

Book Summaries

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Consent and Trade: Trading freely in a global market, by Frank J. Garcia, Cambridge University Press (2019)

In *Consent and Trade: Trading freely in a global market*, Frank J. Garcia (2019) examines the historical contexts of exchange as a series of personal and collective contracts and how these underpinnings of free trade convey the vitality of open governance. His development of the practical legal application of volition delineates how much this necessary precondition occurs for individuals, organizations, and nations. Garcia concludes that in many settings, the tenuous nature of consent leads to imbalances, exploitation, and dysfunction, especially in terms of Adam Smith's 18th Century descriptions of ethics and efficiency in both human nature and economic systems. Although primarily a legal analysis, the research draws from detailed etymologies and classical literature references in order to evaluate historical and current examples with the benchmark of balanced free trade as a bulwark against authoritarianism. With this diverse range of sources, he draws into question the validity of all formal agreements, contracts, treaties, and other implicitly binding negotiations. Garcia describes the mandate for relatively equivalent bargaining leverage as establishing free exchange as a premise for multiple levels of social stability. Enforcing equitable contracts keeps people, companies, and states investing in democratic traditions through sustainable market exchanges rather than seeking last resorts in the desperation of autocracies in interpersonal settings, corporate monopolies, institutional hegemony, and illiberal governments. Investment in the primacy of balanced consent staves off inefficiency, oppression, instability, and totalitarianism.

Garcia highlights how much of global trade reflects coercion and predation despite the appearance of bargaining and ratifying during the formation of various contracts and treaties. Paradoxically, the goal of rising above environmental limitations by streamlining international exchange systems winds up causing more subjugation. He cites Simone Weil's analyses in asserting that "then one can see why a global system of production can become the ultimate form of human domination, even as it seeks to become the ultimate form of human economic productivity and therefore liberation from the constraints of nature" (page 214). He notes that the solution of promoting mutual consent in transactions dates back to Plato's definition of justice. Asymmetric negotiating positions unravel the sustainability of small and large-scale trade systems despite the appearance of mutuality, and exploitation leads into unsustainable power dynamics that threaten the stated purpose of global trade itself. Specific cases include bilateral and multilateral agreements such as ones with Colombia (CTPA) and Central America (CAFTA). The U.S. trade policy with South Korea (KORUS) offers an example of a modest role reversal. China operates as the imbalanced power in the region, and the treaty with the Americans helps the Koreans wield some outsized influence for a smaller economy because of the U.S. desire to slow the spread of Chinese dominance in that part of Asia. However, in all three, the power imbalance emboldened the larger economy to eventually dictate conditions requiring the other countries to submit to unfavorable conditions. Garcia concludes that this practice "is an exercise beyond trade liberalization and toward asymmetric

economic integration, in which one country's regulatory scheme for legitimate public policy objectives had to be abandoned to satisfy the interests of its trading partner" (page 93). Efficiency and growth remain out of reach when voluntary participation and contractual oversight favor one side from negotiation through domestic ratification and ongoing enforcement of treaties and agreements in global trade.

This research strikes at the heart of the myth of post-World War II sustainable development through interdependent exchange among nations. In theory, yes, these principles hold true that workers, industries, and countries all benefit from power sharing through trade. However, the mere formalities and trappings of negotiation ring hollow when overwhelming power disparities leave disadvantaged parties susceptible to exploitation in what Garcia calls "the something else other than free trade" of "take it or leave it" dynamics at the bargaining table. By building his case through classical Greek, Shakespeare, Adam Smith, and a range of ethical and legal scholars, he inspires the reader to pull back the layers of cosmetic volition covering up the coercion below the surface of free exchange. The digitization of work and the entrenchment of multinational corporations and wealthier nations signal the imperative of his conclusions about re-establishing choice and balance in all levels of trade, from the field worker to the economic foreign policy negotiator. However, problems persist in terms of defining ownership of natural resources and other personal property, something that arises in contract discussions. It seems difficult to maintain the multigenerational birthright to preserved land in impoverished countries, for example, when government officials retain the right to redefine the potential of the resources there for the benefit of a limited number of workers, companies, and officials who agree to convert it into commodities. A balanced process and legal framework prevent some coercion and exploitation. Without firewalls defending ecological infrastructure, public spaces and public good, in general, then abuses in global free trade likely continue relatively unabated. Garcia sounds the alarm that symmetry and consent in all types of exchanges prevent the disaster of reinforced autocracies.

