Recent Publications


In 1890, Louis Brandeis and Samuel Warren called attention to the dangers presented by rapidly improving technology and the growing media industry. “Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life,” wrote Brandeis and Warren.¹ These “recent inventions” necessitated new legal protections for citizens based on the right “to be let alone.”² Though written over a century ago, these famous words could just as easily describe the present era of the iPhone and Facebook, when the global reach and instantaneous speed of the Internet have fundamentally blurred the distinction between public and private life.

Jon L. Mills tackles this problem anew in *Privacy in the New Media Age.* Mills is concerned with one central issue: “How do we safeguard personal privacy when any individual can spread intrusive or slanderous information instantaneously on a global scale?” (p. 7). It is a momentous question, to which Mills offers a bold—if somewhat underdeveloped—answer: adopt a European framework of free expression that balances the free speech rights of the blogosphere with a conception of an individual right to dignity.

Mills first embarks on a whirlwind tour of the history of the media and freedom of expression in the United States and Europe, from 1275 to the present day. He argues that while freedom of the press has been a central tenet of American political life, today’s citizens have more reason to seek legal protection from media intrusion. He also discusses how technological developments and the rise of globalization have made contemporary laws surrounding the media increasingly obsolete.

After outlining the historical and contemporary landscape surrounding the media-privacy conflict, Mills compares the regulation of the media under American and European legal frameworks. Mills suggests that the European Union—with its focus on the dignity of the individual—has been more successful than the United States in keeping pace with the changing media landscape. He also argues that the global nature of today’s media landscape calls for a more uniform response to the media privacy conflict.

Mills also usefully identifies areas for further discussion, including the problem posed by the enforcement of different countries’ standards of free speech on a supposedly universal Internet. In doing so, he calls for more uniformity between nations in their regulation of the media and argues for the

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². Id.
adoption of the European legal framework. However, he fails to offer adequate
evidence to substantiate his claims that America should abandon its rich history
surrounding free expression in favor of a more nebulous European balancing
test that considers the dignity of individuals subject to media scrutiny.

Mills does not suffer from lack of experience in this area. In addition to
being a former Speaker of the Florida House of Representatives, Mills
represented clients seeking to prevent the media from publishing distressing
material about their loved ones. Many of his own cases, which he cites
throughout the book, are sympathetic to such clients. Consider Dale Earnhardt,
a famous NASCAR driver killed in a crash. Mills represented Earnhardt’s
family and argued that the court should block the publication of the driver’s
autopsy photos because publication would violate the family’s right to privacy.

As Mills highlights, while the media has always adopted a mantra of “if it
bleeds, it leads,” the rise of modern technology and social media have
exacerbated the problem (p. 151). The drive for salacious material along with
the prioritization of speed of publication over accuracy often sacrifices the truth
(and ruins reputations) in search of page views or re-tweets. Mills cites, for
example, conservative blogger Andrew Breitbart’s publication of a deceptively
edited video of Shirley Sherrod, a U.S. Department of Agriculture employee, in
2010. Breitbart suggested that Sherrod discriminated against white farmers.
Afraid of missing the story, reputable media outlets picked up Breitbart’s
narrative without conducting due diligence. Mills warns that “[a] complete lie
can travel worldwide and savage an innocent individual in less than a day” (p.
2).

Mills offers a fair critique of some contemporary media practices in the
age of the twenty-four/seven news cycle. Indeed, media overreach has become
itself the subject of controversy, such as when employees of the News of the
World infamously hacked into the cell phone of a kidnapped teenager. Mills
also offers a compelling analysis of the evolution of the very definition of the
“press.” As he points out, the rise of Internet bloggers and other independent
sources of information have resulted in an “increasingly nebulous dividing
line” between reporters and the public (p. 117). The growth of blogs—
especially those run by anonymous sources—has undeniably made it more
difficult to pursue legal relief for defamation or the publication of intrusive
information.

One of Mills’s most interesting observations is best termed the multi-
jurisdictional problem. When Australians objected to online content published
by the U.S.-based Wall Street Journal, each respective country had to grapple
with different traditions of privacy and free expression. Because media
companies hold assets around the world and news stories are available
instantaneously across the globe via the Internet, it has become increasingly
difficult to determine legal jurisdiction over cases involving the media. “When
national laws clash,” asks Mills, “whose standards should apply?” (p. 70). Mills
argues that this jurisdictional problem creates uncertainty about the rights and
liabilities of both corporations and individuals. He also notes the development
of the practice of “libel tourism,” meaning that “logical plaintiffs choose the
Most favorable jurisdiction for their claim” (p. 75). These reflections on the media as it operates today stand on their own as useful insights into the media-privacy conflict.

Mills is certainly not the first to advocate for legal action against the illegal acquisition or publication of false information. More controversially, he goes a step further in advocating for the suppression of facts that are “truthful but harmful” (p. 176). While existing U.S. laws prevent media outlets from publishing private facts that people have a reasonable expectation of privacy, Mills would expand this category to encompass a much broader range of information. He argues that a more encompassing approach would more effectively balance the interests in promoting freedom of expression and the right to personal privacy.

What such a legal framework would specifically entail remains largely undefined, though the author holds the European Union out as an example for the United States to follow. According to Mills, “Continental (European) law has embraced the social-responsibility approach of regulating the press . . . individual dignity is considered more important than free expression when it offends European values” (p. 67). Mills demonstrates the divergent outcomes of defamation and privacy cases originating in the United States and in Europe. Celebrities, for example, have been more successful in bringing defamation cases in the United Kingdom than in the United States. Additionally, European nations have pursued aggressive legal action against companies ranging from Facebook to Google, alleging a universal right to be forgotten.

Adopting the European dignity-driven approach would fundamentally reshape American law in a way that many would find problematic. The author extolls a French case, in which a man marching at a gay parade successfully sued a newspaper for publishing a photograph of him. The French court ruled that the marcher intended to disclose himself to the public present at the event—and not to the larger public audience of newspaper readers. Mills would like to see American judges adopt similar “intent to disclose” standard that considers just how public someone intends an act to be (pp. 179-80). Such a result requires rethinking longstanding American jurisprudence in favor of the media’s right to report on issues of public importance, including New York Times Co. v. Sullivan’s standard which protects media coverage of public figures so long as journalists do not print falsehoods out of actual malice.3 In other words, Mills believes that the dignity of an individual—even a public figure—can and should often trump free expression.

