

## Recent Publications

*Striking First: Preemption and Prevention in International Conflict.* By Michael W. Doyle; edited and introduced by Stephen Macedo; with commentary by Harold Hongju Koh, Richard Tuck, Jeff McMahan. Princeton: Princeton University Press, 2008. Pp. xi, 175. Price: \$24.95 (Hardcover). Reviewed by Kiel Brennan-Marquez.

In *Striking First*, Michael Doyle takes up a fundamental question in contemporary international relations: by what standards should we gauge the legitimacy and legality of nondefensive wars? Its salience today, in an age of newfound ideological strife and impending scarcity of resources, is obvious. Doyle parses this complex issue with perspicacity and sophistication. He steers clear of empty abstractions, avoids getting bogged down by overly detailed accounts of particular situations, and offers a cogent and persuasive argument for the importance of international legal norms in today's fragile world.

Doyle is especially concerned with the difference between preemptive war and preventive war, the former referring to interventions that neutralize an already materialized threat, and the latter to interventions that fend off future threats before they fully materialize. Doyle explains that one of the difficulties of the post-9/11 world is that interventionist jurists and politicians, including many in the Bush administration, have begun to conflate these categories. They argue that in light of heightened threats from decentralized, nonstate actors, preventive war is legitimately preemptive. If the attack could come from anywhere, at any time, then almost any counteraction could be construed as preventing future conflict.

Doyle finds this logic not so much false as theoretically and legally complacent. In the age of terrorism, it may very well be that security threats have become so extensive and unorthodox as to warrant vigilant intervention across the globe. Doyle is less concerned with this empirical issue than with the procedures by which these interventions may legally occur. Indeed, he makes a compelling case that the efficacy of international law is contingent on our ability to ensure the transparency and sensibility of such procedures. For Doyle, this requires keeping genuinely preemptive action analytically distinct from merely preventive action, and developing viable criteria for adjudicating between the two, especially in the case of unilateral preventive action.

The core of Doyle's book consists of two complementary essays, which are adapted from his recently delivered Tanner Lectures on Human Values at Princeton University. The first, "International Law and Current Standards," explores the meaning of preemptive versus preventive war in the context of international law, and concludes that we need better criteria by which to evaluate the latter's justifiability. The second, "Standards," is an attempt to develop such criteria. The two Doyle essays are followed by three short comments by leading scholars of international law and war—Harold Hongju

Koh, Richard Tuck, and Jeff McMahan—which critique various aspects of Doyle’s argument. The book ends with Doyle’s brief reply.

Throughout *Striking First*, Doyle takes issue with traditional accounts of geopolitical violence—realist theory and liberal theory—that circumscribe discussions about preventive force. Both are too blunt for Doyle’s taste. Whereas realist theory overdiagnoses threats and produces false positives, liberal theory underdiagnoses threats, producing false negatives. Doyle argues that four theoretically straightforward criteria should guide the deliberation of preventive war: lethality, likelihood, legitimacy, and legality. Applying these criteria, he derives a multiplicative calculus of preventive action:

$$\text{Justifiability of Prevention} = \text{Lethality} \times \text{Likelihood} \times \text{Legitimacy} \times \text{Legality}$$

The algorithm is expansive and versatile, and manages—quite impressively in light of its simplicity—to quantify many widespread intuitions about the justifiability of force in the international arena. Specifically, it suggests that (1) even nonimminent threats can be justifiably prevented if their potential damage is great enough; (2) the greater the potential harmfulness of a threatening regime, the less stringent the legal standards necessary to justify prevention; and most importantly, (3) if the potential harmfulness of a threatening regime is sufficiently acute, almost any intervention will be justified. This last implication forms the basis of Doyle’s theoretical defense of unilateral preventive action.

In the first comment, Koh seems to agree, in broad terms, with Doyle’s formula, but he disagrees with Doyle about the nature of “legitimacy” in the international arena. Whereas Doyle believes that in particular kinds of exigent circumstances, nation-states should be given preauthorization for unilateral preventive action, Koh believes that unilateral preventive action can only be justified *after* the fact. Koh strictly differentiates between ex post pardon and ex ante license, and argues that the former should never apply to nonhumanitarian unilateral interventions. Without this distinction, governments will always be able to stretch definitions and rubrics to fit their policy agendas. “If we want to create a meaningful default position against unwarranted use of force,” Koh writes, “we need bright-line rules” (p. 114).

This critique is enriching, though it may simply postpone, rather than guide, legal decisionmaking. If we should never sanction unilateral preventive measures, but under the right set of circumstances they can be exonerated, then what are the criteria of post hoc exoneration? Notwithstanding their disagreement about ex ante versus ex post legitimation, Koh and Doyle actually share much common ground. In particular, they concur on the inherent tensions in preventive war deliberation. And both seem to agree that the tension between international consensus and sovereign decisionmaking can be swept aside when the global community is confronted by universally condemnable threats (such as genocide). The harder cases are geopolitical disputes about the nature of, and proper response to, hazier threats. In this vein, Doyle’s most compelling work comes in his discussion of historical moments when justifications for preventive interventions were unusually hazy—such as the Cuban Missile Crisis and Israel’s 1981 strike on Iraq’s

Osirak nuclear reactor—and more importantly, how these historical examples come to bear on contemporary issues of preventive war.

Richard Tuck's response to Doyle and Koh is indicative of the fundamental consensus among them. Tuck brackets criticism of Doyle's substantive claims about the criteria of justifiable preventive action, and chooses instead to focus on the viability of abstractions like "lethality" and "legitimacy" in general. Arguing from a Hobbesian perspective, Tuck claims that transnational standards of prevention are fine in theory, but that in practice, nation-states will (and perhaps should) follow their own prerogatives and define their own bounds of legitimacy. He reads Doyle as suggesting "that there is an existing body of international jurisprudence, the force of which some states acknowledge" (p. 124). For Tuck, however, "there is no institution whose determination on the matter *eo ipso* decides the question," from which it follows that any "judgment about legality is then the same kind of thing as our judgment about necessity or proportionality: we ourselves have to assess whether the proposed action fits the accepted canons of international law" (p. 124).

Although Tuck's analysis of Doyle's work is persuasive and eloquent—for example, "the skeptic would find in the end little to dissent from . . . but equally, he would find little to force him out of his skepticism" (p. 125)—many of his reservations are in fact addressed by Doyle's essays. Consider the following qualification that Doyle offers regarding the scope of his work: "One can wish that the standards generated a sharp set of rules or a precise recipe for judgment and action. But they do not. They are best conceived of as a set of relevant questions whose answers in past cases serve as benchmarks for further deliberation" (pp. 84-85). This proviso does not necessarily obviate Tuck's criticism, but it does lend significant credence to the integrity of Doyle's work. Doyle's reflections on the necessity and quality of preventive war are not blinded by an overly zealous or optimistic account of how international law works. *Striking First* recognizes from the start that institutions are imperfect, and that the world is often, as Tuck suggests, a darker, more Hobbesian place than we like to imagine.

It would be easy to write off Doyle's concession as unproductive; readers amenable to Tuck's perspective may find it insufficient. To my mind, however, Doyle's work exemplifies the possibility of turning ostensibly pessimistic views on the state of international relations into productive scholarship. Doyle's starting point is sober and coolheaded, but he never lets that dissolve the rigor or weigh down the value of his conclusions. Tuck's critique might seem to render projects like *Striking First* useless—why bother with enumerated standards when decisionmaking in international relations is dysfunctional and prone to blatant opportunism anyway? But the critique actually underscores the value of Doyle's work.

