Recent Publications

The Milošević Trial: Lessons for the Conduct of Complex International Criminal Proceedings. By Gideon Boas. Cambridge: Cambridge University Press, 2007. Pp. xviii, 306. Price: $45.00 (Paperback). Reviewed by Tom Dannenbaum.

The arrest of Slobodan Milošević in April 2001—and his subsequent transfer to The Hague two months later—marked a critical juncture for the International Criminal Tribunal for the former Yugoslavia (ICTY). As the first attempt to prosecute a former head of state for war crimes and genocide, and with the other top targets Radovan Karadžić and Ratko Mladić still at large, the Milošević trial offered the Tribunal an opportunity to assert its relevance, authority, and competence to a skeptical global audience.

Four years, twenty-seven days, seven thousand allegations of wrongdoing, and over a million pages of disclosed prosecutorial documentation later, Slobodan Milošević was found dead in his jail cell, yet to be convicted of a single crime. The early contender for "trial of the century" ended in embarrassing anticlimax, without a defendant against whom to deliver judgment.

In *The Milošević Trial*, Gideon Boas, former Senior Legal Officer for the Trial Chamber of the ICTY, picks over the bones of the prematurely interrupted case, offering his candid assessment of its successes and failures, and drawing lessons for similar prosecutions in the future. Boas argues that the criteria against which such trials must be evaluated are the twin procedural virtues of fairness and expeditiousness. While the Milošević trial just about met minimum standards of fairness, he contends, it far exceeded the length and scope of reasonable expeditiousness. With better application of the rules of international criminal procedure by both the court and the prosecution, Boas believes that Milošević would have died a convicted criminal, leaving behind not the unanswered question of what might have been, but a verdict to bring succor to those whom he made suffer, and a precedent to strike fear into others seeking to enforce brutality on civilian populations.

Boas exploits his intimate familiarity with the Milošević case to offer a thorough and illuminating discussion of the legal and strategic dilemmas that faced the prosecution and the court from start to finish. Of Boas's broad arguments, two in particular point to important considerations for the future conduct of similar proceedings.

First, Boas criticizes the Tribunal's permissiveness in allowing the prosecution to "throw the book" at Milošević, charging him with every crime to which he could possibly be tied. The result was an impenetrable sea of paperwork, a trial in which eighty percent of the offenses examined were not the direct personal responsibility of the defendant, and acquittals on more than a thousand charges before Milošević even began his defense.

Boas urges future prosecutors to choose a narrowly focused and representative case that succeeds in exposing the depth of the accused's

wrongdoing and facilitates the expeditious delivery of justice, without going to unnecessary lengths to prove the breadth and repetition of wrongdoing. However, recognizing that this advice will often be ignored, he articulates a theory of judicial case management under which courts can compel such narrow tailoring in the face of stubborn prosecutorial ambition. In this vein, he commends the Trial Chamber's decision to utilize macromanagement tools in Milošević's trial, such as setting overall time limits for the presentation of each party's case. However, he argues that, where such methods are insufficient to narrow the case (as they were in the Milošević trial), procedurally available micromanagement tools, such as directly limiting the charges brought and the classes of witnesses that may be called, should be used to ensure a fair and expeditious trial.

In his second important line of argument, Boas addresses the trend among high-profile defendants in international criminal proceedings to represent themselves. While recognizing (somewhat ruefully) that the right to self-representation has become established in international criminal law, he argues that recent international criminal jurisprudence has interpreted it to be a limited right that can be regulated when it threatens the fairness or expeditiousness of a trial. While such regulation can occur through the imposition of assigned counsel, intermediate options are also available to the judge, and Boas is particularly sympathetic to the Milošević court's innovation of what he terms the "hybrid *amicus*/defence counsel" (p. 256)—amicus curiae appointed by the court to serve in the interests of the defendant, though not to replace the defendant in his function as his own counsel. Despite the utility of this innovation, Boas argues that the Tribunal failed to take an adequately firm and consistent position on regulating Milošević's right to self-representation throughout the case, severely delaying the proceedings and undermining their fairness.

From within a framework that prioritizes fairness and expeditiousness above all else, Boas presents compelling arguments, and his analysis of how to achieve those goals within the current procedural parameters of international criminal law is instructive. However, it is precisely Boas's dogmatic adherence to the exclusive criteria of fairness and expeditiousness that is *The Milošević Trial*'s central weakness. In explicitly repudiating the idea that courts must be flexible to adapt to the political context within which they operate (pp. 265-68), he ignores the core failure of the Milošević court, and in so doing draws incomplete and dangerous lessons for the conduct of similar prosecutions in the future.

