

## Recent Publications

### International Trade and Finance

*International Monetary Law: Issues for the New Millennium*. Edited by Mario Giovanoli. New York: Oxford University Press, 2000. Pp. 1i, 538. Price: \$215.00 (Hardcover). Reviewed by Daniel E. Ho.

The financial crises of the 1990s prompted calls by economists and politicians for a new “international financial architecture.” *International Monetary Law* addresses the legal aspects of this challenge, filling a void in the literature on international financial flows and cooperation that has to date largely glanced over the role of international monetary law. The book presents an impressive collection of twenty-seven essays divided into five Parts written by distinguished practitioners and academics, all members of the Monetary Law Committee of the International Law Association.

Part I contains five essays on the international financial architecture, defined as “the rules, guidelines and other arrangements governing international financial relations as well as the various institutions, entities and bodies through which such rules, guidelines and other arrangements are developed, monitored and enforced” (p. 9). Mario Giovanoli provides an overview of current international financial institutions and evaluates mechanisms for strengthening the “soft law” of international financial standard setting. Cynthia Crawford Lichtenstein evaluates the debate over the expansion of International Monetary Fund (IMF) jurisdiction over capital controls, concluding that in light of substantive disagreement amongst IMF member states the current deregulated regime of promoting liberalization of capital controls by surveillance, conditionality, and technical assistance is more efficient than a regime giving the IMF jurisdiction. The remaining chapters examine the legal implications of broadening the scope of IMF and World Bank conditionality, IMF responses to debt crises, and the alleged erosion of monetary sovereignty due to international capital flows.

Part II discusses legal implications of the European Monetary Union (EMU), focusing on the transition period to a single currency as well as external relations of EMU countries. After describing the legal framework of transition, Bertold Wahlig and Jean-Victor Louis analyze the principle of *lex monetae*, which holds that states have exclusive jurisdiction over regulating their currency and associated monetary law. Under this legal theory third party states would have to enforce contracts denominated in the previous national currencies and defer to European Union (EU) legislation related to the Euro in interpreting existing contracts. Antonio Sáinz de Vicuña argues that the single currency necessitates harmonization of contract law in line with the American UCC experience, while Bernhard Kempen summarizes the Euro implementation legislation in Germany. The remaining chapters examine problems of enacting monetary policy at a multinational level, addressing the legal mandate of price stability as it relates to exchange rate policy, EU

representation under IMF law, and EU relations with European countries that are not current participants of EMU.

Part III discusses regulatory and supervisory regimes of financial and banking markets, particularly in light of financial developments accompanying liberalization that have blurred the traditional distinction between banking and non-banking functions (i.e., investment, insurance, and retail banking). René Smits, David Flint, and Yu Syue-Ming provide detailed case studies of national and regional legal frameworks of central banks and monetary authorities such as the European System of Central Banks, the Reserve Bank of New Zealand, the Hong Kong Monetary Authority, and Taiwan's central bank. The latter two are analyzed in the context of the 1997 Asian financial crisis. Klaus Peter Follak then analyzes international harmonization of regulatory frameworks, examining the Basel Accord, which specifies minimum capital standards for internationally operating banks based on a risk-weighting approach, as well as regional harmonization within the EU. Lastly, Javier Arrigunaga Gómez del Campo discusses national approaches to establishing deposit insurance schemes, which, while designed to prevent detrimental bank runs, raise corresponding dangers of moral hazard and adverse selection.

Part IV surveys the potential impact of technological developments, in particular credit transfer systems and electronic money, on monetary law. Thomas Baxter and Stephanie Heller argue that in light of wide doctrinal differences across the major credit transfer systems, a safe and efficient international credit transfer system requires substantive harmonization of legal rules. Bradley Crawford, Barry Sookman and Hideki Kanda examine approaches towards regulating electronic money, which currently circulates as "a form of cash-like transferable value that is stored in digital format" (p. 371).

Part V addresses the law of international monetary obligations. William Blair describes defenses invoked to claim public law interference with performance of monetary obligations, and finds that common law doctrine roughly reflects territorial considerations of where payment is to be made. Jacob Dolinger analyzes the effect of Brazilian legislation that declares "null and void" contractual clauses that stipulate payment in a currency other than legal tender. Michael Gruson discusses the problem of continuity of contracts denominated in prior national currencies that now constitute the Euro and finds *lex monetae* to be a mandatory choice of law principle under U.S. law. Similarly, Dominique Carreau finds that international arbitrators concerned with enforcement of their decisions under an *exequatur* test will abide by *lex monetae*. Remaining topics examined in this Part include the UNCITRAL conflict of laws principles for international payments, choice of law issues for banking operations of the European Bank for Reconstruction and Development, and the EU framework for harmonizing regional price indices.

*International Monetary Law* is an ambitious, convincing, and authoritative study of the vast array of legal issues related monetary law. The wide variance in approaches taken by the contributors reflects both the interdisciplinary and nascent state of analysis of international monetary law,

making the extensive notes that accompany the book an invaluable reference source. Being the first edition, however, *International Monetary Law* suffers from some substantive overlap across chapters—multiple elaborate descriptions of the same EMU legislation are particularly duplicative. The essays might face complaints of eurocentrism—indeed, there is not a single chapter on dollarization—and direct quotes are not translated from original languages. Finally, while Giovanoli poses the question of how international monetary law may be strengthened to provide global market stability, the authors unfortunately provide only indirect conjectures via doctrinal analysis as answers that fail to address the larger implications of the role of legal standards in the international political and economic environment. Notwithstanding these largely minor critiques, *International Monetary Law* provides an invaluable resource into the legal perspectives and problems of reform of the international financial architecture.

*Antitrust Goes Global: What Future for Transatlantic Cooperation?* Edited by Simon J. Evenett, Alexander Lehmann, and Benn Steil. Washington, D.C.: Brookings Institution Press, 2000. Pp. xiii, 206. Price: \$16.95 (Paperback). Reviewed by Boris Bershteyn.

As markets and companies expand across national borders, domestic antitrust authorities must adapt to the demands of global competition. Their jurisdictions inevitably overlapping, regulators from different nations struggle to cope with diverse economic theories, conflicting laws and inconsistent procedures. *Antitrust Goes Global*, a collection of studies presented at a joint conference of The Brookings Institution and the Royal Institute of International Affairs in London, assesses opportunities for more effective cooperation. In this book's six primary chapters, economists, legal academics, and practitioners examine the challenges of harmonizing antitrust enforcement between the United States and the European Union. Nine brief case studies of attempts at transatlantic cooperation—some of these attempts successful, some calamitous—complete the book. Although a broad theoretical framework for analyzing international antitrust does not emerge, the work succeeds in multiple other ways. Diverse perspectives of its contributors provide insightful background on transatlantic cooperation, identify its critical shortfalls, and propose practical steps toward further harmonization.

At the outset, the book's editors—World Bank economist Simon J. Evenett, IMF economist Alexander Lehmann, and Council on Foreign Relations senior fellow Benn Steil—offer a broad overview of international antitrust problems. Multijurisdictional enforcement challenges, they argue, include cross-border market definition and the interplay between competition and trade. Antitrust watchdogs on both sides of the Atlantic should approach their task with a focus on minimizing “resource misallocation” (p. 20), such as the transaction costs that their uncoordinated procedures may impose on multinational corporations. As U.S. and EU authorities cooperate, their experience “may serve as a model for the emerging network of bilateral

cooperation agreements” (p. 24). These, in turn, may lead to a multilateral framework.

