Mini-Reviews of Recently Published Books in International Organization and Governance

by Christopher M. Jackson, James Lenzer, and Henry F. Carey

How to Do Things with International Law, Ian Hurd, Princeton: Princeton University Press, 2017

Ian Hurd seeks to answer the question of how states use the concept of international law to achieve their ends in world politics. The author argues that international law as a concept is an instrumental form of power employed by powerful states to justify choices and legitimize actions. Accordingly, international law and power cannot be separated. In making this argument, Hurd seeks to challenge the prevailing concepts of law and power in international relations theories and argues that separation of international law into a liberal camp and power into a realist one, fosters less understanding of both concepts. By linking the concepts of law and power, international rule of law can be conceptualized as a hierarchical structure of political authority in international politics. This structure, which is dependent upon and reinforced by the practice of legal justification, constrains, empowers, and informs the foreign policies of states. The author terms this structural theory as international legalism empire: A centralized and hierarchical system that unites subjects under a single political authority.

To make the argument, Hurd first distinguishes between domestic and international rule of law. The former entails stable, public, and certain rules applied equally and dispassionately across society. The latter entails a political and intellectual commitment to behavior that conforms to international legal obligations, which often means both stretching rules to fit behavior and constraining actions where no legal justification instruments exist. Unlike the stable, public, and certain rules of domestic rule of law, international rule of law is a product of social practice in which states exploit ambiguity to legitimize policy choices. To illustrate this claim, the author considers three cases. The first, the ban on war, illustrates how the practice of justifying war has changed since 1945 as a result of dynamic processes that inform the interests and policies of powerful states. The second case considers new weapons technology and demonstrates that in the absence of laws governing the use of new weapons, states quickly deploy existing frameworks to justify their use, filling any legal gaps before a formalized legal transition can occur. The third case considers the practice of torture by the United States. The arguments made to justify the practice and those made against it were drawn from the same legal sources, stretched in different ways to fit opposing preferences. In conclusion, Hurd returns to the theory of empire of international legalism and concludes that policy must be consistent with law, thus law both empowers and constrains states' actions.

Christopher M. Jackson

United States Law and Policy on Transitional Justice: Principles, Politics, and Pragmatics, by Zachary D. Kaufman, New York: Oxford University Press, 2016

Zachary D. Kaufman seeks to explain why the U.S. government has historically supported certain transitional justice options. The author further seeks to develop a framework that explains U.S. government policy on transitional justice. In so doing, Kaufman rejects the existing legalism

explanation posited by Bass and develops a theory of prudentialism derived from realist theory of international relations. Unlike legalism, which focuses on a consistent commitment to normative beliefs, prudentialism considers three interrelated factors in constant tension—normative beliefs, politics, and pragmatism. Accordingly, Kaufman argues that any state, liberal or not, will support war crime tribunals as a result of the case-specific intersection of norms, politics, and pragmatics. The U.S. government has traditionally used a wide array of transitional justice options, of which tribunals and legal instruments are only a subset. The balance of the three prudentialist factors determines which options are pursued.

To build the argument, the author presents a number of historical cases from the post–World War II and post–Cold War periods, in which he considers each of the three prudentialist factors as well as the alternative explanation—liberal legalism. The cases presented in the analysis sections are Germany and Japan in the post–World War II period, and Yugoslavia, Iraq, Libya, and Rwanda in the post–Cold War period. In the analysis of each case, Kaufman considers the U.S.'s choice to act in the first instance, then how domestic pressure and the normative beliefs of the policy-makers and the geopolitical realities of the time affected the design and instruments of transitional justice employed by the U.S. government. The narrative concludes by arguing that the actions of the U.S., a prominent liberal state, cannot be explained without accounting for political and pragmatic factors, independent of normative beliefs. A strict focus on legalism fails to explain variations in transitional justice choices and the participation of illiberal states in transitional justice proceedings.

Christopher M. Jackson

International Law and New Wars, by Christine Chinkin and Mary Kaldor, Cambridge: Cambridge University Press, 2017

The central purpose addressed by Christine Chinkin and Mary Kaldor is to reconcile the concept of new wars with both existing security models and international law. In making their arguments, the authors first outline a typology of the new wars concept, identifying five factors that differ from what they term old wars or traditional interstate conflicts. The goals of new wars are identity-based rather than ideological, with one group making an exclusive claim to the state. Conflicts are fought by fluid networks of both state and nonstate actors. Civilians, rather than opposing armies, are the primary targets, with groups vying for control of areas where state control is weak. Financing is secured through looting, pillaging, smuggling, and external patrons, rather than state-directed contracting and industry. This creates a new class of war-profiteers who have less of an interest in concluding conflict than gaining from its persistence.

