

individuals (as many nations do) constitutes a violation of these treaty principles and whether the duty to protect the right of privacy enshrined in the ICCPR, the ECHR, and the American Convention on Human Rights (ACHR) applies to the signatories' extraterritorial cyber-surveillance efforts. Building on this groundwork, Watt distills the privacy formulations of article 17 of the ICCPR, article 8 of the ECHR, and article 11 of the ACHR into a two-part test. The international organizations and tribunals tasked with enforcing these treaties must generally determine whether (1) there has been an interference with the right to privacy of communication, and if so, (2) whether that interference was justified. This is followed by a full two chapters methodically applying these legal standards to cyber surveillance, before contextualizing that analysis within a discussion of past (and potential future) efforts to directly address cyber security through multilateral instruments. As with Watt's definitional work, the preceding is a highly abbreviated overview of an extensive investigation; this format cannot do justice to the incredible depth of the analysis.

The text does have some shortcomings, often the result of necessary compromises in a book of this kind. While it is eminently readable for those versed in the field, it is not especially accessible otherwise. The prose is sprinkled with jargon and Latin legal phrases (such as *sensue lato*, *locus standi*, and *lex specialis*) that could alienate a broader audience. The level of detail, particularly in the later chapters, results in some sections that read as overwrought. These passages feel weighed down by excursions into minutia and slowed by an overreliance on block quotes that rarely add value commensurate with their lengths. Most notably, the work as a whole displays a strong focus on European tribunals and US/UK law. This is certainly understandable given the importance of this jurisprudence and the prominence of the US and UK in the cyber arena. However, it is the kind of restriction in scope that is worth mentioning for an academic reference text addressing an international topic.

That said, the work is still a remarkable achievement. Watt's *State Sponsored Cyber Surveillance* would be an excellent addition to any academic library but would be particularly at home in academic law libraries, government agencies, and on the desks of all policymakers or jurists who regularly confront transnational human rights issues.

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***Climate Change, Sustainable Development and Cleantech: A Pathway for Developing Countries.*** Joy Y. Xiang. Cheltenham, UK; Northampton, MA: Edward Elgar, 2022. Pp. 210. ISBN 978-1-78536-345-0. US\$120.00.

Combating climate change will require a global effort, but the tools and resources for this fight are currently held by just a few affluent countries. How can we distribute these often-proprietary technologies to developing nations whose participation is vital to achieving international climate goals? Further, how can we do so while also incentivizing wealthy States to continue groundbreaking research and development in this field? These are thorny questions, but author Joy Y. Xiang is equal to the task in her meticulously constructed text, *Climate Change, Sustainable Development and Cleantech: A Pathway for Developing Countries*. With clear-headed analysis and precise prose, Xiang unpacks how intellectual property law and sustainable development can be cornerstones for the widespread adoption of new technologies designed to mitigate or adapt to climate change (so-called "cleantech").

Xiang begins with an efficient introductory chapter, sketching the contours of the underlying problem: intellectual property rights (or IPR) have been a long-running sticking point in the global climate response. Through multiple conferences and rounds of negotiations organized under the auspices of the UN Framework Convention on Climate Change (UNFCCC) and the World Trade Organization (WTO), developing countries have repeatedly pushed for a reduction in IPR protections for new cleantech. The thrust of these arguments is typified by a notable proposal presented by Ecuador at a 2013 WTO meeting. The proposal asserted that existing IPR regimes inherently facilitate the monopolistic hoarding of clean technologies by richer nations. To ensure knowledge transfer to the developing world, Ecuador suggested that cleantech should be categorically excluded from patentability or subject to compulsory licensing rules that require the technology to be shared at a fair price. While several developing countries supported the proposal (including major economies such as India, Brazil, and China), developed nations such as the United States balked. Instead, the latter suggested that instituting *stronger* IPR protections

within developing countries would facilitate transfer while rewarding innovation. This impasse has remained the status quo for over twenty years, and Xiang suggests a new approach is needed to continue the forward momentum in the climate movement.

