest of Ignatieff's analysis simplistic and unpersuasive.

Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law. By Allen Buchanan. New York: Oxford University Press, 2004. Pp. vii, 507. Price: \$35.00 (Hardcover). Reviewed by Stephen M. Ruckman.

International law has so far operated without a coherent framework when addressing matters of global moral concern. There is certainly no shortage of international law bearing moral content—the European Convention on Human Rights, the International Labor Organization's Tripartite Consultation (International Labor Standards) Convention, and many

other international agreements have moral commitments at their core. Nor is there a lack of theorizing about peoples' and nations' moral obligations at the international level—Thomas Pogge's cosmopolitan vision for the world's poor and David Held's call for "cosmopolitan democracy" are but two prominent examples. The problem for international law is thus not the paucity of its moral foundations but their infirmity.

Allen Buchanan, Professor of Public Policy and Philosophy at Duke University, is no stranger to this confused state of affairs. In *Justice, Legitimacy, and Self-Determination*, he offers an account that is as much a tireless demolition of international law's extant moral foundations as it is a systematic construction of his own. Buchanan rejects the prevailing view that the goal of international law should be peace for all, pursued with unwavering deference to national interest and standing law. Instead, Buchanan posits that the chief aim of international law should be *justice* for all, and that the pursuit of such justice may rightfully require acting against national interest, breaking the peace, and even breaking the law.

Buchanan's argument rests on what he terms the "Moral Equality Principle"—the cosmopolitan notion that, from a moral standpoint, "all persons are entitled to equal respect and concern" (p. 87). From this principle arises each individual's limited moral obligation to take actions that will protect moral equality, an obligation that generates both the negative duty not to treat others unjustly and the positive duty to support institutions that guarantee against such unjust treatment. This "Natural Duty of Justice" exists "to help ensure that every person has access to institutions that protect his or her human rights" (p. 427).

Wrapped up in this reasoning is the claim that justice mandates the protection of basic human rights. Equal respect and concern for all individuals require, at a minimum, guaranteeing certain fundamental rights: life; security of the person; resources for subsistence; equality before the law; freedom of expression and association; and freedom from persecution and systematic discrimination on grounds of ethnicity, race, gender, religion, or sexual preference. Justice demands a system of international law that legally obligates international organizations to intervene when these rights are threatened. Furthermore, since any institutional framework will concentrate enforcement power, Buchanan astutely recognizes an institutional obligation to protect the human rights of all people as equally as possible. Buchanan argues persuasively that democratic governance offers the best hope for ensuring this robust protection of human rights, and so should be the form of governance used whenever feasible.

From these moral foundations, many implications follow—both for what can be considered legitimate international law (and legitimate legal action), and for what legal rights people can invoke under the banner of international law if their human rights are not being protected. These remedial claims include the rights to secession and to some form of intrastate autonomy where past inequalities have been perpetrated at the state level.

Of course, however logical, Buchanan's set of basic and implied rights plainly fails to command universal assent. While this discord poses no

problem for the soundness of Buchanan's account—which cannot be determined by the breadth of its acceptance—it does pose major barriers to its enforcement. Since current enforcement of international law deriving from the U.N. Charter is consensus-based, any lack of consensus on human rights will lead to inadequate enforcement of those rights. Buchanan anticipates this problem, and urges a controversial solution: the creation of a “treaty-based, rule-governed, liberal-democratic regime for armed intervention that bypasses the UN Charter-based requirement of Security Council authorization” (p. 440). Insofar as its efforts to protect human rights would contravene existing Charter-based law, this coalition would be illegal—but Buchanan sees no problem with such illegality. “If illegal acts are necessary to bring about important substantive improvements in the system whose rules for legal change are serious impediments to progress . . . then [the] presumption in favor of change through legal means can be overridden” (p. 465).

As may already be apparent, the success of Buchanan's moral framework requires the demise of many long-standing moral theories, including those based on consent, national interest and the unified state, tolerance, legal absolutism, and of course realism, according to which international law can never adequately institutionalize morality. Much of Buchanan's book is devoted to taking up and critiquing these incompatible theories in turn, and the reader will have to judge his success on these fronts. Whatever one thinks about his criticisms of other approaches, however, one comes away impressed with the consistency of Buchanan's position, despite the panoply of possible counterclaims.

Buchanan's work greatly advances the moral project of international law both by defanging those moral theories that have hampered international legal theory and by providing an account that—in its very creation of a moral obligation to seek international justice (rather than mere moral permission to do so)—finally gives international law moral bite. Yet his work does not go quite far enough, failing to spell out *how* international actors should fulfill their moral obligations, and in what order. How, for example, ought a state with limited resources determine whether its duty to protect a right of individuals within its borders trumps its corresponding obligation to those people outside its borders? How, too, ought his proposed treaty-based coalition—the real teeth of his argument—determine when armed intervention is necessary, and what form it should take (via Somalia-style peacekeeping? Kosovo-style air assaults)? At the moment, the United States does not recognize the right not to be executed—a codified right in the European Union—nor does it recognize certain rights of children as articulated in the U.N. Convention on the Rights of the Child. Would Buchanan suggest that these human rights discords call for “coercive diplomacy” or even armed intervention (p. 442)? If so, who would be obliged to intervene against whom? In the case of the rights of the child, for example, the United States may think itself obliged to intervene to protect children's rights above and beyond those espoused in the U.N. Convention.