Particularly jarring for some will be Mills’s discussion of so-called “super injunctions,” a procedure by which British courts prevent media outlets from reporting on a topic and simultaneously bar journalists from reporting about the injunction itself (pp. 41-42, 179-80). When they work, super injunctions prevent both private information and any hint of controversy from appearing in print. It seems Mills would apply super injunctions to a range of Internet service providers. He also advocates for a more formalized licensing process

for journalists as well as the creation of a journalistic code of ethics to promote restraint in divulging private information. Adopting these procedures would constitute a large shift away from the norm against prior restraint of the media famously affirmed in the Pentagon Papers case, in which the U.S. Supreme Court refused to allow the government to prevent the publication of sensitive documents related to the Vietnam War.\(^4\)

To approve of super injunctions is to also approve of secret courts on technological issues more generally. Mills would have done well to situate the debate over free speech and privacy within the larger international conversation surrounding the U.S. Foreign Intelligence Surveillance Courts and controversial non-disclosure orders issued to Internet service providers. Mills should be credited, however, for offering at least the outlines of a potential solution to the problem he identifies.

As technology continues to develop, a vibrant public discussion will emerge around the implications for individual dignity in the digital era. If the media “traffics in smut” as Mills claims (p. 150), it does so to a public that values such information. Instead of simply castigating the media for publishing salacious material, we might also ask the more difficult question of how our public thirst for this information reshapes society’s conception of what is private. Privacy in the New Media Age is a good starting point for that conversation and others surrounding the press and technology.

When it comes to technology, there is a tendency to assume the novel is unique. A century ago, Brandeis and Warren thought that cheap photography—protected under an absolutist conception of free speech—would upend the individual’s right to privacy. Though their concerns remain relevant, the implications of modern technology were not as dire as they feared. We may similarly overcome the problems of new media that Jon L. Mills identifies without modifying America’s existing legal framework surrounding expression.


The two-decade long United Nations Compensation Commission (UNCC) operation was an effort unprecedented in scale and speed.\(^5\) Created in 1991 to compensate victims of Iraq’s unlawful invasion of Kuwait,\(^6\) UNCC received and decided millions of claims by governments, corporations, and individuals from over eighty countries whose property and livelihoods had been damaged or destroyed by the Iraqi invasion and occupation. In *Gulf War*

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Reparations and the UN Compensation Commission: Environmental Liability, a two-part book with a collection of thirteen essays from seventeen authors, the editors build upon a previously published companion volume. Whereas the previous volume was limited to the area of environmental damage, the editors now seek to craft a “broader retrospective look at the UNCC across all of its claims categories” (p. xxiii). While certain authors applaud the ways in which the UNCC approached its unique challenges, others are concerned about its legacy in the context of international law. In particular, the critiques concern the UNCC’s prioritization of efficiency over due process rights—those of Iraq as well as claimants.

Part I details the framework needed to understand the UNCC’s successes and shortcomings. The authors address the administrative hurdles and tradeoffs inherent in integrating various actors while executing its mandate to efficiently and justly process millions of claims worth hundreds of billions of dollars. Part II explores the UNCC’s jurisprudential innovation, focusing on the body of law developed within the UNCC through each of its claims categories.

To open Part I, Ronald J. Bettaur analyzes the logistical and institutional fracture points that threatened the UNCC’s operation and its ultimate success in spite of them. The UNCC encountered a major logistical roadblock when Iraq refused to cooperate with its original funding scheme. Thinking outside the box, the United Nations eventually extracted funds from frozen Iraqi assets. Internal conflicts within the United Nations also interfered with the UNCC’s mandate. For example, the U.N. Secretariat in New York was concerned about the burden the UNCC was placing on Iraq. Despite opposition from the Secretariat, the UNCC fought to keep funds flowing and succeeded in doing so. Thus, Bettaur views the UNCC as one of the United Nations’ success stories, noting that the UNCC had processed “more claims more quickly than any claims institution ever had” (p. 26). Francis McGovern also praises the efficacy of the UNCC’s creative decision-making. In his view, the UNCC’s success in rapidly processing millions of claims can be attributed to its “tailoring of decision-making techniques to different types of claims” (p. 45). This included the division of claims into six categories based on claim type. For example, Category A consisted of individual claims, which were given priority. Arif H. Ali and Marguerite C. Walter further praise this valuation approach as “innovative, flexible, but methodologically rigorous and principled” (p. 82). Because of its quasi-judicial elements, the UNCC became a body that was neither political nor adjudicatory. Instead, it operated as a hybrid entity.

According to the more critical authors in Part I, the UNCC’s emphasis on efficiency came at the expense of Iraq’s due process rights. Veijo Heiskanen and Nicolas Leroux submit that in passing U.N. Security Council resolution 687 (1991), which established Iraq’s liability for damages under international law, the United Nations failed to adequately and uniformly address whether *jus in bello* or *jus ad bellum* was applicable in determining Iraq’s liabilities. The

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authors argue that the United Nations blurred the distinction between the two and stripped Iraq of legal defenses that would have been available under either body of law. For example, in holding Iraq liable for the breakdown of civil order within its own borders, the United Nations “appears to have departed from the customary international law rule and extended the scope of application” (p. 64). Under the traditional rules of *jus in bello*, Iraq would only be liable for damages suffered by Kuwaiti and Iraqi nationals. Instead, the UNCC approved claims by third-party nationals. Legal scholars have debated this issue of whether to hold belligerent states responsible under *jus in bello* after conflict has ended. In Iraq’s case, the authors worry that this harsh application will deter future aggressors from complying with international law during conflict.

Some authors suggest that the greatest oversight on the part of the UNCC may have been its systematic exclusion of Iraq from its proceedings. In his evaluation of the Palestinian late claims program, Jason Scott Palmer notes that Iraq was not given the chance to comment on possibly fraudulent claims. He writes that “legitimate questions exist as to whether Iraq was entitled to some opportunity to participate in this late claims program” (p. 132). Like Palmer, Michael E. Schneider is critical of the UNCC’s treatment of Iraq. Shocked by Iraq’s exclusion from the UNCC process, Schneider goes as far as to call it an “amputation” (p. 140). Although Iraq was fully prepared to be an active participant, its relationship with the UNCC was essentially limited to communications with the Secretariat. For instance, in the environmental claims proceedings, the panel refused to discuss directly with Iraq. While every dispute resolution must weigh efficiency against due process, Schneider asserts that the UNCC landed much too far on the side of efficiency. Iraq bore the cost of this choice.

Whereas Part I is more skeptical of the UNCC methods, Part II is more laudatory of the ways in which the UNCC expounded the law in the area of war reparations. Part II asks: Has the UNCC’s jurisprudence contributed to the development of international law, or does it constitute a distinctive jurisprudence particular to its mandate? Editor Timothy Feighery opens with his answer—“both” (p. 189). His essay commends the consistent body of law developed within the UNCC on common legal issues across claims categories. Feighery writes that this body of law developed despite a lack of binding precedent or a unifying appellate mechanism because Commissioners coordinated their efforts to achieve a uniform jurisprudence. In light of the magnitude of claims, such a feat is impressive. This law developed in areas such as jurisdiction, burden of proof, sufficiency of evidence, and standard of evidence (p. 187).