In light of this typology, the central claim is that state-centric and self-defensive models of security, which have been traditionally relied on and legitimized by existing international law, are insufficient and fail to take into account the realities of new wars. The authors argue that instead of state-centric forms of security, which still dominate, a second-generation human security approach is the only practical model to address new wars. Second-generation human security focuses on protecting the individual, family, and group at the communal level and seeks to redress grievances through local institutions of justice and economic cooperation. In the realm of international law, this means reconceptualizing conflict as a humanitarian catastrophe rather than a violation of state's rights, and recasting foreign intervention as a scaled-up protection of individuals rather than states. While the authors do acknowledge the role of humanitarian intervention and the Responsibility to Protect doctrine, they contend that such practices are still heavily state-centric.

To demonstrate their argument for the inadequacy of traditional security models, the authors trace the existing security models and their relations to, and effect on, international law. Since the prohibition of war in the UN Charter, the distinction between the internal and the external has been blurred as states have been increasingly more integrated in international structures

of finance, trade, and security. International law has since been stretched by powerful states to meet the existing security challenges. As the threat from other states has declined, the concept of self-defense has been stretched from protecting a state's rights vis-à-vis another state, to pre-emptively eliminating threats from non-state actors, challenging organized crime, and protecting national groups abroad. The authors conclude by highlighting the insufficiency of an international legal regime based on state sovereignty when the predominant security challenges of new wars are threats to the rights of individuals and sub-national groups. They call for a re-thinking of international law that credibly commits to human, rather than statist, security.

Christopher M. Jackson

Judicial Politics and International Cooperation, by Arlo Poletti and Dirk de Bievre, Colchester: ECPR Press, 2016

The question addressed by Arlo Poletti and Dirk de Bievre is how judicial politics in the World Trade Organization (WTO) affect the dynamics of lawmaking through multilateral trade rounds. The concept of judicialization is defined as an increase in adjudication and the possible authorization of sanctions by an independent third party. Building on a strong body of institutionalist theories, the central argument is that an increased judicialization of the WTO has negatively affected the willingness of members to pursue multilateral liberalizing trade deals. The authors argue that lawmaking in the WTO has shifted from the traditional legislative venues of the member states to the WTO's courtroom of the Dispute Resolution Mechanism, a process which has eroded issue-linkages and disincentivized firms from joining cross-sector lobbying ventures.

Judicialization of the WTO doesn't necessarily empower pro- or anti-trade liberalization camps in member states. In building their argument, rather than addressing such camps, the authors focus on two features of multilateral trade liberalization that are affected by judicialization and reduce the likelihood of agreement. First, they contend that their judicialization creates only two equilibria in the context of negotiation—either full compliance or retaliation. This eliminates the option of issue linkage and side-payments and provides few incentives for states, which have less interest in a multilateral agreement, to consent to terms. Second, judicialization of the WTO focuses on issue-specific adjudication and tit-for-tat retaliation, which reduces the incentives for sector-wide lobbying ventures in the member states. Disputes are more likely to be linked to a specific product or firm, which de-links issues and stimulates specific lobbying efforts. The authors conclude that the process of judicialization has had consequences for the WTO that have extended well beyond incentivizing compliance with existing rules. Increased reliance on judicial rather than legislative politics has affected the formation of preferences, development of strategies, and patterns of political behavior employed by relevant domestic actors in member states.

Christopher M. Jackson

Power and Principle: the Politics of International Criminal Courts, by Christopher Rudolph, Ithaca: Cornell University Press, 2017

Christopher Rudolph poses the dual questions of what drove the creation of international criminal courts and why did the courts take the forms that they did and function the way they did. The central argument put forth by the author, which addresses both questions, is that the creation of international criminal courts occurs at the intersection of state power and normative principles. The preferences of powerful actors plays as much of a role in the creation of courts as normative considerations of justice. Power politics and strategic interests are an important factor both in the institutional design of courts and their continued function. As the courts depend upon cooperation to function, they must accommodate the interests of the powerful states whose aid is needed to carry out their objectives.

To make this argument, the author first charts a brief history of international criminal justice by identifying four seminal moments: the Nuremberg Trials, the International Criminal Tribunal for the Former Yugoslavia, the creation of the International Criminal Court, and the filing of the first indictments by the ICC. In reviewing this brief history, the author contends that the courts relied upon powerful states to stabilize conflict situations, negotiate with recalcitrant governments, apprehend fugitives, and shoulder financial burdens. Reliance on these states drove the institutional design of the courts. Powerful states sought to use their influence strategically to design institutions that would forward their own interests and power, while constraining the power of other states. Preferences of the powerful states are furthermore reflected in the prosecutorial strategy of the ICC. Though, as the author notes, while they influence prosecutorial strategy, they do not determine it. Despite posing a primarily realist argument to explain the formation and function of courts, Rudolph departs from that analysis in explaining France, Britain, and Guatemala as outliers in the creation of the ICC. These cases are explained through a depiction of rational domestic strategy. Once adverse domestic conditions changed, such as a change in leadership that altered domestic preferences, national support for the ICC increased.

The argument that Rudolph poses is a largely realist one, arguing that international criminal courts are weak institutions that require the support of powerful states in order to function, making them subject to realpolitik. As a result, powerful states design the institutions in such ways as to solidify their own power and influence and constrain that of other states. In conclusion, the author considers whether this is detrimental to international justice. While idealists would disagree with the sacrifice of legal principle for pragmatism, the author concludes that such sacrifice is necessary. As international law requires material power to enforce it, the principles and practice of law must be fit within the framework of the existing international order.

