RECENT BOOKS ON INTERNATIONAL LAW

EDITED BY RICHARD B. BILDER

REVIEW ESSAY

INTERNATIONAL LAW, DOMESTIC LAW, AND THE UNITED STATES

International Law in the U.S. Legal System. By Curtis A. Bradley. Oxford, New York: Oxford University Press, 2013. Pp. xvii, 371. Index. $75.

Curtis Bradley has written an important and timely book on international law in the U.S. legal system. Bradley—one of the so-called conservative "New Sovereigntists"[1] who began his academic career in the mid-1990s—is a prolific and influential scholar of U.S. foreign relations law. *International Law in the U.S. Legal System* provides abbreviated versions of some of his most important scholarship, but it also adds a substantial amount of new material in an extremely well-integrated and readable book.

Its central aim is to offer a descriptive account of how international law is treated in the U.S. legal system, with an emphasis on constitutional structure, particularly separation of powers and federalism. Chapter 1 begins by providing a clear, concise overview of courts and foreign affairs generally. This chapter also demonstrates one of the book's many virtues: it will serve as an important resource for diverse audiences. For foreign scholars, LLM students, and anyone else seeking a short but sophisticated, nuanced but accessible treatment of courts (state and federal) and foreign affairs, the first chapter of this book is hands down the best thirty pages available anywhere. Subsequent chapters are frequently organized around categories from (or familiar to) international law, and not around constitutional actors or powers, true to the book's title and deliberate focus on international law in the U.S. system, rather than foreign relations law more broadly. Thus, chapter 2 is about treaties, chapter 5 customary international law, chapter 8 sovereign and official immunity, and chapter 9 extradition. But as Bradley emphasizes, the international law described in the book is mediated by the U.S. legal system, including its constitutional structure. The title and organization of some chapters accordingly mark the book as unmistakably U.S. in origin and focus, as in chapter 3 on "Executive Agreements," chapter 6 on "Extraterritorial Application of U.S. Law," chapter 7 on "Alien Tort Statute Litigation," and chapter 9 on "War Powers and the War on Terrorism."

Bradley provides a skillful and ambitious overview of what is at times a complex body of material. He describes key intellectual debates, constitutional text and structure, history, and important cases and legislation at a very effective level of detail, which is no small accomplishment. Accordingly, a great deal is packed into 331 pages of text and footnotes. Particularly successful are the many sections of the book that give background about broader political developments and discuss nonjudicial legal materials—as befits the title's reference to "the U.S. legal system," not "U.S. courts." For example, chapter 4, "Decisions and Orders of International Institutions," avoids a narrow emphasis on the Vienna Convention cases and instead paints with a broader (and much more interesting) brush by briefly describing the rise of international institutions, the history of U.S. international adjudication and arbitration, issues of constitutional structure, and the text and implementing legislation of treaties such as the Chemical Weapons Convention. As smaller examples,

[1] Peter J. Spiro, *The New Sovereigntists: American Exceptionalism and Its False Prophets*, 79 FOREIGN AFF., Nov.–Dec. 2000, at 9, 13.

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chapter 2 is enriched by short discussions of the U.S. treaty-making process and the history of conditional consent; chapter 5 by a discussion of customary international law in the *Restatement (Second)* and *Restatement (Third) of the Foreign Relations Law of the United States*; and chapter 6 by a discussion of regulatory actions involving foreign corporations and the enactment of an anti-corruption treaty and related legislation. Other examples abound.

Substantively, the book accurately describes a generally (and increasingly) "dualist"—for lack of a better term—relationship between the domestic and the international (p. xii) in which the political branches must explicitly incorporate international law into the domestic legal system; otherwise, its relevance for courts is merely indirect and interpretive. Thus, for example, U.S. treaty reservations, understandings, and declarations (RUDs) are binding on the courts as a matter of domestic law; customary international law is not federal common law absent incorporation by the political branches; treaties are not presumptively self-executing; and decisions of international tribunals lack the status of domestic law. These issues are controversial and not entirely settled (more on that topic below), but U.S. law has unquestionably, for better or worse, shifted in this direction over the past decade or so.