The scope of the transatlantic economic relationship suggests a fertile ground for collaborative antitrust enforcement. In a chapter reviewing bilateral cooperation agreements, Merit Janow, a Columbia University international trade expert, indeed finds that “U.S. and European competition authorities have come to work more closely” (p. 46). She then assesses opportunities to further harmonize antitrust enforcement. Investigators may, for example, benefit from intergovernmental exchanges of confidential information. Janow argues that the fear of leakage, a major hindrance to such exchanges, “may be exaggerated” (p. 48). Nor are governments the only potential beneficiaries of cooperation. Streamlined merger review procedures across multiple jurisdictions would, for example, reduce the costs facing merging firms. Of course, underlying differences in competition laws ultimately limit opportunities for transatlantic procedural convergence. Although substantive antitrust harmonization remains unlikely, Janow optimistically observes “some cross-fertilization” (p. 50) between U.S. and EU practices.

With Janow’s institutional framework in the backdrop, subsequent chapters discuss transatlantic cooperation within specific branches of antitrust enforcement. Edward M. Graham, a senior fellow at the Institute for International Economics, offers a historical and economic context for the oversight of horizontal mergers. While the U.S. economy has experienced merger waves in the past—in the 1890s, 1920s, and 1960s, for example—recent years have witnessed a particularly “large number of cross-border transactions” (p. 59). Graham notes, however, that “no general case” (p. 60) exists to demonstrate whether any given merger increases or diminishes overall efficiency. On the one hand, a merged entity may reduce efficiency through exercise of market power; on the other, it may perform more efficiently than its component parts. Graham’s survey of empirical studies does not uncover sufficient evidence to conclude which effect of mergers—monopoly rents or technical improvements—dominates. Not surprisingly, then, antitrust watchdogs from different jurisdictions do not always strike the same balance among their competing efficiency concerns.

Next, James S. Venit and William J. Kolasky, antitrust attorneys in Brussels and Washington, respectively, bring this merger review discussion further into the transatlantic context. While substantive merger review standards in the United States and the European Union are “increasingly converging,” several “appreciable differences” (p. 80) remain. Venit and Kolasky argue that EU regulators have endorsed U.S. approaches to defining product markets and to analyzing oligopolistic dominance. In contrast, the two jurisdictions continue to differ in their treatment of merger-generated efficiencies. European authorities are considerably more skeptical of such merger defenses than their U.S. counterparts. In fact, the European Commission “has come close to suggesting that the possibility that a merger may make a firm with a leading position more efficient is itself a reason for challenging the transaction” (p. 85). Another lingering difference—one with both substantive and procedural implications—arises from the greater role the

EU authorities assign to the competitors who challenge mergers. Still other, largely procedural, contrasts abound in areas including review thresholds, filing requirements, transparency of investigations and availability of precedent. Relative to their converging substantive doctrine, U.S. and EU antitrust authorities thus remain “far apart” (p. 97) on merger review procedures. Like Janow, Venit and Kolasky see opportunities for more cooperation in this area.

Spencer Weber Waller, professor at Loyola University Chicago School of Law, argues that transatlantic cooperation would also strengthen cartel investigations. Although both U.S. and EU authorities have established a “consistent history of vigorous anticartel enforcement”, including cross-border cases, no current mechanisms “permit either easy or significant cooperation” in this area (p. 99). Absent a transatlantic agreement permitting exchange of currently confidential information, Waller advocates more coordinated investigative procedures.

Shifting from procedural challenges to substantive disagreements, London solicitor Philip Marsden identifies a transatlantic divide on the fundamental objectives of antitrust enforcement. He compares restrictions on vertical agreements between companies, only to discover a “difference in philosophical approach to the concept of economic freedom, which is essentially about whom—and what—competition policy should protect” (p. 128). Whereas U.S. regulators scrutinize effects on consumer welfare, their EU counterparts prioritize competitor interests. Marsden argues that Europe’s approach to vertical agreements is “perfectly defensible in its own jurisdiction” (p. 118) but inappropriate as a model for a common international framework.

Finally, nine brief cases studies of transatlantic antitrust enforcement complement the book’s theoretical discussions with practical insights. A look at multijurisdictional regulation from the perspective of multinational companies clarifies the potential costs of uncoordinated antitrust enforcement. The case studies cover a wide range of transatlantic interactions, from the “model” (p. 176) cooperation in the 1993-94 Microsoft investigation to the dramatic conflict over the 1997 Boeing-McDonnell Douglas merger, which almost led to a trade war. On balance, the studies suggest that coordination is more routine than discord.

Since the publication of *Antitrust Goes Global*, competition watchdogs on both sides of the Atlantic have clashed over the failed GE-Honeywell merger. Given the public spotlight on their disagreement, harmonization appears elusive. This book’s contribution is, then, even greater for its ability to frame recent debates in a broader institutional and economic context. Its case studies also supply essential insights from a range of industries. Diversity of the authors’ perspectives does, however, present one predictable downside. Some of them rely primarily on economic theory for their analysis, while others focus on the practical challenges of transatlantic cooperation. Since different facets of antitrust may not receive comparable theoretical treatment, the book does not form a single coherent framework. Still, it remains comprehensive enough to shed considerable light on the future milestones—

great and small, substantive and procedural—in the quest to harmonize global antitrust enforcement.

*Domestic Structures and International Trade: The Unfair Trade Instruments of the United States and the European Union.* By Candido Tomas Garcia Molyneux. Oxford: Hart Publishing, 2001. Pp. xxvii, 272. Price: \$80.00 (Hardcover). Reviewed by Oluwaseun Ajayi.

As one argument has it, free trade and globalization are above politics. From this point of view, the idea of being either pro-globalization or anti-globalization makes little sense, as globalization is inevitable. Free trade is seen as the oil that greases the wheels of an ever-blossoming international trade system, and free trade, inherently fair, benefits people worldwide.

In *Domestic Structures and International Trade*, Candido Tomas Garcia Molyneux, a law professor at the College of Europe in Natolin, argues that not only is this position faulty, it also cloaks a particular viewpoint of trade in an undeserved shroud of universality. Molyneux claims that the proper inquiry “analy[zes] a state’s foreign economic policy from a domestic structural perspective [and] implies a critical approach to the normative idea of free trade by rejecting a-historical and structure-blind assumptions [while] asserting the primacy of social, economic and political structures.” (p. 5). Relying on a detailed discussion of U.S. and European Union trade practices and policies, supported by statistical evidence, Molyneux argues that globalization is a product of deliberate state policies and particular historical legacies.

Taking a comparative approach that employs legal, historical, and statistical arguments, Molyneux locates state participation in the global trade system in the context of an almost Darwinian struggle. States, he contends, use trade negotiations and rule-making in ways that provoke and respond to “a cut-throat struggle in which trading partners try to protect themselves by imposing policies, which accord with their domestic structures, on others” (p. 9). More specifically, Molyneux contends that both the European Union and the United States use trade instruments as preemptive and reactive mechanisms to protect domestic trade. While trade instruments like countervailing duties and anti-dumping measures are purportedly driven by a notion of fair reciprocity, this sort of “fairness” is very subjective and reflects different political and socio-economic realities within each state’s history. In reality, the rubric of fairness masks political and economic demands.

In the first of two parts, Molyneux provides an empirical description of US trade policy, demonstrating how the United States uses trade policy to advance its political and economic agenda. He illustrates the nexus between domestic politics and US trade policy with numerous examples from trade agreements, ultimately unveiling a systematic unfairness that pervades American policy. Molyneux matches this policy to a historical experience that favors individualist and laissez-faire values. He suggests that, in the United States, diffuse political power, a loosely regulated business sector and weak

unions all coalesce into an individualist and uncooperative trade policy that is often hostile to other nations.