This area of uncertainty represents a shortcoming of Buchanan's argument, but not a refutation of it. While this criticism points out a portion of

the argument that needs further exploration, it does not diminish the impressive coherence of that argument. At the end of the day, Buchanan does not presume that his account provides a fully fleshed-out moral edifice for international law. It provides, as the book's title suggests, a set of foundations. In this endeavor, it succeeds ably where others have not. Buchanan demonstrates that, while the moral project of international law may not command firm agreement, it can at least rest upon firm ground.

Understanding Globalization

Why Globalization Works. By Martin Wolf. New Haven: Yale University Press, 2004. Pp. xviii, 398. Price: \$30.00 (Hardcover). Reviewed by David E. Pozen.

Is it possible to profess a profound love for multinational corporations, capital markets, and free trade and at the same time care deeply about the plight of the poor in developing countries? In *Why Globalization Works*, Martin Wolf turns this question on its head—if one sincerely hopes to improve life for the world's most disadvantaged, Wolf insists, it is impossible *not* to embrace corporations, markets, trade, and the globalization they entail. A former World Bank economist, Wolf has long advocated a market-based approach to development in his *Financial Times* column. *Why Globalization Works* seeks to cement the desirability of this approach and thereby restore reason to the debate on globalization.

Reviewing both the current literature on globalization and the centuries-old literature on capitalism and trade, Wolf sets forth a comprehensive case for economic globalization—defined as “the integration of economic activities, across borders, through markets” (p. 14)—as the sine qua non of mutual growth and prosperity. The first half of the book sweeps through the history and macroeconomics of international markets in order to contextualize the modern critiques of globalization, which Wolf then tackles one by one in the book's second half. Throughout, Wolf combines the economic liberalism and commonsense tone of *The Economist* with the passion for globalization and epigrammatic style of fellow columnist Thomas Friedman. (Though Wolf's signal attempt at a Friedmanesque catch phrase—labeling today's dissenters “antiglobalization.com” (p. 4)—falls utterly flat; Wolf never explains the Internet analogy and drops the term after the first chapter.) The result is a deceptively simple treatise with an inescapable conclusion: “The problem today is not that there is too much globalization, but that there is far too little” (p. xvii).

Specifically, there is too little implementation in the developing world of the so-called “Washington Consensus,” a set of market-friendly reforms emphasizing privatization, trade and finance liberalization, fiscal and monetary stability, and corporate deregulation. These policies—promoted since the 1980s by the U.S. Treasury, the International Monetary Fund (IMF), and the World Trade Organization (WTO)—have generated enormous

resentment from critics who believe they enrich developed-world companies at the expense of developing-world citizens, strip governments of the power to engineer their economies, and fuel a global race to the bottom in welfare provision and labor standards. The protest literature soon led to street protests, culminating in the mass demonstrations that scuttled the 1999 WTO meeting in Seattle.

To Wolf, all this outrage seems at best misplaced and at worst extremely dangerous, because the evidence from the last two decades supports the Washington Consensus. Global inequality and poverty have been decreasing; multinational corporations operating in developing countries have treated and paid their workers better than have domestic firms and brought manifold ancillary benefits; export-oriented economies have consistently outperformed those more inwardly oriented; welfare states have continued to expand; and the IMF and WTO, though at times inept, have played a key role in mitigating the damage of numerous national crises. Seattle-style protesters, in their righteous myopia, threaten to turn back all this progress and rob the developing world of the international trade, capital, and technology—the globalization—that it desperately needs.

Wolf also reserves some venom for Western governments that, hypocritically, maintain high trade barriers on agriculture and textiles in deference to domestic producer lobbies. One World Bank study estimated annual welfare losses to developing countries due to agricultural subsidies at \$20 billion, almost 40 percent of all development aid. Similarly unjust are American and Canadian efforts to protect drug patents abroad, but not at home, and the “brain drain” of skilled workers from low-income to high-income countries.

From these critiques, Wolf arrives at his central proposal—global governance on issues ranging from the environment to the Internet, poverty, disease, trade, investment, and security. As a classical small-government liberal, Wolf professes a fondness for international organizations that is perhaps the most surprising element of the book. (A close second is his support for certain infant-industry protections in developing countries, although here Wolf can cite compelling success stories in post-World War II East Asia.) Yet in his view, supporting international organizations is perfectly consistent with classical liberalism: the transnational externalities associated with these issues demand an international response, and governments’ policies will be more predictable and transparent (and limited) when they are bound to international agreements. Whereas for Wolf “the assumption of a benevolent welfare-maximizing [national] government is naïve and implausible” (p. 275), the assumption of benevolent and welfare-maximizing global institutions appears eminently sound. The “democratic deficit” occasioned by international agreements does not trouble Wolf, nor does their tendency to reinforce existing power dynamics.