Although much of Bradley's previous writing comes down squarely in favor of a dualist relationship between domestic and international law, the book is generally evenhanded, exploring counterarguments in the text and through footnotes that direct the reader to scholarship that disagrees with the author's own. For this and the other reasons already mentioned, the book should help make the field more accessible to a broad range of readers, foster more scholarship on comparative foreign relations law, and encourage more engagement between (and even among) foreign relation scholars and experts on constitutional and public international law. The book is not just for newcomers to the field, however, as it provides a rich and sophisticated treatment of its topic, one that will serve as an important reference for all working in U.S. foreign relations law, including scholars, government lawyers, and judges.

If pressed to point to weaknesses in Bradley's book, I would note that certain themes arguably merited greater attention. One example is the political question doctrine, discussed in a couple of paragraphs in chapter 1, briefly mentioned at various places elsewhere in the book, and then poorly indexed. Missing is not so much a lengthy treatment of this doctrine but, instead, even a concise description of what might be characterized as its declining significance based on the Supreme Court's decision in *Zivotofsky v. Clinton*,[2] as well as an exploration of the doctrine's potential application to Alien Tort Statute (ATS) and terrorism-related cases. The arguable decline of the doctrine seems relevant to (and may be in some tension with) the book's overall theme of judicial restraint in favor of actions by the political branches. Another example is the author's discussion of the issue of judicial deference to the executive branch (also poorly indexed) in international-law-related cases, which is introduced in terms of deference as set forth in *Chevron, U.S.A., Inc. v. NRDC, Inc.* and *Skidmore v. Swift & Co.*[3] However, these analogies are not pursued at other places where deference is mentioned, and it is unclear how useful they are in the end. A third example is the author's statement in his conclusion noting a "central theme of the book" is that domestic law and institutions mediate and "inevitably" alter international law as it is applied domestically (p. 329). Thus, the "international law in the U.S. legal system is not the international law applied by, say, the International Court of Justice" (*id.*). For a "central theme," this subject gets little explicit attention throughout the book, which is especially noticeable in the author's discussion of sovereign and official immunities and the customary international law of human rights. The divergence between international law and U.S. practice and interpretation emerges more clearly with respect to the Bush administration's application of the four Geneva Conventions for the Protection of War Victims and the litigation concerning the

[2] Zivotofsky v. Clinton, 132 S.Ct. 1421, 1427 (2012).

[3] Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837 (1984); Skidmore v. Swift & Co., 323 U.S. 134 (1944).

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Vienna Convention on Consular Relations (in which the Supreme Court rejected the International Court of Justice's interpretation of a treaty),[4] but it is unclear in what sense these differences were inevitable.

All told, the book meets and exceeds its goal of describing international law in the U.S. legal system with a focus on constitutional structure. On its own terms, the book is a home run. Even more, this book is one of those once-in-a-generation kinds of contributions that should help define and shape an important field of law. Bradley describes his book as "self-consciously written" in the tradition of Louis Henkin's landmark treatise, *Foreign Affairs and the U.S. Constitution* (p. xiv). The two editions of Henkin's book, appearing in 1972 and 1996, were *the* defining works for more than a generation of foreign relations scholars. Bradley's book, as noted above, focuses on international law in the United States, not on foreign relations as whole, so coverage accordingly varies somewhat between Bradley's and Henkin's works. But Bradley's volume earns its place on the shelf alongside Henkin's increasingly outdated book—high praise indeed. Even readers who strongly disagree with much of Bradley's other academic work will likely find themselves reaching for this book and its concise yet sophisticated and thorough treatment of many important topics.

The book's successful execution of its mission and the influence that it is likely to enjoy do lead the reader to ask whether a dualist-leaning system is a normatively desirable one for the United States. As Bradley acknowledges, many issues addressed by the book are "never entirely settled" (p. 331), so the question—doctrine aside—of how they ought to be resolved remains salient. Moreover, the book describes doctrinal developments, for example with respect to the status of customary international law as federal common law and to treaty self-execution, that are in tension with some positions taken by the American Law Institute in the *Restatement (Third) of the Foreign Relations Law of the United States* (a project for which Louis Henkin served as chief reporter), causing the reader to wonder whether those developments are ones that we should embrace.

The book itself offers no overarching normative perspective from which to answer this question. It has, for example, none of the methodological ambitions of originalist Michael Ramsey's *The Constitution's Text in Foreign Affairs* (2007). Although Bradley mentions in passing some reasons for a dualist approach and purported problems with customary international law in particular, he shows little outright hostility toward or skepticism about international law itself, unlike Jack Goldsmith and Eric Posner's *The Limits of International Law* (2005). The Bradley book's preference for political branch—rather than judicial branch—implementation of international legal obligations is supported by passing reference to the courts' lack of democratic accountability, but otherwise the purported institutional weakness of the courts is barely mentioned, in contrast to Julian Ku and John Yoo's *Taming Globalization: International Law, the U.S. Constitution, and the New World Order* (2012).