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Through a more detailed analysis of the UNCC operations, the subsequent essays explore the UNCC’s precedential value. Íñigo Salvador-Crespo details the UNCC’s prioritization of claims by claimant type. In particular, Category A claims, deemed “most urgent” (p. 222), encompassed individual claims on the basis of departure from Kuwait or Iraq. The UNCC used matching and sampling systems to quickly process claims in which claimant information was compared to data in Arrival/Departure Records (ADRs) in Kuwait and Iraq. To expedite processing, compensation awards were fixed at different levels for individuals and for families. More than 850,000 claims were awarded compensation totaling over $3 million in five years, amounting to a “tremendous success” (p. 239). Salvador-Crespo maintains that among the UNCC’s most significant precedential contributions are its legitimization of such a broad criterion for individual compensation, its prioritization of individuals over governments, and its innovative and highly efficient mass claim verification methods. Yet, despite Salvador-Crespo’s enthusiasm, this rapid processing raises questions about whether or not claimants’ due process rights were duly respected.

Alternatively, other authors focus on corporate claims. Michael J. Muchetti approves of the UNCC’s E4 panels, which adjudicated the claims of Kuwaiti private-sector corporations, although he is not convinced that they were engaged in “developing a legal system” (p. 243). He concedes, however, that the United Nations’s compensating for corporate losses is an unprecedented innovation in itself. Likewise, Ucheora Unwumaegbu and Aïssatou Diop provide an ambivalent review of the E2 panels, which processed claims from non-Kuwaiti corporations. Eligibility for compensation centered largely upon a concept of “direct cause” (p. 259) of loss,11 which the authors believe was too stringently interpreted in requiring a physical nexus. Despite their concerns, they ultimately conclude that the E2 panels “struck a reasonable balance” (p. 284) in weighing the exigencies of their mandate against the rights of claimants. John Tackaberry and editor Trevor M. Rajah discuss the E3 panels, which specifically addressed construction and engineering claims by non-Kuwaiti corporations. The authors admire the UNCC’s “imaginative” approach (p. 323). In only five years, the panel resolved nearly 400 construction cases valued at over $10 billion at a very low cost to claimants. The authors suggest the UNCC’s work will be regarded as foundational for future mass resolution claims, citing construction cases in which its work has already been referenced.

Lastly, the book turns to government and intergovernmental claims. Robert C. O’Brien discusses the UNCC’s adjudication of Category F claims. This category encompassed claims from governments and international organizations. O’Brien argues that the UNCC’s success in this area can be credited to its pragmatism, as the UNCC adjusts its operational parameters to respond to challenges arising from its mandate. Caroline Nicholas discusses a specific Category F claim, that of the Kuwait Investment Authority (KIA).

Seeking compensation for the costs of reconstructing Kuwait after the occupation, the KIA brought the largest claim received by the UNCC, which amounted to $63 billion. The UNCC’s innovative strategy was to assess “direct and compensable” (p. 374) losses as consisting “primarily of lost investment returns . . . and the costs and interest paid on the relevant funds borrowed” (p. 376-77). Building on lessons from previous F claims, the panel worked to produce a jurisprudence and methodology that could be of use to future bodies assessing reparations claims.12

The editors’ decision to structure the book in two parts is a practical one. While Part I explains the UNCC’s primary challenges and successes, Part II gives a more technical analysis of specific strategies for each claim category. Thus, Part I is useful for generalists seeking to understand the challenges underpinning mass compensation projects and the ways in which creative solutions can overcome them. On the other hand, Part II should be attractive to specialists seeking to model their compensation projects on previous successes.

The authors balance recognition of UNCC contributions with critiques of its legacy. They agree that the UNCC faced enormous and unprecedented challenges. The first of its kind to effectively decide millions of compensation claims simultaneously, the UNCC forayed into an entirely new dimension of international law. Thus, it serves as an example of what to emulate and what to avoid in the future creation of such schemes. For example, mass compensation schemes should be innovative and flexible, recognizing that their role is both political and adjudicatory. Separate treatment of claims by type is crucial to efficiently manage claims of this scale. This efficiency, however, will inevitably come at the cost of due process rights of the liable party or claimants. In light of this tradeoff, future mass compensation schemes should seek to include parties in the proceedings as much as possible.

This volume should be of interest to practitioners working in post-conflict compensation and reparations. Furthermore, it is a useful reference for those seeking to understand one of the United Nations’s lesser known, but more innovative, quasi-judicial projects.


The traditional narrative of the development of international law has been highly Eurocentric. In Mestizo International Law: A Global Intellectual History, Arnulf Becker Lorca counters this established view with a thorough and compelling account of the development of international law. While Becker Lorca problematizes the traditional Eurocentric narrative, he does recognize the

primacy of Europe in the development of international law. For example, the term *mestizo* was historically used to refer to a child of a European colonizer and an indigenous mother. With the title *Mestizo International Law*, Becker Lorca acknowledges the crucial role of European expansion in international law while also highlighting the importance of its semi-peripheral appropriation.

Becker Lorca traces the contributions of lawyers and nations outside of Europe to the development of modern international law, bookending the analysis with the 1842 Treaty of Nanjing and the 1933 Montevideo Convention. The Treaty of Nanjing marked the beginning of classical international law and was used to justify opening non-Western countries on unequal terms, while the Montevideo Convention signaled the end of that era with the dissolution of the standard of civilization and its replacement by a formal definition of statehood. The dichotomy between core and semi peripheral states serves as the organizing principle of Becker Lorca’s book. Under his definition, semi-peripheral states such as Japan, Russia, and several Latin American countries were not subject to colonization by core European powers due to their size, power, geopolitical insignificance, or other historical contingencies. Within this framework, Becker Lorca discusses a cast of elite semi-peripheral lawyers and explains their contributions to international law.

*Mestizo International Law* aims to show that the development of international law was not exclusively European. To that end, Becker Lorca succeeds by presenting many compelling examples of semi-peripheral lawyers who influenced the course of international law. The intellectual history divides naturally into three distinct periods in the development of international law: first, the geographical expansion of international law; second, the transition from classical to modern law; and, third, the fall of the standard of civilization.

I. DEVELOPMENT OF A SEMI-PERIPHERAL VERSION OF CLASSICAL INTERNATIONAL LAW

Becker Lorca begins his analysis with the geographic expansion of classical international law from 1842 to 1907. He argues that semi-peripheral lawyers shaped classical international legal thought through “particularistic universalism” (p. 44). That is, semi-peripheral lawyers both accepted international law’s universalism and applied it to further their own states’ ends, thereby advancing new legal arguments and international agreements. Presenting case studies of jurists from semi-peripheral states, Becker Lorca uses three central tenets of European classical international law to examine their appropriation of the tradition: positivism, absolute sovereignty, and the standard of civilization for granting legal subjectivity.