While Wolf is certainly correct to identify the enormous potential, even necessity, of global institutions across a wide range of policy areas, he understates the likely difficulties in establishing and coordinating such institutions. Efforts to expand supranational authority have consistently

produced a backlash among affected populations, making Wolf's vision of exponentially increasing its scope seem hopelessly far-fetched. Moreover, international institutions present unique problems of structure and management that often limit their effectiveness; consider the Organization of African Unity, the U.N. Oil-for-Food Program, or, according to some skeptics, the United Nations itself. Wolf acknowledges the risk that international institutions will privilege hierarchy and order above initiative and flexibility, but he declines to pursue this idea to its logical conclusion: a world shot through with international institutions might stifle the entrepreneurship and market-based solutions that he so cherishes. When Wolf calls at the book's end for rich countries to increase their foreign aid dramatically—a recommendation oddly out of sync with his earlier characterization of such aid as distortionary, corrupting, and ineffective—it seems an act of desperation, an implicit concession that global governance is a long way off.

Why Globalization Works suffers from other, lesser faults than the flimsiness of its conclusion—most notably in what it excludes. Wolf discusses only institutional actors and, notwithstanding his affinity for the private sector, overlooks nongovernmental mechanisms for alleviating poverty. He also conspicuously ignores Russia's and South America's largely disastrous experiences with Washington Consensus reforms. Finally, Wolf lumps together all the models of liberal democratic capitalism (LDC), slighting a whole academic sub-industry that aims to classify these models according to their welfare state typologies. While Wolf is surely right that, compared to socialist or communist regimes, such models are much more similar than dissimilar (and all vastly superior), their differences remain significant, especially in the context of a globalization debate so focused on the role of the state. Wolf's failure to parse the different conceptions of LDC reflects a larger failure of the book: he devotes so much energy to defending LDC against neo-Marxist, socialist, and obscurantist critiques that one almost forgets that most contemporary critics of globalization are none of these. Nevertheless, an intelligent defense of LDC is always useful, and Wolf valuably debunks the radical critics of globalization, whose apocalyptic tracts have too often defined the debate. Passages eviscerating Michael Hardt, Antonio Negri, Naomi Klein, and George Monbiot are some of the most enjoyable in the book.

For all its warts, *Why Globalization Works* succeeds mightily at its core objective—persuading readers that economic globalization, though not without its difficulties, demands their loyalty. Wolf opines, rather patronizingly, that anti-globalization protesters “fall . . . in the category of spoiled children. But they are ‘our’ children. If we fail to persuade the idealistic young of the merits of a liberal global economic order, it may founder before the certainties of its enemies” (p. 10). It has happened before; economic globalization, by some measures, reached its all-time zenith in 1914, when World War I and its aftershocks triggered a downward spiral of protectionism. It took another world war for the West to get back on track. Linked to politics, globalization is inherently precarious. Wolf reminds

readers how much vigilance it takes to preserve globalization, and suggests just how much creativity will be required to improve it.

Private Power, Public Law: The Globalization of Intellectual Property Rights.

By Susan K. Sell. Cambridge: Cambridge University Press, 2003. Pp. xv, 218. Price: \$60.00 (Hardcover), \$21.99 (Paperback). Reviewed by Mark Wu.

How do multinational corporations shape U.S. trade policy? Why do they sometimes succeed tremendously, and at other times get only a fraction of what they want? In *Private Power, Public Law*, Susan Sell examines the role that large U.S. multinationals play in shaping the international rules governing intellectual property (IP).

Sell, Associate Professor of Political Science and International Affairs at George Washington University, uses a political science framework to explain “who gets what, when, and why” in global IP. To set up her analysis, she lays out a theory of structured agency, noting the interplay between structure, institutions, and agents. The relative dominance of each component vis-à-vis the others depends on the problem at hand and the time period in question.

Sell uses the negotiations on the 1994 Agreement for Trade-Related Intellectual Property Rights (TRIPS), one of the accords emerging from the Uruguay Round that established the World Trade Organization (WTO), and its aftermath to illustrate this theory. Her book is at its best when recounting the historical narrative behind TRIPS. She shows how structural forces in the 1970s and 1980s—including increased global trade, growing U.S. trade deficits, and a rethinking of U.S. antitrust policies—were already leading lawmakers in Washington to reconceptualize IP rights, but argues that IP ultimately leapt to the forefront of the nation’s trade agenda in the Uruguay Round thanks to the devoted effort of twelve chief executive officers from major U.S. multinationals. These business luminaries did not share identical interests; some were concerned with copyright standards while others cared mainly about patent rights. Nevertheless, they recognized the power of their collective strength and formed an ad hoc IP committee to advise U.S. policymakers during the trade talks. This committee essentially synthesized and reframed the intellectual framework for arcane matters in IP and trade—culminating in the largely pro-IP provisions of TRIPS.

