international judicial function. Not only do they lift the veil on the range of activities pursued by international courts and tribunals, they also shine a light on the way in which these activities are pursued and give consideration to the broader consequences and challenges germane to the expanded judicial function. One particularly interesting insight is the ever-increasing dialogue between international courts and tribunals and other international institutions.

As a result, we can see that judges engage in activities, ranging from the settlement of the immediate dispute before them to regime support and governance functions, for example. However, these studies also remind us that issues such as effectiveness, independence, and legitimacy remain fundamental. Overall, the three books each contribute innovative approaches to or unique insights about international adjudication.

LAURENCE BOISSON DE CHAZOURNES
Of the Board of Editors

BOOK REVIEWS

Making Human Rights a Reality. By Emilie M. Hafner-Burton. Princeton NJ: Princeton University Press, 2013. Pp. xvi, 276. Index. $75, £52, cloth; $27.95, £19.95, paper.

Emilie Hafner-Burton's recent book, *Making Human Rights a Reality*—the recipient of the 2015 Annual Best Book Award by the International Studies Association—is a passionate appeal for a realistic strategy for improving human rights around the world. As she describes, the current array of treaties, the patchwork of institutions, and misguided universalism have basically permitted human rights abuses around the world to continue or even to worsen over time. Hafner-Burton, a hugely respected social scientist and the John D. and Catherine T. MacArthur Professor of International Justice and Human Rights and Director of the Laboratory on International Law and Regulation at the University of California, San Diego, reviews the literature from many different angles, and she argues that only by recognizing that it is not realistic to address every right in every place in the world will it be possible to make progress on human rights overall. The book is a strong critique of the gap between legal and organizational structures, on the one hand, and effective norms and competent institutions, on the other. Her solution is a more targeted approach by committed "steward" states dedicated to the realization of human rights around the world.

Hafner-Burton develops her critique with an extended review of the social science literature as well as expert assessments. One of this volume's strengths is the range of perspectives brought to bear on why human rights abuses occur in the first place and why they have been able to continue. Following the introductory chapter, part I (chapters 2–3) reviews the literature on the systemic conditions in which human rights abuses thrive. Conflicts and traditions of violence—war, insurgency, power struggles—"erode[] social ties while creating crisis environments and cultures" (p. 22). Illiberal political ideologies, inequality, intolerance, and dehumanization all contribute to human rights abuses. They also come from broader systemic problems, such as war, poverty, and repression, for which a century of attention has found no solution. Making matters worse, individuals are psychologically constituted to rationalize their actions, to avoid taking responsibility for abuse, and to routinize abusive practices. They may even benefit psychologically, politically, and monetarily from abusing their opponents or any social underdogs. Hafner-Burton makes these points to argue that quick fixes to endemic violations are unlikely to work.

Part II (chapters 4–7) is the heart of the case for understanding why so many people continue to suffer serious rights abuses. While acknowledging the "extraordinary accomplishment of just creating [the international human rights legal] system" (p. 42), Hafner-Burton claims that the system's "practical impacts are few in the areas where many of the worst or most human rights abuses actually occur" (p. 43). The basic point is that states have left all the hard work to the international legal system and to the United Nations. The former is helpful as far as it goes—which is as far as articulating principles but not enforcing them—and the latter has been pernicious. In particular, the

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growth of both law and institutions has been detrimental to human rights. Chapter 4 is written explicitly for nonexperts: it describes the international legal system, from the International Bill of Rights,[1] to treaties and treaty bodies, to the United Nations Human Rights Council (né Commission) (UNHRC). Hafner-Burton looks at the various regional human rights regimes in Europe, the Americas, and Africa. She also considers Asia and the Islamic world, which lack such human rights systems. Furthermore, she notes that states join human rights treaties for a multitude of reasons, many genuine, others less so.