For the semi-peripheral states in the mid- to late nineteenth century, international law offered an opportunity to obtain sovereign equality vis-à-vis the European states. Becker Lorca traces the careers of a number of jurists from semi-peripheral states and, in doing so, shows their contribution to the geographical expansion of international law. These lawyers obtained a cosmopolitan legal education in Europe, they contributed to European journals, and regularly weighed in on European legal debates. At the same time,
however, they also used the doctrine of international law to advocate for their own countries. In numerous cases, Becker Lorca shows how semi-peripheral states had strategic reasons to adopt international law. For example, semi peripheral jurists were positivists because the philosophy confined law to juridical rules rather than natural law principles, such as the just war theory, which could be cited to justify European intervention in semi-peripheral states (p. 57). Semi-peripheral lawyers also appropriated the standard of civilization in order to assert membership in the group of “civilized” nations (p. 67).

This section suffers perhaps inevitably from Becker Lorca’s expansive definition of semi-peripheral states. Even within his breakdown of three types of semi-peripheral states (p. 77), some comparisons seem far-fetched. For example, although Becker Lorca categorizes Japan as semi-peripheral, Japan had already modernized at a rapid pace, developing a highly competent judiciary comparable to Western systems (p. 69). By 1907, international law actually empowered Japan to act like a European power in its colonial policy and efforts to renegotiate unequal treaties with core states (pp. 113-14). Furthermore, Becker Lorca only gives one example of a semi-peripheral lawyer pushing back against the standard of civilization: Japanese lawyer Tsurutaro Senga (pp. 73-74).

Becker Lorca’s examples clearly show Japan’s unique situation relative to the other semi-peripheral states during the expansion of international law. Certainly, this type of generalization will be inherent in any attempt to write a global narrative, and Becker Lorca’s basic argument—that semi-peripheral lawyers played a role in the creation of international legal norms via particularistic universalism—still stands despite the criticism. However, the dissonance does raise questions that demand a more focused analysis of the particular countries’ trajectories.

II. CONTINUOUS ANTAGONISM FROM THE 1890S TO 1920S

Part II of the book carefully examines significant historical events from the 1890s to the 1920s through a critical lens. Specifically, Becker Lorca illustrates that the disputes between intellectuals reflect the continuous antagonism between core and semi-peripheral states. Becker Lorca emphasizes that power imbalances impeded the transition from classical international law during this period. To that extent, Part II is inconsistent with his ultimate goal of arguing that the development of international law was not exclusively European.

In the events outlined in Part II, Lorca illustrates how the legal arguments on the issues of sovereign equality and formalism of international law intersected with the power conflicts between core states and semi-peripheral states. For example, in 1902, Western powers (namely, Britain, Germany, and Italy), operating under the classical international law theories, assembled a naval blockade against Venezuela. The Western powers exercised substantive and procedural rights to coerce non-core states, claim jurisdiction, and enjoy a higher baseline of protection for their citizens and companies (pp. 149-52). Similarly, Becker Lorca discusses the proposal to create a permanent
international court at the Second Hague Peace Conference of 1907. The proposal gave the core states greater rights to appoint judges (p. 159). A comparable dynamic can be seen in the Japanese failure to include a clause recognizing racial equality in the Covenant of the League of Nations during the Paris Peace Conference of 1919 (p. 174). In each of these three situations, jurists of core states advocated for limiting sovereignty, which not only justified the creation of permanent international organizations but also constrained the autonomy and equality of semi-peripheral states.

Indeed, the change in the intellectual history of international law in this period did not accompany a fundamental change in the actual rules governing international relations between states at the core and peripheries (p. 197). Unequal treatment, armed interventions, and the exclusion of non-Western polities from membership in the international community continued to characterize international law. Core states deployed new theories developed from the intellectual debates, such as interdependence and social duties, to intervene in the peripheries in the name and in the interest of the international community. Becker Lorca refers to this as “a stark continuity between classical and modern international law” (p. 201).

Part II adds conflicting historical examples to demonstrate the complexity between intellectual debates of international law and the power dynamics between states. Becker Lorca pivots from the previous argument that the development of international law is not exclusively European to highlight the historical reality that international law was still largely controlled by core states. Western powers continued to command the participation of non-core lawyers in the intellectual debates. Semi-peripheral lawyers had to resist by employing theories of classical international law, and their intellectual attempts failed without the support of state power. It was not until the postwar period that the rising power of semi-peripherals made possible the indeterminacy of modern international law and the equality between intellectuals.

III. THE EMERGENCE OF MODERN INTERNATIONAL LAW

In the final part of his work, Becker Lorca hones in on one of the central tenets of modern international law—self-determination. Self-determination “has been a central strategy” for people fighting for independence against foreign rule (p. 225). While one may perceive the right to self-determination as a natural consequence of Western principles touted after World War I, Becker Lorca puts forth a different story. He instead argues that “semi-peripherals made possible the emergence of a right to self-determination” by appropriating the Western powers’ legal discourse to remove obstacles to self-government (p. 226). Although Western powers largely ignored the semi-peripheral states’ claims to self-determination, semi-peripheral states did succeed in replacing the standard of civilization. Consistent with his core/periphery framework, Becker Lorca’s argument is persuasive, especially when he closely examines the League of Nations’s mandate system.

Becker Lorca explores the history of self-determination as a political ideal for the Allied powers in the reorganization of the international order after
World War I. Startlingly, the Allied powers did not invoke the idea of self-determination with the equal treatment of non-Western countries in mind. Instead, as Becker Lorca notes, self-determination was articulated by the Allied powers “to sustain new modes of Western domination outside the West” and to widen “the basis for intervention under humanitarian grounds” (p. 231). Becker Lorca uncovers the allegedly duplicitous intentions of the Western states couched in Article 22 of the Covenant of the League of Nations, which entrusted “‘well-being and development’” of peoples “not yet able to stand by themselves under the strenuous conditions of the modern world” to “advanced nations” (p. 295). The League’s mandate system allowed advanced Western states to infringe upon the sovereignty of semi-peripheral states as they saw fit.

However, this turn of events did not discourage the semi-peripherals from aspiring to obtain sovereignty. In step with the theme of semi-peripherals appropriating the language of international law in order to transform it, Becker Lorca highlights how semi-peripherals utilized the European “standard of civilization” against the Western powers by pointing out the Western powers’ violent repression of native populations (pp. 239-44). This tactic by semi-peripheral jurists served to destabilize the divide between the apparently civilized and apparently uncivilized peoples. Becker Lorca explores in depth the Bondelswarts affair, the violent incident in South Africa’s League of Nations Mandate of South West Africa, which set the precedent for the supervision of the League of Nations’s mandatory power.