After all, the primary failure of the trial was not legal, but political. Within one week of the opening statements, Milošević's approval ratings in Serbia, which had dropped into single digits, doubled to twenty percent,[1] where they remained. Indeed, so powerful was Milošević's trial in mobilizing support for his previously discredited ultranationalist agenda, that his Serbian Radical Party pressured Serbian state television to broadcast the prosecution

1. Andrew Purvis, *Star Power in Serbia*, TIME, Sept. 30, 2002, at 46.

of Milošević's erstwhile henchman Vojislav Šešelj in 2007.[2] That Milošević's political heirs are the leading Serbian voices advocating the broadcast of ICTY proceedings against his collaborators is a disturbing reflection of the impact of the Milošević trial in the state where it matters most. Rather than promoting reconciliation, the trial appears to have stoked the flames of nationalism that originally facilitated the crimes against humanity for which Milošević was prosecuted.

By declaring such concerns political and therefore outside the remit of prosecutorial or judicial consideration, Boas takes the rigidly legalist line of "let justice be done, though the heavens may fall." But what kind of justice is a fair and expeditious trial that catalyzes ethnic hatred and potentially precipitates further violence? Did we try Milošević for the countless innocents who suffered his reign of terror, or for the international legalists who seek an insulated code of international criminal procedure? The challenge of trying a former political leader who committed crimes with the support of large numbers of political followers is unique not, as Boas claims, simply because the prosecutor's case is necessarily more complex than usual (p. 93), but rather, because the conduct and outcome of the trial are likely to have profound political consequences for a precariously balanced society trying to heal from the trauma of mass atrocity. For prosecutors and judges to bury their heads in the sand in an attempt to ignore these political ramifications is the height of irresponsibility. Boas's exclusive focus on the virtues of fairness and expeditiousness, with the idea that other values may be "legitimate derivative outcomes" of a fair and expeditious process, but cannot be allowed to drive decisionmaking (p. 4), is misguided.

Of course, this is not to say that fairness and expeditiousness are not important. Quite the contrary. But an appreciation of political consequences must not be discarded. Rather than focusing on the two-way balancing act between fairness and expeditiousness, courts and prosecutors should focus on a three-way balance among fairness, expeditiousness, and political reasonableness.

As a practical matter, many of Boas's suggestions are politically reasonable, and so the distinction appears unimportant. But the overlap is not complete. On Boas's view, the imposition of assigned counsel and the assignment of hybrid amicus/defense counsel were both acceptable responses to Milošević's petition to represent himself. From the political perspective this is not the case. Milošević abused the platform provided by his status as counsel to engage in inflammatory nationalist rhetoric directed not at the bench, but at the Serbian masses. Far from blocking the propagandist use of the courtroom, the hybrid amicus solution gave the accused a safety net that ensured that his political posturing would not come at the cost of failing to assert fundamental legal arguments in his defense. Given this man's proven capacity to inspire atrocity, political reasonableness militated unequivocally in favor of assigned counsel, an alternative that would have preserved the fairness of the trial while eliminating the threat of Milošević's grandstanding.

2. Vesna Peric Zimonjic, *Trial Opens of Serb "Who Gave Ethnic Cleansing to World,"* INDEP. (London), Nov. 8, 2007, at 32.

Weighing political factors alongside the ends of fairness and expeditiousness does not entail discarding those more conventional values. *The Milošević Trial* provides an excellent elaboration of the procedural parameters within which prosecutorial and judicial decisions must be made, and provides compelling analysis on the fairness and expeditiousness of various options. Boas draws on a deep and expansive knowledge of international criminal procedure, and for international criminal lawyers and judges the book is a valuable resource. However, the argument is incomplete, and the lessons potentially misleading. In deciding how to structure the prosecution of a *political* leader for *political* crimes committed via *political* means, one simply cannot ignore political consequences.

International Refugee Law and Socio-Economic Rights: Refuge from Deprivation. By Michelle Foster. Cambridge: Cambridge University Press, 2007. Pp. 355. Price: $98.50 (Hardcover). Reviewed by Rebecca Heller.

The breadth and diversity of emerging claims to refugee status have forced immigration tribunals in many countries to reassess traditional interpretations of the 1951 Convention Relating to the Status of Refugees. Michelle Foster's book, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation*, does not aim to redefine the Convention, but rather examines how it might evolve to respond to emerging socioeconomic issues in refugee law. Foster reviews the case law of common law courts, as well as recent theoretical developments in human rights law, to build a persuasive case for including socioeconomic claims in refugee status determinations. However, she provides very little analysis of domestic policy considerations, or of the interaction between immigration law jurisprudence and legislative priorities.

Foster begins with the Refugee Convention itself. Rebutting critics' charges that it is a Cold War relic, Foster argues it has shown an ability to adapt, such as by allowing new categories of asylum claims—most notably, gender-based persecution. Foster also identifies developments in international human rights law that are eroding "[t]he simplistic distinction between political persecution, which is traditionally thought to involve positive action by an entity targeted at a particular individual or group, and economic degradation, which has traditionally been thought to be uncontrollable, inevitable, and just a sad fact of life" (p. 19).