In spite of its decentralized political system, the United States can hide this hostility behind a claim of fairness because its fundamental national unity allows it to implement a hegemonic trade policy. Reflecting the compromise-based nature of a domestic political system that values bargaining and ultimate unity of purpose, the United States is able to impose decidedly American preferences onto international trade. The US rationalizes its behavior with claims of fairness, but Molyneux argues that in reality its policies foist “standards embedding implicit parochial views on the behavior of political institutions and market actors” (p. 39).

The second part of the book focuses on the European Union and how its trade instruments also reflect internal socio-political and economic dynamics. Molyneux presents extensive empirical evidence that buttresses his argument that political pressures dictate the development of European Union trade policy. In contrast to American trade policy, Molyneux characterizes the European Union’s trade policy as “chaotic” (p. 14); divergent domestic pressures and goals reduce Union’s power to articulate a consistent policy. For example, in France, strong state involvement in the market yields protectionist policies, while Germany seeks to protect its domestic trade by using unfair trade instruments that purportedly advance free trade. Questions of national sovereignty and the European Union’s ultimate legitimacy mean that the Union and its member states simultaneously maintain separate and unified policies, undermining the Community’s position in international forums such as the WTO. Thus, the Community is “an economic super-power that cannot meet its expectations and be assertive in the international trading system” (p. 144).

Molyneux predicts perceptively that the EU’s disaggregated foreign policy will continue to erode its overall effectiveness as a major actor in the international trade arena. Indeed, his observations with regards to the European Union are particularly noteworthy and compose the most effective parts of his argument.

However, his analysis of US trade policy is less nuanced. He fails to grapple with questions about how the pressures of globalization might alter either America’s dominance of the international system or the inequity in America’s domestic structures. He notes that American dominance in international affairs is now threatened by “the same domestic structures which allowed the United States to succeed in world trade.” (p. 139). Because Democrats in Congress insist on firmer commitments to environmental and labor rights, Congress is unwilling to grant the President “fast track” authority to negotiate new trade deals. Therefore, America might have to resume a unilateral approach or “lose the battle in new trade areas, as it cannot conclude new agreements.” (p. 139). Still, he trusts too readily that “America’s big business would [not] give away its world hegemony by refusing to accept some changes in the trading system” (p. 269).

Molyneux presents a useful context for understanding how and why nations participate in international trade. His volume suggests that the politics

of free trade undermine the legitimacy of the evolving international system—free trade only serves as a convenient mechanism for advancing narrow interests. Finally, the empirical analysis in the book nicely supports his main argument, that international trade agreements and the legal regimes that undergird them sustain and promote unequal relationships among nations.

### **International Human Rights**

*Human Rights as Politics and Idolatry.* By Michael Ignatieff. Edited by Amy Gutmann. Princeton, NJ: Princeton University Press, 2001. Pp. xxviii, 187. Price: \$19.95 (Hardcover). Reviewed by Sanjukta Mitra Paul.

Michael Ignatieff's unique ability to crystallize the moral and political themes exemplified by some particular region beset with strife – without doing violence to the richness of particulars, and without reducing generalities to truisms - has rightfully won him superlative acclaim as a master of the documentary voice. However, In *Human Rights as Politics and Idolatry*, Ignatieff, director of the Carr Center for Human Rights Policy at Harvard, assumes a somewhat more philosophic voice. He sets out to identify the forms of self-deceit to which the human rights movement is susceptible and articulate for the movement a self-conception that avoids these perils. The core of the volume consists of two essays, "Human Rights as Politics" and "Human Rights as Idolatry", based on his Tanner Lectures delivered at Princeton's Center for Human Values in 2000. Brief commentaries from K. Anthony Appiah (Professor of Afro-American Studies and Philosophy, Harvard University), David A. Hollinger (Professor of History, UC-Berkeley), Thomas W. Laquer (Professor of History, UC-Berkeley), and Diane F. Orentlicher (Professor of Law, American University) follow, and the volume ends with a response from Ignatieff.

The challenges the book tackles are at once intellectual and strategic. Indeed, its tone and format sometimes invite one to view it as a sort of huddle from which the human rights team will emerge, with its conceptual house in order, to face its opponents and detractors. But the invitation should be resisted: the essays are ultimately too thoughtfully self-critical to allow the volume to be reduced to a manual of even high-minded strategy. In the first essay, Ignatieff advances his vision of the human rights program as operating within politics rather than looming uncompromisingly and monolithically (and perhaps ineffectually) just above it. This vision offers two correctives to the dim view human rights orthodoxy takes of the political process. First, the movement should recognize that the state, not NGO's or international institutions, can most effectively protect human rights – both as a guarantor of order and as a source of meaningful political and civil rights. Ignatieff knows well that states also commit the most egregious human rights violations; a sensible response to this knowledge, however, involves promoting healthy and viable states as much as it involves building up independent loci of power. Still, Ignatieff emphasizes the indispensable role of independent civil society.



It is crucial that the government not monopolize social and economic goods, even while it is paramount that it monopolize the means of coercion.

Secondly, the human rights agenda should be conceived as an instrument within the political game, and not as a moral trump card that ends the game. To put the point positively, Ignatieff is at pains to commend political deliberation as one of the values that should motivate the human rights program. Rather than encouraging insulation, the human rights movement should inculcate the virtue of tolerant engagement with other political actors, including those one would prefer be silent. Moreover, an apolitical vision of human rights is self-defeating: rights can conflict not only with other interests but also with each other, and they do not come neatly pre-ordered in priority. Joint reasoning and compromise in the political arena tailor abstract rights to the real world. Ignatieff also points out that a refusal to recognize the political character of the human rights agenda not only discourages internal reflection and self-criticism but also endangers the movement's credibility, since rights will inevitably be politicized – the question is only by whom, and in how democratic and transparent a manner. The urgency of clarifying the status of human rights as one (very high) priority among many in a complicated political process stems from the desperate need for criteria to guide decision to intervene when real-world human rights crises erupt – decisions constrained by concrete political, military, and economic factors.

Conflicts between national minorities and unstable regimes (themselves defined by “unitary national ideologies” (p. 27)) often precipitate the need for such decisions. Lamenting the human rights movement's traditionally restricted role of responding after a situation has sunk into acute crisis, Ignatieff envisions an expanded agenda that includes the development of political institutions legitimated by civic, not tribal, pacts. This is surely a laudable goal, and Ignatieff rightly identifies rigidly particularist political ideologies as the root cause of those human tragedies that have indelibly tainted the twentieth century. But not every desirable outcome is *ipso facto* an appropriate goal for a political movement. In his second essay, Ignatieff argues convincingly that the aims and assumptions of human rights require vigorous pruning if the program's agenda will be practically effective. This includes guarding against “rights inflation” and allowing for “moral pluralism”.

The reason for the pruning is self-avowedly pragmatic: a minimalist conceptual foundation for the human rights framework will win more supporters and will circumscribe the cultural relativist's critique. The dangers of more robust philosophical foundations are twofold: selecting among the variety of possible ‘thick’ moral foundations will alienate adherents of the rejected theories, and, what is more, analysis may reveal that there is *no* philosophically satisfactory thick foundation. Lurking behind these concerns is a more basic wariness of the transformation of the human rights program into a sort of secular religion, complete with articles of faith impenetrable to criticism. However, the metaphor of idolatry should not mislead one into identifying the peril contemplated here with sacrilege. Ignatieff is not afraid of insulting religion by imitating it – he is simply afraid of imitating it. More

specifically, he is afraid of the unyielding ideologue who would condemn his critic as an infidel instead of engaging him as a fellow political actor. Since unitary ideologies encourage ideologues, Ignatieff is happy to jettison all but the thinnest of philosophical commitments. What remains is a commitment to protect human agency from the most egregious constraints placed upon it. A basic belief in the worth of human purposiveness, in the worth of freely designed and pursued lives, underlies this practical commitment.