Scholarly monographs should always proceed logically, but the second chapter of this work highlights Xiang's special strength for methodical writing. While not explicitly titled as such, the entire chapter is essentially a "definitions" section, interrogating every acronym, category, and term of art that appears in subsequent pages. With the caveat that my own biases may be at play here (as attorneys have a special affection for defining key terms), this exercise contributes tremendous context and value. Even in high-level academic discussions of climate issues, terms such as "developing country" and "clean technology" are regularly bandied about, eliding the crucial nuances packed within them. Xiang recognizes that there are important differences among developing countries, which she sorts into tiered categories using objective metrics drawn from respected international reports (e.g., Least Developed Countries, Mid-tier Developing Countries, and large Emerging Economies like China). She similarly crafts an inclusive definition of "cleantech," acknowledging that it must encompass both the technologies themselves, as well as any associated know-how, expertise, and training.

With this groundwork laid, Xiang devotes the following chapter (a full third of the book) to detailing the current state of clean technology transfer. She begins by examining the worldwide asymmetries in cleantech investment and patenting, which reveals predictable disparities between the most developed countries (the US, Japan, and the EU member States) and the rest of the world. While certain larger polities such as China and India have begun heavily investing in research and benefiting from technology transfer, Xiang finds that the vast majority of existing transfer occurs between the most developed States. This leads to a detailed exploration of the various proposed methods for weakening cleantech IPR, a discussion that causes Xiang to conclude that IPR is not actually the primary barrier to cleantech transfer. Rather, her analysis indicates the high cost of cleantech compared to older alternatives is a much larger factor and that weakened IPR protections would not necessarily solve this problem. Instead, she addresses various other approaches for encouraging technology transfer and combating restrictive behavior by patent holders, primarily by leveraging US and EU antitrust/competition law. This dovetails nicely with a chapter examining how some nations have fostered domestic cleantech innovation or made themselves appealing destinations for technology transfer, complete with representative case studies of Denmark, Sweden, India, Turkey, and Morocco.

Xiang then endeavors to craft her own proposal for facilitating domestic cleantech innovation in every country while also helping developing countries build capacity for cleantech importation. The proposal starts from the premise that different strategies will be appropriate based on where a country falls along the spectrum of development. For the least developed countries, Xiang proposes that the primary goal should be to build domestic capacity for technological implementation via the existing infrastructure of foreign monetary aid (which she deftly outlines throughout the chapter). For mid-tier developing countries that already have some technological capacity, as well as emerging economies like China and India, Xiang focuses on various models for mutually beneficial voluntary collaboration. In theory, these would be more likely to appeal to domestic business interests than top-down mandates from national governments. They include pathways under existing multilateral and regional instruments (such as the Kyoto Protocol's Clean Development Mechanism and the UNFCCC Technology Mechanism) and new, creative approaches to IPR management. These novel IPR models would be centered around the creation of a global platform that would subsidize developing countries' cleantech purchases and match them with patent holders. For developed countries, Xiang suggests that governments send clear policy signals demonstrating long-term support for cleantech while also spurring innovation through cleantech-specific IP rules and subsidies. The book concludes with a chapter responding to critiques the author received on earlier drafts of this proposal.

From top to bottom, this is an excellently constructed work of scholarship. Virtually every section is well-researched without being overly long, establishing a solid foundation as Xiang builds to her final proposal. This isn't to say the text is perfect. Xiang's arguments are so often rock-solid that it is especially glaring when the text makes a rare logical leap or unsupported supposition. The book's organization is generally very sensible, but the extra-long third chapter could have been reorganized to avoid subsections that stretched to six digits (e.g., section 3.7.2.2.1.1). Also, while probably a necessity based on the paucity of data, several of the quantitative analyses rely heavily on the same small number of reports from non-governmental organizations, creating a risk of bias in the results. At the macro level, the attempt to cover so much ground has apparently left the work with more breadth than depth. The proposal itself is well-supported, but its scope is somewhat conservative, and it can feel more like a thoughtful synthesis of existing ideas than a wholly original proposition. Finally, though the inclusion of a chapter responding to

critiques shows admirable forethought, the author's answers to those concerns were at times unpersuasive. That said, these shortcomings hardly detract from the fantastic finished product.