If Tuck is right, and international legal norms merely obscure the skeptical self-interest that undergirds the world, then scholarship like Doyle's is needed all the more urgently. He manages the impressive feat of acknowledging the tenuous reality of international law, but also moves *beyond* that acknowledgment, and in the process, tries to nudge the world, slightly and

subtly, toward greater justice. As Doyle expresses it in his reply to the commentators, although “these standards can only be preliminary and incomplete,” they are “designed to reflect deep moral duties and to begin to create the conditions of respect and trust preliminary to a more reliable international order” (p. 152). To hope for anything more would be politically dangerous, but to expect anything less would be to give up hope entirely.

*The Fall and Rise of the Islamic State.* By Noah Feldman. Princeton: Princeton University Press, 2008. Pp. 189. Price: \$22.95 (Hardcover). Reviewed by Maryam Khan.

In the minds of many, the word shari’ah has come to evoke images of primitive justice, fear, and tyranny—be it gender apartheid in Afghanistan at the hands of the Taliban, ethnic cleansing in Sudan by its Arab Muslim population, or harsh corporal sanctions in Saudi Arabia. The increasingly popular calls from within Muslim societies to provide a greater role for shari’ah in politics and government lend urgency in the non-Islamic world to concerns over terrorism and threats to democracy. In his most recent book, *The Fall and Rise of the Islamic State*, Noah Feldman makes an iconoclastic inquiry into the original spirit and meaning of shari’ah and the recent revival of the Islamic Shari’ah State.

“Can the new Islamic State succeed?” (p. 3). This is the fundamental question at the heart of Feldman’s analysis. To answer it, *The Fall and Rise of the Islamic State* presents an account of the evolution of the Islamic State from its inception in the seventh century, to its downfall in the nineteenth century, and eventually to its resurgence in a radically different form in the late-twentieth century. This insightful analysis attempts to bridge the chasm between the old, traditional Islamic State and the new, Islamist articulations of democracy, which accommodate shari’ah in innovative, nontraditional ways. Only by understanding the past can the current political discourse begin to appreciate why the old Islamic State was so successful in sustaining a civilization that spanned thirteen centuries, and how the enduring constituents of the old state may be recaptured in the new state to “make it work” (p. 4). Feldman argues that the modern Islamic State—if founded on certain core features of the traditional Islamic State—may repair the schism between Western liberal democracy and Islam.

So what is the historical panacea for the ills afflicting modern Muslim governments? Feldman points to a classical Islamic version of separation of powers, embodied in an “unwritten constitution,” which originated from the divine Quranic injunctions, and whose interpretation and exegesis was the exclusive domain of the highly learned scholarly class (pp. 25-26). Although the Islamic executive head (first the Arab Caliph and later the Turkish Sultan) possessed wide powers, his authority was not unfettered. By assuming the sole right to declare what the law was, Islamic scholars served as a check on the executive’s authority. Transgressions of divine laws—which were the source of executive authority in the first instance—would not be tolerated.

Islamic history tells us that this was not an empty threat. Scholars played the all-important role of legitimizing the new executive's authority as much as they retained the right to interpret and develop the law. In a politically uncertain environment with multiple claims to power, a wise ruler was loath to challenge the boundaries of Islamic law set down by the scholars. Shari'ah—or Islamic constitutionalism—was therefore not merely a collection of substantive Islamic laws but a much larger constitutional framework, which provided the bedrock for effective checks and balances in the classical Islamic State. Political stability in turn promised economic stability, protection of property, advancement of trade, and military expansion.

According to Feldman, the weakening of the Ottoman Empire in the nineteenth century under severe strain from Western powers sounded the death knell for rule by shari'ah. Rulers of the late Ottoman Empire attempted to modernize the Islamic government by establishing a legislature and codifying shari'ah laws. Scholars failed to foresee the irrevocable effects that codification would have on their role as the exclusive custodians of the shari'ah laws, or the threat it would pose to the only effective check on executive authority in the traditional Islamic State. Once shari'ah became part of a body of codified rules, a judge without training in the classical Islamic law could apply it. This had two drastic implications for the authority of the scholars. They had to surrender autonomous control over both the content of the law and its interpretation, and more importantly, they could no longer claim to be the decisive source of legitimation for the executive's power. Nor was it the case that the scholars' authority was fully transferred to the new and inexperienced legislature, which proved to be impotent in the face of executive strength. The nascent political status of the legislature, coupled with the steady marginalization of the scholarly class, led to the unhappy emergence of unbridled executive authority in the Muslim world.

Feldman's arguments are compelling. *The Fall and Rise of the Islamic State* highlights the dearth of checks and balances on executive authority, which has socially and politically crippled societies in many Muslim-majority countries. Critically, the example of Saudi Arabia reveals that even a formal separation of powers based on the old Islamic State may be dysfunctional in a modern environment where the oil-rich monarchy is easily able to coopt the scholars. On the other hand, the examples of Iran and Afghanistan show that the reemergence of a powerful scholarly class may not prove to be a one-size-fits-all solution for modern Islamic States, unless the autocracy of the scholars is balanced by other state institutions.

According to Feldman, more recent formulations of a shari'ah state do not envisage any role for religious scholars. Rather, they are modeled on a modern democratic institutional framework with some accommodation of shari'ah as either a direct source of law or a form of Islamic judicial review, which would, to some extent, ensure continued involvement of Islamic law in the legal regulation of societal values. It may seem counterintuitive to suggest, as Feldman does, that both Muslim-majority countries and the rest of the world may have something to gain from a "democratized" system of shari'ah established by popularly elected Islamist parties, such as Hezbollah in

Lebanon and Hamas in Palestine. Given that many Muslims identify shari'ah with relief from autocratic rule, however, the best solution may be to provide the new political Islam with a fair chance at governance.

For all its insights, Feldman's account leaves several gnawing issues unresolved. The first concerns Feldman's presumption that the revival of Islam as a political solution derives from popular sentiment across Muslim-majority countries, as exemplified by electoral support for Islamists. While this may be the case in certain countries like Iraq and Jordan, it is far from true in other countries where political trends in fact show lack of popular support for Islamists. Pakistan is a case in point. Feldman believes that "Pakistan's formal constitutional structure already embodies many of the goals of mainstream Islamists" (p. 144). But he fails to distinguish populist voices from those of the highly unpopular military establishment, which was singularly responsible for "Islamization" of laws in the 1980s, in an attempt to legitimize its unconstitutional rule through certain shari'ah laws. These laws have been neutralized to a large extent in subsequent years. Added to that is the empirical observation that in Pakistan's February 2008 elections, the military-sponsored Islamist political parties were clearly outvoted in favor of more secular elements. Feldman's account of a homogenized culture of popular support for Islamists in Muslim countries around the world leads to a disingenuous assessment of the politico-legal ideology of these countries.

Feldman similarly fails to confront sufficiently the substantive dimension of shari'ah. Any meaningful discourse on whether a modern Islamic State can succeed must take cognizance of the effect of substantive shari'ah laws in present day. Implicit in Feldman's thesis is the argument that with a functional shari'ah state founded on some form of democratic separation of powers, the substantive laws will be reprogrammed through popular struggle over time to meet modern demands of social justice. This is not a particularly persuasive argument. It is precisely the substantive side of shari'ah as interpreted by Islamists that makes moderate Muslims skeptical of the desirability of an Islamic State in the first place. Moderate Muslims would like to see an end to violent jihad, greater rights and equal treatment for women, equal protection of law and equal opportunity in the public sphere for non-Muslim minorities, and a rationalization of state intervention in the private lives of citizens. These moderates, who continue to advocate change to discriminatory shari'ah laws around the world, do not seem to find a voice in Feldman's discourse. Neither does Feldman effectively explain how the initial revivalism of the Islamic State can be sustained without first engaging with the draconian laws which shari'ah has largely come to represent.