This is not perfect moral pluralism. It is fundamentally a commitment to the value of the individual, rather than that of some larger social entity. Ignatieff acknowledges this, but he denies that this kernel of individualism drags with it all the contents of the larger bag of liberal democratic political values (and he certainly denies that it drags along the yet larger bundle of Western-rationalist-Enlightenment social values). The universal claim of human rights lies simply in our common experience of pain, together with a minimal shared capacity for empathy or moral imagination with which to feel the pull of others' pain. These universal human materials enable us all, regardless of cultural background, to recognize that when a group places unreasonable constraints upon the agency of its less powerful members, those powerless individuals must retain some meaningful right of protest.

None of this is seriously contested in the rest of the volume. Despite Ignatieff's enthusiasm for dissent, he does not find much of it in the mostly sympathetic commentaries. Appiah and Hollinger both suggest that the human rights program could safely trade a single, thin foundation for a plurality of thicker foundations. First principles may be safely left to individuals and subcommunities. Orentlicher emphasizes the importance of procedural and collaborative inclusiveness in norm-creation as a response to the relativist challenge. All, including Ignatieff, concur on the importance of "going local" with the human rights agenda – following the lead of local human rights groups, promoting the development of a truly global human rights culture, permitting and indeed welcoming the adjustment of the general rights agenda to particular cultural and political contexts.

Only once do sparks nearly fly. In his first essay, Ignatieff traces the juridical, advocacy, and enforcement revolutions in human rights to a discrete historical moment – the moment of recognition, horror, and despair that followed World War II. Laquer, on the other hand, suggests that the twentieth century developments in human rights are also continuous with earlier historical trends, notably the anti-slavery movement. The continuity consists in the expansion of the moral imagination, of the reach of fellow-feeling that binds together human beings. But Ignatieff is emphatic that fellow-feeling, no matter how far-reaching, does not do justice to the moral innovation of human rights. Empathy can motivate the extension of a beneficent hand by one with means, but the only obligation it creates is the inconstant one of *noblesse oblige*. In contrast, the human rights revolution creates a space for the powerless to lay a claim on their own behalf. There is something profound in this observation, and it identifies what is revolutionary about human rights. Nevertheless, fellow-feeling could sensibly be seen as the conceptual ancestor of equal rights without impugning its moral uniqueness (and without

impugning the rather different moral uniqueness of the post-war historical moment). After all, it probably took an exercise in empathy on the part of the initially enfranchised – among other things – to create the political and moral space for autonomous and universal self-help. To paraphrase Ignatieff, “are we not brothers?”, while admittedly insufficient, may have been the necessary precursor of “are we not *all* rights-bearers?”

*Giving Meaning to Economic, Social and Cultural Rights*. Edited by Isfahan Merali and Valerie Oosterveld. Philadelphia: University of Pennsylvania Press, 2001. Pp. 278. Price: \$45.00 (Hardcover). Reviewed by Intisar A. Rabb.

The tragedy of September 11, 2001, highlights the nature and importance of human rights once again as the world grapples with the humanitarian crisis that inevitably accompanies war. *Giving Meaning to Economic, Social and Cultural Rights*, a set of essays aimed at reconceptualizing and implementing international human rights, is therefore needed and timely. The book, edited by Isfahan Merali, legal counsel of the Ontario Human Rights Commission, and Valerie Oosterveld, a legal officer with the Canadian Department of Foreign Affairs and International Trade, includes contributions that focus on economic, social and cultural rights as part of a comprehensive set of interdependent and indivisible rights; it is designed to direct international attention to all aspects of human rights law. The volume offers both a useful theoretical study of human rights law and provides helpful case studies illustrating the law’s application to specific issue-areas in several countries.

The book is divided into three parts. The first lays the groundwork for ensuing discussions of economic, social and cultural rights as indivisible from all human rights. Discussing the single textual genesis of human rights, the first section begins with the Universal Declaration of Human Rights (UDHR), then traces its subsequent division into two different treaties: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Focusing on the contextual application of these two treaties, contributors debunk the idea that this textual division was intended to translate into the practice of affording the ICCPR more weight than the ICESCR. Indeed, this is the central contention of the volume; authors repeatedly emphasize an all-inclusive vision of human rights that reflects this notion of “indivisibility.”

In the first chapter, Craig Scott, a professor at Osgoode Hall Law School, links the UDHR’s codification of rights to its practical realization. Arguing that the UDHR provides an overarching ideal, Scott advocates a more fluid approach to human rights implementation, one that traverses the categories offered by the six core conventions that have grown out of the early Covenants. In this way, he posits that the various UN treaty bodies can work in conjunction with one another to monitor human rights compliance more effectively and thereby accord with the foundational intent of the UDHR.

In Chapter Two, Chisanga Puta-Chekwe, an advocate of the High Court of Zambia, and Nora Flood, an LL.B. candidate at the University of Toronto, contend that focus on civil and political rights contradicts an original interdependent conception of human rights and is merely a product of socialist-capitalist tensions that emerged from the Cold War. Capitalists, for example, conceive of the rights defined by the ICESCR and ICCPR as fundamentally contradictory; focus on economic, social and cultural rights requires wealth distribution that conflicts with the individual liberty that civil and political rights mandate. Observing that this misrepresentation born of Cold War ideologies finds renewed purchase in the conflict between developed and developing nations, the authors discuss ways of increasing respect for economic, social and cultural rights.

Next, Diane Otto, a senior lecturer in law at the University of Melbourne, uses the notion of indivisibility to advocate on behalf of women's economic and social rights. She argues that feminists can play a leading role in articulating an indivisible approach by responding to the myth of "neutral" human rights. She calls these rights "masculinist," rather than neutral, in light of persisting inequalities between men and women. For example, although "neutral" human rights dictate that men and women should receive pay equity on the job, they do not take into account the fact that women cannot work as many hours as men and are often obliged to fulfill other responsibilities in the home for which they do not receive compensation. Through highlighting such "masculinist" applications of human rights as a pervasive phenomenon, feminists can argue that all human rights need to be reevaluated as an indivisible set of basic human rights.

Essays in the second section of the book pay attention to the practical problems of advancing and implementing this indivisibility conception. In Chapter Four, Craig Forcese, a visiting professor of law at the University of Ottawa, discusses the obligations of multi-national corporations to promote human rights locally. Using Canada as an example, he examines the role that developed nations should play in pursuing global human rights standards when engaging in business operations in developing nations. He wonders if responsible corporate investment can play a role in curbing a repressive government when it abuses human rights as a matter of policy.

In the following chapter, Kerry Rittich, a professor of law and women's studies at the University of Toronto, critiques the joinder of human rights with global market reform and development as it impacts women's rights. Arguing that global economic integration has replaced the nation-state with the multinational corporation as the principle international actor, she considers whether feminists should change the methods through which they seek human rights redress for women. Should they join in advancing global market hegemony as a means of framing a new language for women's rights activism? In response, Rittich suggests that it is time for feminists to rethink women's empowerment in a way that will best incorporate global changes.

Rebecca J. Cook, a professor of law and medicine at the University of Toronto, continues the discussion of women's rights in her essay focusing on reproductive rights. She contends that preventable maternal mortality is a

symptom of a larger social injustice against women that societies must address. One way of doing so is to reinterpret the universalist discourse of human rights in the languages of local religious or cultural values.