To be sure, Bradley has set out to write a different kind of book, one chiefly aimed at describing, not arguing. Description is a legitimate and important objective, which the book successfully meets and which I do not intend to question. Nor do I mean to ask whether the book, written as it is by one of the "new sovereigntists," is either motivated by a veiled hostility toward courts and international law or designed to be all the more effective by its lack of an overt agenda.[5] Indeed, my question is not about Bradley's personal motivations but instead about the field itself and the dualist-leaning world described by the book.

What benefits might international law realize from a dualist-leaning, partial retreat from the *Restatement (Third)*? These developments make

[4] Sanchez-Llamas v. Oregon, 548 U.S. 331 (2006); Medellín v. Texas, 552 U.S. 491 (2008).

[5] *Cf.* Peter J. Spiro, *Sovereigntism's Twilight*, 31 BERKELEY J. INT'L L. 307, 308, 309–10 (2013) (making this claim about a different book); *see also* Mattias Kumm, *Constitutionalism and the Cosmopolitan State*, 20 IND. J. GLOBAL LEGAL STUD. (forthcoming 2014) (describing Bradley and other new sovereigntists as settling into a "dogmatic slumber of self-congratulatory hubris with regard to the achievements of national constitutionalism, while promoting scepticism about international law").

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international law harder to enforce in U.S. courts, especially at the behest of individuals. The doctrine described by the book also tends, on the whole, to consolidate power in the political branches and in nation-states, still the most powerful actors in the domestic and the international contexts respectively, at least with respect to formal international legal norms. If, as realists sometimes argue, broader efforts to advance and develop international law may harm the political conditions under which any form of international law can thrive, then perhaps the doctrinal arrangement defended in the book can in some sense advance a normative, pro-international law agenda. As Benedict Kingsbury observes, one might be an "idealist" who believes "that only through realism could progress towards ideals be made."[6]

I offer three observations in this direction. First, at both the domestic and international levels, the doctrinal developments described by the book generally allocate power over formal international law to the actors that already exercise the most control over it: the political branches (in the domestic context) and, to a lesser degree, the nation-states (in the international context). Second, eschewing broader assertions of hard international law, based less clearly on the consent of these actors and premised upon a greater erosion of sovereignty, may permit international law to flourish in more limited circumstances. Third, the foregoing idea is not new to be sure,[7] but it may have renewed significance in light of the current state of U.S. foreign relations law and political developments more generally.

First, at the domestic level, the most controversial aspects of the book generally involve privileging the political branches over the courts in the direct implementation of international law into the U.S. legal system. Consider the *bêtes noires* of international human rights activists (and, indeed, much of the international community): the waning of ATS litigation and the apparent rejection in *Medellín v. Texas*[8] of a presumption in favor of treaty self-execution, both generally defended by Bradley in other scholarship and, to a lesser extent, in this book (pp. 150–58, 225–26).[9] Many would like the courts to use treaty self-execution and customary international law in a sense as the better angels of ourselves to judicially enforce normatively desirable international law, even when not clearly authorized to do so by the political branches. The Court has shied away from this approach, requiring clearer actions from the political branches before applying international law domestically.

The domestic allocation of power as described by the book may also impact the development of international law, a point noted but little elucidated by Bradley. Dualism is generally associated with a state-centered positivist approach to international law that privileges the executive branch in particular, focuses on horizontal state-to-state interaction, and excludes nonstate actors.[10] Some of the doctrine described in Bradley's book has these effects, such as limitations on the enforcement of customary international law and treaties through the domestic courts at the behest of individuals. These limitations tend to consolidate power in what has traditionally been the most important actor in the development of formal international law[11]—the nation-state. Not all of the doctrinal developments favor the executive branch or even the federal government; potential federalism limitations on the treaty power might, for example, impose modest limits on the power of the federal government in favor of individual U.S.

[6] Benedict Kingsbury, *Legal Positivism as Normative Politics: International Society, Balance of Power and Lassa Oppenheim's Positive International Law*, 13 EUR. J. INT'L L. 401, 435 (2002) (footnote omitted).