Nonetheless, *The Fall and Rise of the Islamic State* provides incisive arguments for the revival of the Islamic State as a sociopolitical solution in those regions of the modern Muslim world that identify shari'ah with political stability and social justice and view it as a viable alternative to established authoritarian systems of governance. After all, as Feldman observes, "[s]o long as all-powerful executives continue to rule unjustly—which is to say, so long as they continue to rule—there will be a hunger for an alternative" (p. 146).

*Defending Humanity: When Force Is Justified and Why.* By George G. Fletcher and Jens David Ohlin. Oxford: Oxford University Press, 2008. Pp. xvi, 268. Price: \$27.95 (Hardcover). Reviewed by Courtney Hostetler.

In *Defending Humanity: When Force is Justified and Why*, George Fletcher, a preeminent scholar of criminal law, and Jens David Ohlin, an expert in international criminal law, examine if, when, and how a nation legitimately may engage in self-defense or in defense of other nations. In this ambitious and timely book, Fletcher and Ohlin set out to “rescue” the concept of self-defense (p. 5), tarnished by governments that use the phrase as a catch-all justification for aggression. The authors succeed in their rescue by drawing on multiple disciplines and several legal frameworks in order to present a rich picture of defensive force, in its historical and current manifestations in criminal and international law. They enumerate the standards for the legitimate use of defensive force and then invoke these standards to assess whether self-defense is an appropriate justification for several types of conflict scenarios, all of which have contemporary relevance. These scenarios include military intervention on behalf of another nation, preventive wars, preemptive strikes, and torture of unlawful combatants. Fletcher and Ohlin also present their own theories as to how defensive force should be understood in international law.

This book covers vast territory. In several explanatory chapters, Fletcher and Ohlin comb through philosophical theories, important cases from several legal traditions, and Judeo-Christian religious texts in their exploration of self-defense doctrines. They carefully deconstruct defensive force concepts, including “self-defense,” “legitimate defense,” and “necessary defense” (p. 63), and separate out the unique, though related, ways in which these concepts are understood in criminal law systems, international criminal law, and international law generally. They analyze concepts correlated with defensive force, including reciprocity, equality of states, *jus ad bellum*, and *jus in bello*. In these chapters, the authors collect the pieces of the defensive force puzzle—pieces that they argue can be organized to produce an improved picture of defensive force law.

Fletcher and Ohlin fully engage with competing visions of defensive force in Western philosophy and law. Despite their assertion that “[e]very legal system has a concept of self-defense” (p. 26), examples from non-Western systems of law or philosophy and examples from religions other than Judaism and Christianity are notably absent from their analysis. The authors write for an American audience and analyze an international legal framework that is heavily influenced by Western traditions. Fletcher and Ohlin’s theory of legitimate defense, however, is meant for a global audience. They argue for a reinterpretation of the self-defense doctrine and of Article 51 of the United Nations Charter. This reinterpretation would guide all member states of the United Nations, despite Fletcher and Ohlin’s focus on Western moral philosophy and legal traditions. A complete analysis of non-Western self-defense traditions perhaps was not possible, but Fletcher and Ohlin might

have at least introduced the subject as an avenue for future research. Alternatively, they might have expressed more explicitly that the aim of the book was not "to understand self-defense in war . . . [and] its use as a justification" (p. xiv), but rather, to understand self-defense in light of Western legal and philosophical traditions.

The traditions upon which Fletcher and Ohlin depend provide ample support for the theories they advance. They theorize that the French version of Article 51 of the United Nations Charter is more effective than the English version in conveying a comprehensive conceptualization of legitimate defensive force in international law. Article 51 confirms the right of states to defend against aggression, even in the absence of Security Council permission. However, the two official versions of the Charter translate it differently. The French-language version "uses the phrase '*droit naturel de légitime défense*' to refer to what is termed in the English version 'the inherent right of self-defense'" (p. 66). Fletcher and Ohlin assert that experts focus too much attention on the English-language translation, which is based on the common law rule of self-defense. This rule limits defense of others to collective self-defense, which allows states to intervene only on behalf of countries with which they have "treaties of mutual defense" (p. 67). Fletcher and Ohlin argue that Continental traditions, which influenced the French version, offer defensive force theories that are more applicable to international law. Germany uses the notion of "necessary defense," and France relies on "*légitime défense*, or legitimate defense" (p. 63); other European and Romance-language countries follow suit. Necessary defense and legitimate defense articulate the legal rights of individuals to defend others from harm perpetuated by a third party. The latter concept became international law doctrine in the French version of Article 51. "Legitimate defense" recognizes the right of states to intercede on behalf of nations, even in the absence of mutual defense treaties. The French text of Article 51 further stipulates that legitimate defense is a natural right. This translation therefore provides a much stronger argument for states to engage legitimately in defensive force on behalf of a victim nation.

However, "the standard legal texts take for granted the primacy of self-defense and totally ignore a more plausible analysis of the provision that remains more faithful to the French-language version of the Charter" (p. 78). The equivalence of the translations is limited. If both translations of Article 51 are considered equal, they introduce uncertainty into international law regarding the definition of defensive force. If certainty of meaning must be established between two official translations, then one translation must be favored over the other when the language conflicts. Fletcher and Ohlin suggest that the French-language version of Article 51 should become the favored translation. Although it takes the authors beyond the scope of their main argument, this discussion raises intriguing questions about competing meanings in two equally authentic translations of international law.

Legitimate defense expands the boundaries of legitimate use of defensive force by states. Fletcher and Ohlin limit this expansion in two ways. First, they lay out the elements that a legitimate defense action must contain.

The defense must be necessary, proportionate, and “an intentional or knowing response” to an offensive attack that is covert, unlawful, and imminent (pp. 86-103). In addition, they limit to nations the right to defend and to be defended. By using nations as their unit of analysis, Fletcher and Ohlin both limit and expand legitimate force. They argue that the United Nations Charter should be interpreted to provide nations with the right to exercise self-defense and to be defended by other countries; moreover, such rights should not be limited to politically recognized and territorially sovereign states. Nations, defined by “common connections such as language and religion and a common cultural heritage” (p. 149), exist within and across state lines. Their members can self-identify, or be labeled by external parties. Fletcher and Ohlin argue that a nation has the right to defend and be defended, even when its aggressor is the sovereign state in whose territory the nation is located. They also argue that collective responsibility for aggressive action should be accorded to nations.

While admitting that this partial return to “romantic notion[s] of collectives” is dangerous (p. 215), they argue that it is “disingenuous” to recognize only individual actors, given that “our lives are embedded within a larger culture” (p. 213). Fletcher and Ohlin’s argument provides valuable justification for the defense of nations, in a world in which the most vulnerable nations often are those without political recognition or territories. The model’s advantage is that it is “based on a theory of self-defence that is cognizable under international law” (p. 153). It relies on concepts, including defensive force and self-determination, that are already recognized in the United Nations Charter. It can be implemented without creating new law. One wonders, however, if this model creates a black hole in international law for victims of aggressive warfare or crimes against humanity who do not constitute a nation. For example, Fletcher and Ohlin admit that the U.S. invasion of Somalia in 1992 was not a justifiable use of legitimate force because the United States did not invade on behalf of a nation. This reasoning suggests that countries had the right to intervene in the 1994 Rwandan genocide to protect Tutsis, but not to protect moderate Hutus. Fletcher and Ohlin are correct to seek out a theory of legitimate defense that is defensible in international law, but it seems counterintuitive to suggest that legitimate defense is valid only in defense of nations.

Fletcher and Ohlin are understandably cautious about expanding the field of legitimate defensive force too far; they are cognizant that states already abuse the limited “self-defense” model in order to justify their military aggression. Yet because the international legal regime cannot intercede in or prosecute aggressive warfare, terrorism, and illegitimate violence, nations will continue to determine how and when to apply defensive force. “[W]hen law fails, [a state] must resort to violence. But this does not mean that in the wake of violence, law should fall by the wayside” (p. 218). This book clarifies what that law is and develops innovative ways to improve this area of law through a reevaluation of its underlying concepts.