Sell’s narrative provides a detailed account of the lobbying, political maneuverings, and diplomatic horse-trading behind the formation of TRIPS. Even those familiar with the story will likely discover a new insight or two, particularly in her anecdotes culled from interviews with the individuals involved.

Engaging as this narrative is, however, readers should keep in mind the larger questions that it raises. Is it true, as Sell argues, that “in effect, twelve corporations made public law for the world” (p. 96)? If so, could this feat happen again, and what does it imply about the legitimacy and transparency of the global trade regime? Sell argues that the confluence of four factors allowed corporate agents to shape Washington’s trade agenda in IP:

multinationals mobilized effectively; U.S. policymakers and businesses were able to develop a common position; other developed countries managed to resolve their differences; and developing countries failed to mount a sustained opposition. In this case, agents played a critical role. However, in different circumstances, similarly skilled corporate agents may be less successful. Sell demonstrates this point by showing how a different mix of these four factors led to substantially different, and less pro-business, outcomes in the Uruguay Round negotiations on services (excluding financial services) and investment.

Sell also devotes a chapter of her book to examining what has happened in the years since TRIPS came into effect. She notes how the environment has changed: the unity of the disparate pro-IP industries has eroded while an active opposition to the accord, centered particularly on efforts to liberalize access to medicines in the world's poorest countries, has emerged. Sell argues that the global trade regime is in the midst of a second cycle of structural elaboration of international IP rules. While the first cycle was shaped by private corporations, the current one is being shaped by a contest between TRIPS' architects and its protesters. The latter, in particular, have become better-organized and more sophisticated as agents, and as a result they are reshaping the public discourse on global intellectual property rules. Sell illustrates her point by taking the reader through a number of recent IP-related trade controversies.

Again, the anecdotes are interesting, especially Sell's account of how public health activists disrupted campaign events for Vice President Al Gore in the 2000 U.S. presidential elections in order to precipitate a change in President Bill Clinton's policies. However, the major shortcoming of the book is that Sell fails to push her theoretical framework further when analyzing post-TRIPS developments. Readers looking for a framework to understand who gets what, when, and why in post-TRIPS global IP rules will likely be disappointed.

In addition, Sell fails to incorporate a multi-level analysis into her theoretical framework to the same extent that she ably incorporates the temporal dimension. Yet this dimension is critical if one is to understand the workings of global IP trade negotiations. In defining international IP rules, discussions occur on three levels. First, lobbyists and activists work to persuade different government agencies of the merits of their position. Second, government agencies negotiate with each other to reach a consensus position. Finally, the ultimate decisions are made by states through bilateral or multilateral negotiations in various international fora. Failure to achieve a desired outcome can result from insurmountable barriers raised at any of these levels.

Without this multidimensional analysis, Sell's book falls short in providing readers with answers—or even means to consider—some of the more interesting questions in the global IP debate. For example, one of the major post-TRIPS controversies concerns implementation of regulatory requirements for the protection of confidential data. TRIPS Article 39 contains notoriously ambiguous language and remains the source of contentious debate between U.S. and European trade negotiators, on the one

hand, and activists and developing country negotiators on the other. Why was this ambiguity enacted into WTO law? Did corporate agents fail to frame the debate as effectively as they had on other issues—creating a first-level problem that reverberated upward? Or were compromises during third-level negotiations to blame? If the latter, why were developing countries able to weaken the IP liberalization forces in Article 39, but not in other areas?

Similarly, readers are left wondering why activists have enjoyed only limited success in their efforts to increase flexibility for developing countries under TRIPS. Is it because activists have not been able to frame the discourse in a fully convincing way during first-level talks with U.S. governmental agencies? Or should the public's focus shift to the inter-agency and congressional battles within Washington, to renewed policy debates on compulsory licensing and pharmaceutical pricing? Or maybe the problem is really the inability of developing countries to hold their ground on IP in bilateral and multilateral talks when faced with offers of attractive concessions on agriculture, textiles, and other matters. How do failures on all three levels affect and reinforce each other?

Finally, Sell's book presents a thorough discussion of corporate and nongovernmental agents, but makes little mention of the role of institutional agents. Institutional players, which may seem to lack agent representatives during first-level talks, can evolve to become agents themselves in the second- and third-level negotiations. The question is, do they actually do so? In other words, how much do the individual government negotiators matter?

These questions are not meant to distract from Sell's valiant efforts to provide a political science framework to analyze the evolution of global IP norms. Sell's book is a good first step in a much-needed endeavor and will be a valuable resource for those new to the debate. But the questions do highlight how much further political science needs to push before it can provide a satisfactory explanation for "who gets what, when, and why" when it comes to distributing IP rights globally between corporations and the public at large.