In Chapter Seven, Martha Shaffer, a professor of law at the University of Toronto, examines Canadian law of children's rights. She closely evaluates specific Canadian measures to eradicate child poverty, concluding that Canada, through statutory enactments, has taken some of its obligations to eliminate child poverty seriously. However, like other developed nations ostensibly committed to human rights, Canada fails to fully address economic and poverty issues where its statutory provisions are only marginally effective.

The final section of the book moves from a study of the practical problems involved in applying the indivisibility standard within individual countries to a focus on giving effect to that standard within international legal institutions. Barbara von Tigerstrom, the project coordinator for the Health Law Institute at the University of Alberta, proposes extended roles for non-judicial institutions, such as an ombudsman – an agent who monitors human rights compliance and recommends redress for violations – as one means of complaint resolution in international institutions. She suggests multiple advantages for partnerships between ombudsmen and human rights institutions like the UN and regional human rights bodies, giving examples of the efficacy and limits of a heightened ombudsman role as demonstrated in several countries.

In the next essay, Leilani Farha, a lawyer and human rights consultant, examines Palestinian initiatives to use international legal mechanisms to help bring international attention and pressure to human rights issues. She details a study of a collaborative effort among Palestinian NGOs that heightened awareness and increased monitoring activities of human rights issues among Palestinians, Israelis and international human rights bodies.

Finally, S. James Anaya, a professor of law at the University of Arizona, discusses the Maya Petition to the Inter-American Commission on Human Rights, including excerpts of the petition itself. The Maya People seek to enjoin the Belize government from granting concessions to logging and oil companies, contending that such activities have and will be destructive to their way of life. This represents the first time that an indigenous people has sought relief for human rights violations against a national government before an international human rights body. By tracking this litigation, Anaya describes perhaps the most telling characteristic of international human rights implementation – its ever-present state of flux. Like the Mayans, the global community still awaits verdict on the practical assurance of an indivisible set of human rights, which must include the economic, social and cultural rights originally referenced in the UDHR.

*Giving Meaning to Economic, Social and Cultural Rights* is a well-structured set of essays that provides much insight into the current state of human rights implementation. More critical than laudatory, the book devotes little attention to the positive advances in the human rights arena. Its focus is also necessarily limited to few practical examples. However, the book may

well be an indispensable resource for both the new and seasoned human rights activist interested in discovering more about the intricacies of human rights law and implementation.

*A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights.* By Mary Ann Glendon. New York: Random House, 2001. Pp. xxi, 333. Price: \$25.95 (Hardcover). Reviewed by Jennifer Behr.

As legal remedies become increasingly important in the international struggle for human rights, it is useful to re-examine the history of the first effort to codify the fundamental rights of humankind. Mary Ann Glendon's *A World Made New*, which describes the creation of the Universal Declaration of Human Rights, is a timely and well-written response to this need. Although the book, subtitled "Eleanor Roosevelt and the Universal Declaration of Human Rights," purports to center on Roosevelt, its coverage is much broader, describing in equal detail the involvement of several other delegates to the UN Human Rights Commission. The stories of these influential men, including China's Peng-chun Chang, Lebanon's Charles Malik, Britain's John Humphrey, and France's Rene Cassin, provide a comprehensive account of the ideological dynamics that shaped the Declaration.

Glendon, a professor of law at Harvard, describes the struggles and compromises of those who created Declaration during the post-World War II period, when relationships among nations were redefined along lines of political ideologies and economic development. *A World Made New* is a tale of personalities overcoming divergent views to write a document capturing a profoundly influential view of human rights. Throughout her presentation of the Declaration's creation, Glendon engages in discussions of the varied influences on the process, including of the role of lesser-developed nations and of advocates of women and children's rights. The U.S. State Department's evolving opinions about an international human rights instrument, which eventually lead Roosevelt to step down from the Commission, are also explored, as is the impact of the Soviet Union's decision to change delegates several times. Glendon includes these many individuals and groups in her account of the Declaration drafting process to reinforce her thesis that it is, in fact, a universal document.

The book is organized chronologically, with anecdotes and additional explanatory commentary added where necessary. After a brief discussion on the formation of the UN and the Human Rights provisions in its Charter in Chapter One, Chapters Two through Six detail the creation of the Declaration and its adoption by the Human Rights Commission. Glendon describes Roosevelt's travels to the first UN General Assembly meeting in London, where she was asked to lead the planning for the Commission. Under her guidance, the Commission members decided that their first job would be to draft a bill of rights. Chapter Three turns to the first session of the Commission, where the conflicts that arose foreshadowed future difficulties

the Commission would face. Issues such as the enforceability of the Declaration and the inclusion of social and economic rights sparked disagreement between delegates from communist and democratic countries. Malik and Chang emerged as the most influential thinkers of the drafting process, but they often took opposing stances; following their lead, delegates often found themselves mired in intellectual debate.

As Glendon narrates in Chapter Four, the drafting committee started its work against a backdrop of conflicts between the Soviets and the Western nations and conflicts over the creation of Israel. She describes Humphrey's first draft and Cassin's second draft of the Declaration. Glendon observes that commentators have ignored Humphrey's contribution in favor of Cassin's, ignoring the fact that the forty-eight items Humphrey presented included most of those ultimately contained in the Declaration. Cassin, who had worked as Charles de Gaulle's lawyer, kept the substance of Humphrey's draft, fleshing out the Preamble and grouping the rest of the articles by their themes. The two drafts are included as separate appendices.

Once the main features of the document were in place, the question of universality was addressed. Delegates debated whether it was even possible to declare that all humans possessed certain rights, regardless of race, religion, or cultural background. These discussions often pitted representatives of developing or more authoritarian countries against developed democratic countries. Smaller countries also had a voice in the human rights debate. In Chapter Five, Glendon discusses the UN Economic and Social Council's (UNESCO) influence on the Declaration, including its ultimate opinion that the ideals contained in the draft were common rights, despite competing ideological stances on matters such as the importance of individual versus group rights. Chapters Six and Seven focus on the work of 1948, including the debate over implementation of the Declaration and the eventual adoption of the draft by the Commission in the face of deteriorating relationships among individual nations. The key problem that arose at this point was the possibility that the Declaration would be used to interfere with the actions of individual countries within their borders.

In Chapter Eight, Glendon describes Malik's presentation of the Commission's draft to UNESCO. The core of this chapter is Malik's biography, linking his work as a philosophy professor in Lebanon to his leadership in the United Nations. Malik was at the helm as UNESCO engaged in a general debate about the Declaration. Chapter Nine describes a second round of debates, this time on individual articles. The Chapter also goes into greater detail about P.C. Chang and his role in the proceedings. It ends with the General Assembly's approval of the Declaration on December 10, 1948.

As its subtitle—"A Close Look at the Declaration"—suggests, Chapter Ten provides a close analysis of the document. Glendon divides articles into their relevant themes, explaining how they relate to one another and to the document as a whole. Cassin once likened the Declaration to a temple, with pillars, a base, and a roof. This image provides Glendon with a useful analogy; she uses this structure to frame her discussion of the substance of the Declaration. Rights that underlie all others, such as dignity and liberty, form

the base. The top step of the entrance to the temple is the preamble. The individual articles comprise the pillars of the temple. Rights that delimit the relationship between individuals, society and the state represent roof sections. Glendon also compares the Declaration to the Magna Carta and the American Bill of Rights. After this discussion of the Declaration, she details the use of the Declaration in the cold war years in Chapter Eleven. The Chapter also concludes the stories of Roosevelt, Humphrey, Cassin, Malik, Chang, and Romulo.