This eroding distinction is relevant to asylum applicants as they attempt to identify the source of their oppression and whether that oppression rises to the level of "persecution." Foster argues for applying a human rights framework to evaluating refugee claims, as it would provide a universal and objective set of standards that would enhance the consistency and predictability of the asylum system. She notes that the Refugee Convention was written against the backdrop of human rights law, as "[t]he key purpose of the Refugee Convention was not so much to define what constitutes a

refugee, but to provide for the rights and entitlements that follow from such recognition" (p. 46).

Foster makes a convincing case for applying human rights standards to persecution claims, but never adequately deals with possible policy objections. She acknowledges that critics might argue that allowing human rights-based claims could open the "floodgates" of asylum-seekers, but she dismisses this as "not a valid legal argument" and "inchoate" (p. 79). She returns to the issue in her conclusion, arguing that other requirements of the Refugee Convention would check against this concern, but only after having argued for the systematic relaxation of these requirements for the last 340 pages. She also claims that even if the grounds for qualification were expanded, not everyone who qualified would leave their home country. This seems implausible given current rates of migration. In the end, she rests on her earlier claim that "[t]he difficulty with the floodgates argument is that it is clearly not a legal argument, as has been reiterated by many senior common law courts" (p. 344). While this may be true, it does not mean that policy considerations are not taken into account in determining the grounds for granting asylum. Immigration judges apply the Convention in part as interpreted by legislative and administrative bodies. It is typically these political branches of government that incorporate Convention grounds into national laws and regulations according to domestic policy priorities.

After describing the rights-based approach to determining asylum claims, Foster turns to explaining how economic claims might fit under the definition of persecution in the Refugee Convention. Persecution is typically a matter of degree: the relevant inquiry is whether a particular form of oppression or discrimination rises to the level of "persecution." Foster demonstrates how the interaction of economic discrimination with other harms may rise to the level of persecution; examples include deprivation of the right to work and to receive primary education and healthcare. An accumulation of smaller violations may also amount to persecution, but as noted above, most courts are more likely to view the abrogation of civil and political rights as constituting oppression, as opposed to the abuse of social and economic rights. Foster views this as an overly rigid approach that mistakenly compartmentalizes rights, when in fact, social and economic rights violations often implicate civil and political rights. This can be seen in the significant overlap between the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), for example.

Rejecting the hierarchical model of rights, Foster argues that the key question in determining whether persecution has occurred should be whether the *core* of a certain right has been violated. Emerging theories of human rights have identified both core and peripheral elements of certain rights, and in practice most international refugee courts make status determinations based on the degree of persecution. Foster does not offer a precise explanation for how the "core" of a particular right might be determined, nor does she address whether "core violations" of all rights—or only violations of certain more fundamental rights—would constitute persecution. In the end, it is unclear

whether the idea of the "core" of a right in the refugee context would serve as more than a metaphor for a "serious human rights violation," because there is no real analysis of how this would shift the existing framework of asylum jurisprudence. Indeed, Foster acknowledges that this conceptualization will shift on a case-by-case basis "according to the particular vulnerabilities of the applicant" (p. 212).

In addition to establishing persecution as a prerequisite for an asylum grant, the Refugee Convention requires both that the applicant fit into one of the five protected groups (based on race, nationality, religion, political opinion, or social status) and that there be a causal "nexus" between the claimant's group membership and the persecution suffered. Foster deals first with the nexus clause, noting a traditional bias against applicants from poor countries, whom judges occasionally write off as simply looking for a better life, rather than actually having suffered persecution: "The corollary is that decision-makers often appear more comfortable with an applicant from a poor country when he or she can establish some independent wealth" (p. 239). She identifies two distinct tests for the nexus requirement—a "but-for" approach, which requires demonstration that an applicant would not have been persecuted *but for* his or her membership in a protected group, and the "predicament approach," by which "the fact that one group is significantly over-represented amongst victims is deemed sufficient to establish nexus" (p. 281). The "but-for" test often imposes a higher burden on applicants from poorer countries, where economic oppression may be more widespread. In the case of large-scale societal inequality, it is difficult for an impoverished applicant to claim that absent one particular kind of persecution, life would have been substantively better. The predicament approach mitigates the question of intent; persecution does not have to be deliberate if there is widespread societal discrimination, neglect, or government unwillingness to prevent rights violations. However, a predicament approach that recognizes poverty as giving rise to a protected social group would necessarily lead to an exponential increase in the number of people eligible for asylum. Foster does not attempt to analyze the potential policy implications of such a definitional shift.

