Recent Publications

The Rule of Law. By Tom Bingham. London: Penguin, Allen Lane, 2010. Pp. ix, 213. Price: $39.00 (Hardcover). Reviewed by Daniel Schuker.

In 1776, Thomas Paine told readers of *Common Sense* where to find the "king" in America. He entreated them to look not among earthly beings, but to a power above. In America, he explained, "The law is king. For as in absolute governments the King is law, so in free countries the law ought to be King; and there ought be no other."[1] Paine's insight finds its way onto the dust jacket of Tom Bingham's *The Rule of Law*. The cover shows a weather-beaten statue of Justice, scales in her left hand and uplifted sword in her right. But atop her head sit the sparsely sketched outlines of a gold crown. Where the rule of law governs, no individual reigns supreme. Justice is the monarch.

Bingham's *The Rule of Law* is a quest for definition. If the rule of law carries genuine meaning, it must embrace more than a single principle, however sweeping. The term has become a watchword for judges and academics, for politicians and citizens. Liberals exalt it, as do conservatives. Commentators invoke it in their prescriptions for developing countries and for industrialized nations.

Bingham held several of the top positions in the British judiciary: he served as Master of the Rolls, Lord Chief Justice of England and Wales, and Senior Law Lord of the United Kingdom. By the time of his death in September 2010, he had achieved a reputation as perhaps the most distinguished British judge in recent decades. Yet even in the twilight of his judicial career, he was "not quite sure" what the rule of law meant, nor could he ascertain whether "all those who used the expression knew what they meant either, or meant the same thing" (p. vii). And a sovereign cannot govern through abstraction alone.

The notion of the rule of law reaches back at least to Aristotle, as well as to the nineteenth-century Oxford professor Albert Venn Dicey, who traditionally receives credit for coining the phrase. Many scholars have suggested that the expression has come into such common use for so many divergent purposes that it almost lacks a coherent meaning. Despite that ambiguity, the rule of law remains a fundamental precept of good governance. Bingham challenges his readers to scrutinize a concept that may seem to many to be second nature—self-evident, even. What does the rule of law mean to us today—in the United States, the United Kingdom, and across the globe?

Bingham's book offers a structured, thoughtful, and concise answer to that sprawling question. He starts with a general definition of the rule of law and separates it into what he considers its foundational parts. The essence, he

1. THOMAS PAINE, COMMON SENSE AND RELATED WRITINGS 98 (Thomas P. Slaughter ed., Palgrave Macmillan 2001) (1776).

contends, is this: "[A]ll persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts" (p. 8). Bingham does not consider this description to be comprehensive or universally applicable in all cases, but he believes that any action departing from it should require "close consideration and clear justification" (p. 8). For instance, if a manufacturer sues to restrain a competitor from unlawfully capitalizing on a trade secret, justice may require that the proceedings take place outside the public eye. Bingham does not revere legal systems or their administrators unreservedly. Yet, given the many horrors to which the twentieth century bore witness, he insists on the indispensability of the rule of law: "Better to put up with some choleric judges and greedy lawyers" in a country that seeks to uphold the rule of law than to live under a regime without compunction for violating it (p. 9). Bingham favors the formulation of John Locke: "Wherever law ends, tyranny begins."[2]

In much of his analysis, Bingham demonstrates clear, crisp thinking about how to define the rule of law. The book surveys the field briskly and informatively, and Bingham is rarely at a loss for colorful illustration. He constructs a robust framework, outlining eight constituent features of the rule of law. One set of principles centers on procedural protections. The law must be accessible and, to whatever extent possible, comprehensible and predictable to the people subject to its enforcement. The people must have access to courts empowered to resolve civil disputes, and courts must enforce rights and claims efficiently and affordably. Moreover, the state's procedures for adjudicating criminal, civil, and administrative cases should be fair. Another set of principles turns on the exercise of power. The state should constrain the discretion of judicial decisionmakers and other officials, relying first on set criteria to resolve legal issues and allowing avenues for legal challenge. The laws should apply equally to all, and only genuine differences should justify disparate treatment. In addition, public officials should exercise their powers fairly and adhere to the laws strictly (Bingham extols judicial review as a means of enforcing officials' compliance). Bingham also retains a concern for the content of the laws, and, as discussed below, he emphasizes the protection of basic human rights. Finally, he argues that the rule of law requires the state to observe its obligations in international law. Bingham contends that the rule of law should extend beyond national borders: "The rule of the jungle is no more tolerable in a big jungle" (p. 112). Each of the constituent parts builds toward his ultimate proposition that the law reigns above any arm of the state.

Not just any set of laws will do, though. Bingham retains a profound concern for legal content and basic justice. He espouses a "thick" definition of the rule of law—the end is not simply the enforcement of laws in itself, but rather an essentially just legal system (p.67). He rejects thin definitions that emphasize form over substance. "A state which savagely represses or

2. JOHN LOCKE, TWO TREATISES OF GOVERNMENT 400 (Peter Laslett ed., Cambridge Univ. Press 1988) (1690).

persecutes sections of its people," he asserts, does not genuinely follow the rule of law, even if the state undertakes those heinous acts according to "detailed laws duly enacted and scrupulously observed" (p. 67). Fundamental human rights, such as freedom from arbitrary repression and persecution, thus form a critical component of Bingham's understanding of the rule of law. He recognizes that countries around the world differ over which rights are fundamental. Yet he sees those disagreements mainly at the "outer edges" (p. 68). Treading carefully around geopolitical differences, Bingham focuses on basic understandings "in the UK and developed Western or Westernized countries elsewhere" (p. 68). He references—in distinctly clinical language confined to a single sentence—practices in other parts of the world, but stops short of overt criticism: "In some developing countries a higher premium is put on economic growth than on the protection of human rights, and in some Islamic countries little or no protection is given to some rights which are cherished elsewhere" (p. 68). Perhaps, even in retirement, Bingham thought discretion the better part of valor. While he favors a thick understanding of the rule of law, he does not indicate whether he wishes to oblige foreign governments to adopt his view.

Bingham personally favors the protections outlined in the European Convention on Human Rights, which the United Kingdom incorporated into its laws through the Human Rights Act of 1998. He considers the treaty's guarantees essential to anyone living in "a free democratic society" (p. 68). Among the provisions he highlights are the rights to life, personal liberty, and security; fair trials; respect for private and family life, marriage, and protection of property; access to education; prohibitions against torture, slavery and forced labor, and punishment without law; freedom of thought, conscience, religion, expression, assembly, and association; and, finally, equal protection of those rights and freedoms. Yet Bingham also calls attention to agreements "within a given society . . . on where the lines are to be drawn at any particular time" (p. 68). Despite his passionate personal belief in thick protection of basic rights and freedoms, he does not assert their applicability across all states and societies. Bingham intends his project to be descriptive rather than prescriptive. But even if he does not seek to impose his own views, he is at times a heartfelt advocate.