Christopher M. Jackson

Buddhism, Politics, and the Limits of Law, by Benjamin Schonthal, New York: Cambridge University Press, 2016

Benjamin Schonthal addresses how constitutional law and the inclusion of specific constitutional arrangements for managing religion has affected conflict over religion on Sri Lanka. With a population that is roughly 70 percent Buddhist and whose major ethnic groups fall roughly along religious lines (Hindu Tamils and Muslim Malays being the other major groups), the issue of religious management is contentious. The 1972 Sri Lankan constitution contains a chapter specific to the role of Buddhism—the state shall protect and foster Buddhist *sasana* (a Buddhist and Shaivite term used to refer to their religion)—while only paying lip service to the other major religions. Intended to placate both Buddhist nationalists and non-Buddhists, this constitutional arrangement has had the opposite effect, exacerbating conflict both between and within religious communities. This, the author contends, is an example of Pyrrhic Constitutionalism—a discordant relationship between the goals and effects of constitutional law. In Sri Lanka, the practice of constitutional law with religion has undermined the purpose of the law. Likewise, policies implemented to support the constitutional laws undercut their own effectiveness.

To build his argument the author employs a constitutional microhistory methodology that traces the legal, political, and social processes of the constitutional law and policies over time, while considering the agency of both the framers of the law and those marginalized in the process. The author begins the narrative at the end of the colonial period by identifying the three predominant paradigms for addressing religion in the early constitution: prevention, which prohibited legislators from passing religiously discriminatory laws; protection, which sought to make religious freedom a positive fundamental right; and promotion, which advocated Buddhism as the dominant religion. The need to reconcile the promotional and protectionist paradigms was a constant point of contention through the 1960s. The author contends that while the Buddhism

chapter included in the 1972 constitution might seem like a product of Buddhist nationalism, it was in fact a successful compromise between these paradigms. This, however, had three unintended effects. First, constitutional provisions have failed to curb Buddhist claims on political life. Second, a culture of Buddhist interest litigation has emerged in which religious grievances become matters of state concern. Third, concerns over the well-being and status of Buddhism have been amplified.

The author concludes the narrative by providing salient examples of conflict between Buddhist officials and the Sri Lankan state in which an unintended consequence of constitutional law is the state ruling on religious doctrine and authority. The inclusion of Buddhism in constitutional law has exacerbated both interreligious conflict and intrareligious disputes in Sri Lanka. Cleavages between religions have been hardened and conflicts between them sharpened. At the same time, the stakes in long-standing disputes within Buddhism (between monks and laypersons over religious doctrine and practice) have been substantially raised to matters of national concern.

Christopher M. Jackson

Confounding Powers: Anarchy and International Society from the Assassins to Al Qaeda, by William J. Brenner, Cambridge: Cambridge University Press, 2016

William J. Brenner draws a number of parallels between significant non-state actors that have challenged the international system throughout history. Admittedly not seeking to develop a predictive or all-encompassing theory, the book finds common ground in the rise and effects of such actors. The central argument put forth by Brenner is that significant non-state actors emerge to challenge the existing system at periods of systemic change when the dominant forces within the existing system are in decline. In addition to the threat to physical security posed by the violent challenge of these actors to the system, they pose an ontological security threat as well. Their existence outside of the established system and their often times extraordinary violence shocked and threatened the identities of those conforming to the established system.

To make his argument, the author considers four cases of extra-systemic actors throughout history that posed an existential challenge to the established system—the Nizari Ismailis, the Mongols, the Barbary Pirates, and Al Qaeda. Each case study considers the origins of the actor, the physical and ontological security threat it posed, and the legacy it left on ontological security well after its decline. The actors emerged during a period of decline for dominant powers: the Nizari Ismailis, or Assassins, during the decline of Seljuks; the Mongols during the decline of the Jin Dynasty in China; the Barbary Pirates during the decline of the Ottoman and European Empires; and Al Qaeda during the decline of the Cold War bipolar world. They existed outside of the established system in that none claimed to control a state. They threatened both the physical and ontological security of those within the established system. The Nizari Ismailis skillfully and clandestinely murdered their enemies on their own territory, leaving a widespread sense of insecurity and uncertainty about who would be killed next. The Mongols used new tactics and weapons to overrun cities and render traditional armies and fortifications useless, fostering in their Christian enemies a widespread fear that they were the soldiers of a biblical apocalypse. The Barbary pirates disregarded the customs of the sea and seized vessels and enslaved merchants, fostering an image of savagery and lawlessness. Al Qaeda attacked large numbers of civilians and military personnel, signaling the inefficacy of governments to protect their territory and populations.