[7] *See, e.g.*, Prosper Weil, *Towards Relative Normativity in International Law?*, 77 AJIL 413 (1983).

[8] *Medellín*, 552 U.S. 491.

[9] *See also* Curtis A. Bradley, *Self-Execution and Treaty Duality*, 2008 SUP. CT. REV. 131.

[10] *See* Harold Hongju Koh, *Transnational Public Law Litigation*, 100 YALE L.J. 2347, 2349 n.10 (1991).

[11] This discussion is limited to formal international law—treaties and custom. Many argue that soft or informal law and governance are displacing formal international law. *See, e.g.*, Spiro, *supra* note 5, at 315–18; Nico Krisch, *The Decay of Consent: International Law in an Age of Global Public Goods*, 108 AJIL 1 (2014). Bradley's book focuses on formal sources of law, as does this review.

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states.[12] But limiting the roles of individuals and of customary international law does, as a general matter, disadvantage nonstate actors and nonconsensual forms of lawmaking.

Second, eschewing broader efforts to enforce and implement international law beyond the consent of powerful actors could permit a narrower assertion of international law to flourish—a realist hope for the current state of U.S. foreign relations law. But does it? Contemporary transnational human rights litigation came into its own at a time when law in general, and courts in particular, were widely viewed as key agents of social change in the United States. In the late 1970s and 1980s, as international human rights litigation geared up in the United States, public interest organizations generally turned to law and litigation, rejecting "[t]he traditional tools of political change—bargaining, negotiations, and elections"—in favor of the adjudicative process, which "came to be seen as a more efficient, more effective, and more just model for government—and as a 'substitute for politics.'"[13] Writing back in 1991, Harold Koh explicitly linked burgeoning transnational human rights litigation to the rise of domestic public interest litigation and to "a growing acceptance by litigants of United States courts as instruments of social change."[14]

Today, however, the view that domestic courts can or should serve on the leading edge of social change has come under substantial pressure. Some argue that the Supreme Court follows rather than leads public opinion on contested social issues and that courts lack the long-term institutional capacity to act counter to public opinion and to the preferences of the political branches.[15] The relationship between courts and social change remains complex,[16] and the analogy between transnational human rights litigation and judicial review of statutes (the focus, for example, of Barry Friedman's book[17]) is imperfect. Yet, given the extent to which the Supreme Court appears to work generally in step with public opinion, it is hard to see why the courts would (or successfully could) be on the leading edge with respect to international law when the political winds blow hard in the opposite direction. The long list of international law violations, assertions of U.S. exceptionalism, and failures to ratify international conventions—all at the hands of the political branches—need not be repeated here. These actions by the political branches may not be a perfect proxy for public opinion, but the extent to which the (directly) politically accountable actors in the United States are willing to violate, denounce, and fail to commit to widely accepted international norms cannot, in some sense, be lost on the Court.[18]

As well, the implementation of international law pressed upon the courts in both *Medellín* and the ATS context was premised upon exceptionalism in the other direction as it was out of step with actions of other domestic courts around the world, as noted by the U.S. Supreme Court.[19] As a point of comparison, Italian courts, when faced with the domestic implementation of a judgment from the International Court of Justice (ICJ),[20] followed the ICJ judgment based in part on Article 11 of the Italian Constitution, which (unlike the U.S. Constitution) requires the promotion of international

[12] As Bradley mentions, however, the Supreme Court has not been receptive to federalism arguments in the context of sole executive agreements (pp. 58–61, 88, 92). As this review went to press, the Court was poised to decide *Bond v. United States*, in which the Court may impose federalism limits on Congress's power to implement treaties.

[13] GORDON SILVERSTEIN, LAW'S ALLURE: HOW LAW SHAPES, CONSTRAINS, SAVES, AND KILLS POLITICS 9 (2009).

[14] Koh, *supra* note 10, at 2364.

[15] BARRY FRIEDMAN, THE WILL OF THE PEOPLE: HOW PUBLIC OPINION HAS INFLUENCED THE SUPREME COURT AND SHAPED THE MEANING OF THE CONSTITUTION 364–65 (2009); GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 420–29 (2d ed. 2008).

[16] *See* Linda Greenhouse & Reva B. Siegal, *Before (and After)* Roe v. Wade*: New Questions About Backlash*, 120 YALE L.J. 2028 (2011).