Finally, Becker Lorca explores how Latin Americans were able to codify the idea of non-intervention in international law using the conventions of statehood, an effort that culminated at the Montevideo Conference of 1933. The aftermath of World War I spurred a great movement to reform international law. Indeed, “the classical sensibility of the nineteenth century centred [sic] on the absolute sovereign autonomy and equality of states was superseded by a modernist, cosmopolitan sensibility that limited sovereignty in the name of a stronger international legal order” (p. 311). Semi-peripheral jurists saw an opportunity to codify an international legal system that would serve not only the interests of a few powerful core states but also the interests of the wider international community. In 1924, drawing on years of experience with the United States in the Pan-American Conferences, Latin American jurists led by Alejandro Alvarez initiated the codification project. Professionally based in Paris, Alvarez appropriated the conventions from classical international law to modern times—transitioning from a “system of pure individualism and anarchy in international relations” to a “system of solidarity” (p. 315). Becker Lorca’s overt focus on Latin American jurists as opposed to other semi-peripheral jurists may appear arbitrary. However, the centrality of Latin America in the transformation of international law as we know it today cannot be understated. Adopted by nineteen Latin American states and the United States, the Montevideo Convention set forth an authoritative definition of statehood—the state “as person of international law”—that the world refers to today (p. 306).
IV. Conclusion

While *Mestizo International Law* raises unanswered questions about certain case studies, the book succeeds in its goal of unveiling an underdeveloped narrative in the history of international law. Lorca’s core/periphery framework remains salient today, as Western countries continue to justifiably or unjustifiably intervene in peripheral states. While the 1933 Montevideo Convention on the Rights and Duties of States stands as the prevailing legal standard, the United Nations’s recognition of states poses a political problem rather than a legal one. For example, the United Nations does not recognize Taiwan as a legitimate state despite Taiwan meeting Montevideo standards. On the other hand, United Nations member states with ill-defined borders including Georgia, Serbia, Somalia, and South Sudan do not meet Montevideo standards. Countries become member states after two-thirds of the U.N. General Assembly votes for them, and the U.N. Security Council approves. A book on peripheral states that currently confront this problem of U.N. recognition might be in order.


The establishment of human rights as a firm legal concept in Africa is a recent and ongoing phenomenon. After progressively winning their independence from colonial powers in the second half of the twentieth century, African states, through the newly formed Organisation of African Unity (OAU), created a human rights regime. The result of this effort was the adoption of the African Charter on Human and Peoples’ Rights (ACHPR) in 1986. Based in part upon its European and inter-American counterparts, the Charter recognized a wide swath of civil, political, social, economic, and cultural rights for the African people. The Charter delegated oversight and interpretation of these rights to the African Commission on Human and Peoples’ Rights (the Commission), a quasi-judicial body with a range of mandates broadly aimed at upholding this new system of human rights.

In *The Implementation of the Findings of the African Commission on Human and Peoples’ Rights,* Rachel Murray and Debra Long identify an “implementation crisis” (p. 1) of the Commission’s findings and discuss the insights they have gleaned from their four-year study into the Commission. The authors first introduce international human rights legal concepts before proceeding to address the Commission’s findings and the role of various actors in ensuring implementation of and compliance with those findings. Broadly, Murray and Long argue that the traditional binding/non-binding distinction that typically characterizes international law fails to capture the “large grey zone” (p. 11) and relevant conceptual nuances of the relevant law. They assert that compliance depends on broad institutional support at the domestic, regional,
and international levels, including individual African states, the African Union (AU), and the Commission itself (pp. 34-35). Murray and Long conclude the book by arguing that the ultimate responsibility lies with individual states, although the AU can play a significant role in ensuring an integrated and effective system of implementation by states, monitoring, and follow-up by others. This coordinated approach, they argue, should incorporate a variety of legislative and judicial tools for monitoring and compliance. Ultimately, they claim, the Commission must take a leadership role in structuring effective follow-up mechanisms, but the continued success of these mechanisms depends on a combination of legal authority, expert delegation, and political ownership of the compliance process.

The structure of the book takes the reader on a circuitous route to the book’s primary contribution: recommendations for increasing the operationalization of the Commission’s findings. Murray and Long use the first portion of the book to introduce pertinent terminology. In Chapter 2, the authors present the concepts of “soft” and “hard” law and argue that the dichotomization of the terms ultimately diverts the discourse surrounding the implementation of and compliance with the Commission’s findings. While most readers might presume that the “hardening” of the findings will lead to increased compliance, the authors claim that there is no definitive correlation and that such postulation is but a distraction (pp. 13-18). Binding status can bring about sanctions for the failure to use and comply with the findings, but “soft” law can wield equal force depending on a number of political factors: the context of drafting and the sense of ownership among stakeholders (pp. 18-20); implementation strategies (pp. 20-22); the quality of the finding and the extent to which it is tailored to specific contexts (pp. 22-23); the extent to which the findings add value to existing international treaties and documents (pp. 23-24); and the nature of the body (pp. 24-26). “Software” and “hardness,” though certainly not irrelevant, represent only one of a list of factors that influence the findings.

Murray and Long subsequently proceed with their tutorial in terminology, defining and distinguishing “implementation,” “follow-up,” and “compliance” in Chapter 3. They define implementation as the “legal process by which states take measures at the national level to address issues of concern raised by the human rights treaty bodies”; follow-up as the mechanisms by which to monitor implementation and ultimately compliance by the states; and compliance as a broader notion that “moves beyond the legal process, and . . . [that] is concerned with the factual matching of State behavior and international norms” (pp. 27-28). Again, they evaluate the limitations of these terms and recommend a more comprehensive approach, one that looks at “use” by parties beyond states and treaty bodies in order to measure levels of awareness and understanding, which in turn are linked to levels of implementation and compliance (p. 42).

In Chapter 4, the authors first reach the merits of the Commission’s findings. Here, further exploration of what the findings entail—a range of outputs, including concluding observations on state reports, resolutions,
mission recommendations, and general comments (p. 45)—helps to ground the abstractions of the previous chapters. The authors reintroduce the “soft” and “hard” law dichotomy, simultaneously reiterating their previous point that the legal status of the findings is not decisive while presenting a new practical argument that soft law guidelines can be more user-friendly, expedient, and pragmatic than hard, binding instruments (p. 56). In a similar attempt to contextualize previously defined terms, Murray and Long use Chapter 5 to define the “use” of the findings as broadly including judicial and quasi-judicial processes, national legislative and institutional reform processes, training activities, and awareness-raising by stakeholders (pp. 70-80). They then apply their list of political factors in an effort to explain the reasons for limited use (pp. 80-85). Here, they introduce the compelling circular problem that emerges, namely that the limited information reporting the findings in the public domain results in the Commission’s lack of visibility. Accordingly, actors, including the states themselves, repeatedly miss vital opportunities for use (p. 86).