In his effort to define the rule of law, Bingham finds himself caught between specificity and universality. "[I]n a world divided by differences of nationality, race, colour, religion and wealth," he writes, the rule of law constitutes "one of the greatest unifying factors, perhaps the greatest," that humanity knows (p. 174). Bingham's analysis, however, relies heavily on the British experience, and for most other support he turns to the United States or continental Europe. Occasionally, he does so explicitly: in his discussion of historical landmarks underlying the rule of law, he concedes, "[i]n my choice of milestones I am highly selective and shamelessly Anglocentric" (p. viii). Bingham's definition of the rule of law, in short, is attuned to Western societies, and particularly to liberal democracies. He does not delve substantially into how those elements relate to one another. Perhaps some

ineluctable tensions exist between Bingham's preference and the international spectrum of legal cultures. But one cannot expect resolution of such a complex problem in this compact, albeit incisive, volume.

Bingham's analysis raises many important questions for future inquiry, and he addresses one such question in his final chapter: can traditional understandings of the sovereignty of parliament coexist with the rule of law? The British legal tradition customarily regards Parliament as the country's supreme, and absolutely sovereign, lawmaking authority. That conception stands in notable contrast with that of the United States, as well as many other countries in Europe and elsewhere, whose governmental structures center instead on a written constitution that stands supreme and mandates some form of separation of powers. In the United States, the Constitution is the supreme law of the land, and government officials must swear an oath to support that document. The rule of law underlies the separation of powers inherent in the Constitution's structure: the legislature passes generally applicable laws, the executive enforces them, and the judiciary decides individual cases arising from those laws. Bingham praises the U.S. Constitution's "enthronement of the law" (p. 26), but he stops short of explicitly advocating a comparable step for the United Kingdom. He does not believe judges are independently empowered to alter the principle of parliamentary sovereignty. Nevertheless, he cautiously suggests that the question is worthy of consideration. The rule of law, after all, requires some rules that "no government should be free to violate without legal restraint" (p. 170). Substituting the sovereignty of a written constitution for the sovereignty of Parliament would mark a profound change. In the final analysis, Bingham intimates that this is a decision that "should be made only if the British people, properly informed, choose to make it" (p. 170). From one of the United Kingdom's preeminent judges of the modern era, his subtle exhortation is a significant statement: it would definitively place the rule of law above the rule of a legislative body.

Bingham occasionally steps away from legal, political, and historical considerations to appeal to his readers' more visceral instincts. He entreats his readers to see that "aspiration without action is sterile" (p. 173). He invokes a biblical call to be "doers of the word, and not hearers only"[3] (p. 173). Bingham, however, considers the rule of law a secular principle. Indeed, faith in the rule of law, Bingham believes, may be "the nearest we are likely to approach to a universal secular religion" (p. 174). He notes on several occasions that the rule of law simply makes a place desirable to inhabit.

Ultimately, Bingham's book constitutes an appeal to pursue an ideal. That purpose stands in some tension with Bingham's aspiration to describe what the rule of law means, and yet by revealing this tension (incidentally or not) he sharpens the contours around the precise content of the rule of law. Our understanding of what the rule of law requires may change over time, and even faithful governments may encounter difficulties in applying this set of principles fully and consistently. But it is, as Bingham insists, "an ideal worth

3. *Epistle of James* 1:22.

striving for" (p. 174). For citizens, scholars, and public servants, that is no small lesson.

The Fog of Law: Pragmatism, Security, and International Law. By Michael J. Glennon. Washington, D.C.: Woodrow Wilson Center Press, 2010. Pp. xiii, 253. Price: $40.00 (Hardcover). Reviewed by James Shih.

Michael J. Glennon's new book, *The Fog of Law: Pragmatism, Security, and International Law*, begins with a dauntingly basic question: when and why does international law work? Glennon, a professor at The Fletcher School of Law and Diplomacy, has written extensively on pragmatism in international law. In presenting the question as his central inquiry, *The Fog of Law* represents Glennon's ambitious effort to synthesize his formidable body of scholarship on legal pragmatism in order to comprehensively reconceptualize international law as an institution.

In nine economical chapters, Glennon lays out an answer that is astonishing in its simplicity. A rule can be considered law—that is, binding upon states—not when it articulates a greater morality or when states consent to be bound by it; rather, it works when and only when the benefits of compliance and the costs of noncompliance are sufficiently high that noncompliance becomes irrational. Glennon wields this rational choice thesis adroitly in dismantling the current legal regime governing international security. He convincingly argues that this regime consists of rules that have failed to meet the cost-benefit threshold and have therefore fallen into non-law. He intentionally stops short, however, of outlining a pragmatist legal framework that could take its place. *The Fog of Law* thus succeeds as a powerful deconstructionist critique of the present state of international security law, but leaves its readers wanting more.

In a pragmatist's world, states decide to follow or to violate a rule mostly, if not wholly, through a "hard-headed, cold-blooded calculus" (p. 226) of the economic, political, or military interests such decisions could advance. Glennon applies this concept to draw a useful distinction between rules on security and other rules. Rules on matters of "low politics" (p. 37), such as trade, communication, and transit, often benefit all parties and are therefore effective in inducing compliance. The "high politics" of security, on the other hand, is more prone to zero-sum calculations; compliance with a non-aggression rule, for example, could cost a state its sovereignty. Naturally, fewer states comply, and international consensus on that rule becomes elusive.

Two institutions of international security discussed at length in this book, the United Nations and the Nuclear Non-Proliferation Treaty (NPT), exemplify how such a consensus can be said to have existed in the wake of World War II and the subsequent nuclear arms race. The specters of nuclear catastrophe and another global conflict sufficiently aligned the interests of the international community for the implementation of a supranational legal regime that has largely remained intact to the present. Glennon suggests, however, that with the end of the Cold War and the advent of the age of stateless terrorism, the initial

consensus present at the foundation of these institutions has waned. For example, he points out repeatedly and with relish that Article 2(4) of the U.N. Charter, prohibiting a state's use of force against the political or territorial sovereignty of another state, has been violated between 200 and 680 times (p. 205).