Human Rights on the World Stage

The Human Right to Water: Legal and Policy Dimensions. By Salman M.A. Salman & Siobhán McInerney-Lankford. Washington, D.C.: The World Bank, 2004. Pp. v, 180. Price: \$30.00 (Paperback). Reviewed by Galit A. Sarfaty.

In *The Human Right to Water: Legal and Policy Dimensions*, Salman Salman and Siobhán McInerney-Lankford make a powerful case for the existence of a human right to water within the legal framework of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Salman and McInerney-Lankford, who serve as Lead Counsel and Counsel, respectively, in the Environmentally and Socially Sustainable Development and International Law Practice Group of the World Bank Legal Vice Presidency, are recognized experts in the fields of water law and human rights

law. Their argument begins by noting that lack of water and unclean water are the leading causes of premature death worldwide. An important step in alleviating these dismal conditions is recognizing that water is a human right. Recognition of a right to water would, for one thing, exert pressure on states to refrain from interfering with the enjoyment of that right, and would provide incentives for states to adopt necessary measures both to achieve the full realization of the right to water and to prevent third parties such as corporations from interfering with it. While some issue areas in their study might have benefited from more detailed elaboration, the authors convincingly establish the interconnection between development, water, and human rights.

Although they acknowledge the absence of any legally binding authority for the human right to water, Salman and McInerney-Lankford conclude that an incipient right is emerging in public international law. In providing a comprehensive justification for the recognition of this human right, the authors suggest that there are various sources from which to recognize human rights aside from legally binding instruments. The path towards recognition of a right as customary international law begins with soft law commitments (such as resolutions and declarations) and then leads to the adoption of domestic legislation and internalization of the human rights norm into domestic legal systems. The right to water can be inferred from Article 25 of the Universal Declaration on Human Rights, which grants every human the right to a standard of living adequate to the health and well-being of himself or herself and his or her family.

Of particular importance is General Comment No. 15 on The Right to Water, which was adopted by the U.N. Committee on Economic, Social and Cultural Rights in late 2002. According to the authors, the General Comment carries significant legal weight not because it creates a new right under the ICESCR, but because it infers the right to water from established rights—the right to an adequate standard of living in Article 11, and the right to the highest attainable standards of physical and mental health in Article 12. In addition, the right to water is central to the recognition of other ICESCR rights, thus highlighting the interdependence and indivisibility of all human rights.

The General Comment declares that non-state actors might possess obligations to cooperate with states towards the protection of the right to water. International organizations, including U.N. agencies and international financial institutions, should take steps to ensure that their policies take this right into account. Yet Salman and McInerney-Lankford only give passing reference to this issue. Given the authors' professional positions at the World Bank, they might have contributed more of an analysis of the Bank's international responsibility to protect the human right to water.

On a different note, as the authors acknowledge, General Comment No. 15 does not mention the duties and obligations of the users of water, such as the duty to conserve or pay for water. The Comment is exclusively addressed to states party to ICESCR, and one wonders whether individuals should bear some of the burden of managing water resources. Other international instruments, such as the Dublin Statement on Water and Sustainable

Development (1992) and the World Bank Water Resources Management Policy Paper (1993), emphasize a more participatory approach to water management that involves users, planners, and policymakers. While the authors briefly discuss participation in water management, the mechanisms by which participation can be most meaningful and effective deserve fuller treatment given their significance in operationalizing the human right to water.

The private sector is another potential actor in the management of water resources. The authors provide a few brief case studies where privatization of water services led to a considerable cost increase for users. For example, the privatization of water services in Cochabamba, Bolivia and the resulting increase in tariffs led to widespread civil unrest. Further elaboration on these case studies would have provided insight into the difficulty of weighing affordability with private sector participation.

The economic value of water is highly relevant when making policy decisions over water resource management and private sector investment. A related issue is whether water should be given free of charge or whether this would lead to environmentally damaging uses of the resource. In regard to the affordability of water, General Comment No. 15 advocates "appropriate low-cost techniques" and "appropriate policies such as free or low cost water." Among the important questions raised by the authors is whether water should be viewed as an economic commodity as well as a social good and a human need.

The authors emphasize that implementation of the human right to water requires considerable financial resources. This raises additional obstacles for poor and developing countries, which often have insufficient resources to fully ensure the protection of all human rights. Salman and McInerney-Lankford duly respond to this concern by indicating that this right, like other economic, social, and cultural rights, must be *progressively* achieved using the maximum of a state's available resources. As they accurately note, the goal of progressive realization stands in contrast to that of civil and political rights, which require an immediate obligation to ensure that these rights are respected.