In conclusion the author seeks to reconcile both realist perceptions of power and constructive concepts of identity to explain the emergence and threat of these confounding powers. While they seek to challenge the dominant states in a system through violence, they are incapable of doing so with strictly military power, and instead do so primarily by challenging the ontological security of those within the system. The author considers the legacy that each has left as indicators of the threat they posed to ontological security of the system. Terms such as assassins, Mongol hoards,

and barbarism are still used today to describe extra-systemic threats, while the threat posed by the Islamist terrorism pioneered by Al Qaeda continues to define security culture.

James Lenzer

The Accountability of Armed Groups under Human Rights Law, by Katherine Fortin, Oxford: Oxford University Press, 2017

Katherine Fortin charts the emergence of a legal, technical standard for these non-state combatants. Fortin cites a sense of urgency to develop a clear process for applying international law. She does this because the uncertainty surrounding their definition and formal treatment as armed groups by the UN taints the perception of validity for the current court system and undercuts the potential for the application of future accountability structures and review. The inspiration for this book started with the author's experiences in Sierra Leone and her witness of the impact of violence and displacement on civilians. This extensive comparative study of cases involves armed groups and how different venues treat the expectations for non-state actors engaged in ongoing non-international armed conflict against a government to abide by international precedent. The work combines a theoretical and historical survey with an evaluation of the worth and practicality of extending an accountability framework for armed groups beyond humanitarian law and into human rights law. The work also questions whether such an obligation exists in cases of landless non-state actors. Her documentation details an extensive range of standards and precedents from the UN and other legal forums that highlight the lack of attention on the consequences of the burgeoning legal personality of armed groups.

Fortin builds a case for the utility, legal necessity, and added value of an accountability framework, based on norm building and compliance. Even though armed groups are not state parties to international humanitarian law treaties, they should be held to standards of conduct of government troops and groups armed by states. This is because states have responsibility for ensuring the safety of its citizens by reasonably protecting them, both by providing national and internal defense and by holding armed groups opposed to states to the same standards as states.

She systematically lists the two-plus decades of cases that continue to set a tone for how the UN and others evaluate and sanction armed groups. Debate persists in terms of the designation of legal personality for non-state actors. The author also examines how and when to bind armed groups to international humanitarian law, treaty law, crimes against humanity, and customary international human rights law. The conclusions center on the positive impact of certainty in legal reasoning, established frameworks, and expert oversight in terms of how the international community holds armed groups accountable for their actions toward individuals during their non-international fight against the state.

This research refutes a number of criticisms from opponents of extending human rights laws to bind non-state actors. The consent of armed groups remains irrelevant as substantial legal theory holds no need for the agreement of the actor. Similarly, the pressure for oversight and sanction succeeds regardless of whether formal recognition of armed groups exactly resembles the formal legal wording for state actors to uphold human rights law. In addition, Fortin points out that a systematic delineation of accountability features gradations of expectations for armed groups depending on their capacity to guarantee protection for individuals during conflict with or without territorial occupation and control. She argues that the established purpose of international humanitarian law covers the two state parties involved in violence or war. Its focus hones in on the inevitability of occasional fighting tamped down by practical assessments of how to limit civilian and collateral damage while advancing the goals of each side's military. The author's premise involves the need for aspiration in the application of human rights law to further protect individuals from the brutality and loss commensurate with the rise in viability of armed groups to wield power. Structures for defining, tracking, and sanctioning armed groups set up benchmarks for building a sustainable

and trusted system for legal oversight and improvement and calls for more research into the practical application of these new designs.

James Lenzer

The Hidden Hands of Justice: NGOs, Human Rights, and International Courts, by Heidi Nichols Haddad, Cambridge: Cambridge University Press, 2018

Heidi Nichols Haddad describes the impact of these non-state actors on legal systems, the types of participation in court proceedings, and the functional effects of their involvement. Haddad builds her research from the interaction of NGOs and the European Court of Human Rights (ECHR), the Inter-American Human Rights System (IAS), and the International Criminal Court (ICC). This design combines international criminal and human rights courts and includes international human rights commissions. For this study, the role of the NGO extends beyond activity in the courtroom and concerns over standing to include "consulting on issues of court governance and administration, and providing funding, outreach, and investigative services." These NGOs combine the traditional role choices of advocacy versus service by building a pattern of relations and networking to fill in gaps in court resources for field work, research, interviews, and access. The author concludes that the roles, participation, and impact result from the institutional history of the NGOs engagement, the drive and capability of the NGO, and the level of court resources and legitimacy. Her emphasis on both the formal and informal contact among NGOs and courts demonstrates how the decisions in the courtroom reveal only part of the full spectrum of the expansion of NGO's into additional areas of legal expertise.

A regular pattern of involvement with courts and state actors ends up building momentum for increasing NGO participation on behalf of both individuals and states in an increasingly interlocking series of relationships. She concludes that the ECHR routinely seeks input from NGOs, but their relative abundance of resources runs counter to inviting full participation. Conversely, the IAS and ICC face a shortage of resources and expertise, and they include NGOs in more areas related to victims and state actors. Relative access and institutional memory help to determine where to find critical shortage aspects for them to shore up with the assets, motivation, and wherewithal of the NGOs to provide these missing legal services. Haddad cites the inspiration for her book as the trends she observed about twenty years ago in terms of NGOs shifting a large amount of attention to the ICC. After finding an audience the NGOs assisted by absorbing travel requirements and remote locations, usually heavily cost prohibitive, for gathering evidence in the field and compiling eyewitness testimonials. In addition, she connects the NGOs advocacy roles in governance to the legal system itself in terms of how states and courts develop and monitor enforcement of human rights law.