Most of chapter 4 is unobjectionable, until its conclusion, which is marred by one of those unattributed generalizations that may leave balanced readers scratching their heads: "[M]any people are convinced that further legalization, ideally global legalism, will lead to a better, safer, more peaceful world" (p. 65). "Many people?" Who would that be? Not even precollege students taking my summer human rights seminars typically hold such naïve views. Despite 66 pages of footnotes at the end of 199 pages of text, the book has no references to anyone who advocates more law, rather than enforcement. (Ryan Goodman and Derek Jinks are skeptical of coercive enforcement[2] but cannot be thought of as among the "many" described therein.) In any case, the rhetorical purpose of the claim is clear: the "vast array" of existing international legal institutions in support of human rights norms (p. 66), one of which—universal suffrage—"spread almost like a virus" (p. 65), is the foil against which Hafner-Burton builds her case for greater coercive action. This analysis is meant to inspire the critical literature of chapters 5 and 6 or, if readers do not have the patience for that review, to rally the strategic interventionary troops for part III (chapters 8–12).

In chapter 5, Hafner-Burton turns to scholarly literature on international law and human rights. Here, she does a good job of tracing the main arguments on international law's effectiveness, determining that most of the positive consequences, especially in civil and political rights, have been in the "advanced democracies" (p. 72). However, one might disagree with this assessment. Several studies are fairly clear that internationally inspired human rights law has had its most noticeable positive consequences not in the advanced democracies, but in a large swath of partially democratic or transitioning countries.[3] What is a little more disconcerting is the handling of evidence in this chapter. Hafner-Burton is a scholar of the first rank, and her oeuvre is characterized by careful quantitative study. And yet the data presented in this chapter are misleading. In a set of graphs, she presents a series of sad slopes purporting to convince readers that things are not getting better—and may be getting worse—according to several measures of human rights (p. 74, fig.2). But Hafner-Burton, who elsewhere has done truly pathbreaking work in this area (as noted in her research list on pp. xiii–xiv), does not tell the reader about the source of the data, what they measure, or the obvious perils of such simple graphs. Debates rage among researchers about the difficulty of measuring human rights abuses over time, particularly since norms change (i.e., the same practice that was coded not abusive in 1975 is considered intolerable in 2005), and information about actual practices has exploded (i.e., the more we know, the more abuse we uncover). These graphs certainly do *not* "summarize[] what we know" about changes in various right abuses over time (p. 73). It certainly does *not* address the counterfactual: what the "data" might have looked like in the absence of broad efforts to develop legal norms to address human rights abuses. And averaging

[1] The "International Bill of Rights" encompasses the rights set forth in the Universal Declaration of Human Rights, GA Res. 217A (III), UN GAOR, 3d Sess., Resolutions, at 71, UN Doc. A/810 (1948); the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171; and the International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 UNTS 3.

[2] RYAN GOODMAN & DEREK JINKS, SOCIALIZING STATES: PROMOTING HUMAN RIGHTS THROUGH INTERNATIONAL LAW (2013).

[3] KATHRYN SIKKINK, THE JUSTICE CASCADE: HOW HUMAN RIGHTS PROSECUTIONS ARE CHANGING WORLD POLITICS (2011); BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS (2009).

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scores—by definition—cannot say anything about what the "vast majority" (*id.*) of states are actually doing. Of course, it is not news that severe human rights abuses exist around the world. No one is surprised that Harold Koh (or anyone else, for that matter) "has expressed little faith that international mechanisms will ever offer picture-perfect enforcement of human rights law" (p. 81). Not to attain picture perfection is hardly a damning critique of the law in any setting.

The practitioners reviewed in chapter 6, if anything, seem even more dour about the effectiveness of legal machinery. Much of the criticism is leveled at the UN system and the UNHRC. In many respects, Hafner-Burton's critique of this first issue is spot on. The politicization of UN human rights treaty bodies has in many cases, indeed, been shameful. But two points should give us pause. First, there are important distinctions between the UNHRC and the treaty implementation bodies, and these distinctions are blurred in the discussion in chapter 6. The treaty bodies may suffer from being under-resourced, and many people are either ignorant that they exist or do not have any knowledge of what they do. But they are not nearly as politicized as the UNHRC, staffed as it is with state representatives elected by regional nominations. Hafner-Burton strongly criticizes the self-reporting system overseen by treaty implementation bodies and concludes that "reports often don't seem to lead to results that matter" (p. 100). While practitioner frustration is understandable, few, if any, published studies actually exist on the effects of self-reporting in this area. Missing and low-quality reports are a staple complaint, but new and fairly rigorous research is emerging that shows for the Convention Against Torture,[4] at least, states that are willing to turn in reports do improve their practices over time.[5]