The Justice of Visual Art: Creative State Building in Times of Political Transition, by Eliza Garnsey, Cambridge University Press (2020) from the Law in Context series

In *The Justice of Visual Art: Creative State-Building in Times of Political Transition*, Eliza Garnsey (2020) examines how the state sponsored art of South Africa impacts the post-Apartheid progress of the nation. She conducts over one hundred interviews as a participant observer in delineating the role of visual art in the Constitutional Court of South Africa and the Biennale of Venice. This novel form of aesthetic analysis aims to demarcate the potential for this specific type of creative expression to serve a function in the traditional mechanisms of transitional justice. As art establishes a space, in this case in the former prison converted into a court building and in the international exhibition in Venice, then the country incrementally heals and gains a footing as a sustainable state actor in terms of reckoning with its internal legacy of misconduct while also marketing itself globally as a viable government in the process of redemption. This distillation of voices, artifacts, and other remnants of incalculable suffering ends up forging the past into a curated visual aesthetic of the present, a self-actualized realization of current conditions. Then a burgeoning, hopeful future emerges as the multifaceted systems of transitional justice entrench a belief in the government and culture to validate the memories of loss while simultaneously constructing institutions that safeguard against future transgressions. Visual aesthetics create justice.

This incipient way of valuing the wherewithal of art differs from other legal scholarship. Garnsey labels them as visual jurisprudence and cultural diplomacy. Previous research focuses mainly on performative arts such as films or predominantly on visual displays such as statues. Plus, the aesthetic usually connects with other aspects of post-conflict resolution such as restorative justice and transformative justice. Beyond therapy and peacebuilding, her depiction of art rises to the mobilized level of political participation and a conduit for interpersonal understanding that operates as a bulwark against the long-term causes of the original mass conflict. Both local and global interactions factor into how effectively the visual art represents a complete narrative of pain and loss for countless individuals, and this dynamic mirrors the steps toward acceptance within the larger international community. In this example, difficulties surface if South Africa attempts to distance itself too much from its identity as part of a regional pan-African community or if the distinguishing trait for the entire culture remains anchored to the misery of Apartheid. Packaging a new version of the country risks trivializing, compartmentalizing, or even forgetting the past, but the other end of the spectrum eliminates the possibility for the positive effects of adopting the rule of law and institutions of justice.

Garnsey deconstructs the specific elements of several works of art in order to demonstrate how they contribute to the formation of sustainable justice and international relations. She contends that "When establishing the most significant institution to emerge out of South Africa's transition, judges were not on the sidelines as mere inhabitants of future courtrooms; rather, they were on the front line pushing and prioritizing art to be at the heart of this justice institution....Art is fundamental to the appearance, understanding, and provision of justice in South Africa and of South African justice at the highest judicial level." The audio-visual installations in the courthouse with monitors and headsets display letter bombs, news reports, and family archives that retrace the horrors of state sponsored violence and converts it into state sponsored art that memorialize the significance of suffering and proving how to shield against advancing forward. The solemnity of public spaces also manifests itself in Venice with stark admissions of atrocities validating the improvements in South Africa and ushering in a new era of full inclusion in the permanent exhibits at the Biennale, in contrast to its exclusion as a pariah state for a quarter century and its temporary footing in the Arsenale, apart from the national pavilions. Tens of thousands of visitors view these works of art, and South Africa benefits from raising general awareness about its culture while also issuing a mea culpa for widespread misdeeds.

The processes for inclusion in the Biennale reveal some of the limitations of its structure. In 1995, South Africa changed its submissions from an independent art group. Garnsey explains, "Shifting responsibility to the government increased the political, public, and national sense of ownership. It also arguably weakened an important part of cultural diplomacy, the 'arm's length' of government." Since each country must fund its own pavilion space, then the choice for each exhibit stands out as more of a representation of the current leadership and to some extent the culture at large. Yet artists frequently demur from labels such as nationalism for the sake of the universal, or they intensively elevate the unique qualities of individual elements or qualities that resist categorization by culture. Some of those objections surfaced in previous decades of involvement at the Biennale during the apartheid era. In addition, the author conveys the problematic aspects of the curatorial veneer in arguing that "This emphasis on officialdom and invitations portrays the Biennale as having the final word, whereas in reality its decision-making is heavily circumscribed by power,