The author addresses criticisms of NGO role expansion beyond an impartial witness and recorder, who advocates and offers relief, to a state actor with a vested interest in the workings of court proceedings. Beyond a loss of objectivity, this extension of legal expertise (what the author labels as actions that "directly pertains to the court") also runs the risk of leaving the NGO captured by states and courts in purpose, funding, and legitimacy. Haddad asserts that the newfound leverage for additional input, advocacy, background, networking, and administration outweigh the loss of prestige as distanced third party subcontractors as courts depend on states that then depend on NGOs. They monitor elections of court officials, seek input from aggrieved communities, and help prosecutors to develop strategies and budgets. A broader legal footprint for the NGO also means a possible slippery slope that lets states off the hook for building a series of court systems fully poised to conduct the steady process of institutional development on their own. It also allows for them to point the blame at NGOs when the preparations, procedures, and decisions of courts fall short of expectations, but this researcher champions the potential for NGOs to set up a more viable context for legal decision-making.

James Lenzer

Sovereignty and Territorial Temptation: The Grotian Tendency, by Christopher R. Rossi, Cambridge: Cambridge University Press, 2017

Christopher R. Rossi discusses the potential for resolution between the mutually contradictory trends of claim staking of map spaces for control by individual states versus shared management of resources among a community of states. Rossi compares the inevitability of the Grotian Tendency for delineated territoriality against the hopefulness of cooperation amidst the Grotian Moment of realization that ownership violates the founding tenets of common areas across the globe dating back half a millennium to the origins of freedom of the seas. This research offers a historical framework for evaluating Hugo Grotius and his original assertions, along with specific conclusions about how they apply to contemporary examples in the changing Arctic, the contested Pacific (in Central America and China), and the Atacama Desert. The race for minerals, expansion, and access all combine to cloud the process of deciding which states maintain sovereignty over what places and which resources. Over-fishing the oceans provides a clear-cut example of the tragedy of the commons in that mismanagement and selfishness by a small number of state actors poisons the well for a negotiated and sustainable conservation management plan based on a premise of the common good and an obligation for future generations. His work points out that the rapid warming of the planet and improvements in technology serve to heighten a sense of rapid change in defining national boundaries and loci of control. He concludes that a potential for optimism emerges from the success of intra-boundary resource stewardship of river and lake access, grazing lands, groundwater supplies, and other resource issues among groups within states. Owned-by-all does not necessarily mean supervised-by-none even though states attempt to smash and grab territorial sovereignty when threatened by a limitation in resources or transit.

Much of the discussion focuses on maritime traditions, the foundation of the openness of oceans, and the impossibility of its ownership as a starting point for the possibility of an enforceable legal framework for enforcing the common good. He advances this into the present day context of melting sea routes in the far northern reaches of the Arctic that hold new ways to travel and incalculable riches along the now technologically viable continental shelves. Rossi compares the cases of the 1920s Svalbard Treaty, the Arctic Council Club, the Gulf of Fonseca, the South China Sea, and the Atacama Desert. Each setting uncovers how the initial fallback position of states amounts to a proverbial drawing of lines in the sand to hurry and expand sovereignty onto someplace different. They also present opportunities for cooperation and interconnected management in a variety of condominium arrangements. Again, this apparent dichotomy highlights his emphasis on the fragile mutuality of the Grotian Moment amidst universal predictability of the Grotian Tendency of states to try to expand sovereignty.

The careful treatment of the particular setting for each of the examples fortifies Rossi's belief that a viable global commons persists despite an evolving map of the earth and its drawn boundaries. He succeeds in finding links among the case studies as opportunities for preventive conflict de-escalation as neighboring states and the international legal community label universal interests for administration, preservation, and access to places and resources. Climate change clearly accelerates the urgency in refining these cooperative processes that calculate how to scope out the best way to accommodate all parties. The Atacama Desert circumstances show how Peru and Chile eked out a compromise that may eventually provide Bolivia with its long sought-after path to the Pacific. A comparable condominium arrangement assisted with the questions of access for Honduras, El Salvador, and Nicaragua to the Gulf of Fonseca. National examples such as the Swiss Alps offer hope that a collective caretaking role works and assists in applications to international common areas.