The remainder of the book contemplates ways for relevant actors to operationalize the Commission’s findings going forward. In Chapter 6, the authors argue that due to limitations at the national level caused by challenging domestic settings in most states, reliance on national actors to deliver compliance is misplaced (p. 87). The authors advocate instead for the inclusion of regional and international players. In order for the ACHPR and Commission to gain legitimacy at the domestic level, the authors recommend the involvement of judges and lawyers (pp. 92-96), governmental parties (pp. 97-104), independent national human rights institutions (pp. 104-08), civil society organizations (pp. 108-10), and UN country teams (pp. 110-12). While Murray and Long recognize that the Commission itself is trying to find ways to strengthen follow-up, the approach thus far has been ad hoc and limited (pp. 119-32). Hence, they argue that the Commission should act instead as the “facilitator,” strengthening follow-up through supervisory actions and enforcement located at the regional level (p. 135).

In their concluding chapters, which are also the strongest, Murray and Long advocate for the active participation of the African Court (the Court) and the AU. In Chapter 8, they explore the technical jurisdiction and procedures of the Court (pp. 141-59) and argue that if the Court increasingly uses the Commission’s findings in its jurisprudence, the Commission’s reputation—and consequently its findings—will be strengthened as a result (p. 160). As the Commission currently considers which cases to submit to the Court, Murray and Long emphasize the importance of the Commission’s strategy, especially since its approach will be scrutinized by actors “within and outside the regional human rights system” (p. 161). Lastly, they argue that one of the reasons for the limited operationalization of the Commission’s findings is the lack of support and action by the AU. They explore the possible engagement of the AU in Chapter 9, advocating that AU organs participate in a range of “soft” roles that might promote implementation (pp. 175-79). Murray and Long conclude the book with a consequentialist argument, reflecting on the importance of coordination and integration among elements of the AU and ACHPR organs—
not just for the sake of implementation and compliance by states with the Commission’s findings but for the effectiveness of the Commission and the regional human rights system writ large.

Murray and Long provide a thorough and clear description of the African Commission’s structure. Their compilation of information on the Commission’s findings and the description of structural relationships between the Commission, the states, the Court, and the AU provide a valuable contribution to the field. However, those with knowledge of international and regional judicial (as well as quasi-judicial) bodies will find many of their observations and conclusions rather intuitive. For example, it is well established that, regardless of “legally binding” status, the implementation of international and regional law is much more of a political dance than the implementation of domestic law.

Nevertheless, some of the observations regarding the Commission’s functionality are useful. While it may seem obvious that the distinction between hard and soft, or binding and non-binding, law is quite fluid in the international/supranational context, it is a helpful reminder for scholars and practitioners that this false dichotomy is not a useful framework for discussing the Commission’s successes and failures (pp. 11-12). Furthermore, Murray and Long’s central argument—that too much emphasis has been placed on the Commission’s perceived failures to follow up on state implementation, use, and/or compliance with its findings—is a welcome addition to the field. While the Commission can—and should—have a role in follow-up, Murray and Long contend that it is neither practical nor desirable to hold the Commission responsible for all the follow-up (p. 193). They also recognize that it is impractical to leave follow-up solely to the states (p. 190). Rather, they argue that follow-up should unfold at multiple “levels.” This is one of their most useful contributions; as they argue, the division of duties not only takes some pressure off the Commission and the individual states, which are under-resourced, but is also practically and politically more feasible (p. 193). Support for the Commission from the Court and the AU would give more credibility and enforceability to the Commission’s findings. This is an important point, as the practical and normative legitimacy of international and regional human rights bodies is an open question in the field.

The assertion that broader integration of national and regional legal and political forces would lead to better follow-up is arguably one of the book’s most valuable contributions; in terms of implementation, however, this point falls flat. Very few concrete suggestions regarding the roles of the states, the Court, or the AU are presented, leaving many questions unanswered. What should be the division of duties? Implementation is left to the states, but in terms of follow-up it is unclear which roles each body would assume. Further, how would this cooperation come about? Any type of formal agreement or division of labor among all the interested actors is unlikely to occur, for both practical and political reasons. The “cooperation” that the book advocates would have to be voluntary and relatively informal. This could lead to further problems of enforcement and accountability down the line, particularly since
many of these bodies are under-resourced and may not always be able to fulfill their informal responsibilities. One possibility might be for the Commission to take responsibility for coordinating follow-up efforts, but relying on the resources of some of the other bodies whose involvement the authors recommend. For example, the Commission might coordinate meetings with stakeholders, help divide up tasks among the Commission, the states, and the AU, and compile and disseminate regular reports on the results of these follow-up visits.

Other questions arise in light of the authors’ distinction between implementation, compliance, and use. Even if an informal system of follow-up investigations were to be established, what exactly would be the subject of the follow-up? “Use” most likely would not be subject to follow-up investigations, but what about compliance? Or would implementation—in the strictly legal sense—be the main focus of follow-up investigations? Given that the Commission, the relevant state actors, and the AU are underfunded and under-resourced, it might be most practical to start out with follow-up at the implementation level. It is less costly and would require fewer in-country visits, to determine whether a country has enacted a law (“implementation”) than to determine how that law is playing out on the ground (“compliance”). On the other hand, compliance is the more relevant factor in determining whether human rights abuses are actually occurring, and so if the follow-up on implementation is successful, it would be ideal to also have a comprehensive system of follow-up for country compliance.

These questions leave something to be desired, and at the moment, it is ultimately unclear what solutions would be most effective. An additional chapter, addressing some of the more detailed, pragmatic concerns regarding actual follow-up on the Commission’s findings, would have been helpful. Nevertheless, the authors provide a useful description of the Commission’s work and make a genuine contribution to the field in their analysis of the problems with holding the Commission solely responsible for follow-up on its findings. This observation can serve to reframe the debate about the Commission’s utility as a quasi-judicial body. Given the tenuous position of the Commission within the African system, Murray and Long’s reframing provides a valuable way to evaluate the Commission’s “successes” and “failures.” Finally, given broader debates about the usefulness and legitimacy of human rights bodies, this book provides a new framework that can be applied to other international and regional human rights bodies.


Juvenile justice, the formal institutional arrangements through which legal systems respond to young offenders, originated in the United States when an 1899 Illinois statute established the first formal juvenile court. Since then,
American scholarship in this area has been consistently parochial, producing little analysis of developments beyond the U.S. context. *Juvenile Justice in Global Perspective* seeks to rectify the paucity of international analysis. True to what its title suggests, the volume describes the diversities and commonalities across juvenile justice policies worldwide. Given the previous dearth of relevant literature, *Juvenile Justice in Global Perspective* is an indispensable contribution to the study of juvenile justice for English-speaking scholars and practitioners interested in international law, youth advocacy, or comparative criminal law.

Editors Franklin E. Zimering (University of California, Berkeley), Máximo Langer (University of California, Los Angeles), and David S. Tannhaus (University of Nevada, Las Vegas) offer a useful theoretical primer for students of juvenile justice reform. They set forth three complementary ambitions for the volume. First, the editors seek to profile a large number and wide range of juvenile justice systems in order to diversify relevant scholarship. Second, they utilize a “double-comparison perspective” to juxtapose individual juvenile justice systems both with their counterparts in other countries and with their respective domestic “criminal justice sibling.” Third, the editors seek to investigate whether juvenile courts worldwide and the criminal justice systems that they “adjoin” exhibit fundamental differences (pp. 1-3).