The second issue is open membership in human rights bodies. As Hafner-Burton writes, anyone can join the United Nations, ratify a treaty, and even, apparently, get elected to the UNHRC. But is open membership per se a problem? No evidence is presented, and no studies are mentioned one way or the other, so we can only speculate. On the one hand, it seems "wrong" for violators to take part in human rights bodies. On the other hand, a thriving literature in international relations has developed about the important role of socialization in these very forums.[6] We simply do not know the net effects of universal membership. Keeping the bad guys out might raise the average quality of human rights in the group, but the net effect more broadly is theoretically ambiguous and empirically unknown.

Scholars and practitioners could debate for decades the question of whether, with respect to international law and human rights, the glass is half empty or half full. Indeed, this topic is what seems to have dominated discussions at least among researchers for the past several years. Hafner-Burton forces us to think whether we really can do better than the admittedly spotty results of the approach taken since passage of the Universal Declaration of Human Rights in 1948.[7] She claims that, yes, we can, and it involves setting aside the tools of law and multilateral organization in favor of the tools of state coercion exercised by clubs of like-minded states. She calls for a plan to get "*more strategic*" (p. xvi (emphasis added)). That plan means discarding universal membership, deprioritizing some rights, and selecting targets for rights assistance in places that the rights-committed governments, dubbed "stewards," can actually

[4] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. TREATY DOC. No. 100-20 (1988), 1465 UNTS 113.

[5] Cosette Creamer & Beth A. Simmons, Do Self-Reporting Regimes Matter? Evidence from the Convention Against Torture (Feb. 11, 2015) (draft article), *available at* http://projects.iq.harvard.edu/files/wcfia/files/creamersimmons_isa2015.pdf.

[6] The classic study on the power of international organizations to socialize actors including states is Alastair Iain Johnston, *Treating International Institutions as Social Environments*, 45 INT'L STUD. Q. 487 (2001). For a recent survey study exploring and supporting this link, see Natalia Saltalamacchia, *Three Decades of Socialization Later, Mexicans View "Human Rights" as Their Own*, OPEN DEMOCRACY (Jan. 2, 2015), *at* https://www.opendemocracy.net/openglobalrights/natalia-saltalamacchia/three-decades-of-socialization-later-mexicans-view-%E2%80%9Chuman-ri.

[7] Universal Declaration of Human Rights, *supra* note 1.

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hope to have an effect. It also means adding coercion where necessary to the tool kit of (largely) normative and legal pressure.

I have two rejoinders. First, the real world of rights enforcement has always been strategic. Hafner-Burton is offering nothing new in this regard. Second, this recommendation is curious given her purpose for writing this book in the first place: to address the problem that the "people most at risk still are not getting much relief" (p. 11). It is not clear that life will improve much for the most vulnerable under a plan for strategic action by the "stewards."

Despite claims that "the principle of universality is the cornerstone of international human rights law" and that "[h]uman rights are indivisible: we aren't supposed to pick and choose among them" (p. xv), in fact, people do. Certainly, the literature reviewed in chapters 5–6 does not dwell on *all rights* under all circumstances for all people guaranteed by treaties that all governments must ratify. Most scholarly studies discussed in chapter 5 focus on a very specific and especially egregious set of rights, centering on torture, extreme forms of repression, and a fairly narrow set of civil and political rights. With one exception (p. 71 n.8),[8] Hafner-Burton does not even mention studies of international law and women's rights in this chapter. The rights of disabled persons are only mentioned once (p. 49), and only in the chapter on practitioner perspectives. One study is cited that deals with gay and lesbian rights, and the only references to gay rights elsewhere in the book are in the cases of Nigeria (p. 157) and Egypt (p. 161) in which nongovernmental organizations have already gotten the memo (and gleaned a good deal of experience) on strategic rights demands.