Glennon forcefully argues that the predisposition among international jurists to treat the oft-violated rules as if they remain binding has undermined the legitimacy of international law. The International Court of Justice (ICJ), for example, reiterated this determinist view in *Nicaragua v. United States*. It held that a violation in fact strengthens a rule when the state in violation justifies its action by appealing to exceptions contained in that same rule, whether that justification is valid or not (p. 92). Glennon rejects this reasoning as wishful thinking and attributes the deep reluctance to abandon rules to a fallacious premise shared by two conventional theories—naturalism and positivism—that underpin the supranational legal structure. Naturalism views morality as the foundation of international law, positing that states are morally bound by rules that represent universal principles readily discoverable through logic. Positivism counters that international law is a set of rules created by states, to which states commit to be bound through consent. Glennon identifies these principles' shared faith in the intrinsic power of the law to compel behavior; that is, both theories rely on the assumption that states will obey rules simply by the virtue of their status as law. This faith, Glennon argues, has encouraged international lawmakers to draft and hold onto naïvely prescriptive rules even when they prove ineffective, thereby divorcing international law from geopolitical reality. In so doing, they have not only rendered their efforts practically futile but also have "create[d] the illusion that all international rules are merely hortatory and can be violated with impunity" (p. 231).

In proposing pragmatism as an alternative to both naturalism and positivism, Glennon seeks a fundamental redefinition of international law. The premise that law by itself compels behavior is not always false; rather, it depends for its validity on the level of coerciveness with which the law can be enforced. Such a requirement distinguishes the international legal system from domestic systems. National governments can impose their laws through highly restrictive means, whereas the international framework relies heavily upon the pressures of incentives and disincentives applied by peer states. While individual citizens have no choice but to submit to their national jurisdiction, states can often choose to opt out of supranational enforcement mechanisms. In such a system, rules with which the states *should* comply or *agree* to comply simply have no force unless the balance of costs and benefits are such that states, as rational actors, choose to comply. Consequently, "[w]hat the rules should be depends entirely upon what the rules *can* be" (p. 122)—that is, rules that are unable to impose sufficient costs and impart sufficient benefits to induce compliance cannot be considered law. This definitional shift, while possibly not significant to areas of international law that enjoy a high level of consensus, has enormous ramifications for the international security regime. Perhaps somewhat counter-intuitively, Glennon's pragmatism dictates that the

security regime considerably scale back its scope by discarding disused rules and retaining only a narrow set of "rules that work" (p. 27). Only in this way can it remain relevant as an institution that can be considered legal rather than merely symbolic or aspirational.

Glennon's analysis resonates with the current state of international affairs, in which salient issues have remained unsolved by the extant legal regime. With striking concision and precision, Glennon identifies components of the international security framework that he believes have failed as law: the U.N. Charter's use-of-force rules, which he emphasizes have "'died'" time and again from hundreds of violations (p. 61); the NPT, which in his view has failed to properly incentivize North Korea and perhaps Iran; and the newly adopted "crime of aggression," which he argues, in empowering the International Criminal Court (ICC) to prosecute individual government officials for aggression, has "paper[ed] over" a fundamental lack of consensus among states (p. 171). Glennon repeatedly demonstrates the real-world applicability of his pragmatist thesis: laws cannot govern if state interests do not or cannot be made to align. "When international institutions stand in the way," as the United Nations did between the United States and Iraq and as the NPT did between North Korea and nuclearization, "international institutions fall by the wayside" (p. 29).

To the extent that Glennon effectively dismantles the present regime, his readers are left waiting for affirmative solutions that he acknowledges he does not have. He forewarns in the introduction that "[a]ll forms of pragmatism disappoint[, and] . . . none tells us 'what we should want to want'" (p. 2), and he follows through on that disclaimer. Glennon insists that pragmatism necessarily means there can be no comprehensively articulated alternative. "[T]he contours of a new international paradigm will gradually emerge," he assures the reader, only when the international community "feel[s] its way inch by inch, balance[s] one tradeoff against another[, and] weigh[s] competing resource needs" (pp. 123-24). To one of the crucial questions of the book—*how* to make "rules that work"—Glennon offers little more than Oliver Wendell Holmes's amorphous words: "Be pragmatic and realistic" (p. 127). In fact, Glennon readily admits mere pages later that "[w]ithin the legalist paradigm, the probability is high that there *is* no solution now for curbing the profligate use of force" (p. 167).

This admission, as jarring as it is refreshing, logically leads to the strongest critique of Glennon's pragmatist application to international law. If what can be properly considered law is no more than a set of codified results of the political cost-benefit analyses of state actors, pragmatism necessarily equates law with politics. While one might suppose that this critique would be anathema to a legal scholar, Glennon anticipates and welcomes this suggestion. In fact, he tacitly accepts the possibility that law-as-politics is the logical conclusion of a pragmatic international legal framework. He seems ultimately hesitant, however, to give his full endorsement to the logic, instead choosing to stake his position somewhere between the determinism that he has undone and the relativism that has taken its place. "In very few situations, probably, is

international law wholly determinative of what a state does," he ventures tentatively, "[b]ut in very few situations, probably, is international law wholly irrelevant" (p. 80). Even while allowing that international law in the "high politics" of state security is "more effect than cause," subject to "cultural, historical, and power-related factors" (pp. 37-38), he insists that a new consensus is possible if states proceed cautiously and agnostically. This hedging begs the very question that the book has sought to answer: how does one go about drawing the line between pragmatically enforceable rules and pragmatically unenforceable rules? On this, Glennon's concession that he cannot give a satisfactory response leaves the reader similarly dissatisfied.

This pragmatic approach to international law has serious implications for U.S. foreign policy. *The Fog of Law* can be read as an apology for the Bush Doctrine, and Glennon indeed spends one chapter defending the necessity of preemption and another debunking the "crime of aggression"—dismissing it partly on the grounds that it may be used against U.S. officials who initiate unilateral aggressive acts. To conclude that the byproduct—or perhaps the product—of Glennon's analysis is to proffer legitimacy to U.S. actions is not a criticism, however. Glennon makes clear that his aim, in proposing pragmatism as the alternative to positivist and naturalist models of international law, is "to deal with the world as it is, not the world as [diplomats and international lawyers] would like it to be" (p. 74). In a world in which international law has been inadequate in neutralizing some of the actors or potentially destructive means viewed as threats by the United States, the question is not whether U.S. actions are wrong, but why the existing legal regime fails to adequately address those threats. Glennon presents a stark choice: international law can hold onto its theoretical coherence or its real-world relevance, but not both. As the book's title fittingly suggests, if international lawmakers and state actors want the latter, they can but bravely wade into the Clausewitzian fog of uncertainty.