*Juvenile Justice* is a collection that is original in its conception, although the individual essays vary in quality. Cogently organized into geographic and theoretical sections, each section introduces new jurisdictions into the literature. The authors who give the juvenile-versus-criminal comparisons adequate attention provide fascinating observations. However, their numbers are few, and such attention is selective and often cursory. Nonetheless, *Juvenile Justice* is a step forward from the current literature, and the volume deserves praise for the ground it does cover.

With respect to the editors’ first goal—representing a variety of geographical, political, and religious contexts and incorporating them into their analysis (p. 1)—the editors succeed admirably, covering more than 110 countries across five continents. Although they emphasize the volume’s reach, the editors do not claim to be comprehensive. Chapters titled “Myths and Realities of Juvenile Justice in Latin America” (pp. 198-248) and “Juvenile Justice in Muslim-Majority States” (pp. 249-88) suggest that breadth will be privileged over depth. Yet even from this empirical distance, the authors generally provide a useful starting point and, more importantly, identify where those seeking greater depth may turn. Tapio Lappi-Seppälä’s review of the

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Scandinavian experience is indicative (pp. 63-118). The bastion of twentieth century liberalism, it turns out, has no separate juvenile court system. Juvenile justice in Nordic states “stands as it was designed more than a century ago” with “one foot in the adult criminal justice system and the other in the child welfare system” (p. 64). Addressing themes that recur throughout subsequent chapters, Lappi-Seppälä situates the Nordic States’ approach to juvenile justice within a broader socio-political context (e.g. the exceptionally generous welfare system and a tradition of municipal self-governance) and economic situation (e.g. trade ructions and subsequent budgetary constraints).

Ved Kumari’s chapter on the Indian juvenile justice framework is equally compelling and particularly valuable insofar as it draws attention to a jurisdiction rarely studied by Western scholars. (Other previously understudied jurisdictions addressed in Juvenile Justice include China, Latin America, and majority-Muslim contexts.) Kumari’s chapter also stands out for less praiseworthy reasons. Kumari shifts between positive and normative claims with what is often startling abandon. This is not altogether surprising: a country’s treatment of its poorest and typically most downtrodden young citizens engages fundamental moral issues. However, Kumari’s academic argument would have been better served by drawing a clearer line between “the theory and practice” of the Indian juvenile system (p. 145) and “what is needed in India” (p. 186). Like many of the authors, Kumari also too often lapses into discussion of the United States. After a thorough review of child offender transfer provisions, Kumari devotes the penultimate pages of her chapter to the adolescent brain and, in particular, United States Supreme Court rulings that emphasized the findings of neuroscience, such as Roper v. Simmons14 and Miller v. Alabama.15 This analysis is only marginally pertinent to the remainder of the chapter.

The editors skillfully incorporate the narratives of countries that have undergone recent political changes in order to explore the evolution of juvenile justice systems in comparatively dynamic contexts. For instance, Barbara Stando-Kawecka’s chapter tracing the development of the Polish juvenile justice system through the collapse of the Soviet Union persuasively argues that the country experienced a gradual acceptance of norms codified by Western European states and international institutions. Ann Skelton meticulously traces the genealogy of juvenile justice in South Africa from the colonial period up to the present post-Apartheid constitutional context, ending on a note of sober optimism regarding the juvenile justice challenges prevalent in developing countries with large income disparities. The comparative study of South Korea and Japan by Jae-Joon Chung also falls into this category. Collectively, these chapters allow readers to develop more nuanced understandings of juvenile justice in relation to contexts ranging from post-colonialism and post-Communist transitions to the 1989 Convention on the Rights of the Child and democratization in East Asia.

The editors set themselves a formidable challenge. The chapters, authored by scholars hailing from different academic cultures and with varying degrees of data at their disposal, are difficult to organize into a coherent volume. As a result, the editors only moderately succeed in achieving their second and third goals of comparing specific juvenile systems with their foreign peers and their domestic criminal justice “siblings” and of identifying significant contrasts between juvenile justice apparatuses and the “regular” criminal justice counterparts. With regard to the cross-national aspect of the “double-comparison perspective,” the editors could have taken a broader, global vision. While the surveys of Europe, Latin America, and Muslim-majority states take on intra-regional or cross-national comparisons, no global-level comparisons were offered. Since the quality and depth of analyses varies significantly among authors, the contrasting of juvenile courts and the criminal justice systems that they adjoin—the other comparison within the “double-comparison perspective”—also varies from chapter to chapter. Even though most of the authors address the historical origins of the juvenile justice systems as well as the contrasts between juvenile and adult sentencing, some chapters fall short. For instance, Weijian Gao’s chapter, which recounts the development of the Chinese juvenile justice system, is both important and innovative but reads more like an outline than an analysis. Most worryingly, it fails to adequately take into account the harsh penal culture in the People’s Republic. It is true that the Chinese juvenile courts only came into existence in the 1980s and statistical information is wanting. However, Gao could have probed more critically the tension between the “youth welfare” ideal and the Chinese penchant for strict social control (pp. 136-37).

For theorists interested in the rationales behind the institutional design of juvenile justice systems, the concluding chapter successfully synthesizes the commonalities in juvenile justice policies worldwide in its “search for a deep structure in global juvenile justice” (p. 383). The editors contend that neither “power” (military occupations, threats, or incentives by other states) nor “emulation” (international norms or trends) explains the commonalities across juvenile justice systems globally. Instead, the editors argue that such global commonality results from a maturation-rather-than-rehabilitation philosophy shared across countries, which posits that juvenile offenders should be allowed to mature with the least interference. “There is not now, nor was there ever, substantial investment in relocation and indoctrination of young offenders. Instead, the court for young offenders hopes to do less harm than long-term incarceration” (p. 406). The virtues of “maturation,” the editors emphasize, are “passive.”

In the their concluding thoughts, the editors of this “global” work return to the words of an American judge in early twentieth century Chicago. Judge Julian Mack, writing about the newly established Illinois Juvenile Court in the 1909 Harvard Law Review, explained that the Court’s purpose was “not so much to punish as to reform, not to degrade but to uplift, not to crush but to
develop, not to make him a criminal but a worthy citizen.”

As the American criminal justice system comes under increasing scrutiny, a crucial question arises: what kind of citizens does the United States want to foster? In attempting to answer that question, a nation as inclined to navel-gazing as our own may profit from a glance abroad.