[17] FRIEDMAN, *supra* note 15.

[18] *Cf.* Sosa v. Alvarez-Machain, 542 U.S. 692, 734–35 (2004); Sanchez-Llamas v. Oregon, 548 U.S. 331, 355 (2006).

[19] Kiobel v. Royal Dutch Petroleum Co., 133 S.Ct. 1659, 1668–69 (2013); *id.* at 1677–78 (Breyer, J., concurring); Medellín v. Texas, 552 U.S. 491, 516–17 (2008).

[20] Jurisdictional Immunities of the State (Ger. v. It.; Greece intervening), 2012 ICJ REP. 99 (Feb. 3).

organizations designed to ensure peace and justice among nations. But the Italian parliament also passed a statute directing the implementation of the ICJ judgment, and the Italian executive branch accepted the compulsory jurisdiction of the ICJ in future cases.[21] The Italian courts acted differently than the U.S. courts had in *Medellín*, but the Italian courts did so based on a different constitutional text and a different political climate. In the United States, Congress refused domestic implementation of the ICJ judgment in *Avena*[22] and withdrew from the Optional Protocol that had afforded jurisdiction to the ICJ. The fundamental difference between the Italian and U.S. implementation of the ICJ judgment lies not so much in the actions of the courts but instead of the political branches and in the context within which the courts operate. At a minimum, given political developments in the United States, the direction of U.S. foreign relations law away from some of the *Restatement (Third)*'s court-centric positions seems inevitable in retrospect, not as a matter of doctrine (although maybe that, too) but as a matter of politics and the institutional position of the U.S. Supreme Court.

Had the U.S. Supreme Court given full imprimatur to *Filártiga v. Peña-Irala* and subsequent ATS cases (especially against corporations) or had it held in *Medellín* that ICJ decisions are directly enforceable in U.S. courts, political backlash seems like a nontrivial possibility, perhaps reverberating well beyond those cases themselves. Political movement in this direction would have been especially likely as the executive branch opposed direct application of ICJ decisions and (at times) the broad application of the ATS. To be sure, the Torture Victim Protection Act of 1991[23] provides explicit legislative backing for a narrow set of cases originally brought under the ATS, but, as Bradley recounts, it was a product of both lower court judicial initiative (*Filártiga*) and pushback (*Tel-Oren v. Libyan Arab Republic*).[24] The developments represent less an uninterrupted march forward and more an ongoing conflict over fundamental values—*Filártiga* being less like the common understanding of *Brown v. Board of Education*[25] and instead more like *Roe v. Wade*—illustrating what both Bradley and Koh describe as an ongoing institutional dialogue rather than final settlement of contested issues.[26]

As Bradley describes in the last chapter of his book, the same decade that saw the Supreme Court limit the direct application of international law in the foregoing ways also brought important decisions relying upon international law to interpret acts of Congress, including *Hamdi v. Rumsfeld* and *Hamdan v. Rumsfeld*,[27] as well as limitations on the political question doctrine (that Bradley mentions in chapter 1). Of course, no demonstrable causal relationship exists. But the Court maintains its power in part by astutely aligning itself with powerful social and political forces, giving it a basis from which to make occasional decisions that strike down the actions of the political branches.[28] Viewed over a longtime horizon and at a higher level of generality, it is, indeed, decisions like *Medellín* (in its rejection of direct applicability of ICJ decisions) that make those like *Hamdan* possible. In addition, the Court's rejection of a strong version of the political question doctrine preserves the Court's role in future foreign relations and international law cases, in keeping with the hopes of a generation or more of liberal scholars.[29] With respect to treaties, Bradley's argument that statements of non-self-execution (and other RUDs) helped break political gridlock and ensure ratification of some human rights treaties is entirely plausible, and it also seems plausible

[21] *See* Giuseppe Nesi, *The Quest for a 'Full' Execution of the ICJ Judgment in* Germany v. Italy, 11 J. INT'L CRIM. JUST. 185 (2013).

[22] Avena (Mex. v. U.S.), 2004 ICJ REP. 12 (Mar. 31).

[23] Torture Victim Protection Act of 1991, 28 U.S.C. §1350 note (2012) [hereinafter TVPA].

[24] Filártiga v. Peña-Irala, 630 F.2d 876 (2d Cir. 1980); Tel-Oren v. Libyan Arab Republic, 726 F.2d 774 (D.C. Cir. 1984).