Invisible War: The United States and the Iraq Sanctions. By Joy Gordon. Cambridge: Harvard University Press, 2010. Pp. ix, 359. Price: $39.95 (Hardcover). Reviewed by Adam G. Yoffie.

> *The bottom line was that the U.S. was prepared to live with the horrible human impact. We gradually took steps to ameliorate it, but always slowly and reluctantly.*
> —A. Peter Burleigh, former U.S. Ambassador to the United Nations (p. 205)

Joy Gordon, a philosophy professor at Fairfield University, cannot be accused of obfuscation. She opens her book on the U.N.-imposed sanctions against Iraq by affirmatively stating: "[T]he U.S.-led invasion and occupation of Iraq in 2003 will be viewed as one of the catastrophes of contemporary U.S. foreign policy" (p. 1). Neither mentioning the "Surge," nor the improved situation for the Kurds, Gordon makes her views quite clear as she focuses on American and Iraqi casualties. Recent reports that the current political

stalemate in Iraq may finally be coming to an end, as the nascent coalition government rallies around Prime Minister Nuri Kamal al-Maliki, indicate that the local and international policy implications may not be that black and white.[4] This book, however, is not about either Bush war in the Persian Gulf. Focusing instead on economic warfare, Gordon exhorts her readers to remember that the U.S.-inflicted damage in Iraq did not commence in 2003. "Starting in August 1990, the United States was instrumental in imposing the cruelest sanctions in the history of international governance" (p. 1).

The exhaustively researched book chronicles the more than decade-long sanctions imposed by the U.N. Security Council—at the behest of the United States—on Saddam Hussein's Iraq. Gordon's book is not just about our nation's near obsession with Iraq, but also about the role of the United States in the wake of the Soviet Union's collapse. In the post-Cold War era, the United States was able to dictate the terms of the sanctions and then effectively prevent their repeal or modification. Following Iraq's invasion of Kuwait, the Security Council—which was no longer crippled by the American/Russian standoff—invoked Chapter VII of the U.N. Charter and passed Resolution 661. Approved with thirteen "yes" votes and two abstentions by Cuba and Yemen, Resolution 661 "prohibited the sale or supply of any goods to Iraq . . ." (p. 21).

Although the resolution allowed for medical and humanitarian exceptions, it paved the way for more than ten years of crippling sanctions by creating a committee with the power to determine what goods qualified for the exemptions. Comprised of representatives from the fifteen countries on the Security Council (the five permanent members and the ten rotating members), the committee allowed for any single member to deny an exemption. The United States, actively aided by Great Britain, used the consensus requirement to block goods ranging from tissue paper and glue to materials necessary for making shoes and packing food (pp. 62-63). Gordon is correct that the committee was responsible for carrying out the "blockade," but she is wrong to paint a picture of a monolithic entity strictly dedicated to denial. Writing in the *Virginia Journal of International Law* in the mid-1990s, Paul Conlon describes the committee's evolution to reflect the ever-changing strategy of the Security Council.[5] To be sure, Conlon's more nuanced approach is still fairly critical of the committee, which he argues did not bother to immerse itself in the details of how various nations actually implement sanctions by imposing assorted trade restrictions.[6]

Conlon was also writing prior to the implementation of the Oil-for-Food Program, which theoretically afforded Iraq the opportunity to import more goods, yet in practice led the United States to issue more holds and block additional contracts. The value of the blocked goods skyrocketed from $147.5

4. *See* John Leland & Steven Lee Myers, *Iraqi Lawmakers Approve an Outline for Power Sharing*, N.Y. TIMES, Nov. 13, 2010, at A16.

5. *See* Paul Conlon, *Lessons from Iraq: The Functions of the Iraq Sanctions Committee as a Source of Sanctions Implementation Authority and Practice*, 35 VA. J. INT'L L. 633, 636 (1995).

6. *Id*. at 659 (explaining that the committee "never concern[ed] itself with the fulfillment of the transaction, except in cases of delivery by air, and therefore [had] no way of knowing how many cleared export exemptions actually [were] delivered").

million in 1998 to over $5 billion in May 2002 (p. 63). From the start of the Oil-for-Food Program through the March 2003 invasion, less than $30 billion in humanitarian goods were allowed to enter Iraq. Given Iraq's total population, the paltry figure represented "one-half the per capita income of Haiti, the poorest country in the Western hemisphere" (p. 63).

Although Gordon includes passing references to the damage Saddam Hussein wreaked on his own people and the endemic corruption within his government, she does not believe his actions had a significant impact on Iraq's economy (p. 2). Gordon states: "The real damage to Iraq's economy and society was not from Hussein's neglect or corruption but from the systemic impoverishment of the entire nation," effected by "[t]he United States, and to some extent the UN" (p. 2). The widely reported Oil-for-Food scandal, moreover, is given its own chapter, but is then largely dismissed as a fairly insignificant occurrence given the broader economic losses stemming from the all-encompassing sanctions regime. Toward the end of the book, Gordon goes so far as to equate the concerns driving the United States with those of Hussein:

> For both . . . one critical feature of the decision-making calculus was the same: it was that humanitarian needs, however extensive, urgent, and certain, were consistently subordinated to the state's overriding political agenda—for the United States, to achieve containment or regime change; for Saddam Hussein, to preserve his power and outlast the containment. (p. 242)

Yet the ideological perspective is not the primary problem with the book. Gordon is actually a victim of her own success, in that the fact-intensive research is somewhat overwhelming and difficult to digest. The author best captures readers' attention when she provides examples of some of the absurd distinctions made by the United States, such as "agree[ing] to allow black fabric for nuns but block[ing] white cloth as an input to industry" (p. 62).

Chapter Eight begins the most compelling section of the book, in which Gordon focuses on Congress's reckless disregard for the humanitarian impact of the sanctions. Although she notes Congress's obvious underlying concern with national security, she also manages to paint a damning picture of the bipartisan callousness that characterized our legislative body throughout the last decade of the twentieth century. Gordon describes the offices of Representatives Joseph Hoeffel, Lee Terry, and Robert Menendez as "familiar with the crisis but unsympathetic" (p. 168). In many instances, however, the lack of concern for the Iraqi people stemmed from outright ignorance. Although there were some notable exceptions, such as Senator Russ Feingold and Representative John Conyers, no one seemed to heed Senator Daniel Patrick Moynihan's early call for Congress to think about the moral implications of the sanctions. Moynihan pointedly explained: "'Food present[s] a special case. Nothing works like famine"' (p. 143). In spite of Moynihan's prescient view that noncombatants, especially children, would suffer the brunt of the punishment (p. 143), the only serious attempt to alleviate the food shortages in Iraq was spearheaded by a group of elected officials in the Midwest. Representing the nation's breadbasket, they were eager to provide their constituents with an additional market for selling crops. Nebraska Senator

Chuck Hagel was outraged by the widespread imposition of sanctions that cost the United States "$20 billion in exports, along with 20,000 jobs" (p. 162). Indiana Senator Richard Lugar even "proposed legislation to require a cost-benefit analysis before the executive branch could unilaterally impose sanctions" (p. 161).