*Humanitarian Occupation*. By Gregory H. Fox. Cambridge: Cambridge University Press, 2008. Pp. xi, 320. Price: \$47.99 (Paperback). Reviewed by Andreas Th. Müller.

While not a term of art in international law, the concept of “humanitarian occupation” (HO) is applied by Gregory H. Fox to characterize a peculiar phenomenon in today’s international arena—the full, though temporary, administration of territories by the United Nations with the goal of granting them self-government only after certain benchmarks of good governance have been met. HO is committed to a *humanitarian* agenda insofar as its purposes are to “end human rights abuses, reform governmental institutions and restore peaceful coexistence among groups that had recently been engaged in vicious armed conflict” (p. 3). On the other hand, the authority exercised in the name of the international community is reminiscent of the powers wielded by traditional belligerent *occupiers*.

Fox makes the claim that HO is “a radically new form of action” (p. 12). He argues that while there were “historical antecedents” (p. 15) where international organizations participated in territorial administration, such as the League of Nations mandate system, the U.N. trusteeship regime, and postconflict reconstruction missions, HO can be distinguished because it amounts to “full,” as opposed to somewhat limited, “international governance” (p. 72). Fox identifies four examples of HO, namely the U.N. missions in Bosnia and Herzegovina, Eastern Slavonia, Kosovo, and East Timor.

While Fox’s account of a new form of international governance seems arguable from the historian’s point of view—the examples of the League of Nations’s administration of the Free City of Danzig and the Saar Basin under the Peace Treaty of Versailles come to mind—humanitarian occupations have attracted the interest of international lawyers. This is evidenced by the growing number of legal studies on the former Yugoslavia and East Timor published in recent years, as well as in the prolific literature on human rights protection and the role of the U.N. Security Council. The increasingly strong involvement of the United Nations in ambitious human rights missions poses a challenge to traditional international law principles, such as sovereignty and self-determination. This tension is all the more true when the authority exercised by the United Nations is hardly distinguishable from that of states or, for that matter, occupying powers.

Fox’s book may be seen as part of the larger discourse on the international community’s prerogatives to interfere with a state’s inner organization and freedom of action in the name of overriding human rights claims. While Fox argues that HO takes the powers conceded to an international organization to new heights, it remains unclear whether the phenomenon can be explained satisfactorily within the existing international law framework. Against this background, Fox’s well-organized, thorough, and able analysis departs from two *questions directrices*: why, by endowing international organizations with governing authority over a state, take the “remarkable step of effectively inverting accepted notions of state

sovereignty” (p. 4), and what the legal basis for such an enterprise would be, taking into account that HO “inevitably sits uneasily with traditional legal categories” (pp. 8-12).

Fox answers the first question by rephrasing it. In his opinion, when put into perspective, HO is not in opposition to state sovereignty, but rather, affirms and supports it. In spite of their slightly differing mandates, the international administrations put in place were all entrusted with social engineering projects, promoting structures modeled after the ideal of the liberal, democratic, pluralistic state. To be sure, such enterprises imply extensive intrusion in matters traditionally subject to States’ *domaine réservé*, and ultimately, substantial reduction of their sovereign prerogatives. However, Fox advises caution as to the alleged transformation of the notion of state sovereignty. While it has become common to render homage to the forces of globalization, he considers HO a striking counterexample insofar as it manifests a “stubborn persistence of a state-centered order” (p. 143). In his view, HO takes “the State” as its starting and aiming point. Accordingly, all pertinent Security Council resolutions are expressly committed to the principles of sovereignty, territorial integrity, and inviolability of State borders. Fox’s conclusion may appear somewhat paradoxical, but perfectly reflects his larger thesis: “[t]here is . . . no inconsistency in saying both that international law claims the authority to reform national institutions along liberal lines *and* that it intends the resulting liberal state to be at the center of political life” (pp. 172-73). True as this may be, it tends to conceal the equally important observation that this kind of activism on the part of international organizations, by making the state the privileged object of its action, puts it under tutelage and thus reinforces the relative importance of suprastate entities as actors on the international level. By this very process, however, it undermines the state’s traditional status as dominant actor within the international arena.

Turning to the second question, the author provides a detailed discussion of three legal frameworks that could serve as justifications for HO missions and their far-reaching mandates: party consent, authorization by the Security Council under Chapter VII of the U.N. Charter, and the international law of occupation. All four instances of HO were explicitly based on party consent and Chapter VII authorization. Both justifications have their undisputed merits, but, as Fox rightly points out, also their limitations. Consent, on one hand, caters to the traditional notion of equal sovereignty of states. However, consent in these cases is often bound up with political, and sometimes military, coercion (e.g., Kosovo), thus raising doubts regarding the genuineness of the consent. On the other hand, the Security Council’s sweeping powers under Chapter VII are, despite the precedence clause of Article 103, subject to internal as well as external limits. Hence, the Council’s duties to pay heed to both the Charter’s “purposes and principles” (Article 24) and to peremptory norms of international law (*jus cogens*) call for appropriate consideration of the principle of self-determination, which can be interpreted as restricting projects of too interventionist a character.

This conclusion is reinforced by a *prima facie* plausible, but often neglected, legal basis, namely the international law of occupation. Leaving aside the question of its formal applicability to international organizations, it obliges the occupant to respect the legal provisions in place and allows for change only under narrowly defined circumstances. Fox aptly demonstrates that most attempts to declare this *conservationist* principle (p. 233) obsolete and to elicit from past (e.g., Germany, Japan) and recent (e.g., Iraq) examples a *reformist* paradigm have largely failed. Thus, he suggests that HO cannot be justified within the framework of occupation law, not even an “updated” version of it, but only via Security Council authorization under Chapter VII. While traditional state-sponsored unilateral or multilateral occupations remain bound to the conservationist paradigm, the Security Council’s scope of action is more extensive, albeit not unlimited.

Fox’s comprehensive and largely convincing analysis of the legal framework applicable to HO missions thus shifts the burden of legitimation almost completely to the Security Council. Against this background, he devotes the book’s last chapter on “Reforming the law: the Security Council as legislator” (p. 273) to the very question of the nature and scope of Security Council powers. However, in this section, his purpose and style of reasoning assume a quite different character from the preceding pages. Fox, obviously unsatisfied with the available set of “state-centric norms,” strives to dispose of this Procrustean bed and develop a more expedient “neutral and coherent normative framework scheme” (p. 274), which also implies the rejection of the existing legal justifications for HO. Tempting as the project of liberating the Security Council from an “ill-fitting tyranny of state-centric categories” may seem (p. 274), it has some unsettling features.

When Fox claims that the Security Council has established “a new model of enforcement action that transcends existing legal categories” (p. 288), he appears to argue for a broader, more generous, and flexible understanding of the Council’s authority. However, the concrete examples given (pp. 289-94) remain within the familiar scope of Security Council powers and, in particular, within the two major traditional limits mentioned above: the Charter principles and *jus cogens*. Fox himself concedes that the Council is a “creature of international law” (p. 289)—a creature of the Charter and thus obviously bound to its prescriptions. Equally, it is hard to imagine that *jus cogens* norms, as far as they exist, in view of their fundamental character for the international community as a whole, could be dismissed as “state-centric,” and thus of only marginal relevance to the Security Council.