Today, the prevailing view in historical scholarship takes a largely ambivalent position in assigning blame for World War I. Influenced by realist theories of political science, many scholars attribute World War I to the “out-of-control, entangling alliances,” (p. 12) absolving individual states from blame. In *A Scrap of Paper: Breaking and Making International Law during the Great War*, Isabel Hull challenges the dominant exculpatory narrative. Arguing that the modern narrative has been twisted by war propaganda, Hull calls for a fresh consideration of the very basis for World War I. Hull follows the scholarship of James W. Garner and advocates an analysis of World War I from the perspective of international law.

Eschewing the notion of indistinguishable state actors, Hull argues that World War I was fought over the nature of international law. World War I, Hull explains, resulted from the clash of state visions over the proper role of international law in determining state behavior. In Hull’s account, Germany posed a “fundamental challenge” to the established legal order (p. 11). Britain and its allies (most notably France) rejected Germany’s attempt to refashion the laws of war, and this fundamental disagreement over the basic rules of law serves as a key factor in explaining both the causes and the conduct of World War I.

Arising from the Prussian military tradition, Germany took a “war positivist” approach towards international law. Their war positivist approach “claimed that the putative nature of force and violence unleashed in war produced the ‘natural’ laws of war, which could not be limited by norms or binding laws external to them” (p. 316). As such, Germany interpreted international law as a non-binding, descriptive mechanism, with *Notstand*, or military necessity, ruling military doctrine.

In contrast, Britain and its allies perceived international law as prescriptive behavior that served as a guarantor for stable international order. From the British perspective, “international law was made by the society of ‘civilized’ states acting together” (p. 197). Britain and France saw their

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behavior as far more constrained by the principles of international law, demonstrating much greater concern over their ability to justify their behavior under international law.

Hull further suggests that the structures governing Germany and Britain’s military policies may have affected divergent understandings of international law. The military establishment controlled Germany’s military decision making: “the legal issues were vetted only once before the Kaiser; thereafter, decision making devolved . . . with the military taking the lead and ultimately determining policy” (p. 161). In contrast, Britain’s military policy operated “within a strategic context that factored legal, diplomatic, economic, coalition, public opinion, and other considerations into military policy” (p. 181).19

Hull highlights the divergent approaches to international law by exploring several distinct cases where she contends that the law informed government decision making: Germany’s violation of Belgian Neutrality, treatment of enemy civilians in occupied territory, unrestricted submarine warfare, introduction of new weaponry, and the British blockade and reprisals. While the detailed analyses of the cases fully immerse the reader in the subtleties that shaped historic decisions, the focused scope can complicate efforts to follow the larger argument. As such, more casual readers may struggle to get their bearings during discussions of the comparative takeaways found in the later chapters.

The analysis of each of these cases is grounded in a thorough investigation of the governmental decision making processes that led to the policies. Integrating evidence from French, German, and British government archives, along with an array of memoirs, diaries, and secondary sources, Hull guides the reader through the debates and negotiations between governmental departments and military leadership. Hull’s excellent selection and integration of quotations highlight the role of the language of international law during these debates.20 Examining the statements of the United States and other European neutrals, Hull deftly connects British and German debates over war policies to the concerns expressed by neutral states offering a compelling argument that third-party interests influenced wartime decision-making (pp. 176-82).

Another strength of A Scrap of Paper is its ability to allow the reader to understand the motivating questions in international law in the lead-up to the Great War. By tracing international negotiations over the rules of war during the time of the Brussels Convention (1874), Hague Convention (1899), and Declaration of London (1909), Hull identifies the theoretical division over the function of international law as codification of “customary usages of great military powers” or as a representation of the “laws of humanity” (pp. 75-76). By presenting the history of regulations towards levée en masse, the transport

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20. For example, Hull discusses Germany’s debate over the use of landmines, “The chancellor was advised that a blockade by U-boats and anchored mines was “unobjectionable” . . . because Russia had never signed the Hague Convention on automatic contact mines, so it was not in effect” (p. 218).
of conditional contraband, and other areas of disagreement within international law. Hull clearly connects British and German government decisions to their larger debate over the prescriptive versus descriptive role of international law.

While the nuanced depth of Hull’s investigation into British and German wartime decision making allows for thought-provoking comparison, Hull’s arguments would be strengthened by a broader international focus. For instance, Hull’s emphasis on Germany’s unique view of international law and the role of its governmental decision-making structure has no point of comparison other than Britain and France. The reader cannot help but wonder about the role of international law in the decision-making processes of Austria-Hungary and Russia. Because their governmental structures and views of international law differ from those of western European democracies, an expanded investigation beyond the Western Front to these powers would provide a stronger basis for judging Germany’s wartime relationship with international law. Further scholarship would benefit from the consideration of international law during the Great War from a continental rather than North Atlantic perspective. For example, a continental approach could integrate the separate studies on the treatment of POWs on the Eastern and Western Fronts.

A reader may also question whether international law had any intrinsic value to the parties in conflict or if state conformance simply reflected an alignment with neutral preferences. Hull finds that Germany took care to observe enough international law so as not to antagonize neutral players to join the Allied effort: “[Germany] feared that sinking neutral vessels, or enemy passenger ships with neutrals aboard, would bring the United States into the war against Germany” (p. 257). Thus, German observance of international law may have been an instrumental way of keeping third parties out of the war. Similarly, there are indications that British leadership followed international law as a means of influencing third-party behavior. When considering whether to implement censorship by blockade, a British cabinet member “suggested canvassing the neutrals to see how upset they would be if Britain adopted the measure” (p. 202). This behavior indicates that Britain’s compliance with international law may have been motivated by an attempt to garner neutral support. Essentially, both parties tried to convince the neutral actors that their interpretation of international law did not affect the status quo in a way that threatened third-party interests.

As such, the author falls short of addressing an essential legal question: is international law merely an instrument for maintaining the status quo? Eric Posner observes that “[t]here is a long history . . . of using international law against small predatory states” and that wealthier, more powerful states have a significant interest in restricting “the weapons and tactics favoring the small states.” In this sense, Germany needed a fundamentally different conception

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21. For example, Hull discusses the legal principles of non liquet, rebus sic stantibus, and opinio juris.
of international law if it were to challenge a legal system that perpetuated an unfavorable hierarchy of nations. Hull dismisses this argument by first suggesting that “Germany was not objectively, but only relatively weak in comparison to its enemies’ coalition” (p. 319). However, because balance of power may function as a zero-sum game, relative power is the relevant metric. Hull’s second counterargument contends that even if Germany was indeed significantly weaker, it was not at a disadvantage because the protections of international law applied equally to all states (pp. 319-20). However, if as Posner has suggested, the law of war favors the wealthy and the powerful, then this contention would require further exploration.

In sum, *A Scrap of Paper* provides a valuable contribution to the historical literature on World War I and a fascinating behind-the-scenes account of wartime policy development. Hull’s work also offers key insights into the development of international norms as well as potential barriers to norm internalization. Thus, this book is as forward-looking as it is historical: not only does it provide a trove of historical data, but it also offers the promise of deep insight into the normative development of our international law today.

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