As Lugar's proposal intimates, Congress was only part of the problem. It did not help that the Executive Branch was led by a Democrat who lacked confidence in his ability to serve as the head of the nation's armed forces. Fearful of yielding an inch to the Republicans on matters of national security, an extremely cautious President Clinton was unwilling to brook any discussion of meaningful sanction reform. Gordon also points out the sad irony that the crippling sanctions were actually the more dovish option: "[T]he Democratic leadership saw sanctions as a kind of a buffer" (p. 149). Then-Senator Biden "privately told congressional critics that if sanctions were removed as an option the Democrats would be painted into a corner where the only remaining alternatives for dealing with Iraq would be military ones" (p. 149). Although the issue was far more complicated than a simple either-or option between sanctions and attack, American politicians are rarely known for their nuance.

Such impressive research into congressional records, which must have required combing through countless Congressional Research Service reports, committee hearings, and floor statements is indicative of the book's fact-intensive content. The archival research is impressive but the absence of broader analysis leaves readers wanting. In terms of legal commentary, it is not until Chapter Eleven—in a twelve-chapter book—that the author even addresses the international legal ramifications of the sanctions and begins to wrestle with the system's shortcomings. Gordon critiques an international legal framework that undervalues the right to economic development and lacks the requisite jurisdictional powers to challenge the United States or the U.N. Security Council. The Rome Statute, for example, which governs the International Criminal Court (ICC), only applies to state actors and not to international governance bodies. The United States, meanwhile, is not even a party to the statute (p. 219). Gordon also laments the International Court of Justice's (ICJ) limited powers, which do not afford the Court the right to review U.N. Security Council decisions (p. 220). At most, the ICJ can offer an "advisory ruling" on such a decision, and only if the General Assembly or Security Council asks the Court for one (p. 220). In fact, it is unclear what, if any, restrictions international law imposes on Security Council resolutions passed under Chapter VII (p. 221). If international judicial bodies, such as the ICC and ICJ, are going to have any meaningful impact on the development of international law, they need to be able to exercise greater oversight of the international system—particularly of the Security Council.

Gordon reserves her strongest disdain for international law's definition of genocide and crimes against humanity. Treating the sanctions as a clear violation of international legal norms, Gordon nonetheless admits that the policies lacked the requisite mens rea to qualify as genocide or crimes against humanity. For Gordon, the lack of an explicit legal violation does not lend

credence to the validity of the sanctions but rather demonstrates the limitations of international law. The author proceeds to offer an intriguing alternative based on Article 30 of the Rome Statute, which applies a different standard of intent. The article's knowledge standard, which does not apply to genocide or crimes against humanity, requires '"awareness that a circumstance exists or a consequence will occur in the ordinary course of events"' (p. 226). Such a definition would clearly have applied to a United States bereft of malicious intent but cognizant of collateral damage.

Unfortunately such critiques of the international legal system come too late in the book, which ends eighteen pages later. To be sure, Gordon offers a much-needed account of the morally suspect and strategically dubious nature of widespread economic sanctions. Unable, or perhaps unwilling, to de-link military sanctions from economic sanctions, the United States and United Nations contributed to widespread malnutrition and a reprehensibly high child mortality rate. From a geopolitical standpoint, the ineffectiveness of the sanctions stemmed from a misguided U.S. policy built on the "irrebuttable presumption that Saddam Hussein would never comply" (p. 18). Although Saddam was never able to develop nuclear, biological, or chemical weapons of mass destruction, the United States did not determine that until *after* invading the country in 2003. Thus, unless sanctions are intended to pave a path to open warfare, they failed.

Gordon's vicious critique of the U.S. approach toward Iraq naturally leads readers to question the legitimacy and effectiveness of any form of narrowly tailored and targeted restrictions on a nation's ability to import and export goods. Yet as the specter of a nuclear Iran dominates the headlines—and a new cadre of American leaders oscillates between the imposition of "smart sanctions" and the initiation of open warfare—the world must tackle the ultimate question head on: can sanctions ever really work? And if so, how can we ensure that they do within the regulated confines of a flawed international legal system?

Constitutional Engagement in a Transnational Era. By Vicki C. Jackson. New York, NY: Oxford University Press, 2010. Pp. xviii, 519. Price: $85.00 (Hardcover). Reviewed by Avery White.

Vicki C. Jackson's book *Constitutional Engagement in a Transnational Era* is a comprehensive overview of how national constitutions operate in an increasingly globalized world. The book serves a dual role as both a descriptive reader on current theory and issues in comparative constitutionalism and a normative call for a more internationally engaged American judiciary. Jackson is largely successful on both counts. She describes current attitudes toward foreign constitutional law by using a continuum between theories of "resistance"—opposing the use of foreign law—and "convergence"—suggesting that domestic judiciaries should be governed by uniform international law. Between these two poles lies "engagement," a theory that calls for domestic constitutional courts to examine foreign law although they

are not bound by it. It is this final approach to foreign law that Jackson advocates. In doing so, she provides a moderate and persuasive argument for increased engagement between the U.S. Constitution on the one hand and foreign and international law on the other.

The first half of Jackson's book is devoted to mapping the prominent theories of comparative constitutionalism using the framework of resistance, convergence, and engagement. Theories of resistance suggest to varying degrees that international and foreign law have no place in domestic constitutional courts, whether for reasons of constitutional sovereignty, American exceptionalism, or simple hermeneutical problems of correctly interpreting foreign bodies of law. Theories of convergence, by contrast, argue that foreign and international law can and should at times be authoritative over domestic law, especially in the area of universal human rights. Between these two poles lie theories of engagement, which argue that national constitutional courts have a great deal to gain from considering foreign and international law. Unlike convergence, engagement does not suggest that foreign law should be authoritative in domestic courts—only that the consideration of foreign sources of law may elucidate vague constitutional principles and provide valuable empirical evidence on the results of various policy choices. Jackson makes a further distinction within engagement itself, between "relational" engagement, in which the consideration of foreign sources is mandatory for domestic courts, and "deliberative" engagement, in which the consideration of foreign sources is optional. It is this last form of engagement that Jackson endorses in the second half of the book.