Finally, Foster addresses under which of the five protected groups an economic or social claim might fit. The most obvious, she believes, is the social group. Economic status may be used as the basis for social group status, with the most obvious example being caste membership, which meets the requirement of immutability (p. 304). Less obvious examples where judges have granted social group status based (at least partially) on an economic claim include "poor campesinos (rural peasant farmers) from El Salvador" and "impoverished young women from the former Soviet Union recruited for exploitation in the international sex trade" (p. 306). A social group claim may also include membership in a class-based organization, such as a union or cooperative, or membership in a traditionally economically disenfranchised class of people, such as people with disabilities, women, or children. Foster makes a convincing argument against those who claim that poor people should not be considered a social group because poverty is not immutable.

How, after all, does one voluntarily disassociate from being poor? However, she follows this discussion with a variety of statistics illustrating the devastating and widespread effects of poverty, which could lend support to the floodgates concern.

Thus, the major hole in Foster's argument is that policy and practical considerations are not taken into account in her analysis. She makes a strong case for what refugee law *should* be, but overlooks political constraints that limit what it *could* be. She states that she is not arguing for a large expansion of grounds for asylum, but this is difficult to accept given her vision of how the Refugee Convention should be interpreted. In the end, Foster makes a strong and convincing argument that in a world where law and ethics exist outside of foreign policy considerations, the Refugee Convention clearly allows for broader inclusion of socioeconomic claims in the determination of refugee status. Whether this analysis applies to the world in which we live may be a question for another book.

Judges Beyond Politics in Democracy and Dictatorship: Lessons from Chile. By Lisa Hilbink. Cambridge: Cambridge University Press, 2007. Pp. xvi, 299. Price: $80.00 (Hardcover). Reviewed by Kathleen Claussen.

Lisa Hilbink catches readers of her latest book by surprise when she asserts that "it is neither possible nor desirable to construct a judiciary beyond politics" (p. 8). In *Judges Beyond Politics in Democracy and Dictatorship: Lessons from Chile*, Hilbink sets out to explain why Chilean judges failed to challenge the illiberal and undemocratic policies advanced by the military dictatorship of Augusto Pinochet. Hilbink, a political scientist, enriches the sparse literature in this area of scholarship with her meticulously researched work. *Judges* sheds light on a variety of critical questions at the intersection of democratic theory, law, and political science; it disappoints only insofar as it fails to probe deeper into these questions and unpack the normative dimensions of the trend it identifies.

The book opens with a literature review in which Hilbink describes the increased importance of judges in judiciaries around the world throughout the 1970s and 1980s. She traces a turn to the judiciary, widely acknowledged in political science literature, as part of a broader democratization process in which the polity looked to judges to be guarantors of civil and social rights newly affirmed in the democratic constitutions emerging at that time. She then introduces the anomaly of Chile, where judges of the Chilean Supreme Court under the Pinochet dictatorship did not engage with the law in this way. Hilbink turns to the question: "under what conditions are judges likely to be willing and able to play [a role in discussion and reflection about the meaning of democracy]" (p. 23)? Although tangential to her own study of Chile, this background inquiry situates the Chilean case and gives rise to important theoretical questions, to which Hilbink returns in her conclusion. Unfortunately, however, the first chapter's exploration of major normative shifts in transitional governments is not taken up in a formal way in Hilbink's

analysis. Rather, the book delves into the empirical study the author conducted using case law from the time of the dictatorship and personal interviews with current and former judges.

The trend Hilbink observes, that the Chilean Supreme Court overwhelmingly supported the position of the Pinochet dictatorship, is not novel, though the clarity and comprehensiveness of her research is impressive. Her discussion of the judges' seeming complicity leads her to conclude that the institutional structure and ideology of the Chilean judiciary promoted a "conservative bias" among the judges (institutional "apoliticism") (p. 39). "Structure" refers to "the organizational rules governing the powers and duties of different offices," while "ideology" refers to the "discrete and relatively coherent set of ideas shared by members of the institution regarding the institution's social function or role" (p. 5). In her analysis of ideology, Hilbink implicitly deploys an argument predicated on the dual quality of norms, such that the norms of the profession are both embodied in and reproduced by the institutional structure. *Judges* complements the work of other scholars who have also pointed to the configuration of the Chilean judiciary—its limited judicial independence and its corporatist arrangement with other branches of government—as serving to constrain liberal judicial review. In contrast to the work of other scholars, however, Hilbink argues that there was a more substantive underlying ideology at work. According to Hilbink, the apoliticism of the judiciary served to perpetuate a conservative bias, understood by those within the system to be the prototype of professionalism, while support for any other view was considered "political" or unprofessional.

Hilbink gives fairly short shrift to alternative explanations for trends of judicial behavior in illiberal contexts. In a few short pages, she glosses over potential reasons for the trend she has identified in Chile, inter alia social class, legal philosophy, and judges' personal policy considerations, though she returns to these possible alternative explanations methodically in later chapters as part of her data analysis. While she concedes that each of these features might contribute in some way to judicial complicity, Hilbink argues that, even taken together, they are not sufficient. At the same time, Hilbink leaves out any meaningful consideration of the most salient alternative explanation: fear of the powerful Pinochet regime. In 1991, newly inaugurated President Patricio Aylwin attributed the lack of judicial challenge to a lack of moral courage. Yet, would a voice against the violence of the dictatorship have made a difference? By speaking out, judges risked endangering their lives. Paralyzed by a fear for their safety, these jurists might have felt it necessary to rubber-stamp dictatorial policies in order to protect their families. The book instead argues that judicial deference to the military dictatorship was actually the product of broader ideological and structural features.

