Such restraint should not be regretted, since it contributes to this being an authoritative account of the doctrine of State responsibility. It is accomplished with brilliance and not only reflects the author's knowledge of the agents and socio-historical forces that influenced codification processes, but also of what it takes to persuade an audience to accept one's understanding of a doctrine. There is no doubt that this exhaustive, precise and rigorous exposé of all the dimensions of the doctrine will establish itself as a form of 'holy writ' of State responsibility.

Two further aspects might be mentioned. The first concerns the rich historical overview provided by *SRGP*. In this respect, it is somewhat startling that Dionisio Anzilotti is not given a more prominent role, since he is usually considered to be the great mastermind behind the contemporary doctrine of State responsibility (as a result of Ago's extensive reliance on his work). Crawford takes a more nuanced approach, tracing the distinction between the breach of a substantive rule and responsibility back to Wheaton—whose paradigmatic choices left an important imprint on the contemporary doctrine of responsibility (20–1). In the same vein, Crawford claims that it is Heffter's *Droit International Public de L'Europe* (1857) that puts forward the notion of wrongful act (*fait illicite*) for the first time (21). Anzilotti is, then, seen at best as continuing the work of these predecessors, his main contribution being to elevate State responsibility into a distinct field and to distinguish between natural causality and normative causality (attribution) (23). Crawford seems to go as far as claiming that the work of Eagleton surpasses that of Anzilotti (24). Such a departure from the mainstream understanding of the cardinal influence of Anzilotti is certainly refreshing. This treatment of the Italian master however remains question-begging. Indeed, it reinforces the idea that Crawford sees the ARSIWA as synthesizing a variety of heritages rather than having a clear linear paternity and a limited number of forebears.

Despite being one of the authors of this regime, Crawford has no qualms about confronting the criticisms that have been levelled against it (85–92). It is, however, astonishing that the account of the scholarly criticisms made of the regime fail to include the most well-known—and probably the most compelling—objections that were raised against them. Thus nothing is said of Philip Allott's famous argument that the paradigmatic choices behind the ARSIWA affirm rather than constrain power and provide a convenient veil behind which a morally responsible person can take shelter.[1] Similarly there is no consideration of Vaughan Lowe's objection against the idea of 'precluding wrongfulness'.[2] It is not that the choices made in the ARSIWA should themselves have been revisited, but the opportunity might have been taken to finally and conclusively address these key criticisms of them, a task which remains unaddressed.

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Judicial Decision-Making in a Globalised World: A Comparative Analysis of the Changing Practices of Western Highest Courts by Elaine Mak [Hart Publishing, Oxford, 2013, 290pp, ISBN 978-1-84946-554-0, £45 (h/bk)]

So many constraints apply to the use of comparative legal materials in the judicial decision-making process that a recurrent question for academics and judges alike is whether judges should use them at all. Mak's comparative study suggests that research of foreign legal materials takes place in all of the highest courts examined in France, the Netherlands, Canada and in the United States. The only valid question is therefore *how* foreign law (in the broad sense of binding and non-binding foreign legal sources) can be used in the decision-making of the highest courts. Can judges do more than

[1] P Allott, 'State Responsibility and the Unmaking of International Law' (1988) 29 HarvIntlLJ 1–26.
[2] V Lowe, 'Precluding Wrongfulness or Responsibility: A Plea for Excuses' (1999) 10 EJIL 405–11.

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apparently 'cherry-picking' foreign legal materials in their judgments? Mak answers this question in two ways. First, she connects the use of foreign law with systemic factors, such as the model of implementation of international law (eg, monist legal systems or a supranational order such as the European Union), the style of judicial discourse of the highest court, the personal approaches of the highest court judges to the study of foreign law and to judicial discretion in constitutional and legal interpretation. Second, she distinctively relies upon interviews with judicial members of the highest courts in order to introduce a range of judicial approaches to the use of foreign legal materials in the judicial decision-making. These empirical insights have been gained following a rigorous methodology explained in the early chapters of the book and the interviews make this book very readable.

Mak demonstrates that, against an expanding flow of legal sources across borders, judges have to reconsider the ways they search for and weigh arguments in the making of their decisions. Comparative legal research is now institutionalized, through judicial research assistance. Judicial networks make it easier to learn about the treatment of a similar issue in another legal system. Furthermore, judges can direct specific requests to counsel and they receive third-party interveners' submissions including foreign law. Mak is careful not to exaggerate the importance of comparative legal research in judicial decision-making. The need for timely justice, the availability of research assistance to the judge and the general workload of a court all shape and, in practice, limit the possibility of judicial engagement with foreign law. So judges, within the limits of their legal systems, have been adjusting their role and working methods for the deliberation and judgment of cases.

Perhaps Mak's most distinctive contribution is to identify that judges of the highest courts develop judicial leadership through their engagement as 'partners in a common judicial enterprise' beyond national boundaries. Judges will cite each other's case law to demonstrate established or emerging patterns informing human rights jurisprudence in the world—subject to shared social practices (eg on abortion). This is legal integration across national borders, with the growth of formally binding foreign legal sources (international treaties, the European Convention on Human Rights and the law of the European Union) and the increase in judicial networks. But Mak goes further and suggests that judges measure themselves with other courts, and that judicial practices in other courts also inform the development of best practices in the judicial decision-making process. Thus, Mak detects the influence of foreign judicial practices in the recent evolution of the domestic style of judgments, with greater elaboration of the arguments in Dutch and French highest courts, and a greater emphasis on majority judgments in Anglo-American courts.

Yet not all comparative legal research within a court produces helpful arguments. Mak rightly points out that foreign legal sources do not offer clear-cut solutions but rather inform the possible interpretation of the domestic law. But *why* would judges decide to cite non-binding judgments from foreign national jurisdictions or 'soft law' instruments, such as the Principles of European Contract Law? References to judicial interviews make Mak's analysis highly pertinent, as she demonstrates how judges look at foreign sources for ideas rather than solutions. When preparing a decision, a judge might use a foreign legal source to help to clarify the domestic arguments. He or she might then cite it when the case is difficult and of public importance, or in order to spot trends regarding the evolution of the law elsewhere, and to determine their own position against these trends.

Mak ultimately demonstrates the importance of the judges' personal approaches to the use of foreign legal sources in the courts' decision-making. Resistance to, or engagement with, foreign law reflects different ideas about the possibility of a convergence between legal regimes. The 'localist' judge, in her terms, resists the use of foreign law because the legal culture specific to each legal system is seen as a limiting factor for the harmonization or transplantation of legal solutions. By comparison, the 'globalist' judge expects that a convergence of legal regimes in the world can be realized—hence the interest in, and contribution to the development of the law and judicial practices across national legal borders. This is a theme that, inevitably, requires further discussion; it remains a matter of debate whether 'judicial internationalization' is, or can be, established to the depth Mak suggests. She concludes, perhaps unduly tentatively, that, contrary to

a common assumption, judges do not 'cherry-pick' foreign judgments or other non-binding legal materials to support their own decisions. Rather, given the many constraints they are under, judges are not systematic in their use of comparative legal sources in judicial decision-making and so cannot say in precise terms why they consult non-binding foreign sources in one case and not in another case. While the latter question calls for further elaboration, Mak does provide the tools to understand how each national constitutional framework enables or constrains the integration of foreign judicial practices into the accepted definition of the judicial function in that legal system.

Mak's comparative study offers a significant contribution to the scholarship on the use of foreign legal materials in legal developments. The close scrutiny of the inner workings of the highest courts also make it a welcome addition to the field of comparative judicial studies. The book certainly merits attention from both lawyers and political scientists.

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