According to Jackson, deliberative engagement can provide great benefits to domestic judiciaries while limiting the costs noted by resistance theorists. Jackson demonstrates that the use of foreign sources of law "is grounded in longstanding interpretive practices of the U.S. Court" (p. 103). She points to a long line of cases, including *Plessy v. Ferguson*, *Miranda v. Arizona*, *Lawrence v. Texas*, among others, which used foreign sources of law to call into question traditional definitions of constitutional values. Deliberative engagement can also provide a "better understanding of one's own constitutional tradition" through comparison with other nations' constitutions (p. 116). Such comparison can also prevent "severe constitutional error" by allowing a national constitutional court to examine how similar constitutional systems have dealt with issues such as limited government or freedom of speech. Finally, by placing themselves within a wider judicial universe, domestic judges might be better able to engage in "impartial, objective decision-making" (p. 117).

It is worth noting here the moderate nature of Jackson's position. The approach serves her well, since she is advocating increased judicial internationalism from within a country, the United States, where many have an apparently deep phobia of foreign law. Her reasoning, though admittedly abstract, is certainly sound. It is difficult to argue with her proposition that the U.S. Supreme Court should at least be allowed and encouraged to examine foreign law, even if only to provide empirical information. As Jackson points

out, if another country like Canada has addressed issues like abortion and pursued different policies, examining the empirical outcomes of those policies might assist the U.S. Supreme Court in making its own decisions.

Jackson is also quite systematic in discussing her critics. She acknowledges the deep concerns of many American theorists with defending U.S. sovereignty and democratic rule in the face of foreign decisions. Other theorists suggest that U.S. courts simply lack the expertise necessary to use foreign decisions effectively, or that other constitutional systems are simply too different from one another to compare. And there are the ever-present concerns of originalists and formalists that judicial decisionmaking must conform to constitutional boundaries.

Jackson answers these concerns by arguing that, since deliberative engagement only calls for the U.S. Supreme Court to be allowed to consider foreign sources of law rather than be bound by them, it is difficult to suggest that engagement will lead to judicial tyranny. It is no more likely that foreign law will be used to support countermajoritarian positions than majoritarian ones. The deliberative engagement approach may even be used as a method of distinguishing domestic law as different from and superior to foreign law. Foreign law simply provides another lens that judges may use where they feel it is helpful or appropriate. If judges do not find foreign sources relevant or if they find that foreign law interferes too much with domestic legal traditions, they are under no obligation to utilize it. It is here that Jackson's moderate argument helps her cause, as it requires a supremely cynical view of judges' goals to believe that merely allowing them the opportunity to consider foreign sources of law will undermine American democracy.

Jackson does not maintain her moderate approach in the last chapter of her book, where she broaches the idea of constitutions as "mediators" between foreign and domestic law. In this section, Jackson goes beyond the more moderate idea that courts should merely be allowed to consider foreign law. She suggests that constitutions can also serve as mediators between "the global and the local (national) communities" by promoting both domestic and transnational legitimacy (p. 275). While Jackson does not develop this point in great detail, the idea of constitutions as mediators does not at first glance appear to fall within a theory of deliberative engagement. Indeed, the idea seems to fit squarely into the convergence theories, which Jackson argues are too detached from the domestic concerns of an old democracy like the United States, with its unique but well-established constitutional traditions. Jackson therefore could have more clearly enunciated her idea of constitutions as mediators, since it represents a break with the rest of her argument for deliberative engagement. Given the extent to which Jackson relies on the moderate nature of deliberative engagement to refute her critics, she makes a bold move in advancing a more radical claim in the closing pages of the book, which would have benefited from more robust development.

The idea of constitutions as transnational mediators aside, Professor Jackson's book is well argued throughout and is an interesting work for anyone who wishes to learn about current issues in comparative constitutionalism.

Jackson's prose is clear and easy to read, though she does occasionally bombard the reader with lists of issues. But this is the nature of a work that is as comprehensive as this one, and careful readers are amply rewarded with an educational introduction to the field of comparative constitutionalism.

Due Process and International Terrorism. By Roza Pati. Leiden: Martinus Nijhoff Publishers, 2009. Pp. xi, 520. Price: $220.00 (Hardcover). Reviewed by Spencer Gilbert.

The United States and its allies' response to the terrorist attacks of September 11, 2001, and the subsequent prosecution of the War on Terror have consistently been criticized for displaying a woeful disregard for international law. Roza Pati's study, *Due Process and International Terrorism*, gives substance to some of these criticisms while subtly challenging others. Pati undertakes a rigorous textual explication of various international human rights agreements and subsequently compares them with U.S. practice, but she arrives at few clear conclusions. She discusses the major problems of fighting international terrorism and preserving due process: domestic surveillance, detention, trial, torture, and assassination. In her final appraisal, however, Pati suggests that only those actions that are most clearly beyond the pale of international standards are likely illegal. In her most provocative (though subtle) conclusion, Pati argues that even by the stringent due process standards of various international agreements, trial by military tribunal would not violate due process per se. Compared to this conclusion, Pati's policy proposals of balancing liberty and security are familiar and uninspiring. The most valuable part of her study is its account of post-9/11 U.S. policy, but organizational and stylistic issues hinder what could otherwise be a useful recent history. Pati's conclusions are limited in scope and few, and they suggest that she is a careful scholar—perhaps a bit too careful.

Pati begins by describing the peacetime due process protections enshrined in four major agreements. She focuses primarily on the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). Her discussion of these treaties is methodical and rich, exploring the individual guarantees expressed in each document as elaborated upon by courts applying the agreements. However, this thorough exploration suffers from the problem that undermines much of the book: an absence of broader analysis or reflection. Little or no space is given to discussion of the degree of actual application of the treaty protections or to any comparative analysis. Pati also offers virtually nothing by way of summation; she ends one hundred pages of detailed analysis with the beginning of a new section. The lack of guideposts makes it difficult to link each of her sections into one conversation or to follow her general line of reasoning. Her discussion of U.S. domestic due process protections suffers from similar deficiencies of reflection and summation.

In Chapter IV, Pati focuses on international due process protections in times of emergency. The ICCPR and ECHR both contain derogation clauses,

which allow for the suspension of certain rights in time of "emergency which threatens the life of the nation" (p. 241). Any such derogations must be reported to the international community and kept in force only as long as necessary. Pati details all of those rights which cannot be derogated in times of crisis, but, again, offers nothing conclusive or broadly analytical. The best the reader can surmise is that the ICCPR would allow very few derogations, seemingly only for certain procedural rights. The European Court of Human Rights, interpreting the ECHR derogation clause, has had to confront the issue much more directly during the conflict arising in Northern Ireland, and in that case gave Britain broad authority to detain citizens without trial. The perceived differences between the two agreements, then, may in fact be more an illustration of the difficulty of evaluating the meaning of international agreements out of the context of a specific controversy.