Despite Hilbink's detailed description of these characteristics of the judiciary and her impressive command of the intricacies of the Chilean legal system, civil law scholars may criticize her rejection of an otherwise natural observation that in the civil law system, legal formalism dominates the landscape of judicial decisionmaking. In this way, the book dismisses a fairly simple explanation for the behavior it analyzes—that the judicial record may

actually be attributed to the general framework of the civil law tradition. Indeed, half of Hilbink's argument is premised on structural characteristics specific to Chile but not grossly unlike other civil law judiciaries. Moreover, her broad thesis appears to extend to all judges, but, in a single sentence, it merely mentions the work of the Constitutional Tribunal which did, in fact, hand down decisions against the dictatorship.

Hilbink's framing of the central questions of her study lends itself to a sociological analysis as much as a legal or political one. If one makes allegations about the socialization of the profession, situating those concepts in a broader framework of civic engagement in Chile and cultural mores about professionalism is critical. As Hilbink acknowledges, structure, cultural assumptions, and judicial decisionmaking are inextricably linked: The organizational structure "served to reproduce a very conservative understanding of the judicial role, or what I am calling the institutional ideology. The core of this ideology was a belief that adjudication was and should remain strictly apolitical" (p. 93). To term this socialization of the judicial process an "ideology" may be overstating the case; other authors identifying the same trends have used terms such as "legal culture" or "socialization."

In short, Hilbink's bright-line conclusion may not be as groundbreaking as it is made out to be. The risk-averse behavior of Chilean judges should not be surprising in light of their circumstances and their institutional and professional constraints. Similarly, the book's lack of comparative standards or benchmarks against which to evaluate statistics such as the percentage of habeas petitions granted by the Supreme Court or the success rate of other constitutional claims makes it difficult to understand whether the Chilean case is in fact an anomaly, as Hilbink argues, or whether similar patterns would be found in other like circumstances. In the final chapter, Hilbink attempts to bolster her argument with examples from other countries (Spain, Italy, and South Africa) that have experienced similar trends, though the comparisons are not carried out in enough detail to allow for cross evaluation.

A perception of the role of the judiciary is deeply rooted in any given society, reflective of its sociopolitical history. In the United States and around the world, with the rise of constitutionalism, citizens have developed an expectation for representativeness within the judiciary, under the assumption that judicial decisions should reflect shared social mores. Undoubtedly, the structure of the Chilean judiciary lends itself to a particular philosophy and judicial culture. The historical waves of a strong democracy usurped by a devastating dictatorship followed by yet another transformation contribute additional layers to the story. According to Hilbink, Chilean judges betrayed their public by abandoning their oath to uphold a constitution imbued with liberal democratic rights and by displaying "a greater commitment to public order than to individual citizen rights" (p. 70). Here again, Hilbink conflates the relevant ideologies. Democracy in many parts of Latin America at that time largely granted deference to legislatures; the U.S. liberal rights-based judicial ideology did not take hold in Latin America (and most of Europe) until much later. Even after it had, judges in the "continental" tradition

continued to serve as mouthpieces of the law, rather than affirmative promoters or creators of the law, as Hilbink advocates they should. According to Hilbink, rather than insulate themselves beyond politics, judges should engage with the polity and other structures of government. Her book aims to demonstrate the dangers of apoliticism such that "if we can understand the sources of undesirable judicial behavior, we can, by inference, generate hypotheses about the conditions that might allow for more positive outcomes in other times and places" (p. 23).

Paradoxically, this book only skims the surface of a deeper debate while attempting to assert generalizable conclusions. It gives the reader pause to ask far-sweeping questions about the role of the judiciary and the many meanings of judicial independence. Hilbink's study sheds important light on Thomas Jefferson's maxim referencing the function of the judiciary: independence from the king or executive is a good thing, but independence from the will of the nation is a solecism.

Constitutionalizing Secession in Federalized States: A Procedural Approach. By Miodrag Jovanović. Utrecht: Eleven International Publishing, 2007. Pp. xix, 203. Price: €65 (Hardcover). Reviewed by Caroline Edsall.

In this book, Miodrag Jovanović, a law professor at the University of Belgrade, provides a comprehensive and insightful study of secession throughout history and across the world and proposes a constitutional procedural framework that would permit groups to assert the right to self-determination. Jovanović's contribution to the literature lies in his defense of the constitutionalization of secession and his thorough analysis of the legal procedure that should be used to bring it about. Although Jovanović skims past some historical lessons and does not provide an answer to readers who may be inclined to question the substantive merits of secessionist claims, his procedural analysis is clear, well organized, convincing, and unique.