James Lenzer

Wars of Law: Unintended Consequences in the Regulation of Armed Conflict, by Tanisha M. Fazal, New York: Cornell University Press, 2018

Tanisha M. Fazal conducts a most sophisticated, quantitative, and qualitative comparative analysis of the impact of international standards of violent conflict and what the contribution of the laws of war are in terms of why states go to war. An inverse relationship exists between both the number of formal declarations of war and the number of international humanitarian laws (IHL) and signatory states. Patterns in the declarations of war and peace treaties contribute to the background for the increasing prevalence of civil wars implementing IHL standards. Fazal conducts frequency counts and content search from records of meeting notes and preparation work groups from the IHL conferences of the last century to see who participates in the drafting process and how that shapes the focus of the agreements about conduct during war. The explosion of international law in the twentieth century has not thoroughly examined unintended consequences of using law during war. David Kennedy, in his 2005 book, the *Dark Side of Virtue: Reassessing International Humanitarianism,* argues about humanitarianism, though not as a systematic empirical analysis like in Fazal's book.

In particular, this research focuses on how non-state actors, especially armed groups in secessionist movements, increasingly seek to demonstrate compliance with the laws of war as a means to pry legitimacy, recognition, and standing from an international community that is usually unwilling to recognize unilateral proclamations of incipient statehood. In the process, they curry favor from patron states and other resource support from a variety of sources, regardless of whether the large multinational structure admits them into the fold. As for member states, they increasingly decline to label military action as a war with few formal declarations of war since World War II and none in almost fifty years. The liability, complexity, and restrictiveness of IHL regulations serve as disincentives for parties in the agreement to proclaim anything official using the responsibility-laden word "war," because the legal ambiguity of the violent conflict implants a protective backstop and plausible deniability against consequences from the international community. Lack in designation and implementation of the formalities of war laws results from a decrease in the attendance, consultation, and military leadership during the design and negotiation stages for additional IHL guidelines. This work concludes that the net effect of stringent IHL standards in practice amounts to an outlawing of war in the classically sequenced declaration, combat, and peace stages, and the smaller usurper non-state actors and civil war factions latch onto the short-term support and the long-term branding from the positive regard for voluntarily adapting the restraint of *jus in bello* (laws of war) as a path to sovereignty.

The historical examples for the regression analysis and historical comparison include the Spanish-American War (1898), the Boxer Rebellion (1900), the India-Pakistan War (1971), and the Falklands/Malvinas War (1982). They offer insight into how a variety of domestic factors influence how states decide international expectations for jus ad bello (reasons for war, or its prevention) and increasingly specific IHL agreements about combat. A reverse incentive persists (in terms of staking a claim to the international community's moral high ground) by signing up for these treaties versus implementing the cascading triggers of responsibility by labeling a conflict as a war in order to skirt the checks on military autonomy in battle planning, casualty reduction for friendly soldiers, and collateral suffering by defenseless civilians. In fact, Fazal highlights how the proliferation of new IHL guidelines indicate an increasing primacy for the protection of civilian life, property, and heritage, all factors further driving away military participation in the drafting process for treaty conferences. Names such as police action, counter-terror operation, and insurgency incursion relieve the duty-bound signatory states from the blame on individual bad actors in the armed forces and government along with the accompanying legal, monetary, and trade sanctions after the war. In addition to the four main wars under review, the study incorporates the specifics from multiple conflicts through the present day, and this depiction highlights the strenuous oversight and shaming

that characterized U.S. involvement in Kosovo and Iraq in terms of selection of targets, treatment of prisoners, and guarantees for civilians. She reiterates how states consciously avoid elevating the stature, viability, and sustainability of non-state actors by including them in conflicts defined as war, a term reserved only for states. Regardless, the trend continues to point toward an increase in safeguards during war coinciding with a limited pool of potential settings for practical logistics in IHL implementation, mainly secessionist efforts and some aspects of civil wars.

The research succeeds in drawing attention to a number of paradoxes in how the laws of war unfold in multiple historical contexts. This study questions whether any value accompanies a set of increasingly complex and encompassing parameters no longer implemented as intended. Fazal unwinds the domestic dynamic in terms of the legislative and executive mechanisms for adopting IHL treaties on war, calling states of emergency, announcing declarations of war, and signing treaties of peace. The relative prevalence of democracies impacts jus in bello, and the author suggests that the decline in formal declarations of war possibly signals an overall decline in the strength of free governments. Yet, many state and non-state actors volunteer to follow the standards for conduct because of a range of internal and external pressures for compliance despite the lack of formal war status. However, the attribution of all of these decisions to the status of IHL over the last century possibly misses other unrelated explanations. For example, moral training among the combatants sometimes forbids indiscriminate killing, prisoner mistreatment, and civilian abuse, and these familial, religious, and cultural parameters pre-date formal laws of war. Similarly, practical motivations of winning hearts and minds help promote victory for many categories of belligerents beyond what the author describes as the civil war and secessionist desire to protect its future citizen constituents. Assertions, such as Pakistani and Indian compliance, result from British military training standards, which seem susceptible to a bias that ignores the mutilation, torture, execution, atrocities, and various other war crimes that their armed forces committed on behalf of England. An example was during the Mau Mau Rebellion and in the struggles against independence in Ireland and Northern Ireland. The author succeeds in presenting several thorough counts and statistical analyses while highlighting the historical trends in an inverse relationship between the complexity of IHL expectations and the virtual end of war as a formal description. An exception being for the marketing potential of non-state actors to prove themselves worthy of inclusion in the international community, a non-military victory from violent conflict.