politics, and diplomacy." Her premise asserts that the visual arts collaborate with other mechanisms and institutions to help create justice. Yet, the principles of aesthetics defy some of the preconditions. Encapsulating nuanced complexities and packaging countless experiences of trauma and loss into works of art also create another quandary in terms of whether it motivates further exploration of original, unfiltered first-person accounts or accelerates the relegation of that source material into obscure archives with the rationalization of already understanding their depth through visual displays. Increasing the stakes from art as therapeutic toward a heightened capacity for transformative justice adds solemn responsibilities to the artists, curators, and exhibitors beyond aesthetics and into balancing creative freedom with politics, diplomacy, education, policy-making, mediation, and peace building.

The Persistence of Reciprocity in International Humanitarian Law, by Bryan Peeler, Cambridge University press (2019)

In *The Persistence of Reciprocity in International Humanitarian Law*, Bryan Peeler (2019) conducts a qualitative case study that investigates the decision-making processes in how U.S. government officials determine whether or not to abide by standards for treatment of prisoners during armed conflicts. He asserts that the framework for handling detainees traces back to the Geneva Conventions and Protocols of 1949 and 1977 and that positive and negative reciprocity factor in from the Vietnam War era forward into the Global War on Terror. The increasing influence of neoliberal institutions and the prevailing weight of sovereignty over adherence to international law both contribute to the reasoning behind changes in military procedures for observance of humanitarian expectations for individuals in American custody regardless of the equivalent considerations that captured Americans soldiers receive. This break from the past observances and this new line of thinking both create a tremendous impact on the justification for negative reciprocity as a hammer for leverage in order to compel the enemy to follow proscriptions of the Geneva Convention III (relative to the Treatment of Prisoners of War). Civilians suffer more from wider scale bombing, and enemy combatants face the long-term effects of enhanced interrogation. Moreover, the U.S. military relinquishes its well-established tradition of measured and honorable handling of prisoners. The country as a whole loses its place as an exemplar in international humanitarian law, thereby sabotaging the underpinnings of exceptionalism that the neoliberal arguments wield in justifying unilateral foreign policy.

His methodology includes half a dozen interviews with the lead prosecutors from Guantanamo Bay Military Commissions and the My Lai War Crimes Cases, two State Department officials, an undersecretary in the Defense Department, and a senior counsel from Human Rights Watch. In addition, he researches records from "histories, archival documents, interview transcripts, and other sources" in compiling a multilayered depiction of how leaders in the American government and military institutions first established and then altered precedents for reciprocity. Peeler recounts the stages of development in these categories of international humanitarian law at the beginning of the Twentieth Century and in the post-World War II era with the acceptance of the Geneva Conventions, and later the Protocols, with an emphasis on the Vietnam War and the Global War on Terror. The author expands on the ramifications of the classic Prisoner Dilemma as a way of highlighting the cost-benefit estimations of leaders in handling an enemy's non-compliance with international humanitarian

law, especially without an enforcement mechanism in place. During the Cold War era, some of the communist countries objected to sections of these treaties, and the U.S. calculated that abiding by them served the country's long-term interests as a way to distinguish its values from the Eastern Bloc and its short-term interests of pushing their enemies to reverse course and treat captured American military personnel better. Peeler cautions against the tendency to explain this dynamic as the "humanization of humanitarian law," and he sets out to demonstrate how the causes of rejection of reciprocity during the major armed conflicts of the last half century involve numerous underlying conditions.

During the Vietnam War, the U.S. military regarded captured Vietcong soldiers as prisoners of war and deserving of the protections of that classification, despite objections from the South Vietnamese government. Partially because of dangerous conditions in camps during the Korean War, the U.S. military opted to remove itself from the role of jailer and remanded their prisoners to the South Vietnamese Army, whose commanders kept insufficient records for International Committee of the Red Cross inspections and also practiced various forms of illegality in terms of deprivation, torture, and execution. As a way of distancing itself from this breach of lawful handling of prisoners, the American commanders publicly offered up investigations into possible war crimes and various other violations as overt messages to the North Vietnamese leadership holding American prisoners, their other Cold War adversaries, and the international community as a whole. President Johnson utilized negative reciprocity in expansion and acceleration of bombing targets in the North when Hanoi's leadership threatened to hold war crimes trials for captured Americans and as retaliation for other non-compliance with humanitarian requirements for prisoners. The escalation of reprisals happened simultaneously with positive reciprocity in terms of the further codification of rules of engagement and handling of detainees. Military procedures evolved to include more training for combat personnel on capture techniques that comply with international humanitarian law and the issuance of cards that explaining that soldiers carried with them as a checklist. The author's analysis of documents and official communications among American government and armed forces leadership delineates the reasoning. It produces better results in the field with the facilitation of surrender, increases the likelihood of better treatment of American POWs, and upholds the discipline and honor of military institutions.