Toward the beginning of the book, Jovanović lays out various prerequisites that must be satisfied before his proposed procedure can be successfully applied. First, Jovanović's framework applies only to federal states with electoral and liberal democracies that boast an independent judiciary, have a significant opposition vote, and guarantee protection from police terror. Next, the right to secession must be recognized in the constitution, which would have the effect of limiting secession to the most worthy cases, allowing governments to avoid impasse, preventing the interference of international actors, and ensuring relative political stability by legally regulating an otherwise explosive political issue. The foregoing reasons constitute Jovanović's "political prudence" argument, which he claims is a new addition to the field in defense of the constitutionalization of secession.

After establishing these prerequisites, Jovanović presents his step-by-step framework for secession. Jovanović tackles one of the most difficult questions first: who exercises the right and how? As a supporter of total

democracy, he prefers constitutionally protected popular participation to elite-level, closed-door negotiations. A direct referendum may seem the obvious solution, but Jovanović is careful to highlight the multiple problems of that approach. For example, the masses often possess "less than perfect knowledge" (p. 169), and referenda can be "'insensitive to the intensity and graduated nature of opinion,' because different sides of the same argument are 'subsumed into a single one size fits all statement or choice'" (p. 170 internal quotations omitted). Furthermore, the question of "'which constituency is to decide on secession: the majority of separatist part, the whole, or concurrent majorities of both constituencies'" is a challenging one (p. 171). Jovanović answers that referenda remain the preferable and legitimate approach since they can "make more people better off, [but] not all people" (p. 182).

Regarding the constituency-definition problems, he argues in favor of allowing the referendum vote to proceed at the territorial instead of the national level so long as subsequent referenda are held to allow minorities within the seceding territory to remain affiliated with the larger federal state if they so desire.

Finally, Jovanović does not shy away from treating the question of who exactly should vote in the territorial referenda. The simple answer: all who are eligible to vote in the territory's regular elections. However, international standards support residency requirements which bar participation of interested members of ethnocultural groups who no longer inhabit the land in question. Jovanović, although stopping short of rejecting outright this restriction, hints that such individuals should be entitled to vote. The reader would appreciate a more definitive response to this issue, but Jovanović's nuanced treatment of the manifold difficulties of defining the referendum is commendable.

Jovanović then backtracks slightly to address the actors who can initiate a secession process and propose the referendum, singling out local legislatures, citizen groups, or central authorities as possibilities. He next details guidelines according to which the secession campaign and referendum must be conducted, including a campaign limited to forty-five to ninety days' duration. During this period, Jovanović would require that media coverage be balanced and strict upper limits on the use of public funds set. The clarity of the referendum question is of the utmost performance: there can only be one issue at stake, it must be understandable to the average citizen, and it must be published with an unbiased explanation. Once the votes are in, an independent body must be established to ensure accuracy, along with an official gazette to publish results, a tribunal to review the complaints of dissatisfied citizens, and a special act of parliament to acknowledge and implement the outcome. If the referendum has a negative result, there should be a mandatory waiting period before any further referendums can be held.

In between his discussion of prerequisites and his presentation of a procedural approach, Jovanović embarks on a historical survey of past secession attempts around the world. His accounts ultimately fail analytically. While readers who know little about the reconstitution of the Swiss cantons or the attempted secession of Western Australia may find these tales fascinating, they also contain valuable lessons for would-be secessionists, which

Jovanović neglects to treat in full. For instance, in Australia, despite a clear referendum vote in favor of secession in 1933, global crises sidetracked the issue and within a decade, there was no more talk of fragmentation. If secessionist sentiment can blow over so quickly, any procedural framework for it should include a means by which to ensure that secession movements are not simply the growing pains of maturing federal nations in a sometimes economically turbulent world, but Jovanović does not discuss or absorb this lesson. He also includes a survey of current constitutional clauses on secession: from Burma to St. Kitts, many nations have dealt with secession at some point in their recent past, including the USSR, the Socialist Federal Republic of Yugoslavia (SFRY), Serbia and Montenegro, Ethiopia, and the United Kingdom. Unfortunately, this section too contains little commentary on the successes, failures, innovations, and shortcomings of these clauses, leaving these important questions to the reader's speculation.

To his credit, Jovanović gives fuller treatment to the history of the Badinter Commission, providing insightful analysis along the way. Charged with resolving the 1991 crisis in Yugoslavia, the Commission made a grave mistake in applying the *uti posseditis* principle (calling for borders to be left as found at the end of a war or decolonization movement) to state dissolution in a permanent fashion. Thus the Badinter Commission wrote about Yugoslavia, "'[w]hatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence except where the states concerned agree otherwise'" (p. 96). Although Jovanović concedes its logic in cases of decolonization, he argues that this principle should not be automatically applied to cases of secession. Jovanović calls the Badinter solution an "'invented' norm of public international law" and points out that it would have grave consequences for federalism generally by implying that federal nations are automatically less stable and therefore less deserving of international recognition (p. 102). Although not entirely against the *uti posseditis* principle, Jovanović believes that it should only be used as a temporary measure until the people have a chance to speak and the politicians have a chance to negotiate, thereby redrawing borders to the satisfaction of the greatest number of people.