[25] Koh, *supra* note 10, at 2366–67.

[26] *Id.* at 2371.

[27] Hamdi v. Rumsfeld, 542 U.S. 507 (2004); Hamdan v. Rumsfeld, 548 U.S. 557 (2006).

[28] ALEXANDER M. BICKEL, THE SUPREME COURT AND THE IDEA OF PROGRESS (1970).

[29] *See* THOMAS M. FRANCK, POLITICAL QUESTIONS, JUDICIAL ANSWERS: DOES THE RULE OF LAW APPLY TO FOREIGN AFFAIRS? (1992).

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that the courts' willingness to give them domestic effect could pave the way for the ratification of other contested treaties—an argument admittedly weakened by the U.S. Senate's failure to do so heretofore. Similarly, holding the decisions of international organizations and tribunals as non-self-executing, as Bradley also urges, could encourage greater political engagement with them and may avoid constitutional problems related to delegation.

Third, the book describes doctrinal developments that tend to afford more power to nation-states and to privilege a horizontal state-to-state form of hard international law. These themes are quite explicit in *Medellín* and, to a lesser degree, in *Kiobel v. Royal Dutch Petroleum Co.* (which was pending when Bradley's book was published).[30] These doctrinal developments in the United States may be in keeping with broader global trends in litigation.[31] Transnational human rights litigation in Europe and elsewhere is increasingly controlled by executive branches, states have reasserted themselves in the context of investor-state arbitration and within Europe, and the ICJ has emphasized the value of horizontal state-centered international law in judgments unequivocally upholding strong forms of traditional immunity.[32]

Even some international-law-friendly theorists are motivated in this general direction. Kingsbury, for example, observes that the "vitality of mainstream positivist traditions in international law has been sustained by a deeply felt commitment to the ethical view that legal positivism provides the best means for international lawyers to promote realization of fundamental political and moral values."[33] He further asserts that "the state as a global universal with a vital mediating role between the citizen and the overwhelming forces of cross-national power and global markets has renewed appeal" and that, even if "positivism entrenches the *status quo* and disempowers visionaries, a formal international law based on consent has an increasing hold on the democratic imagination."[34] Brad Roth defends an updated version of the sovereign equality of states,[35] and Eyal Benvenisti, while arguing that states as trustees of humanity have responsibilities to people outside their borders, is "not quick to endorse the demise of sovereignty" and argues for an "other-regarding dualism" with some limited, nonconsensual obligations.[36]

These examples are only isolated, of course, and I do not mean to overstate their significance. Moreover, as mentioned above, power is obviously exercised by international actors outside the framework of formal lawmaking, a topic addressed neither by this review nor by Bradley's book. But these developments suggest, perhaps at a minimum, that the disaggregation of the state will only go so far, at least with the enforcement of the formal legal norm, and that it may be important to avoid judicial overreaching. Cases like *Filártiga* and the 1999 House of Lords case denying immunity to Augusto Pinochet, the former Chilean dictator,[37] demonstrate the value of

[30] Medellín v. Texas, 552 U.S. 491, 512–14 (2008); Kiobel v. Royal Dutch Petroleum Co., 133 S.Ct. 1659, 1667 (2013).

[31] *See Agora: Reflections on* Kiobel, 107 AJIL 829 (2013); Ingrid Wuerth, Case Report: Kiobel v. Royal Dutch Petroleum Co.: *The Supreme Court and the Alien Tort Statute*, 107 AJIL 601, 620 (2013).

[32] *See* Ingrid Wuerth, *International Law in Domestic Courts and the* Jurisdictional Immunities of the State *Case*, 13 MELB. J. INT'L L. 819 (2012); Anthea Roberts, *State-to-State Investment Treaty Arbitration: A Hybrid Theory of Interdependent Rights and Shared Interpretive Authority*, 55 HARV. INT'L L.J. (forthcoming 2014); Kammerentscheidungen des Bundesverfassungsgerichts [Chamber Decisions of the Federal Constitutional Court], June 30, 2009, Case No. 2 BvE 2/08, 9 BVerfGK 174 (Ger.); Paul B. Stephan III, *Sovereign Immunity and the International Court of Justice: The State System Triumphant* (Virginia Public Law and Legal Theory Research Paper No. 2012-47), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2137805.