It is not clear what the characterization of the Security Council as “active lawmaker” (p. 294), so central to the author’s reasoning, adds in this regard. To be sure, the Charter must be construed in light of the prominent place given to Chapter VII and the Security Council within its institutional structure. However, the mere label of “legislator” does not change the normative framework within which the Security Council acts, and according to which the legality of its actions must be evaluated. In the not unlikely case that the United Nations would engage in similar projects of territorial administration in the future, it is doubtful that the vague alternative regime of

containment proposed by the author would provide more appropriate limits to Security Council activism than the traditional ones. Understood, as they should be, as “suggestion[s]” (p. 303), the concluding reflections of this timely and recommendable book nonetheless provide an original and thought-provoking exercise in view of an international law regime constantly in flux.

*How International Law Works: A Rational Choice Theory.* By Andrew T. Guzman. New York: Oxford University Press, 2008. Pp. viii, 260. Price: \$35.00 (Hardcover). Reviewed by Justin S. Lo.

Andrew T. Guzman captures a neoclassical economist’s intuitions about the role of international law in his latest book, *How International Law Works: A Rational Choice Theory*. His theory belongs to a branch of institutionalism, known as rational institutionalism, which holds that institutions themselves—rather than a particular set of legal rules—affect the way states behave. The author borrows tools from the study of economic game theory and uses these to explain the existence of cooperation between states.

Like any economist, Guzman begins with a set of assumptions. First, he assumes states are rational and purely self-interested. Second, he assumes individual states do not have a preference to comply with international obligations. Rather, the force of law only affects the incentive structure associated with their preexisting preferences. Because there are other factors similarly affecting these incentives, international law only matters insofar as it makes states better off than they would have been without it. Surprisingly, these two assumptions allow Guzman to play both sides of the theoretical debate—with international legal (IL) theorists on one side, and international relations (IR) scholars on the other.

In Chapters 2 and 3, Guzman relates traditional IR theory to IL theory. His initial assumption—that states are motivated by self-interest—reflects a realist perspective. Drawing on economic game theory, Guzman argues that state actors often find themselves caught in a “prisoner’s dilemma” scenario in which each individual actor has an incentive not only to defect, but also to cheat. This mutual defection ultimately results in a lower payoff than would otherwise be extracted under some cooperative arrangement. Guzman argues that international law can promote cooperation by properly harnessing states’ self-interest and natural inclination to be uncooperative. International agreements are an “exchange of commitments” that “allow[] each party to anticipate and rely on the behavior of other parties” (p. 143). These agreements are mutually beneficial promissory exchanges that can restructure payoffs in such a way that it becomes rational for state actors to cooperate with one another.

Assumptions about how states behave do not change when IL theory is introduced. In essence, Guzman succeeds in making IL theory work for IR theorists. For Guzman, the only difference is that international law influences what self-interested states do by affecting their incentive structure. By enacting a legal obligation, states lift the veil of uncertainty, making it easier

to detect and deter instances of cheating. More importantly, however, improved transparency promotes accountability and trust between “contracting” states. Upon entering into such agreements, states send clear signals of their commitment to cooperate with other states. Whereas under the prisoner’s dilemma, states act without thinking about how other states might respond, legal agreements impose additional costs on states who fail to cooperate: reputational sanctions, reciprocal noncompliance, and full-on retaliation—the “Three R’s of Compliance” (p. 9).

Guzman argues that while reciprocal noncompliance and retaliation are credible costs of nonperformance under bilateral agreements, they are not nearly as credible in multilateral agreements. To the extent, therefore, that states comply with their legal obligations under multilateral agreements, it is largely due to the presence of reputational sanctions. Agreements are constructed on reliance—that is, reliance that other states will keep their promises and refrain from defecting in order to extract higher benefits. To enact a mutually beneficial arrangement, states have to believe that they can trust one another. Based on observed behavior in present transactions, a state will update its beliefs about another state’s reputation for compliance. In making compliance-based decisions, states are almost always forced to calculate the costs and benefits of any course of action with respect to their “reputational capital” (p. 73).

In Chapters 4 and 5, Guzman applies his theory in the opposite direction, by making IR theory work for IL theory. Whereas Chapters 2 and 3 were devoted to explaining how international law affects state behavior, these chapters account for the fact that states play an active role in shaping the normative force of law. He shows that law, as it is constructed, reflects the rational behavior of states. At the outset, state actors only care about individual payoffs. The process of negotiating an agreement, however, forces states “to trade off design elements against each other to further their goal of maximizing . . . joint value” (p. 133). The result is an exchange that presumably reflects the most efficient agreement cooperation will allow.

The force of law is sustained by such agreements *because* they are products of the rational, value-maximizing behavior exhibited by states. Guzman attempts to demonstrate this point both in terms of the content and form of international law. He contends that states “control the form and content of their promises” (p. 183), which enhances, rather than diminishes, the effectiveness of law. As with any contract, an international agreement is effective because states have had a controlling influence over its content. Affected parties are better situated to know what ought to be incorporated in order to achieve an effective outcome. For example, the provisions of the WTO agreements, Guzman contends, reflect the state-driven weighing of the marginal costs of incorporating nontrade issues against the marginal benefits of drafting a more effective agreement that includes such issues.

Law is also effective because states determine its form. Formal treaties, informal agreements, customary international law (CIL), and legal norms differ in degrees of commitment, but choosing which to use depends on the circumstances and is best decided by state actors themselves. Guzman

suggests that in some cases, informal agreements are more effective than formal treaties at maximizing total joint payoffs. While it is true that treaties maximize credibility and usually yield a higher rate of compliance, they also impose a higher cost on potential violations, thus discouraging other states from entering into the agreement. One example of this is the Universal Declaration of Human Rights. The United States openly resisted the idea of a formal treaty because it believed reputational costs would exceed the benefit of mutual compliance.

Economists are often criticized for making assumptions that do not reflect reality. In this case, however, the fatal flaws in Guzman's book do not arise from his assumptions, which provide clear insights about where along the theoretical spectrum legal theory and IR theory intersect. Rather, the problem lies in Guzman's tendency to relax his assumptions too much. The author states that "compliance can often be sustained by international law" (p. 68), as a conclusion derived from his theory. This is a logical fallacy on his part—Guzman actually relies on his rational choice model to support a foregone conclusion that states generally comply with international law. He stretches his assumptions in order to encompass most forms of state behavior as examples of norm compliance. In short, Guzman goes too far in order to make his theory fit with observed practice. By trying to explain all possible outcomes in terms of compliance, his rational choice theory loses theoretical rigor and winds up as theoretical mishmash.

First, Guzman assumes states have preferences that shape their interests. Yet he fails to address what these preferences are or where they might come from. He relaxes this assumption by stating that state preferences are fixed, but only across "certain time horizons" (p. 21). In failing to specify anything about state preferences, Guzman appears to leave enough room for his rational choice model to capture the broadest spectrum of observable state behavior. Guzman's argument—that states have preferences, and that norm compliance somehow fits with these preferences—is hardly compelling when there is no explanation of what these preferences are or where they come from.

Second, Guzman assumes states only comply with international law if compliance makes them better off. In muddying the distinction between sources of international law, however, he creates an imaginary world in which hard law is just as effective as CIL and unspoken norms. Since nothing, apart from state interests, determines the effectiveness of international law, there is no way of knowing whether or not such a legal obligation even exists. CIL, which the author discusses in Chapter 5, arises from states' beliefs. Guzman argues that a rule under CIL exists if states believe that it does and are willing to impose reputational costs on states that violate the rule. Thus, a CIL obligation can exist "between as few as two states" (p. 195). Again, one suspects Guzman of using theory to fit with practice and calling it "compliance."