Governments have always been strategic. They (infamously?) support their interpretation of their favored set of rights in very selective cases. For example, the United States has been especially enthusiastic about elections (though not always democratic election results), sometimes presses for women's rights (when it can help to justify intervention desired on other grounds, as in Afghanistan),[9] and almost never calls for states to extend health services as a human right of their people. States also have their obvious special exceptions. There is nothing universal about the United States' decision to soft-pedal rights, extend most favored nation (MFN) status to China, and agree to admit China to the World Trade Organization.

Perhaps Hafner-Burton is really arguing that it is the *rhetoric* of universalism—or demands to provide all rights to all people at all times—that has been so damaging. In the conclusion, she writes: "To date, *most discussions* of human rights promotion strategies are strongly rooted in the conviction that the process must be universal and the rights indivisible" (p. 193 (emphasis added)). I'm just not sure that this is so. More than two decades ago, Jack Donnelly wrote in his book *Universal Rights in Theory and Practice* that

> [c]lear thinking about human rights [principles] is not the key to the struggle to implement them, and it may not even be essential to successful political action on their behalf. In fact, such a utopian belief in the power of ideas is itself a dangerous impediment to effective political action.[10]

Hafner-Burton may be constructing a straw-man argument against which to contrast her strategic approach.

In the absence of a citation for "most discussions" as noted above, I went hunting for such a claim. I found that it is easy to find references in the literature and in policy and advocacy circles to the Universal Declaration, but universalism has been hugely overplayed as an ideological target by critics of international human rights law. "Universal human rights" is not at the forefront of general rights discourse. This is an empirical statement, neither a celebration nor a lament. It is just the case. A quick look at over one billion books from university libraries over the past fifty years (using

[8] Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935 (2002).

[9] *See* U.S. Dep't of State, Bureau of Democracy, Human Rights and Labor, The Taliban's War Against Women: Report on the Taliban's War Against Women (Nov. 17, 2001), *at* http://www.state.gov/j/drl/rls/6185.htm.

[10] JACK DONNELLY, UNIVERSAL RIGHTS IN THEORY AND PRACTICE 6 (1989).

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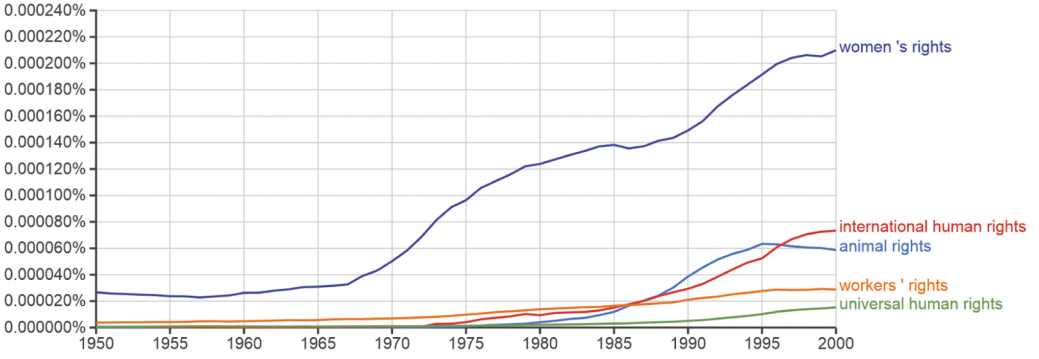

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Google Ngrams[11]) gives a sense of this reality. The phrase "human rights" is off the charts (quite literally, by about a factor of ten, (not) shown in the chart below). The horizontal axis notes five-year periods since 1950, and the vertical axis represents the percent of words in these books where the phrase "universal human rights" comes up. It is dwarfed by "international human rights" and even "animal rights."

Is all this concern about universalism related to the UN human rights committees pressing for it? The evidence is somewhat weak. The documents on Bayefsky's website, which effectively record the entire set of conversations between the treaty implementation committees and states, indicate that 9,492 documents refer to "human rights" but only about a quarter of them ever mention "universal human rights" and *only* 4 mention "universalism."[12] Advocacy strategies are especially prevalent in the media and blogosphere; is it there that we might be able to document this obsession with universalism? The evidence again is weak. In a search of a worldwide swath of English language media and blogs, where most advocacy groups tend to raise their voices, "human rights" were mentioned nearly 2,000,000 times between 2011 and the start of 2015. "*Universal* human rights" could be found only about 4,500 times, while "international human rights" were far more common at almost 57,000 times.[13] Even law journals are twice as likely to discuss "international" as they are "universal" human rights.[14]