Successes and failures of historical analysis aside, a more significant critique arises from Jovanović's failure to prescribe a substantive component of secessionist claims. Jovanović's procedural approach is what makes his work unique, and the steps he lays out will serve any government attempting to clarify secession procedure, be it constitutional or legislative. However, many scholars have argued that the right to secede hinges upon ethnic, racial, religious, linguistic, or cultural distinctness. Others, such as Lea Brilmayer, point to territorial claims stemming from historical wrongs. Jovanović rightly identifies a "biased referee" problem (p. 38) when it comes to governments themselves assessing the moral weight of substantive secessionist claims, but discarding the substantive requirement altogether is a faulty and incomplete solution. Jovanović believes it is safe to rely entirely on constitutionalized procedure, which, if followed, would permit all willing subunits to secede from federalized states with ease. Not only is it unlikely that any state would

consent to secession without merit, it is also probable that relative chaos would result if groups with no legitimate claim to independence sought to invoke a right to self-determination.

Although his piece suffers from occasional weaknesses in historical analysis and a dismissal of the substantive components of secession, Jovanović focuses on federalism, constitutionalism, and procedure in a way that few scholars of secession previously have, and in so doing makes a substantial contribution to the field. As he writes in closing, the purpose of his book is to clarify "certain basic concepts essential for a proper understanding of this subject matter" and to "actively contribute to the ongoing theoretical debate in this field," and to that extent, he is largely successful (p. 203).

The International Judge. By Daniel Terris, Cesare P.R. Romano, and Leigh Swigart. Walham, Mass: Brandeis University Press, 2007. Pp. 315. Price: $45.00 (Hardcover). Reviewed by Craig Konnoth.

In this charming work, the authors provide interesting insights into a relatively new type of judicial body: international courts, whose jurisdictions cross national boundaries. The authors' primary goal is to provide an understanding of the courts from the perspective of their judges and court officials. The authors aim to familiarize American critics with these courts. Besides pointing to sovereignty concerns, critics argue that for the United States to submit to the courts, their jurisprudence would need to be more "settled" and less changeable and "political." Rather than fall back on the usual, unhelpful reply, that the jurisprudence and authority of international courts can only become "settled" if countries like the United States join up, the authors seem to believe that their *description* of the courts will assuage readers' fears and misconceptions.

Those looking for sustained and rigorous academic argument will be disappointed by this book, which more often employs detailed and colorful descriptions of the courts and portrayals of their judges. The authors make few arguments. They do not, for example, cite the practice of a particular court as a model for other courts, or as a reason for U.S. support for the courts overall. Instead, they often spell out both sides of arguments, leaving the disputes in the voices of judges and court officials rather than their own. Readers are left to draw their own conclusions from the descriptions (or not).

The number and variety of courts and judges surveyed is the great strength of this book. While the authors focus their research on certain courts and are conscious of resultant shortcomings, the breadth is impressive; few other studies assess as wide a variety of international courts. This broad approach helps the authors achieve at least one of their purposes—to make readers familiar (and comfortable) with these bodies. It also provides two other advantages.

First, since no single international standard exists to judge the best practices of any one court, the practices of one court can best be evaluated by comparison with the practices of other international courts. Thus, we learn

that at the International Court Justice (ICJ), each of the fifteen justices provide a draft opinion which is then circulated to their colleagues, followed by deliberations and a drafting of the full court opinion. The advantages (thoroughness) and disadvantages (inefficiency and production of multiple opinions) of this process are apparent when compared with processes in other courts. Similarly, the comparative approach proves useful in assessing dissenting practices, mutual citation, nominee selection, linguistic backgrounds of judges surveyed, and canons of judicial conduct.

Second, this broad survey aids discussion of general trends across all international courts, such as issues of translation and Anglicization of the process and the building up of "precedent" (p. 118). It also allows the authors to provide broad recommendations for the systems across the board, such as a more formalized selection process and the establishment of uniform rules of procedure. While it is of course true that different courts need different analyses, the authors are sensitive to these differences and restrict their recommendations appropriately.

The disadvantage of this survey approach is that it can become monotonous. The authors rarely make explicit arguments, and when they do, they are often buried by too much information, as the processes of the courts are perfunctorily listed without comment. Sometimes the reader is left questioning the point of all that detail, unsure what conclusions to draw. As the authors aim to make readers familiar with the courts rather than to argue a certain position, the information in some sections can feel unstructured and directionless.