The book's greatest contribution is its detailed account of the antiterrorism measures taken after September 11. Pati's discussion of the PATRIOT Act, the torture memos, the CIA's "high-value detainee" program, the push and pull in the courts over habeas corpus, and the use of military tribunals is a fairly complete introduction to the topic. The section's only real faults are organizational rather than substantive. For example, she separates the issues of detention, treatment, and adjudication into different sections, such that three timelines using the same sources appear back to back to back. The lack of integration is disorienting and distracts the reader from the material.

Pati's appraisal of U.S. actions in her penultimate chapter finally provides some analysis of the sources she spends the vast majority of her book detailing. Pati begins by saying that September 11 arguably represented a public emergency in which the United States could legally derogate from certain protections of rights. Pati then attempts to determine whether various U.S. policies were illegal even in such a state of emergency, alternating between plausible and rather equivocal conclusions. On detention at Guantanamo and elsewhere, Pati notes that the prohibition against indefinite, incommunicado detention is nonderogable under the ICCPR. The Supreme Court's decision in *Boumediene v. Bush* reasserted detainees' right to habeas corpus, suggesting that such detention may no longer violate this prohibition. Targeted assassination away from the theater of war would violate the nonderogable right to life and generally "run counter to human rights law" (p. 446). The argument, however contested, that the theater of war would extend to anywhere in the world where terrorists hide is not discussed. Torture violates peremptory norms of international law, though Pati notes that the "lack of adjudication leaves room for different interpretations of what exactly constitutes torture" (p.449). However, Pati "takes the stand" that some of the techniques in the torture memos are indeed torture (p. 450). On the question of trial by military commission, Pati comes to the conclusion that such trial *may* afford persons due process, though they certainly afford fewer safeguards. Her conclusions, frustrating as some may find them, are all accurate, and highlight the wide latitude signatories of international agreements have in their interpretation of international law. From torture to trial, international law leaves the specifics of

these concepts ill defined. Even by the closest reading and analysis of international treaties, due process emerges as a much more flexible concept than many ardent "defenders of international law" might suggest.

Pati has read and summarized an enormous corpus of sources on relevant international law and recent U.S. history, but has not provided a strong connection between the two or formed concrete conclusions. The conclusions and recommendations she does offer are too general to be helpful. Readers may have been better served if she had simply presented the tough questions unanswered rather than attempt to provide vague recommendations. Her work shows a promising attention to detail, but, in the end, seems rather unfinished. Pati's study is rigorous and never shoots from the hip. She would do well, however, to make more explicit those provocative thoughts hidden between the lines. More guidance through the book and explicit conclusions at its end would help the reader immensely in following her five hundred pages of thorough research. In its present form, her book contains a useful account of the American struggle to maintain standards of due process. That account could make a fine contribution to any course of legal study on terrorism.

Localizing Transitional Justice: Interventions and Priorities After Mass Violence. Edited by Rosalind Shaw and Lars Waldorf, with Pierre Hazan. Stanford, CA: Stanford University Press, 2010. Pp. xvi, 345. Price: $27.95 (Paperback). Reviewed by Jane S. Jiang.

In the aftermath of mass violence, what does it mean to establish an effective system of justice? Rosalind Shaw and Lars Waldorf's *Localizing Transitional Justice* answers this question from the discrete perspectives of nineteen authors, studying instances of postconflict rebuilding across five continents. The book, as a collection of twelve essays (each constituting one chapter), provides a rather fragmented picture of how transitional justice should be approached. It offers no easy answers—when it provides answers at all—and at its end provides no satisfying and broadly applicable single theory of intervention. But what this collection lacks in theoretical conclusiveness it more than makes up for with its compelling sensitivity to the realities of international intervention's complex and sometimes contradictory nature. The contributors to this volume generally support the trend toward "localized" and "culturally appropriate" systems of transitional justice. They also suggest, importantly, that survivors' needs cannot simply be fulfilled by tailoring an approach to employ or fit in with local customs, beliefs, and values. By identifying problems in current conceptualizations of transitional justice, and by urging shifts in thinking that address these issues, the essays in this volume seek to encourage both more responsive and more effective approaches to localized intervention.

Shaw and Waldorf organize the chapters into four parts. Part I, "Frames," opens the discussion by examining the theories, stated or implicit, that underpin conceptions and implementations of transitional justice, as well as the surrounding historical and critical contexts. These three chapters sketch out the

general critical and historical contexts of the issues and events discussed in this broad collection. Part II, "Local Engagements," and Part III, "Power, Politics, and Priorities," vividly illustrate the ways in which models of transitional justice from recent history have, despite their best efforts, failed to address the needs of the recovering local people. Part IV, "Practicing Place-Based Justice," argues that successful and meaningful transitional justice requires the correct and careful consideration of local desires, customs, and history.

The essays are grouped by topic, but as Shaw and Waldorf's introductory chapter explains, they are also each linked by themes that recur across the parts. These topics include the problematic tendency of many scholars to divide theoretical from practical considerations when thinking about transitional justice, the tension between "victor's justice" and victims' desires for silence and reconciliation, and the fallacy of defining "appropriate" as "local" and then "local" as "traditional." Part I's two other chapters are also worth noting. "Stay the Hand of Justice: Whose Priorities Take Priority?" by Harvey M. Weinstein, et al. compares recent implementations of transitional justice in the Balkans, Iraq, Rwanda, and Uganda in order to warn that international norms of justice and retribution are often not in line with the needs and desires of the local people. Pierre Hazan's chapter echoes this conclusion, arguing that that in the aftermath of September 11, "[t]he axioms of [transitional justice], which were supposed to contribute to the rule of law, foster a human rights culture, promote national reconciliation, heal trauma, and bring closure, were too often misused" (p. 49). Hazan finds that the tremors of the Bush administration's "war on terror" have led to significant changes in the conduct of and reaction to local conflicts—not only in Afghanistan, but also in places as apparently far-flung as Uganda, Sudan, Lebanon, and Morocco. The essay offers a fresh and fascinating look at patterns of change in transitional justice, although its concluding sentiment—that the age of Obama has ushered away the faults of recent transitional justice trends—seems premature and weakens the sharp point of Hazan's argument by drawing it into an unnecessarily facile arc.