I would wholeheartedly recommend *Climate Change, Sustainable Development and Cleantech* for any academic library. Moreover, any government agency, tribunal, nonprofit, NGO, or technology company with an international or environmental focus is also likely to find great value in this book.

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***Digital Platforms and Global Law***. Fabio Bassan. Cheltenham, UK; Northampton, MA: Edward Elgar, 2021. Pp. 150. ISBN 978-1-80088-942-2. US\$110.00.

Fabio Bassan begins by posing a bold question: Can the scale and sophistication of a private digital platform compel us to recognize its rules and operations as an independent transnational legal system, and if so, how should such an entity be regulated? The interrogation of this query forms the backbone of a brisk 150-page analysis. Along the way, *Digital Platforms and Global Law* unpacks the current regulatory landscape and rebuilds it, culminating in the articulation of a new international legal order keyed to the paradigm that digital platforms like Facebook, Amazon, and Google have wrought. It is an interesting premise for a scholarly monograph, but the execution often falters. The complexity of the material would have made this a challenging text regardless, but its message is frequently muddled by irregular prose and confounding organizational choices. The author's subject-matter expertise is abundantly evident in the detailed footnotes and higher-order analyses. Unfortunately, the language used to convey these ideas can be difficult to follow.

*Digital Platforms* sets the stage for its reform proposals through an in-depth exploration of the global regulatory environment, along with the rationales supporting the current approaches of the US and EU. This necessary preamble is nonetheless a tall order, accounting for more than half of the book's total page count. After crafting a functional definition for "digital platforms" that incorporates and expands on conceptions from both the legal and economic literature, it outlines twenty core assumptions that underly existing EU regulation in this area. This is followed by an investigation into the metrics used to measure abuse of market position and monopolization, each of which are linchpins for the exercise of antitrust and competition law (in the US and EU, respectively). Bassan then discusses the relative success of EU regulation in areas such as data protection, as well as the EU's significant blind spots concerning the protection of democratic processes and the ethics of certain emerging technologies (e.g., AI and distributed ledger technology/blockchain).

With this background established, Bassan progresses to the core of his thesis—that the major digital platforms are becoming private transnational legal systems. He argues that the internal rules and processes under which digital platforms operate are not directly attributable to either public or private international law, instead being derived primarily from international commercial norms and standards (an amorphous "*lex mercatoria*"). Unlike other multinational corporations, digital platforms also exercise what Bassan characterizes as largely autonomous legislative, executive, and quasi-judicial powers over their own internal affairs. While they are presently tied to the domestic legal orders of the places they incorporate and operate, Bassan envisions digital platforms achieving increased autonomy as blockchain technologies facilitate private currencies and self-executing smart contracts. Untethered from the infrastructure of traditional States, digital platforms may develop something approaching sovereignty, or so the argument goes.

Bassan is not terribly concerned with the geopolitical implications of this eventuality, and the analysis instead refocuses on how such quasi-independent transnational legal orders should be regulated by States and inter-governmental organizations. Over its final three chapters, the text examines whether so-called "monistic" or "dualistic" approaches can be applied to these conceptualizations of digital platforms as they relate to the rest of the international legal order. More specifically, Bassan questions whether digital platforms (as constituted in this analysis) can properly be considered subjects of international law, with distinct legal personalities. The work concludes with a thoughtful critique of current EU regulatory approaches and the suggestion of a new methodology centered on negotiated best practices that could subsequently be codified by State regulators. Bassan also advocates for the