This book makes a valuable contribution to development studies and international human rights law by raising several important consequences that follow from the right to water. Once water is viewed as a legal entitlement rather than a need or a commodity, the achievement of improved levels of access will be accelerated. Communities and vulnerable groups will be empowered to take part in decision-making processes. In addition, acknowledging a human right to water will help focus attention on the resolution of conflicts over the use of shared watercourses. Finally, as the authors astutely demonstrate, recognition of the right to water would further the adoption of a rights-based approach to development, which sees individuals at the center of development rather than as passive recipients of aid.

The Impact of European Rights on National Legal Cultures. By Miriam Aziz. Portland: Hart Publishing, 2004. Pp. xiii, 206. Price: \$70 (Hardcover). Reviewed by Robert A. Wiygul.

On October 29, 2004, leaders of the various European Union (EU) countries gathered to sign the European Constitution. The document still awaits ratification by EU member states, several of which have promised to submit it to the test of a national referendum. Still, the drafting of a constitutional treaty was an important step forward in the continuing integration of Europe, not least in light of the increasing friction the process has encountered in the last few years. Some of the public resistance may be ascribed to contingent historical circumstances: some countries may chafe at fiscal restraints imposed on them in a time of slow economic growth coupled with an increasingly burdened welfare apparatus. But some of the backlash seems intrinsic to the integration enterprise itself. The European ambition is to knit together a large number of states with diverse economies, cultures, and histories in a political, legal, and economic union that will realize the benefits of pooled resources while respecting the individual identities of all its members.

It is this tension between the *pluribus* and the *unum* that Miriam Aziz, Research Fellow at the Robert Schuman Centre for Advanced Studies at the European University Institute, addresses in her first book. As Aziz rightly reminds the reader, the EU may have been forged by international agreements—declarations, conventions, and treaties—but it is a supranational entity ostensibly superordinate to its constituent states. Nonetheless, the EU relies heavily on member states to implement its policies and directives, particularly in the area of rights protection, which is the focus of Aziz's book. In her view, the "[i]mplementation of European rights incurs an ongoing reconfiguration of the Member States' legal cultures, thereby challenging their sovereignty and, by implication, their identity" (p. 7). Aziz argues that, despite the extensive reconfiguration that has already occurred, legal scholars continue to use an anachronistic, state-oriented analytical framework when trying to conceptualize rights in the new Europe. Thus, for example, political rights in the EU are often described in terms of citizenship, even though "the actors engaged in political participation in the EU include, de facto, EU citizens and non-EU citizens . . . [and] the forms of participation are more innovative than classical conceptions of representative democracy allow for" (p. 8). Aziz's chief goal is to fashion a new analytical framework adequate to the task of understanding the dialectical relationship between the EU and national law. Ultimately, however, her book's value lies more in articulating the problem than in specifying a solution.

Aziz employs case studies to examine instances in which national law and EU-mandated rights have collided, and she displays a thorough knowledge of recent developments, especially in Germany. In assessing the success of Aziz's project, it is useful to start by mentioning what her book does not include. Unfortunately, it is marred by poor editing and ponderous—if not ungrammatical—prose. From a more substantive standpoint, Aziz

assumes a familiarity with the institutions, international agreements, and important debates in the history of Europeanization. Her failure to provide this history is unfortunate, not only because it would help orient the reader but because it would provide essential context to understanding the controversies and case law that Aziz examines. For a book focused on the relationship between rights and national sovereignty, this study, strikingly, includes no real philosophical or historical investigation of either concept. Rights, for Aziz, exist insofar as they are explicitly or implicitly granted by law. Sovereignty refers to a state's ability to decide for itself its policies and how it will treat those within its borders. There is, of course, nothing particularly objectionable about dealing with the concepts in this way, but Aziz misses the chance to look at what role the historical and philosophical underpinnings of rights and sovereignty might play in the interaction she analyzes.

In addition, although the book claims not to be concerned with "whether all residents of the Union *ought* to benefit from rights" (p. 7), Aziz is obviously sympathetic to the new rights regime and is often critical of assertions of national sovereignty. Aziz often implies that sovereignty must give way in order for Europeanization to be realized, without acknowledging the argument raised by other scholars, such as Alan Milward (who is included in Aziz's bibliography), that European integration after World War II was in fact necessary to *save* the nation-state. Clearly, there is more to say about the effect of "Europe" on national sovereignty.

Aziz does offer some tantalizing historical morsels. In emphasizing alternatives to the nation-state model, she refers to both Roman law and the medieval city-state. The former demonstrates that a legally unified Europe is not a wholly new invention; the Romans showed that "law or legal reasoning [could be] . . . an application of legal principles instead of being territorially based within a context constituted by customary law" (pp. 39-40). Similarly, Aziz invokes the medieval city-state as an alternative to the "Fortress Europe" model of rights, which classifies individuals as either EU or non-EU citizens. Just as those within the walls of the medieval city-state had important relationships with settlements beyond their confines, non-EU nationals, such as the Turkish guest workers in Germany, play an essential role in the EU and should not be denied political rights on the basis of an inappropriate citizenship model.