In the final part of the book, Glendon argues against criticism of the Declaration, namely that it imposes Western values on all nations. She uses the story of the Declaration's creation, with representatives from diverse nations analyzing the human rights latent in a multitude of governmental and religious systems, to prove that it is a universal document. Glendon's epilogue is entitled "The Declaration Today." She states that many of its principles have acquired legal force, and power of its moral authority is just beginning to realize its potential. The most significant hindrance to its full effectiveness has been the tendency of nations to pick certain articles to focus on, such as rights to freedom or social security, without considering their context within the document and without regard to relationship among them. Glendon closes by declaring that what is good about the Document is its attention to "small places," such as where individuals are educated and raised; its true test will be if people in these places enjoy lives of peace fortified by the Declaration. Glendon includes appendices containing six drafts of the Declaration as well as the final text. These provide useful information for scholars tracing the development of the document.

One weakness of *A World Made New* is that Glendon waits too long to explain the content of the Declaration itself, saving a close analysis for Chapter 10. Although this is a product of Glendon's chronological approach, understanding the content of the completed document would have increased appreciation for the story that preceded it. Also, the book covers many meetings and conventions in a short space. As a result, the coverage is sometimes insufficient to allow the reader more than a cursory understanding of events. The broad time span of the book precludes more detailed investigation. Still, the interesting details on which Glendon chooses to focus make up for these minor shortcomings.

### **International Conflict Studies**

*Humane Warfare*. By Christopher Coker. London: Routledge, 2001. Pp. 170. Price: \$24.95 (Paperback). Reviewed by Shelby S. Guilbert, Jr.

International legal scholars in the last decade have frequently argued that war should be made more "humane" by eliminating civilian casualties that result from the use of indiscriminate weapons. At the same time, the public, scholars, and military planners alike advocate greater reliance on precision guided munitions in order to make war as "clean" as possible. In lockstep with



this new vision of *jus in bello* is one of *jus ad bellum*; these same commentators often advocate humanitarian warfare, reflecting a post-Cold War preference for limiting the legitimate goal of warfare to humanitarian objectives.

In his book *Humane Warfare*, Christopher Coker, Reader in International Relations at the London School of Economics, argues that these current understandings of military conflict reflect changing societal attitudes in the West towards warfare in a postmodern age. Until recently, Western societies accepted war as an inherently cruel, dirty activity, but they were willing to wage it because war could be fought for God, the nation, liberty, the proletariat, or History (in the Hegelian sense). In the past, the ugliness of war could be “mitigated . . . by the invocation of religious or metaphysical orders” that permitted “the certainty that allows us to kill with a good conscience” (p. 42).

According to Coker, the willingness of Westerners to accept the cruel consequences of war and to die for History or God came to an end after the second World War in Europe, and during the Vietnam War in the United States. Examining an impressive array of philosophy and literature on war dating from before the Enlightenment to the post-Cold War period, Coker makes a strong case that in the West, metaphysical beliefs supporting international violence are dead. The West is now haunted by the evils it committed in the past in the name of ideals which are no longer held as truths. In response, the West, wanting to avoid what is now considered “bad behavior,” tries to avoid fighting or, when forced to do so, fights humanely. Adding to this “end of metaphysics” explanation, Coker repeats the claims of commentators like Edward Luttwak, who argue that the West is living in a post-Heroic age, where the avoidance of risk is a primary goal of military planners and human emotions like hatred and courage are no longer encouraged. Coker concludes that for a society that fights humane wars, the first obligation in fighting is no longer to fight for “the ‘truth’ but to eliminate pain. Humane warfare challenges the claim that any other aim can take precedence. It allows civil society to assume its dominant ethical stance: a contempt for cruelty” (p. 40).

Coker believes that the new Western commitment to humane warfare has important consequences. First, Coker demonstrates how these changing social attitudes are directly affecting military structure and doctrine in the West, from the Pentagon’s fascination with non-lethal weapons to a “feminization of the military” (pp. 103-110). While many authors have highlighted these phenomena, few have offered such a persuasive explanation for why they are occurring.

Secondly, Coker emphasizes the importance of what he perceives as different attitudes towards conflict in Europe and North America compared to the rest of the world. Simply put, the shift in the West to a preference for humane warfare is important because much of the world rejects this change. Coker contends that “humane warfare is a largely western phenomenon . . . . Elsewhere in the world war is becoming more inhumane, not less . . . . War is becoming more dirty . . . . Whatever we wish to call it, whether we prefer to

label it 'nihilistic' or 'irrational' or 'perverse', it has a logic and the logic runs counter to what the West is trying to do - to make war less cruel" (pp. 22-23).

Coker argues convincingly that as the West tries to purify war, war is in fact becoming "dirtier," as events in Somalia, Rwanda, Sierra Leone, Yugoslavia, and elsewhere in the last decade attest. While the West tries to avoid civilian casualties in its attempt to manage humanitarian crises, civilian deaths in conflicts around the globe are rising. In parallel, while the postmodern West tries to fight clean wars, other societies develop indiscriminate weapons like anthrax. Coker notes that this disjunct is more than ironic; he thinks that other societies will do their best to ensure that the Western attempt to make war humane fails. In a question that seems even more pressing after September 11, Coker asks, "[i]n a society which puts humanity first, which no longer asks great sacrifices of its people, how do you react to inhumanity on such a scale?" (p. 62).

Coker's book seems especially trenchant in light of the unfolding post-September 11 conflict in Afghanistan. Some may say that President Bush has made a compelling case that the United States, engaged in a long war on behalf of civilization against terror, has reinjected a metaphysical rationale for violence and has ended the American experiment with humane warfare. Notwithstanding Mr. Bush's lofty rhetoric, however, it seems unlikely that the West is interested in taking risks itself and being cruel to those responsible for the attacks in order to "civilize" them. At present at least, the West still generally fights with laser-guided bombs discharged from 15,000 feet over Afghanistan and lets others on the ground do the dirty work.

Coker has given an excellent account of changing attitudes toward warfare in the West, and his thesis that the West is attempting to change the character and nature of warfare is compelling. The book is an important addition to the international relations and defense policy literature to which it is addressed. The book also challenges those scholars of international law who argue that conventions should be adopted to ban cluster bombs, who attempt to devise guidelines for humanitarian intervention, who advocate international tribunals for war criminals, and who consider the effectiveness of nuclear nonproliferation enforcement regimes. In revaluing war, the West is striving once again in an arguably quixotic quest to avoid the "riot of fury" which Grotius complained of at the end of the Thirty Year's War (p. 22). International lawyers engaged in this effort should consider the project's internal contradictions, as well as the way the project may be perceived outside the postmodern world. While Coker's book does not provide any suggestions on how the West should respond to the inherent contradictions in the project to make war humane, the questions he raises are an important contribution to the debate, and his book is well-worth reading.

*The Invention of Peace.* By Michael Howard. New Haven: Yale University Press, 2000. Pp. 113. Price \$15.00 (Hardcover). Reviewed by Alison Chase.

This short work by military historian Sir Michael Howard is directed to a broad and fundamental question: in light of the horrendous violence of the twentieth century, why does war continue to exist? Howard explains the presence of interstate violence in the twenty-first century by focusing on the development of the nation-state and the genesis of the international system. Indebted to Kant, the proclaimed “inventor of peace,” Howard argues that a system of stable republics is necessary to interstate peace as their increased legitimacy allows them to resist hawkish popular pressures. Peace cannot be maintained by supra- or non- governmental organizations.

There are three particularly trenchant aspects of the book. First, Howard’s explanation for the rise of the state as the predominant actor in international relations provides an interesting historical account of those forces—military, theological, and technological—that have driven the development of the state. Second, the book integrates this story with an interesting intellectual history, as Howard delineates continuous lines of influential political thought from the Enlightenment to the present day. Finally, Howard offers an important reminder about the Kantian “democratic peace” argument: republics are more pacific not because they efficiently articulate the peaceful temperament of their populations, but rather because republics are perceived as more legitimate and therefore have superior control over their populations.