She analyzes the impact of domestic politics and the likelihood of signing up for IHL requirements, declaring war, and signing formal peace treaties. India serves as an example of a government structure that all but mandates an official declaration signaling the start of a conflict. Fazal then describes U.S. conditions as the counterexample for motivation to actively refuse war declarations in order to step back from the legal brink of severe limitations and liabilities once violent hostilities start. She presents the interplay between congress and the president as a relinquishing of power from the legislature, possibly from a loss of courage to use the official word war as prescribed to them in the U.S. Constitution as a primary duty and authority. The account includes discussion of the hamstrung nature of fighting an opponent comprised of irregular army units, small groups of freedom fighters, and religious extremists, thereby calling for months of additional preparation, training for soldiers and airmen, with the well-known carrying card of the rules of engagement. This part stands out as important and explains how it is possible to collapse two types of conflict categories by including civil wars. This also explains how domestic perception of the practicality and costs of IHL limits might indicate a significant predictor.

For at least fifty years a sizable public pressure remained in the U.S. as "our country does not fight to win anymore," because of all of the restrictions on targeting individuals and larger scale collateral destruction. The constituency of voters and influential pro-military and defense contracting groups brings a lot of pressure on elected officials. They believe the U.S. should not

play so fair that they lose or wind up with stalemates, and individual soldiers should not face additional danger to save the lives of non-Americans caught up in a guerrilla war zone. From their perspective, the conflict in Vietnam, as Presidents Johnson and Nixon called it, serves as the perfect example of politicians and lawyers losing a winnable war. It makes less difference whether the facts show this, because the unproven narrative sways a lot of opinions toward indiscriminate killing, unnecessary destruction, and prisoner abuse as a form of overcompensating and score settling for the mistake of bringing a knife to a gunfight in previous wars. Whether mining Haiphong Harbor, bombing more places, and free fire zones really add up to military victories matters less than the push factor that this resentment and fervor generate in policy debates. All-out war tactics, such as violating the territorial and sovereignty rights of neighboring countries, decimating villages, torturing captives, executing politicians, and maximizing firepower to force the enemy to hurriedly quit in the face of overpowering military ruthlessness, all sell as solutions, because they function better for politicians and the public than more detailed analyses of the culturally specific fighting capacity of the foes along with military overreach and diplomatic incompetence.

Recent PBS documentary footage from the early 1970s depicts Bob Hope consoling Richard Nixon by reassuring him that he made the only possible choice to bomb Hanoi at Christmastime, because they both said the communists engaged in most if not all of the above listed illegal acts against the south in their Vietnamese civil war. They specifically cite the news media and anti-war protesters as only complaining of American misdeeds on the battlefield. The My Lai Massacre resulted in virtually no accountability along with other reports of even worse unsanctioned rogue violence. Fifteen years later, Rambo asks "do we get to win this time?" about returning to Vietnam. By the era of the War on Terror, which is not classified as a war, the fictional Rambo character morphs into a generalized, unfounded assertion that Special Forces and devastating ordinances solve conflicts with non-state actors. General Curtis "Bombs Away" LeMay, Dick Cheney, and John Bolton all share a comfortable inclination to talk of acceptable behavior and consequences of war in a cavalier fashion. The myth of the defeat snatched from the jaws of victory helps many to shirk ownership of disastrous implementations of U.S. combat for half of a century. IHL winds up as a foil, an extension of bureaucracy as a catch all basin for ineffectual policy and unjust governance. In summary, Fazal's analysis of how politics affect law and vice versa is remarkable and laudatory.

James Lenzer

Human Rights after Hitler, by Dan Plesch, Washington D.C.: Georgetown University Press, 2017

Dan Plesch details an impressive initial research on archives of the UN War Crimes Commission, belatedly and finally opened on the initiative of the then-U.S. Ambassador to the UN Samantha Power, after the CIA had shut it down decades before to promote the interests of its allies in Japan and Germany during the Cold War. President F.D. Roosevelt was also worried the U.S. might be held politically or legally liable for its historic racial lynchings and suppressed the commission's files. For example, there were racial protests in Washington, D.C., during World War II. The U.S. also delayed the whole process by not sending its delegate until late into World War II.

This is an important book for academic and public policy reasons. It shows that international law can play an important role in curbing criminal violence, even when most thought international law was not relevant, and even when the British and the Americans wanted to keep this crucial activity secret for decades. Until Ambassador Power opened up the archives, the U.S. suppressed the UN War Commission's research (the World War II allies, not the contemporary UN). This was a wonderful example of wartime collaboration of prosecutions during a war and not months or years after the war. These were not examples of summary

justice but thousands of pages of investigation by lower and upper ranking investigators and defendants. This book adds an analysis of the new data released, now available online, which will greatly influence the study of the history of war crime prosecutions. To be clear, Peter Maguire's book *War and Law: An American Story* (2001) considered the lower-level trials in Germany, as well as the criminal acts perpetrated in the Indian Wars, the Civil War, and the Tokyo International Military Tribunal.