These analogies succeed in undermining the sense of historical necessity attached to the nation-state, but they occupy only a few pages and are underdeveloped. In this respect, they are indicative of a shortcoming of the book as a whole: it makes starts in several different directions, but ultimately just scratches at the surface. To take another example, Aziz suggests that, because of their experience under communism, the newer EU members may guard their sovereignty more zealously than their western counterparts. Certainly this is a contention worth pursuing, but it receives little additional comment.

In the end, Aziz is much clearer in diagnosis than in prescription. *That* a new analytical framework is needed to understand rights and legal cultures in the context of European integration is apparent. *How* to construct such a

framework is a good deal more elusive. Aziz effectively argues that the focus must shift from law to legal culture, and that “[w]e should recognize . . . the modesty of what Europe’s constitutional moment can deliver.” (p. 169). In her view, “[c]onstitutional rights may . . . in effect be rhetorical and are not always capable of transforming power structures” (p. 170). The book’s proposals for how to effect that transformation, however, seem rather facile. Aziz’s major practical suggestion is that elites should be required to take a loyalty oath to the European Constitution as well as their own country, and her chief theoretical proposal is for a “comprehensive multi-disciplinary approach [that] would allow jurists to map, classify and monitor the respective constitutional orders and cultures, modes of governance, the relevant elites, and any transformative dimensions in response to European rights” (p. 172). These steps will not in themselves move very far to the goal, but Aziz’s book helps put scholars on the right track to understanding the evolving legal culture of European integration.

Islamic Jurisprudence

Lessons in Islamic Jurisprudence. By Muhammad B’qir al-Şadr. Translated with an introduction by Roy Parviz Mottahedeh. Oxford: Oneworld Publications, 2003. Pp. 208. Price: \$60 (Hardcover). Reviewed by Intisar A. Rabb.

Lawyers and academics alike regard Islamic law with questions of practical and scholarly interest. If there is a continuing place for Islamic law in the modern world, what is the process of legal derivation and what modes dictate continuity or contemplate the possibility of change? Roy Mottahedeh, Professor of Islamic History at Harvard, provides an introduction to and translation of *Lessons in Islamic Jurisprudence* by the late Muḥammad Bāqir aṣ-Şadr that makes it easier for English speakers to pursue such questions.

An influential twentieth-century Islamic scholar and jurist, Şadr hailed from a family of leading Iraqi Shī‘ī clerics. He quickly became prominent in Iraqi intellectual and religious circles through his scholarship, with books such as *Lessons* joining or replacing centuries-old texts of the seminary’s core curriculum. He was also active politically, and co-founded a major Iraqi Shī‘ī political party in 1950. Feeling threatened, Saddam Hussein executed Şadr in 1980. Ironically, Şadr’s nephew, Muqtaḍā as-Şadr, has completed no religious or legal training, yet has capitalized upon the Şadr family renown to gain a platform for his radical policies in Iraq.

Though other English expositions and paraphrases of Islamic legal texts precede this volume, none examines a complete work of Shī‘ī jurisprudence. With *Lessons*, Mottahedeh now presents an account of Shī‘ī jurisprudence, renders Islamic jurisprudential thought intelligible for both the lawyer and the non-specialist, and provides a key to understanding pre-modern Islamic jurisprudential literature through a lucid modern work.

The book is divided into three principal sections. First, Mottahedeh provides an introduction that places Ṣadr's work in the broader framework of Islamic legal development. Next follows the translation of Ṣadr's work itself. Finally, Mottahedeh offers the reader a number of useful tools: a summary of Ṣadr's text (with commentary), a glossary, a list of Arabic terms mentioned in the glossary, and an index.

Mottahedeh introduces Islamic law and jurisprudence by focusing on four core fields: the nature of Islamic law, its historical development, the nature of Islamic jurisprudence, and medieval Western and Islamic law.

Throughout the Introduction, Mottahedeh highlights distinctions between Islamic and Western legal philosophy. He explains how Muslim jurists aspired to a combined moral and legal system that attempted to classify and develop rules concerning *all* human acts. Subsets of only two of those categories—*forbidden* and *mandatory*—could be litigated in Islamic courts; these also happen to be the only categories that Western lawyers would label "law" proper.

Mottahedeh's brief overview of Islamic law's composition includes both Sunnī and Shī'ī developments. He traces, for instance, how the initial *carte blanche* enjoyed by the first four caliphs to promulgate public and personal status laws gradually shrank to cover only matters of public and administrative law. The decline in their lawmaking authority stemmed in part from the impact of the "pious opposition," composed first of proto-Shī'īs, then of Sunnī jurists who had also become suspicious of the government. Mottahedeh further notes how this opposition birthed the enduring split between legal and government institutions in the Islamic system.