In the introductory chapter, Howard confronts the reader with a persuasive yet discomfiting idea—peace is a non-natural condition in a world of nation-states. He argues for this idea through a brief account of European history. The second chapter describes the historical underpinnings of the Westphalian state system, presenting a broad, millennium-long swath of European history up to the French Revolution. Howard finds the roots for the dominance of the nation-state in Europe in the Continent’s bellicose history. Increased political organization first became necessary to fight constant invasion by tribes from Eastern Europe sweeping westward across the continent. War became intrinsic to the social and political order, as the feudal system perpetuated under the Holy Roman Empire used war as a tool for rallying unity to the central authority. This tool became increasingly costly, however, and the bureaucratic state was born out of a need to fund wars – to organize and concentrate the collection of resources.

Once Howard establishes that war is an intrinsic condition of international society, he demonstrates that the conduct of war influenced nearly all functions of the state. The third chapter of Howard’s history continues the narrative from the French Revolution to the end of World War I. Howard tracks the “popularization” of war brought by the French Revolution and the concomitant socio-political changes sparked by Napoleon.

Howard then examines how the state system has evolved into its current form. The fourth chapter echoes the well-known argument that the supposed triumph of Wilsonian liberalism after World War I was an illusion. At Versailles each victor was preoccupied with its own neuroses, most demanding harsh concessions from the defeated Germany and thereby blocking a workable framework for peace. The liberal experiment that was to

end war, Wilson's League of Nations, was doomed from the start; foremost among its infirmities was its exclusion of the Soviet Union. This lack of diversity became problematic after the 1929 economic crises fueled support for alternatives to the liberal order in the form of communism and fascism. The probability of war increased as Hitler's ascent to power was mirrored by the decline of the international system. Here, Howard echoes a theme he stresses throughout – the importance of technology and economic pressures on war and the resulting international order. In World War I, the railroad allowed the rapid movement of men and materials to the front, while breach-loading firearms rapidly increased the speed of fire. War became a battle of administrative efficiency. Indeed, Howard privileges the import of these developments over ideology, tracing the outbreak of war in 1914 to social and technological upheaval. Similarly, he emphasizes the role of technology in World War II and the changes it wrought. The war witnessed Germany crushed by industrial strength. This was a critical development, according to Howard, as the industrialization of war required the total mobilization of resources across society, making civilians intimately involved in the production of resources for war, and thus rendering them legitimate targets.

More interesting than his account of European history is Howard's intellectual history. He observes that three schools of thought on international relations grew out of the Vienna Settlement. The Conservatives, embodied by the Concert of Europe system, did not accept war as an inherent part of the interstate system and relied upon a balance of power to ensure peace. The Liberals argued that peace would be a natural outgrowth of international commerce and self-government. Finally, the Nationalists contended that each nation had a right to fight for its own existence, glorifying violence in the process of national formation. Howard finds that the opposition between these schools of thought continues to the present day, in the form of the opposition between liberalism and a continually resurgent nationalism. The final chapter contests the orthodoxy that liberalism is the answer to war. The post-Cold War victory of liberalism soured in less than a decade, as non-Western nations rejected economic modernization and Western values. Free trade, with the promise of economic growth, was not enough. Rather, global economic competition inevitably created some losers, and the demolition of the socialist support system resulted in widespread economic emmiseration. Protest was strongest where organized by established religions able to command the devotion of a populace and exploit latent nationalistic fervor.

Echoing Kant's belief in republicanism as an answer to conflict, Howard's conclusion is that peace is only maintained through the agreement of states and not between people. However, he contests the Kantian suggestion that democratic states are more peaceful because they allow the articulation of the public will. Instead, he argues that democracies are more peaceful because they are more legitimate and thus better able to keep the warring impulses of their populations in check. The erosion of the state, therefore, is more likely to endanger world order. A peaceful world order depends on domestic order, which in turn is aided by an international community dedicated to the task.

Howard's sweeping historical account, while impressive in ambition, leave some stones unturned. First, he does not fully draw out the implications of the nationalism-liberalism dialectic. His exclusive focus on European history is partly to blame. Howard admits in the introduction that he focuses only on Europe, explaining that he does so because Europe was the center of academic thought on the topics of war, strategy and peace for centuries. That explanation notwithstanding, the book's failure to provide a discussion of the resurgence of violent nationalism in other parts of the world is regrettable. Moreover, while Howard provides the reader with a history of liberalism to the present day, he does not do the same for nationalism. Notably, the modern resurgence of ethnic nationalism, including that of the Bosnian conflict, is not discussed.

Secondly, Howard is ambivalent regarding what an ideal state should be. He states that nationalism is necessary for the formation of a unified polity, but he fails to address the problem of states unified under the rubric of nationalism that turn aggressively nationalist. Howard fails to explain how strong republics and therefore the potential for peace are obtained. He stresses the role of pacific national and transnational elites in creating peace, but does not grapple with the electioneering dynamic that enables the selection of unsavory elites.

Howard's text is a valedictory to an impressive career, but not a tool for researchers. While the book is ambitious, cohesive, and exceptionally clear in its writing, some of the subjects it tackles obviously demand a fuller exposition; the book is clearly not intended to be comprehensive. For example, World War II is discussed largely as a technological phenomenon, and the nuclear endgame which drove politics for the next forty years is barely discussed. This is a grand history, directed not towards specific events, but rather towards the broad changes that have motivated the development of the state and the articulation of the state's power through war. The argument is intended to be a broad overview of European military history, and must be approached as such.

### **International Criminal Law**

*International Criminal Law.* By Kriangsak Kittichaisaree. Oxford: Oxford University Press, 2001. Pp. xxxi, 482. Price: \$35.00 (Softcover).  
Reviewed by Steve Vladeck.

On October 4, 2001, the United Kingdom became the forty-second nation—and second permanent member of the Security Council—to ratify the Rome Statute creating the International Criminal Court (ICC), bringing the landmark international tribunal one step closer to existence. By the beginning of December, the roster of state parties had expanded to forty-seven, making it more likely that the ICC will become operative in the foreseeable future. Driven in part by this new institution, worldwide interest in international criminal law is growing. Thus, Kriangsak Kittichaisaree's new textbook,

*International Criminal Law*, could not be more timely. Kittichaisaree, Director of Legal Affairs within Thailand's Ministry of Foreign Affairs, speaks from experience, having served as head of the Thai delegation to the Preparatory Commission for the ICC. His well-organized volume provides a comprehensive introduction to the field for scholars, students and laypersons alike.

The textbook is divided into four parts. Part I, beginning with the legal and historical foundations of international criminal law, is less technical than those that follow. After a review of relevant concepts and an historical overview of the development of the law from Nuremberg and Tokyo to the present, the part concludes by discussing the evolution of the general principles of international criminal law over the last half-century.

In Part II, Kittichaisaree examines the characteristics of four major categories of international crimes—genocide, crimes against humanity, war crimes, and aggression. The text evaluates the historical development of each category before discussing the more specific legal components of each crime.