Third, his concept of functional interests serves to legitimate almost any state action as either compliance with international law or as rational noncompliance. The U.S. invasion of Iraq in 2003 and North Korea's violation of the Treaty on the Non-Proliferation of Nuclear Weapons are both

accounted for in terms of the nonreputational costs of compliance exceeding the reputational costs of noncompliance. Guzman rationalizes the incorporation of reservations, exit, and escape clauses into treaties and informal agreements, arguing that these provisions legalize nonperformance where performance would be inefficient and far too costly or nonperformance would be inevitable. He concedes, "The second best outcome . . . is to declare the relevant behavior to be legal because doing so avoids the negative-sum sanctions that would follow a violation" (p. 152). Here again, Guzman sacrifices theoretical rigor to fit his theory of compliance with the observed practice of states.

Compliance, as sustained by international law, is really only the premise of Guzman's book. He relaxes his assumptions in order to make it true. As a theory about the role of international law, it lacks predictive value. The only honest conclusion to draw from his theory is that "[t]here is no easy or clear way to distinguish international law from either politics or mere norms . . . . [I]nternational law has the potential to influence state behavior, but always does so in a political context" (p. 217).

*The Steps to War: An Empirical Study.* By Paul D. Senese and John A. Vasquez. Princeton: Princeton University Press, 2008. Pp. xvii, 314. Price: \$26.95 (Paperback). Reviewed by Thomas Clancy.

*The Steps to War* is not for everyone. The book's intricate quantitative analysis of what causes conflict to escalate into warfare may leave nonexpert readers wishing they had a background in statistical and empirical methods. For those who meet that threshold and have an interest in the intersection between empirical methods and international relations, Senese and Vasquez's work is a sophisticated analysis that provides startling insight into what has caused—and will perhaps continue to cause—states to go to war. However, *The Steps to War* is considerably more persuasive when discussing past trends than when applying those trends to contemporary conflicts.

Senese and Vasquez open, helpfully, with an explanation of the theoretical basis for the quantitative research to follow. This introduction includes a useful retrospective of prior research related to the steps-to-war theory and details the research methods that are used throughout the book. Senese and Vasquez's work is the culmination of more than a decade's worth of research into the steps-to-war theory, which they view as an answer to the realist assumptions that dominate the international arena. The authors distinguish their view from realist schools of thought in that they remain optimistic about the ability to create conditions for peace between nations. While they do not explicitly outline those conditions, they offer an analysis of the steps that lead to war as a predicate for such exploration.

Senese and Vasquez first advance the notion that states are most likely to go to war over territorial disputes, positioning this claim as a rebuttal to the realist presumption that disputes between nations can be boiled down to a struggle for power. Second, they seek to counter what they believe to be the

“realist folklore” that nations gain peace through strength (p. 13). The steps-to-war theory posits that when states that are engaged in a dispute turn to power politics, such as forming alliances, building up their military, or engendering a rivalry, they increase the chances of war.

Senese and Vasquez are at their least persuasive in this more theoretical section. They devote time to, yet under-explain, their theory—“biological soft wiring”—for why territorial disputes are more likely to lead to war, before claiming that such background theories are not directly relevant to the work at hand. They also alternately over-explain and under-explain their broader disagreements with realism. Senese and Vasquez spend much time challenging the “peace through strength” doctrine but devote little time to other claims of the realist canon. In one section, they point out that their theory presumes that at least one nation involved in a dispute will not want to go to war, without discussing why leaders would be willing to risk the sacrifice of territory, perceived power, or domestic capital in the name of avoiding conflict. That Senese and Vasquez spend such scant time on why their theory is opposed to realism as a whole probably betrays a desire on their part to press on to their intriguing quantitative findings. They would have been better served by narrowing their distinction between the steps-to-war theory and realism to simply the presumption of certain realists that strength breeds peace.

Senese and Vasquez devote the second portion of *The Steps to War* to number crunching, and it is here that they are at their best. This section focuses on the first of their two main claims: disagreements about territory are more likely to lead to war than other disagreements. Using a series of creative methods to control for selection bias and alternative explanations, they manage to convey both that territorial disagreements significantly increase the chance of states engaging in interstate disputes, and that such disputes over territory are significantly more likely to lead to war than disputes over policy or regime change.

The authors offer an exhaustive examination of possible rejoinders to their theory. At one point, they take up the claim that the contiguity of nations better explains why disputes arise and lead to war. Senese and Vasquez’s empirical tests indicate that both contiguity and territorial disputes have a positive effect on the likelihood that two nations will engage in armed conflicts. However, their analysis also leads to a surprising conclusion: noncontiguous states engaged in territorial disputes are significantly more likely to go to war than contiguous ones. Senese and Vasquez conclude that the territorial explanation for war is more persuasive than the contiguity explanation.

The third and final portion of *The Steps to War* focuses on the various ways states handle disputes, and which of those are most likely to lead to war. Senese and Vasquez break down their analysis into three eras: the classic international political era, 1816-1945; the Cold War era, 1946-1989; and the post-Cold War era, 1990-2001. The steps-to-war theory posits that following hardline policies, such as forming alliances or engendering rivalries, when engaged in disputes increases the likelihood that disputes will escalate to war.

The elaborate statistical analyses in this section support this claim, but only to a limited extent. Senese and Vasquez find that the steps-to-war theory best fits the period prior to 1945. In this era, power politics—rivalry engagement, territorial disputes, alliance formation, and arms build-up—significantly increase.

Senese and Vasquez's analysis of the Cold War era yields insights that do not always align with their own steps-to-war theory. While it remained true during the Cold War that territorial disputes and rivalry significantly increased the chances of war, other aspects of power politics, such as alliance making and arms build-up, failed to increase—or even decreased—the chances of war.

Addressing the post-Cold War era, Senese and Vasquez concede that the data available to them are insufficient to draw firm conclusions regarding all components of the steps-to-war theory. They do, however, employ several intricate and creative tests to indicate that this era is more likely to resemble the classic international political era than the Cold War era. Here they suggest that alliance making and rivalry might return to their original role—increasing, rather than decreasing, the chances of war.

The book's argument that territorial claims are more likely than other disputes to lead to war withstands the authors' thorough empirical testing. However, the notion that power politics tends to increase the chances of war is less firmly established. Senese and Vasquez would have us view the Cold War as an aberration—a series of circumstances that caused the steps-to-war theory to be temporarily less applicable. Admittedly, their tests for the post-Cold War era do indicate that this might be the case. Despite these preliminary tests, though, Vasquez and Senese do not offer a compelling theoretical argument for why we should expect the post-Cold War era to be like the era of classic international politics. Senese and Vasquez's data sample stops conspicuously at 2001, and for arms races stops at 1992. One cannot blame the authors for lacking the necessary information to analyze the post-9/11 world. However, arriving as it does in 2008, *The Steps to War* would have benefited from some discussion of how their theory operates in light of nonstate actors playing an increasingly significant role in international conflicts. The book is similarly lacking in any discussion of how globalization and economic interconnectedness might alter how factors such as alliances influence the outbreak of war.

*The Steps to War* is simultaneously an exemplary synthesis of more than a decade's worth of data collection and statistical analysis, a new and thought-provoking analysis of why we go to war, and a promising springboard for future research into war. For one book to accomplish so much is a praiseworthy feat. It may seem trivial to fault *The Steps to War* for failing as a rebuttal to the notion that power politics can lead to peaceful solutions in a nuclear world. However, that Achilles' heel, coupled with a general failure to address sufficiently whether their speculation about power politics applies to the current geopolitical atmosphere, robs the work of its potential relevance. Future research that better applies Senese and Vasquez's theories to the post-9/11 world will be central to achieving their ultimate goal—providing a

paradigm by which policymakers can better understand how to prevent war and produce peace.

*The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II.* By Yuma Totani. Cambridge: Harvard University Press, 2008. Pp. xiv, 335. Price: \$39.95 (Hardcover). Reviewed by Eric Fish.