This book represents a great commitment to international law during that war—and not after. The UN War Crimes Commission was the precursor of the IMT at Nuremberg and the Far East. Before there was a UN the UN was composed of the Allies. This commission prosecuted many times (36,000 individuals resulting in 10,000 convictions before 2,000 trials) in the immediate aftermath and during World War II. This effort was not only gigantic compared to the few dozen big fish convicted at the two IMTs but also occurred in many more countries using courts of many countries, even though these countries had much more important things to worry about. India and China were among the countries who took a much greater interest in prosecuting war crimes, as well as the Poles, long before D-Day. The Poles did not wait for the end of the war to begin prosecuting Nazis for Auschwitz, as well as prosecuting the "foot soldiers of atrocity," suggesting there is no reason for waiting until the end of the war to prosecute.

After the U.S. allowed the archives to be opened, the U.S. Holocaust Museum began digitizing the enormous sets of data revealed by these investigations and trials. In a five-year period, there were 36,000 cases, suggesting that international criminal law did not begin in 1945 but a few years before. There was hardly any recognition of this until Plesch's book. However, with a public international statement including twenty-six languages by the BBC, the Allies were aware that the Nazis were killing the Jews in Poland since 1940 and definitely since 1942. From 1994, the Resistance provided detailed information on the Holocaust. It was categorical and suppressed later. These war crime prosecutions were a popular movement. The Czechs had 700 pages of indictments against Hitler alone. There was significant public pressure to indict Hitler, but the British never charged the Nazis or Hitler during the war. The exterminations continued for three or more years after Stalingrad, when the tide turned, and no Special Forces were used to either save the Jews or bomb the camps, even though the existence of the camps was well known. These national prosecutions should be more well known, especially when we see that the SS Einsatzgruppen death squads were all tried by the IMT's second round and then released in the early 1950s.

Henry F. Carey

Is International Law International? by Anthea Roberts, New York: Oxford University Press, 2017

Anthea Roberts has received enormous attention and many well-deserved awards for making a systematic, ambitious, and global analysis that will have a large impact based off the range of this book. Yet the study, while new to legal students, makes a point generally well understood by social scientists—international law is understood and applied differently in different national contexts. Indeed, graduate programs in political science have for a century varied enormously on research methodology, subject specialization, and didactic techniques. Law schools within the civil or common law traditions are apparently more homogeneous. Roberts teaches readers that international law is not international law because of diverging interpretation, practices, and training that varies by country. In addition, national ideologies, interests, topics of importance and research agendas are quite disparate, including within the developed countries that she studied in-depth in this book. That said, she uses the social science concept of norm diffusion in discussing how law schools socialize in diverse fashions. Whether international law is actually law (which political scientists have long debated) is a question that Roberts has examined using qualitative and descriptive statistics in more detail than any other social scientists has, to the best of my knowledge.

Roberts provides a systematic comparison of the P-5 countries (China emphasizes international trade and law of the sea with a national interest view of the South China Sea) but also a comparison according to cleavages by wealth (North-South), English speaking versus the rest of the world, and post-colonizer versus post-colonial. This is a sociological approach focusing on the education and training of lawyers to explain why Oscar Schacter's invisible college of law is not real. This is where debate continued to evolve, but it was a single set of conversations on the same questions rather than a series of simultaneous legal subcultures and paradigms, in which the different cleaves were more like walls of separation. She carefully mentions that Third World approaches to international law are quite different from First World approaches generally, common law countries particularly, and the U.S. specifically. We have long known about varying views of international law, but Roberts provides original research on law textbooks (a term that is confusing in the book, given the distinction between textbooks and casebooks in U.S. and English law teaching).

The book has at least two methodological shortcomings. First, it uses none of the social science concepts that have been developed to understand these long-established distinctions—not at the national level where Roberts focuses her research but also across countries where the international system has long produced studies documenting the different views of international law and its application in specific contexts, as UN legal debates had long illustrated. UN human rights treaty bodies have elicited distinct views of international law through responses to its follow-up procedures, just as the Human Rights Council has elicited different reactions to recommendations from states bodies. It is not clear to me how Schacter's concept of the invisible college did not allow for some clear divisions within the international legal world. Peculiarly, it makes the presumption that domestic courts' application of international law should be of secondary concern, given that most international law is in fact implemented in domestic courts, not international courts. The U.S., for example, is a dualist country where international law is subservient to the U.S. Constitution, as well as the textbooks' citing, U.S. cases have a much more instrumental approach.

Since at least the 1960s, Hans Morgenthau, Stanley Hoffman, and other realists have long viewed international law as a divergent, not a convergent force, in international politics. Both only viewed convergence on a small range of non-important issues. Roberts also never asks what law itself is but only whether it is international. Law can include or exclude enforcement in its definition. I find it difficult to determine what her argument is if we do not know if she is focusing on enforcement or not in her definition. Critical and cosmopolitan approaches have long suggested that law is the use of law to dominate less powerful states and forces.

Henry F. Carey