Mottahedeh also discusses considerations that are gaining currency in some modern studies of the field. For instance, the evolution of geographical differences into interpretive differences for Mottahedeh reflects a "pre-Islamic underlay" that many Muslims have "downplayed . . . unnecessarily" (p. 9). Although it is well-known that Islamic law jurists classically allowed a place for custom (it had legal consideration as long as it did not conflict with existing law), Mottahedeh argues that in developing that law, jurists did not always say when they were adopting existing custom or relying on local presuppositions to guide their rational interpretations of the law. In other words, they ignored the impact of culture (over and above custom) on the law.

The translation of Ṣadr's work includes four sections. The first, "Characterization of Jurisprudence," reviews the definition and history of the development of Islamic jurisprudence and describes its place alongside the related discipline of law. Ṣadr notes that while the former deals with the theory and methodology of law, and the latter with its practical application, the two are related. "[E]xpansion of discussions of application impels discussion of theory a step forward . . . [because] it stirs up difficulties as it advances and necessitates the establishment of general theories for their solution" (p. 44).

The second section, "Substantiating Arguments," comprises the bulk of the book, dealing with the two main sources of Islamic jurisprudence: the Qur'an and the Sunna (prophetic practice for Sunnīs, prophetic and "imamic"

practice for Shī'īs). In attempts to create a coherent method of legal derivation from those sources, jurisprudential specialists must analyze texts that record both verbal and non-verbal arguments based on divine law. Accordingly, Ṣadr devotes many pages to word origins, the lexical elements of texts, and the signification(s) of words and forms of speech with legal relevance. Evident here is a unique feature of Islamic legal jurisprudence and education: a focus on text-based, formalistic legal hermeneutics that arise out of what Professor Bernard Weiss has called Islamic law's "textualist/intentionalist bent."

Ṣadr follows his discussion of textual bases with a section on the rational bases for interpretation: "Procedural Principles." These principles cover situations in which jurists cannot define the law vis-à-vis the sources with absolute certainty. Instead, jurists rely on the legal sources to provide a means of arriving at a practical duty before the law by defining a default procedural rule-of-thumb.

Finally, Ṣadr turns to the "Conflict of Arguments" in a last, short chapter (which expands in volumes two and three).

With his translation of *Lessons*, Mottahedeh offers English speakers a clear, sophisticated treatment of the core topics, definitions, categories and problems in Islamic jurisprudence. While other works in translation interrupt the text with complex Arabic terms (including Arif Abdul Hussain's translation of this same work in 2003) and use reasonable though sometimes inapt translations, Mottahedeh has provided a deliberate all-English rendering. This complete transformation of the text may initially be off-putting to a reader familiar with Arabic terminology but not with Mottahedeh's English renderings. But this is one of the underlying points. The English reader *should* become absorbed in a scheme of understanding Islamic jurisprudence for its legal concepts and reasoning, rather than for philological exercises that focus on foreign terms. A quick look at the glossary or index of Arabic-English terms can overcome any confusion. Mottahedeh's useful notes that accompany the summary help further explain conceptual usage.

Mottahedeh follows common translations for familiar terms such consensus (*ijmā'*) or derivation (*istinbāt*); where appropriate, he also offers translations for concepts particular to Shī'ī thought, such as exculpatoriness (*mu'adhdhiriyya*), inculpatoriness (*munajjiziyya*) and procedural principles (*uṣūl 'amaliyya*). He also proposes excellent ways to resolve unsettled translations: argument (for *dalīl*); *prima facie* meaning (for *zāhir* or *zuhūr*); presumptive (for *ẓannī*); and, of course, law or legal understanding (for *fiqh*) and jurisprudence (for *uṣūl al-fiqh*). Some translations read awkwardly, such as "probativity of assurance" (for *ḥujjiyat al-qat'*) or "permittedness" (for *ibāḥa*). There are some inconsistencies, as when Mottahedeh translates *istiḥsān* in his Introduction as "favorable construction" (p. 14) and later as "discretionary opinion" (pp. 50, 178)—in the latter case specifying the Sunni context of the term. And there are some omissions, as when the glossary lists some types of lawyers—the juristconsult (*mujtahid*) and the jurist (*faqīh*)—but not the jurisprudential specialist (*uṣūlī*) that appears frequently in Ṣadr's text.

However, these minor points do not detract from the enormous value of this work. Mottahedeh has well met his aims to present Shī'ī jurisprudence and make Islamic jurisprudential thought more tractable for the English reader. In typical form, Mottahedeh has managed to present the most important aspects of a vast Islamic tradition in precise, readable form with a helpful introduction that leaves the reader thirsting for more. One hopes that Mottahedeh will follow this work with translations of Ṣadr's subsequent two volumes, and that he will write his proposed companion book that will cover Islamic legal history more thoroughly. In the meantime, with the increasing interest in Islamic law in U.S. law schools, other universities, and among non-specialists, here is a volume that can be put to wide use.