An odd contradiction afflicts Westerners' remembrance of the war crimes trials of German and Japanese leaders in the wake of World War II. The Nuremberg Tribunal has always held a prominent place in Western popular memory, while the Tokyo Tribunal was largely forgotten as soon as it happened. This amnesia is ironic, since, unlike Nuremberg, the significance of the Tokyo Tribunal remains hotly contested to this day. In *The Tokyo War Crimes Tribunal*, Yuma Totani, a professor at the University of Nevada, explores the controversy over the Tokyo War Crimes Tribunal and critically evaluates the perspectives of various Japanese thinkers on the trials. She gives both a thorough history of the Tokyo Tribunal—its context, purpose, principal actors, and consequences—and a well-constructed defense of it against the charge that it was an exercise in victors' justice. In so doing, she helps to illuminate a seminal and, in the West, underappreciated event in Japan's postwar transformation, and to rebut the critiques of Japanese revisionists who reject the Tribunal as illegitimate.

Totani's book has two purposes. First, she tells the story of the Tokyo trials through primary sources such as trial transcripts, diplomatic records, and private memoranda. She explains the nature of the charges being tried, the political and legal context, the prosecution and defense lawyers' strategies, and the varying agendas of the Allied powers. Second, she surveys the evolution of reactions to the trials among Japanese intellectuals. These range from the sympathetic interpretations of contemporary analysts to later reactions that have tended to be more critical. Totani uses the evidence from the first part of her book to demonstrate that many of these later analysts have paid insufficient attention to the Tribunal's record, relying instead on politicized secondhand accounts in making their claims. This emergent ignorance of the Tribunal is ironic, since the public's access to the Tribunal's records was much more restricted at the time of the trials than in subsequent decades.

The most significant of these critical perspectives on the Tokyo Tribunal has come from apologists for Japan's actions in World War II. These apologists, generally conservative nationalists, levy their criticisms in the context of an interpretation of the war that started to gain intellectual currency in the early 1960s, and which Totani labels the "Greater-East-Asia-War perspective" (p. 240). Under this interpretation, Japan did not aggressively invade other countries but instead waged a defensive war against the West on behalf of the rest of Asia. This theory thus treats the war from 1931 to 1945 as the conclusion to a much longer war that began in the 1800s with the first Western encroachments into Asia. Its adherents believe Japan was acting nobly during World War II in resisting Western imperialism and often dismiss

evidence of Japanese war crimes, especially the Rape of Nanking, as anti-Japanese propaganda. They see the Tokyo Tribunal as a series of show trials intended to break the spirit of the Japanese public, not as an effort to bring to justice those responsible for war crimes and crimes against peace.

To support their case against the Tribunal, Japanese nationalists have relied extensively on the dissent of Judge Radhabinod Pal. Judge Pal rejected all of the key legal and factual findings of the Tokyo Tribunal. He argued that international law did not criminalize unprovoked war, that Japan's wartime actions were justifiable as self-defense, that treaties against war crimes were not binding on Japan, and that Japan's leaders were not responsible for the atrocities committed by their army. The arguments in his dissent have been widely disseminated by Japanese nationalists through books, articles, monuments, and even speaking tours featuring Judge Pal himself. Totani criticizes those who have thus attempted to discredit the Tribunal by pointing out that they seem unaware of the actual trial records, which contain extensive evidence that the defendants were guilty of war crimes and crimes against peace, and of the subsequent importance of the precedents set at the Tokyo Tribunal. Instead, they focus almost exclusively on the arguments in Pal's dissent, which is problematic because Pal was absent for about a quarter of the trial, engaged in his own fact finding, relied on counterhistorical claims in asserting that Japan was acting in self-defense against China, and did not dispute the evidence of war crimes, only the Japanese leadership's complicity in them.

Totani also analyzes the work of several pro-Tribunal scholars and shows that there is a serious debate in Japan over the legacy of the Tokyo Tribunal. Yet she observes that the more critical accounts of the trials are winning the day, as "notions of victors' justice have shaped Japanese postwar debates" (p. 261). This is partly because progressive Japanese intellectuals who criticize right-wing apologists are still committed to the idea that through the Tribunal, America was engaging in victors' justice for the purpose of extending its control over Asia. Totani takes pains to establish that voices defending the trial have played an important role in Japanese debate, but she makes it clear that they represent a minority viewpoint.

While Totani is concerned with defending the Tokyo Tribunal against its critics, she is also mindful of the Tribunal's shortcomings. Some problems were intrinsic to the Tribunal, thus difficult to avoid. The Allies were handicapped by a coordinated effort to destroy documents in order to cover up evidence implicating Japan's leaders in war crimes, by the difficulties of translating the proceedings among many dissimilar languages, by the need to restrict the evidence to crimes committed in the conduct of fighting World War II (excluding atrocities committed in Taiwan and Korea, which Japan had occupied before the war, and which many critics argue should have had their day in court), and by the perceived need to expedite the trials so that the Japanese public would not lose interest.

Other problems stemmed from politics and human error. The Tribunal's legitimacy suffered enormously from the decision not to prosecute some leaders because of their usefulness in consolidating Allied control of Japan.

The most notable of these was Emperor Hirohito, and Totani dedicates a chapter to the process by which the Allies decided to protect him during the trials. Totani also extensively details the almost comic incompetence of the lead American prosecutor, Joseph Keenan, whose erratic leadership undermined the prosecution's efforts to gather evidence and prosecute the defendants. In one fateful move, Keenan decided at the last minute that he would cross-examine former Prime Minister Hideki Tojo himself, replacing a much better prepared member of his team. This turned out very poorly, as Keenan proved no match for Tojo and did "considerable damage to the educational potential of the trial," allowing Tojo to "refashion himself in the eyes of the Japanese public from a symbol of ignominious defeat to a patriot and defender of Japan" (p. 40). This episode has been widely celebrated by Japanese nationalists in films and books.

Despite these shortcomings, Totani sees great importance in the judgments at Tokyo. First, they held members of the Japanese leadership accountable for a long series of horrific war crimes that included large-scale rape and sexual slavery, massacres of civilians, torture and execution of prisoners of war, forced labor, medical experimentation, and cannibalism. Second, the evidence produced by the prosecution teams of the various Allied countries educated the Japanese public about the wartime activities of their leaders and helped shape the context of the contemporary debate over Japanese war guilt. Third, along with the Nuremberg Tribunal, the Tokyo trials helped establish precedents in international criminal law whereby the leaders of a country are held individually responsible for waging aggressive war without provocation, and for wartime atrocities of which they were or should have been aware. These precedents helped to shape the postwar international order, and are today considered cornerstones of international criminal jurisprudence.

Understanding the subject of Totani's book is crucial to understanding nationalism in contemporary Asia. To this day, the legacy of the Tokyo Tribunal remains hotly contested in both Japan and the countries it occupied, and the suffering inflicted by the Japanese in that period has become deeply intertwined with many Asians' sense of national identity. In particular, the atrocities committed by the Japanese army during World War II and the ambivalence of the Japanese public about recognizing them are major sources of anger in the People's Republic of China and the Koreas. Official visits to the Yasukuni shrine (where Judge Pal and many wartime Japanese leaders are memorialized), Japanese textbooks that whitewash the army's behavior during the war, and the unwillingness of present-day Japanese politicians to acknowledge, apologize for, or offer compensation for Japan's war crimes regularly spark international outrage. As the countries of East Asia grow in geopolitical significance over the coming century, controversies over the legacy of World War II will continue to feature prominently in conflicts between their respective nationalist ideologies. It will thus be increasingly more important for the rest of the world to understand the history behind the anger. *The Tokyo War Crimes Trial* is a good place to start.