Why it is necessary to joust with "universalism," I am just not sure. One sees the same critique against "univeralists" in the writings of Eric Posner[15] and others. Samuel Moyn refers to universalism as an ideological fiction that was very nearly stillborn with the Universal Declaration.[16] Stephen Hopgood argues that the international human rights regime is bereft of moral legitimacy and has been revealed for what it is—a set of social norms, nothing more, nothing less.[17] In contrast, Hafner-Burton attacks universalism as a *strategy*, not a moral claim. But it does not appear to be a strategy that many people actually pursue. Scholars, advocates, and especially states do not stress universalism nearly as much as Hafner-Burton seems to think, and most have been strategic for decades.

Moreover, we need evidence that strategic action works. Its prevalence alone suggests that it might not. All of part I of Hafner-Burton's book

[11] *At* https://books.google.com/ngrams.

[12] *See* http://www.bayefsky.com/about.php.

[13] These tallies are based on use of the Berkman Center's "Media Cloud" tool, https://cyber.law.harvard.edu/research/mediacloud.

[14] A search in early 2015 of the HeinOnline database, http://www.heinonline.org, provided these findings.

[15] ERIC A. POSNER, THE TWILIGHT OF HUMAN RIGHTS LAW (2014).

[16] SAMUEL MOYN, THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY 44–83 (2010).

[17] STEPHEN HOPGOOD, THE ENDTIMES OF HUMAN RIGHTS (2013).

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should raise skepticism as well. In chapter 2, Hafner-Burton describes an insidious "system-level" structure that implicates entire societies and polities as much or more than individuals (p. 27). There is even an "ecosystem" of abuse in which "removing one element without changing the whole system doesn't have much impact" (pp. 27–28). How will strategic coercion actually work in these contexts when systemic society-wide factors render such action largely ineffective? No research of which I am aware points to the general success of even well-coordinated external interventions by states to change significantly the deep-rooted and systemic cultures of abuse described in chapter 2. How are entire societies supposed to undergo coercive social engineering from the outside? Volumes have, of course, been written on just who experiences the greatest impact of external material pressures, and the consensus seems to be that it is typically *not* the individual abusers whose calculations are highlighted in chapter 3. Even when entire governments are replaced (a strategy that Hafner-Burton does *not* advocate), cultures of abuse are more frequently "inherited" by the new governing coalition than they are to melt away under new leadership, especially in the absence of fundamental social change. Chapter 2 makes an extremely important point: cultures of abuse cannot simply be disassembled by a poke or a punch from the outside.

Hafner-Burton advocates less legalism and more coercion. All of part II of the book is dedicated to showing that legal approaches have largely failed. But to accept a policy recommendation to crank up strategic coercion, it is crucial that the success of coercive pressures gets equal (critical) play. The book does not do that. Only one mention is made of the efforts of the Carter administration (p. 156)—the most dedicated foreign policy effort in U.S. history to make human rights central to policy. There is precious little discussion of cases in which coercive pressures have actually succeeded *by the same measures to which treaty ratification is held*. For example, penalties imposed by the United States on Mauritania led that country to amend its labor code, recognize some unions, talk with the U.S. assistant secretary of state for democracy, and ratify an International Labour Organization convention (p. 143). But there is no mention whether any of this effort improved labor rights on the ground, the standard by which we are urged to judge the effectiveness of international legal norms and institutions. In a similar vein, Hafner-Burton criticizes international law by pointing out nine states on Freedom House's "worst violators" list—Burma (Myanmar), Equatorial Guinea, Eritrea, Libya, North Korea, Somalia, Sudan, Turkmenistan, and Uzbekistan—who have ratified one or more international human rights treaties (p. 76). Eight others were "on the threshold" for inclusion in this list: Belarus, Chad, China, Côte d'Ivoire, Cuba, Laos, Saudi Arabia, and Syria (*id.*). However, most of these same states have already been on the United States' sanctions list (at various times, Burma, North Korea, Sudan, and others). In other words, among the "worst abusers" we find an exceptionally high proportion of states that are either already under U.S. sanctions or else is an important U.S. ally (Saudi Arabia, for instance), which certainly does not bode well for the success of strategic pressure. In neither case should we realistically expect Western-led triage to do much better than treaty ratification has done.