Kittichaisaree's examination of the specific elements of these crimes is perhaps the most salient feature of the volume. The analysis borrows from the Elements of Crimes, adopted under the Rome Statute, to structure its discussion. For each Element, Kittichaisaree brings together the relevant provision from the Rome Statute, the implications of its definition, and, where available, the debate at the Rome Conference over the wording of the text, and relevant case law from the *ad hoc* International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). Kittichaisaree's exhaustive analysis covers seventeen different forms of crimes against humanity and fifty-four different types of war crimes, including a careful and detailed differentiation between those committed in international armed conflict and those related to internal armed conflict. This is the most useful and novel feature of Kittichaisaree's text, for, unlike the canonical but monolithic casebook of the same name by Paust, Sadat, and Bassiouni, Kittichaisaree's introduction to the definition and case history of each crime is readily digestible, yet still provides comprehensive coverage of the key subjects.

In Part III, Kittichaisaree shifts his gaze from crimes to perpetrators, focusing on necessary *actus reus* and *mens rea* requirements, as well as possible defenses to the crimes alleged. In regard to the former, he examines the ideas of complicity, inchoate offenses, and command responsibility. For the latter, Kittichaisaree carefully evaluates fifteen different potential grounds for excluding responsibility, ranging from age to intoxication to superior orders to *tu quoque* ("you also"—a defense alleging that the other side has also committed crimes). Kittichaisaree's discussion covers nearly all of the defenses raised by defendants in front of the various international criminal tribunals. In most cases, the analysis highlights the extent to which those defenses have been disallowed historically and in the Rome Statute; however, Kittichaisaree also highlights how defenses such as duress have occasionally been used as mitigating factors in sentencing.

In Part IV, Kittichaisaree switches modes from an analysis of the substantive aspects of international criminal law to its procedural components.

He outlines the process used to initiate proceedings before the ICTY and the ICTR and the extent to which the same will be followed under the Rome Statute. Next, Kittichaisaree examines the rights of parties, including the rights of the suspect, the rights of the accused, the rights of the victims, and, critically, the appellate rights of all convicted defendants before the tribunals. The last segment concludes with the sentencing regime and the debate over compensation of victims. This procedural discussion neatly balances the substantive development of the law in Parts II and III to round out the current state of international criminal law.

With appendices that include the full text of the Rome and ICTY statutes, as well as excerpts from the ICTR statute, Kittichaisaree's volume is a comprehensive, useful textbook. Its title—*International Criminal Law*—is slightly misleading; Kittichaisaree writes not about international criminal law *per se* but rather about the law of the International Criminal Court. That distinction, however, is almost academic, since, as the ICTY has observed on numerous occasions, the law of the current and future international criminal tribunals is, for the moment, international criminal law. Indeed, the broader title hints at its primary virtue—its accessibility to practitioners and laypersons alike.

*International Criminal Law*, the first textbook in its field to be released since the adoption of the Elements of Crimes under the Rome Statute in 2000, is a welcome addition and an important read for anyone with an interest in the critical and rapidly-expanding world of international criminal law.

## Democracy and Transitioning Societies

*Framing Democracy: Civil Society and Civic Movements in Eastern Europe.*

By John K. Glenn. Stanford, CA: Stanford University Press, 2001. Pp. xii, 258. Price: \$45.00 (Hardcover). Reviewed by Ivana Cingel.

John K. Glenn's *Framing Democracy* presents a novel approach to understanding the relationship between civil society and democratic transition. Glenn, an associate at the Council for European Studies, begins his book by rejecting the theory that democratization in Eastern Europe came in a single, undifferentiated wave in the wake of the breakdown of the Soviet Union. Instead, he argues that while the weakening of the USSR and the "Gorbachev" effect provided a necessary impetus for transition, they insufficiently explain the multiplicity of political outcomes and the prospects for sustainable democracy in the region. Using the case studies of Poland and Czechoslovakia as his empirical substrate, he contends that the political outcomes in Eastern Europe can best be explained by examining the various paths taken by countries during the transition period to democracy. These paths, in turn, were largely determined by what Glenn calls the "framing strategies" employed by the social movements of each transitioning country.

The concept of the "framing strategy" provides the theoretical crux of *Framing Democracy*. A framing strategy is loosely defined as the broad

approach to mobilizing support used by different political actors in support of their particular visions of the future. By making various claims about justice, identity, and agency, movements articulate alternative models for social organization, which in turn create and shape different sections of the emergent civil society. According to this model, a state's civil society cannot be understood as a monolithic empirical reality that either exists or does not or whose strength can be easily compared across different countries. Rather, it is a result of competition between actors, claims, and models, and it is an accumulation of all the different understandings of the future developed in the course of the transition. In a sense, civil society conceived of generally is the country's "master" frame and a "master" understanding of the future. In the course of the development of civil society and the articulation of the master frame, certain plausible alternatives are rejected while others are emphasized, and thus the general approach to the transition is defined. For example, the approach developed in Poland was that of bargaining, compromise and democratization from above. In contrast, the Czechoslovak approach featured a popular upsurge leading to the capitulation of the regime and democratization from below. Both framing strategies, Glenn contends, profoundly influenced the political refashionings that followed.

Glenn spends considerable time detailing the period of transition in the two countries and the process by which each country redefined its master frame. In Poland, the communist regime's attempts at both inclusion and repression of the opposition are traced against the background of the country's severe fiscal crisis and a changing international environment. Glenn also traces change in the opposition's identity from the Solidarity trade union movement to a more openly political movement. According to Glenn, during the period of the transition it was unclear how much support Solidarity had; similarly, the opposition on the whole also clearly misperceived the strength of the government. Neither side could mobilize sufficient popular support to resolve increasing economic problems. This political impasse led to the anti-crisis pact where the opposition bargained for partially free elections. The opposition garnered overwhelming voter support, and consequently, Solidarity was able to transform negotiations with the government from an attempt at co-optation into an opportunity for political competition.

Glenn gives a similarly detailed analysis of the transition period in Czechoslovakia. He explains the effects of increasing international isolation on the communist regime and its counter-reform strategies of repression and economic growth. Tracing the development of the opposition back to Charter 77, Glenn shows how the civil society "master frame" came to define itself as a body consisting of various civic movements that linked their demands, all the while claiming to be essentially apolitical. The success of various movements within the master frame depended largely on their ability to appropriate the existing venues of social organizing and use them for political mobilization. (Here, Glenn compares the co-optation of the theaters in Czechoslovakia with the Catholic Church in Poland.) In response to the repression of a student protest, the opposition decided to organize a general strike, and soon thereafter, it became clear that the regime could no longer



stifle the opposition. After a series of resignations, the regime capitulated. In line with the previously articulated master frame, the opposition sought to create a government of national understanding within which various movements could express their demands and work cooperatively.

Based on the analysis of Poland and Czechoslovakia, Glenn concludes that there is no preordained path to democratization. He then briefly addresses the period following the dramatic changes in government structure and shows that the framing strategies had important consequences for the unity of the civil society following each transition. He suggests that in Poland, fragmentation of the political sphere and the fragility of the democracy can be understood as a consequence of political competition and the character of the civil society master frame created by the bargaining approach to democratization. For Czechoslovakia, Glenn argues that the polarization of new political parties and the breakup of the country were by no means an unavoidable result of ancient differences. Rather, they are an outcome of regime capitulation and the fierce electoral competition that followed the lapse of the “non-hierarchical social movements” master-frame.

*Framing Democracy* successfully combines a theoretical approach to understanding civil society and democratic transition with a detailed analysis of two countries. It is a delight to scholars of Eastern Europe who are familiar with the intricacies of political competition of the transition period. However, comparative scholars of democratization may find that the very detailed accounts of various political interactions in the two countries somewhat obscures the analysis of the civil society master frame. The theoretical ends of this book may perhaps have been better served by a broader analysis of a wider span of countries that explicitly focuses on the contestation within the “master frame.” Nevertheless, Glenn’s insightful approach to examining the development of the civil society and its impact on political outcomes definitely makes *Framing Democracy* a worthwhile read.