*Freedom's Unsteady March: America's Role in Building Arab Democracy.* By Tamara Cofman Wittes. Washington, DC: Brookings Institution Press, 2008. Pp. 176. Price: \$26.95 (Hardcover). Reviewed by Lowry Pressly.

In the twilight of President George W. Bush's administration, the Brookings Institution's Tamara Cofman Wittes sees a new dawn. While the world at large shrinks from the Bush Doctrine and the "Freedom Agenda," she embraces their foundational notions of the supremacy of liberal democracy and the United States's role in propagating it. In *Freedom's Unsteady March*, Wittes embraces the primacy of those neoconservative ideals, tracing the tumultuous political history of the postcolonial Arab world and arguing—not unconvincingly—for a muscular program of democracy promotion. Skirting charges of recalcitrant neoconservatism, Wittes takes the Bush administration and Congress to task for neglecting their mandate and slouching toward democratic reform in the Middle East with apathetic half-measures and militaristic boondoggles that, by all accounts, have hindered their purported objectives. Her approach is not so much damn-the-torpedoes as it is to simply skirt around them, and put behind us the damage done.

Wittes finds little empirical backing to the increasingly popular notion that either the Middle East has no history of democratic institutions and therefore no future, or that the people therein simply do not desire liberal democracy. Historical or cultural arguments explaining autocracy as paternalistic custom or as an inevitable product of Islam find no traction here. As means to Arab democratization, she rejects what she calls the "sequencing trap[s]" (p. 59) of economic progress, expanding civil society, and gradual liberalization through existing regimes. However, even the more nuanced export of Western democratic values, which Wittes endorses, often involves these same steps, albeit in more cautiously tailored form and at a different pace. Some of what she initially characterizes as half-measures, or at best partial solutions, are later, in the context of her own proposed solutions, shown as the pragmatic way forward. Wittes's intellectual doubling back is distracting, though perhaps understandable given the rock-and-a-hard-place nature of the problems facing would-be Middle East democracies and the limited set of solutions available to address them.

Wittes had an unenviable task in justifying the divisive assumption that fundamentally underpins the book's argument—that liberal democracy in the Arab world is indeed pragmatically preferable for both Arabs and Americans. She understandably dedicates an entire chapter to this question up front, and makes her case with as much aplomb as possible given the circumstances. Those who view the export of liberal democracy as a dangerous vestige of imperialism will find little to love here, but those who celebrate the United States's championing of Western liberalism will be won over quickly.

Her job is more complicated still when it comes to addressing specific obstacles to her proposal. Wittes devotes much of her time to addressing two looming realities that must be dealt with if democracy promotion is to proceed. The first is a deep-seated ambivalence regarding the aggressive, often costly promotion of democracy in the face of the countervailing interests

of energy and security. Wittes proposes that U.S. policymakers engage with the region's autocratic and semiautocratic regimes in hopes of promoting a gradual opening of political freedoms. Where in the past, U.S. policy has pushed for more democratic process, usually in the form of elections, going forward, it must focus on pressuring existing regimes for political reform.

By expanding the basic political freedoms of expression, association, and assembly, Arab regimes lay the foundation for liberal democratization, and it is to that end, Wittes argues, that U.S. foreign policy should apply all diplomatic, financial, and political means available. A loosening of the constraints on these basic freedoms would, according to Wittes, divest the Islamists of their "privileged position [as] the opposition" in an unnaturally duopolistic political marketplace and "encourage diversification within the broad stream of political Islam" (p. 105).

The second criticism Wittes confronts is that under the watch of the "Freedom Agenda," struggling nations democratically elected militant Islamist groups, like Hezbollah and Hamas, thus entrenching and legitimating them within a democratic framework. By focusing its demands for elections on the region's weaker nations, U.S. pressure forced democratically and undemocratically minded voters alike to choose between either a corrupt and practically impotent state or the main alternative—Islamist or sectarian parties. These organizations often provide the populace security, infrastructure, and social services that the secular government is either too poor or corrupt to administer. These cases, Wittes argues, are not well suited for aggressive efforts at democracy promotion. Rather, she argues that the more stable (that is, autocratic, entrenched, and wealthy) nations are best equipped to repress violent movements, and that if those states were to grant greater political freedoms to their citizens, those who currently embrace radical parties would be free to create and join moderate ones. Appealing though Wittes's claim is, it seems unlikely that the areas in which the United States most needs to cultivate democratic values will somehow happen to align with those nations best equipped to stave off extremist movements. There is an inescapable and deeply troubling irony underlying Wittes's suggestion that the road to liberal democracy will be paved by the state suppression of radical groups, Islamist or not. The unfortunate reality Wittes fails to confront is that such groups are arguably the few sprouts of democratic participation in a desert of monarchs and despots.

The petrol specter, too, looms large over any discussion of leverage. It is unclear how the United States could pressure oil-rich autocrats into liberalization without an entirely new leverage paradigm. Military aid is equally problematic. History shows that military aid, when given, will prop up an autocratic regime and will topple it when withheld. When faced with this dilemma, Wittes argues that the better approach to democratic reform is to support strong regimes that will in turn oppress the radical fringe. Apparently, once the militant and illegitimate fringe is eliminated, then perhaps those in power may begin to open up necessary freedoms. This claim seems suspect, even counterintuitive, with regard to democracy promotion and regional history. It is slightly disingenuous in a work arguing for liberal democracy as

a regional necessity, indeed a human right, to rationalize state oppression as a means to democratic empowerment. History shows that Middle Eastern autocrats are beyond hesitant to hand over their power to the people.

That Wittes likens the Bush Freedom Agenda to a “Band-Aid over a gaping wound” is telling (p. 147). The lack of success of programs such as the Middle East Free Trade Area, the Middle East Partnership Initiative, and the Broader Middle East and North Africa Initiative is attributed to a lack of high-level diplomatic and economic involvement by the Bush administration. The aims, according to Wittes, remain just and necessary, though the methods employed were woefully inadequate. She lambasts the administration for neglecting to pressure more stable governments that have shown themselves in the past to be even slightly receptive to democratization, like Egypt and Morocco, to allow more room for nascent democratic groups to operate. Here, Wittes is at her most convincing. The Bush administration’s focus on total regional transformation on an unrealistic timeline led them to push some states too hard and some not hard enough. Wittes is reassuringly pragmatic when she advocates for results where results can be had, and less so when she extrapolates from individual and disparate nations to regional liberalization.

Regardless of how the United States proceeds—or if it proceeds at all—in the promotion of democracy in the Arab world, its actions will have an enormous sociopolitical impact, both at home and abroad. More than one-third of the Arab world is younger than fifteen, and the economic outlook of the region is grim, despite tremendous oil wealth in some nations. The correlation between swelling ranks of unemployed, disaffected young men and growing enrollment in jihadi and violent Islamic organizations is well established. These facts, backlit by the region’s profound instability, point to a bleak future. Wittes is perceptive in her portrayal of those prospects, and of the ways in which they stand to impact the United States and its strategic interests. That something must be done is clear; given the alternatives, Wittes makes a rich, if not always convincing, case for liberal democracy as one possible solution. In a world where U.S. isolationism and imperialism are equally unappealing options, Wittes’s policy of pressure and engagement could have a positive impact on the region in the form of isolated liberalization of certain nations, but given waning U.S. influence in key entrenched and failed states, regional democratic transformation looks unlikely. Her argument that, in the long run, a more open and democratic Middle East will serve to advance U.S. interests—or at least hinder them less than long-term autocracy and sectionalism—is believable. Even assuming that she manages to convince readers of her claim that democracy is necessary, she has a difficult time persuading us that the results of a continued “muscular policy” will yield results any different from those of present policies. Emerging from a period of the most aggressive attempts to cultivate democracy in the Middle East in recent history, one has to wonder if more muscularity is the way forward at all.