According to Peeler, the Global War on Terror marks the beginning of variations in defining when and how to adhere to past norms in the treatment of detainees. The smaller number of combat forces meant lower numbers of American prisoners and, unlike in the Vietnam War, fewer chances to inflict reprisals against them even with troop surges in Afghanistan and Iraq. In addition, at least some of the Taliban, al Qaeda, and other militant groups lacked internal governing authority and international recognition as states, thereby complicating their legal status. Enhanced interrogation techniques and combat targeting reflect an accumulation of frustration within the American leadership that the stringency and caution of international humanitarian law restricted the fighting capacity of the military to protect service personnel in the short run and to succeed in achieving the overall goal of eliminating the threats from the proliferation of terrorism and the countries that sponsor it. The author includes information from interviews and contemporary documents to parse out the legal wrangling that re-classified captured fighters and introduced previously prohibited wartime conduct in the context of American neoliberal leadership's application of positive and negative reciprocity. One poignant account of this shift involves the torture of the CIA station chief in Tehran during the hostage crisis and how the Iranian interrogator decided to stop

because of his personal values and Islamic beliefs and asked the American to inflict the same physical abuse on him as retribution. Tom Ahern replied "We don't do stuff like that." Decades later, questions arise as to how Americans participate in premediated mistreatment. In the realm of asymmetrical fighting, outsized adversaries follow what the author depicts as Muhammad Ali's "rope-a-dope" strategy against George Foreman by waiting for the Americans to punch themselves out militarily instead of balancing an approach with diplomacy and other policies for confronting threats.

Peeler's documents from the Vietnam War era focus mainly on the Johnson administration's response to the abuse of American prisoners. A potential for future research adds in the retaliatory bombing and expansion into civilian targets during President Nixon's leadership. Both utilized Christmas bombing and moratoriums as leverage against the North. Late in the war, Hanoi's leadership decided to make limited improvements in the conditions for captured Americans. Re-tracing the causes of that shift holds the potential to reveal more about the author's premises surrounding the nuances of reciprocity. In addition, the American military in Vietnam actively recruited converts from the Vietcong as full-fledged soldiers, not just limited sources of information during interrogation. That incentivized them to set up procedures for capture that left open the possibility for future collaboration. In comparison, during the Global War on Terror, that sort of battlefield conversion happens very infrequently. Similarly, during World War II, persuasive methods to convince hundreds of thousands of German and Italian conscripted soldiers to surrender succeeded in reducing American casualties in contrast to the Bushido code fight to the death Japanese soldiers with very few prisoners in the Pacific theater of operations. Also, unlike the Vietnam War, by the start of the Global War on Terror, the influence of World War II direct combat experience diminished substantially. A sizable number of influential leaders and architects of enhanced interrogation, for example, lacked any first-hand knowledge of battle. That facilitated the dismissal of customs and practices that adhere to international humanitarian law. The added belief that the U.S. itself faced the peril of another 9/11 style of attack emboldened them to toss aside established principles, especially against a leaderless and stateless enemy that neoliberals characterized as acting outside the bounds of the very rationality and decency necessary for negotiation and diplomacy. Although partially regretful for underestimating the lingering effects of torture beyond the immediate physical and psychological trauma short of "organ failure," CIA lawyer John Rizzo stood by his sanctioning of waterboarding. This practice proved ineffectual and fraught with unintended consequences at least as far back as Japanese prisoners during World War II. In his August 2021 obituary in the New York Times, Sam Roberts quotes him as predicting that "I know what the first paragraph of my obituary is going to read. John Rizzo, lead counsel, approved the torture programs...I could have stopped them if I wanted to." Removing the risk averse barriers to this level of what Peeler recounts in his documentation of negative reciprocity leaves future American military and civilian leadership susceptible to faster erosions of other aspects of international humanitarian law that helped to shape the stability of the second half of the last century.