[33] Kingsbury, *supra* note 6, at 402.

[34] *Id.* at 436.

[35] BRAD R. ROTH, SOVEREIGN EQUALITY AND MORAL DISAGREEMENT: PREMISES OF A PLURALIST INTERNATIONAL LEGAL ORDER 300 (2011).

[36] Eyal Benvenisti, *Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders*, 107 AJIL 295, 300 (2013); *see also* Michael Ignatieff, *Intervention and State Failure*, DISSENT, Winter 2002, at 115, 119 ("[S]tate sovereignty, instead of being the enemy of human rights, has to be seen as their basic precondition.").

[37] Regina v. Bartle, *ex parte* Pinochet, [1998] 3 W.L.R. 1456 (H.L.), *reprinted in* 37 ILM 1302 (1998),

judicial initiative, however, and the possibility that it may help spur change ultimately supported by political branches and states. In both instances, judicial initiative—notably with the implicit or explicit support of the forum state's executive branch—has ultimately led to important, if limited, legislative advances that allowed for the enforcement of international human rights on a purely consensual model,[38] even while courts significantly curtailed the broad initial promise of both decisions.[39]

Bradley describes an overall tendency toward dualism in U.S. foreign relations doctrine, and I have suggested that this development was likely inevitable and may be desirable given the political environment in the United States over the past decade. But the dialogue is ongoing, and the push toward international justice and accountability has a compelling normative foundation. Even a realist can hope that the U.S. courts continue not only their storied history of restraint but also their equally storied history of judicial initiative and creativity, along with their willingness to impose powerful, sometimes dramatic restraints on the executive branch.

INGRID WUERTH
Of the Board of Editors

BOOK REVIEWS

The Quest for World Order and Human Dignity in the Twenty-First Century: Constitutive Process and Individual Commitment. By W. Michael Reisman. Leiden, Boston: Brill, 2013. Pp. 487. $25, €18.

The General Course in Public International Law offered at the Hague Academy of International Law has provided us over the years with the opportunity to acquaint ourselves with the ways in which leading public international law scholars and practitioners understand the field as a whole. Although the growing complexity and compartmentalization of international law have been accompanied by an increased risk of our not seeing the forest for the trees, the General Course has allowed us, time after time, to take a step back, review general trends in international law, consider their implications, and muse about overarching theories to make sense of it all.

The Quest for World Order and Human Dignity in the Twenty-First Century: Constitutive Process and Individual Commitment—an edited and updated pocketbook edition of W. Michael Reisman's 2007 Hague lectures (which appeared in volume 351 of the *Recueil des Cours*[1])—presents an excellent general overview of international law and provides students of international law with easy access to Reisman's approach to its practice and theory. In publishing this book, the Hague Academy of International Law adds Reisman's lectures to an impressive list of General Course lectures offered by giants of international law, such as Hans Kelsen, Hersch Lauterpacht, Georges Scelle, Louis Henkin, Oscar Schachter, Rosalyn Higgins, Thomas Franck, and Georges Abi-Saab.

It is no accident that Reisman's name is mentioned in the previous paragraph alongside some of the most well-known leaders of the field: he is without a doubt one of the most prominent international law scholars of our era. He has added greatly to the development and maintenance of the New Haven School of International Law (first introduced by Myres McDougal and Harold Lasswell in the mid-twentieth century)[2] by infusing it with normative content and through contextualizing law and policy as an iterative process of communication. Furthermore, in his extensive publications, Reisman has explored in depth many of the building blocks of international law, including

aff'd & rev'd in part, [1999] 2 W.L.R. 827 (H.L.), *reprinted in* 38 ILM 581 (1999); *see also* Ingrid Wuerth, Pinochet*'s Legacy Reassessed*, 106 AJIL 731 (2012).

[38] TVPA, *supra* note 23; *see* NAOMI ROHT-ARRIAZA, THE PINOCHET EFFECT: TRANSNATIONAL JUSTICE IN THE AGE OF HUMAN RIGHTS (2005).

[39] *See* Kiobel v. Royal Dutch Petroleum Co., 133 S.Ct. 1659 (2013); Sosa v. Alvarez-Machain, 542 U.S. 692, 714 (2004); Jones v. Ministry of Interior of the Kingdom of Saudi Arabia, [2006] UKHL 26, [2007] 1 A.C. 270 (H.L.) (appeal taken from Eng.).

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