LAW AND HUMAN RIGHTS

Jens Meierhenrich. ***The Legacies of Law: Long-Run Consequences of Legal Development in South Africa, 1652–2000.*** New York: Cambridge University Press, 2008. xvii + 385 pp. Figures. Tables. Notes. Bibliography. Index. $90.00. Cloth.

Social scientists stand on the shoulders of others in their field, but rarely have others tried what Jens Meierhenrich attempts: he utilizes a forgotten 1941 analysis of Weimar and Nazi Germany, Ernst Frankel's *The Dual State* (Oxford University Press), to conceptualize the role of law in South Africa's transition to democracy. The theory posits that there are two halves of the state, the normative state and the prerogative state. To oversimplify his argument: while the prerogative state may dominate during authoritarian times, the transition to democracy can be eased if elements of the normative state can be preserved. Law is one of those key elements.

Meierhenrich's analysis is more subtle, intriguing, and convincing than I can present here, for it draws on insights from game theory, political science, psychology, and history to build a case that trust in the law was crucial to the resolution of apartheid's endgame: both ANC and National Party leaders trusted a judiciary to interpret rights that were eventually to be embodied in a constitution. The analysis is thorough, but the author also goes the extra step in applying his findings, in a "plausibility probe," to the democratic transition in Chile.

Perhaps the only disappointment in the work is the inaccuracy of the time frame in the subtitle, at least for those who take it too seriously: instead of the 350-year span described there, the book focuses, probably appropriately given the thesis under review, on the post-1910 (and mostly the post-1948) period.

Within the context of that period, Meierhenrich carefully examines legal cases illustrative of the ebb and flow between the normative and prerogative state; he is mindful of the fact that different lines of judicial process (such as labor or housing cases), rather than security cases, might be the refuge of the normative state. Still, he is able to find support for the normative state throughout the various phases of apartheid and in a diverse number of areas of law. But the analysis goes even further in recognizing that reported opinions are but the tip of the iceberg in a legal system. Most litigants never experience the appellate process—and even if they do, their case is often not reported. In an attempt to cast his net more widely, Meierhenrich employs statistics related to the application of various laws (such as the Terrorism Act) to indicate the magnitude of the expansion of the prerogative state during the 1970s. He also refers to opinion research to document the fact that even at the height of apartheid many black South Africans still had considerable trust in the judicial system. This remains true despite revelations from testimony before the Truth and Reconciliation Commission of the judiciary's complicity in permitting the expansion of abuses by the apartheid state.

Case law was important not only in setting precedents that could benefit other litigants, but also in socializing an elite into believing in the efficacy of a court system embedded within a semiauthoritarian state. This was significant, given that both opposition leaders and pro-apartheid leaders had legal training. Even when precedents were overturned by legislative action, there remained a sense that legal tradition still provided opportunities for small victories over petty injustices and that such triumphs might improve the everyday lives of average South Africans. The author remains sensitive to the criticism that the independent judiciary in some ways resulted in a legitimation of apartheid by giving it an air of legality. But in the end, it was not the shortcomings but rather the perceived strengths of the South Africa Legal legacy which were most salient in avoiding a bloodbath even worse than what occured during the democratic transition.

The Legacies of Law is well documented. The study thoroughly reviews a broad range of the literature, and the author is able to comfortably weave together insights from various disciplines supporting his analysis. This book is required reading not only for those interested in South African law or the demise of apartheid, but also for students of democratization.

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John Hagan and Wenona Rymond-Richmond. *Darfur and the Crime of Genocide.* New York: Cambridge University Press, 2009. Cambridge Studies in Law and Society series. xxiv + 271 pp. Glossary. List of Characters. Maps. Figures. Tables. Appendix. Notes. Index. $85.00. Cloth. $25.99. Paper.

Has the crime of genocide been committed in Darfur?

Some writers have answered this question in the negative, while others have said yes: a debate on the question rages among scholars and practitioners, including journalists and human rights activists. The authors of the book under review have joined the fray, siding with those who believe that genocide has indeed been committed. In doing so, they draw on the combined disciplines of criminology and sociology to prove the case for genocide by reference to numerous cases of victims of atrocities in Darfur. For this presentation the primary source for those atrocities is evidence from the victims themselves, now found in the Chad refugee camps; their stories were collected by the Atrocities Documentation Survey (ADS) organized and financed by the U.S. State Department.

The authors also make reference to the prosecution of Sudanese officials by the prosecutor of the International Criminal Court (ICC), Luis Moreno Ocampo, who asked the ICC judges to issue an arrest warrant charging Sudanese President Omar al-Beshir with genocide, crimes against humanity, and war crimes.