In Part II, Fiona C. Ross, Kimberly Theidon, and Rosalind Shaw discuss the ways in which locals have responded to and sometimes modified unsatisfying, externally implemented systems of transitional justice. In Chapter Five, "Histories of Innocence: Postwar Stories in Peru," Theidon interweaves field studies and theoretical perspectives in approaching truth commissions, focusing on the "political protagonism" that stems from international participation in local transitional justice measures. These include the reductive line-drawing between victim and perpetrator by victim-centric truth commissions and the continual structural exclusion of the perpetrator groups. In Chapter Six, "Linking Justice with Reintegration? Ex-Combatants and the Sierra Leone Experiment," Shaw studies Sierra Leone's "Disarmament, Demobilization, and Reintegration" (p. 112) policies, which tackle head-on the problem of reintroducing perpetrators into postconflict communities. She concludes that because the reintegration policies favor educated and elite ex-combatants, the policies actually exacerbate the marginalization experienced by the mass of low-status ex-combatants. Shaw urges transitional justice

mechanisms to go "beyond narrow concepts of justice that derive from criminal law" and seek norms for reintegration from community members themselves, who favor behaviors that are beneficial to the community and perceived as conciliatory, such as "humility, hard work, and sobriety" (p. 131).

Part III further attests to the gap between the goals of various governmental or international transitional justice programs and those of the communities and individuals that the programs intend to serve, and suggests that the discrepancy not only exists, but is widespread. In Chapter Seven, "Reconciliation Grown Bitter? War, Retribution, and Ritual Action in Northern Uganda," Sverker Finnström identifies a deep-seated and persistent structural inequality in the International Criminal Court's (ICC) intervention during the brief period of peace talks and ceasefire from 2006 to 2008. Finnström argues that by prioritizing international ideals of retributive justice over local desires for a third-party facilitator of dialogue and reconciliation, the ICC has failed to "really tune in to [the] flexibility of ever-changing meanings and local social realities," and to meet local goals of encouraging "social solidarity" (p. 154). Finnström notes that in the recent past, the Acholi people in Uganda have turned instead to ritual action in order to effect the sorts of social reconciliations they desire. In Chapter Eight, Ann Nee and Peter Uvin find a similar turn toward traditional social justice institutions in Burundi, where local reluctance to comply with "the international normative enterprise of transitional justice" (p.160)—especially criminal and retributive justice—has been accompanied by a resurgence of support for *bashingantahe*, locally invested or elected mediators. Nee and Uvin's chapter implies a slender hope that locally responsive, community-rooted, and community-oriented mechanisms of transitional justice can be integrated with the interstate actors that command the resources and support of the global community; the *bashingantahe* system and the "well-received" local workshops seem to have benefited from the involvement of NGOs, religious organizations, and even the United Nations. But in the concluding chapter of Part III, Lars Waldorf examines *gacaca* courts in Rwanda to warn that involving government or interstate actors in local initiatives brings dangers of its own. After surveying the history and development of *gacaca inkiko* courts (formalized community courts developed under government auspices from a preexisting local system of ad-hoc dispute resolution), Waldorf focuses on the generally disregarded but increasingly vocal criticisms of the *gacaca* system by on-the-ground local organizations and NGOs. He argues that *gacaca* courts fail to be truly responsive to local needs. Although they appear to resist the usual paradigms of transitional justice, the courts do not actually represent a meaningful rethinking of its central, Western-justice-oriented tenets. At the same time, the consistency of *gacaca inkiko* with international norms has made it enormously successful in gaining the support of donors and interstate actors, diverting attention and resources from smaller and perhaps more deserving projects.

Part IV shifts the focus to methods of reshaping transitional justice practices, particularly in Ron Dudai and Hillel Cohen's Chapter Eleven, "Dealing with the Past when the Conflict is Still Present." This chapter focuses

on the role of local initiatives in truth-seeking in the Israeli-Palestinian conflict. Describing a number of local organizations and initiatives that seek to reach beyond the usual divide of self-victimizing or -excusing while vilifying others, Dudai and Cohen identify the organizations' pursuit of a multifarious truth or history as a significant step toward cultural rebuilding in the wake of—or the midst of—tension and violence. This emphasis on a diversity of viewpoints and a longer-term approach to reconciliation is also at the heart of Part IV's final chapter, "Local Transitional Justice Practice in Pretransition Burma." Here, Patrick Falvey examines Burma's conflict history (unusual in being driven both by authoritarian repression and by interethnic land and resource disputes) to deal frankly with the tension between the priorities of international methods and actors on the one hand and those of the affected peoples on the other. He lands unrepentantly on the side of the locals.

For all its protestations of balancing international needs with local ones, this book as a whole speaks for the side of the locals with no more hesitation than Falvey's chapter. The essays in *Localizing Transitional Justice* seem to implicitly agree that the desires of the local people for modes of justice that promote reintegration and rebuilding are more important than international norms of retributive justice. But why should local desires take priority? To the extent that this question goes largely unanswered, this book runs the risk of slipping by its intended audience—those with the power to influence the interstate actors who govern mechanisms of transitional justice—without persuasively engaging the deeper disagreement at hand. There also seems to exist a fundamental difference in judicial values that is not part of the explicit dialogue on transitional justice, which this volume does not address either. Underlying the opinions of those who support greater sensitivity to local needs is the belief that justice must serve the expressed desires of the people and communities in which it works. But for those who subscribe to the much-maligned external impositions of retributive, criminally oriented justice, what is normatively, universally right and what is convenient for social rebuilding are different things.

Moses Chrispus Okello's thoughtful and considered Afterword aspires to fill this gap. While Okello does not make a conclusive case for the anti-universalist stance of this book, he does raise important objections to the idea that one paradigm of justice and ethics exists that can be correctly applied with the same result to all situations by all people. Okello wonders if universalism is not predicated on an unspoken belief that all actors, regardless of history, culture, and level of current development, are "progressing toward the same destination" (p. 279). Okello also points out that even within their own framework, those who favor normative international standards of justice often interpret the same moral issue differently in varying circumstances. Focusing on several African countries' recent experiences with transitional justice, Okello challenges the tenets of universalism in the same way that the rest of the volume challenges current practices of transitional justice. And like the rest of the volume, he offers no firm answers, but suggests directions of future development and inquiry.

While this volume does not resolve itself neatly into a single, tightly unified answer, its parting questions are not the unfocused inconclusiveness of sloppy scholarship. On the contrary, as Ruti Teitel writes in the Preface, the book "[poses] fundamental questions . . . which are as much moral as legal and political, . . . shed[ding] light far beyond transitions" (p. viii).