In short, the ad hoc system of human rights enforcement that has been so unsatisfactory in the past actually looks a lot like Hafner-Burton's recommendations for triage. "Triage requires putting a priority on some situations while delaying action or even setting others aside" (p. 176). Burma over China, for example; or Iraqi repression over Rwandan genocide. "A practical triage strategy requires attention to national interests because triage depends on support from the steward states" (*id.*). Iranian women over Saudi women, for example. In the end, strategic triage, *at least in practice, which is what counts*, will look a lot like the status quo.

To conclude, scholars, advocates, and practitioners concerned with human rights issues know that they will not be solved by simple formulas or one-pronged approaches. Hafner-Burton is well aware of this reality and, in the end, argues that coercion must be added to persuasion and that it must be done strategically and, it is hoped, cooperatively. She writes with an engaging blend of down-to-earth observation,

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knowledgeable engagement with the scholarly and practical literature, and gutsy policy advice. Readers will set down the book disgusted with the United Nations—and maybe even international human rights law itself—and be ready to rally our democratic friends to sanction rights miscreants. This review hopes to take some wind out of the sails of the proposed mini-lateral intervention. Human rights violations are real, but blaming such violations on law or the United Nations machinery is to look for an easy scapegoat where none is to be found. Repeatedly and correctly, Hafner-Burton warns readers that the issues are complex, that not everyone can be helped, and that addressing real change will take time. Unfortunately, club sanctions, even those justified as "strategic," are not likely to produce the dramatic results that we all seek.

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Transparency in International Law. Edited by Andrea Bianchi and Anne Peters. Cambridge, New York: Cambridge University Press, 2013. Pp. xx, 620. Index. $140, £90.

"Transparency" is one of those ideas against which it is hard to argue. In this volume, the editors, Andrea Bianchi, a professor at the Graduate Institute of International and Development Studies, Geneva, and Anne Peters, director at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany, and a professor at the University of Basel, Switzerland, have gathered together a group of eminent scholars to discuss the different international legal aspects of transparency. In addition to the introduction by Bianchi and the concluding chapter by Peters, the book contains fourteen chapters on transparency in selected areas of international law: international environmental law, international economic law, international human rights law, international health law, international humanitarian law, and international peace and security law. There are also four crosscutting chapters on transparency in, respectively, international lawmaking, international adjudication, business, and international institutions. The issues discussed in the book are wide-ranging: the purposes of international transparency; the arguments for secrecy rather than transparency; the content of transparency in different contexts; the legal status of transparency; the addressees of the obligations; the rights holders; and, finally, the effects of transparency.

Let us start with the reasons why transparency has become such a powerful idea. Transparency is now, as rightly observed by Bianchi, one of the fundamental traits of Western culture, and—as with human rights—few would argue against the need for transparency in the public realm. But Bianchi also reveals some controversial aspects of transparency, exemplified by the disclosure of secret information by WikiLeaks and Bradley Manning. In this context, he points out the "dark sides" of transparency, such as the information obtained not being used for respectable purposes. So transparency is not indisputably good in all contexts. We must examine the objectives behind transparency, define the concept more clearly, and seek a balance in relation to other pertinent concerns.

Peters argues that transparency has both intrinsic and instrumental aspects. It is connected to values such as democracy, rule of law, integrity, and trust. But it may also be an important element in improving the performance and accountability of institutions. These features of transparency become increasingly important internationally as more power is transferred to international institutions. To some extent, international transparency is also necessary in order not to lose the transparency already gained at the domestic level (what Peters calls "compensatory transparency" (p. 540)).

It is, however, difficult to pinpoint exactly what is meant by transparency. As the editors say in the preface, transparency is "not a distinctly legal concept and its contours are rather blurred" (p. xiii). Bianchi reveals that "the definition has haunted us," and the editors' "suggestion to focus on transparency as information about legal processes in the different areas of international law was followed by some [authors] and ignored by others" (p. 8). Peters proposes what seems to be a good definition

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