The monotony is exacerbated for readers already familiar with international courts, as the book is written for nonexperts. While Chapter 1 opens with a useful basic introduction to these judicial bodies, providing a brief history, taxonomy, and scope, the foundational approach permeates the book. One sometimes finds basic information provided with little useful commentary, such as the description of what constitutes substantive law, with explanations of the sources of law, and the difference between appellate and trial courts.

These flaws however, are generally eclipsed by the book's primary charm: the interviews with numerous international judges. A profile and interview of an international judge concludes every chapter except the first, allowing judges to comment on their personal experiences, the tribunals on which they have worked, and the system as a whole. These generally amount to sympathetic and reassuring depictions of the international judiciary.

Court officials' comments pepper the rest of the book. Chapter 3 for example, offers the judges' perspectives on the practices of their courts, the backgrounds of their colleagues, the quality of the lawyers, and linguistic challenges. In Chapter 5, judges discuss American attitudes to the system, the importance of local tribunals in criminal law, and the actions of the press. While some parts of the book are less rich in this commentary, overall the reader is left with the impression that the players in the system are generally humble, qualified individuals, who empathize with those concerned about the international judicial system.

The authors rely on this impression to advance the second of their goals—assuaging U.S. fears of international institutions. The authors are honest about the relative lack of restraints on the courts, discussing, for example, the WTO Appellate Body's writing of its own rules of procedure. They note, "[u]nlike national judges, international judges do not inherit courts of law; they need to build them" (p. 103), and admit that courts are being disingenuous when they claim to merely "stat[e] the existing law" (p. 115). They recommend recognizing and "harnessing" this lawmaking function to ensure the best results (p. 130). Furthermore, one judge at least admits that the purpose of judicial function is to "nudge" countries towards international standards (p. 71). However, over time, growing uniformity of international institutions and proliferation of precedent will increase formal restraint on judges, as in the case of more established courts like the ICJ.

The argument that time will constrain international courts will hardly placate the fears of those who are afraid of their freedom *today*. To combat these concerns, the authors make two somewhat contradictory moves. First, they argue that international judging is *sui generis* and cannot be evaluated by the same criteria as national jurisprudence. International judges may have more leeway because of the lack of formal legal guidance, but they are more constrained by political pressure. Their institutions are more fragile, which makes the judges more cautious. This is a weak argument; it is precisely the *sui generis* nature of these courts that is at issue for critics, who claim that their fragile nature would make judges subsume U.S. interests and justice to the vicissitudes of political popularity.

The second move is rhetorical, and like most of the authors' rhetorical moves, more effective than their arguments. The authors emphasize the *similarity* of domestic (particularly U.S.) and international courts. Both domestic and international judges are educated in similar settings: three of the five profiled judges studied at Harvard Law School, and a fourth researched in Washington D.C. (though a relatively small percentage of the judges on these courts are alumni of U.S. law schools). Similarly, the authors' discussion of the influence of political pressures on courts opens with the limitations of judicial seclusion from politics both domestically and internationally. Finally, most of the Foreword by Judge Sonia Sotomayor of the Second Circuit is devoted to her identification with the experience of the international judge.

The authors conclude the book with arguments for supporting the international legal system that have been made before, and better, by other writers—the prevention of war, the promotion of human rights, and the need for law as a substitute for power to aid the progress of poorer countries. The strength of their overall argument remains in the rhetorical gloss they provide the images of their judges. They emphasize the quality and education of the judges. The challenges the judges overcome—we are told how judges had to work in windowless rooms, or even in a bathhouse—show their commitment. They are ultimately presented in a human, sympathetic manner. Of the five judges profiled, one experienced apartheid in South Africa, one was a political refugee from Chile, and one is a Holocaust survivor.

The authors largely engage in storytelling from the perspective of judges and court officials to make them appear familiar, sympathetic, responsible, and unthreatening. Critics may find these methods lacking in substantive argument. However, those who recognize the importance of international standards of justice will welcome the persuasive methods used in the book to overcome isolationist fears. Finally, the book teaches us that rather than providing a heavy analysis to defend a position, sometimes a good story, well-told, from someone in the know, can be persuasive.

Creating a World Without Poverty: Social Business and the Future of Capitalism. By Muhammad Yunus, New York: PublicAffairs, 2008. Pp. vii, 261. Price: $26.00 (Hardcover). Reviewed by Ronan Farrow.

In 1986, then-Governor of Arkansas Bill Clinton invited a little-known Bangladeshi economist to Little Rock to help establish lending programs for impoverished communities. Clinton had heard about Muhammad Yunus from a college roommate of his wife, and followed how his bank had begun empowering poverty-stricken Bangladeshis through the use of innovative microloans. Within six years, Clinton had told Rolling Stone magazine that Yunus "should be given a Nobel Prize." It was a refrain Clinton would repeat often over the ensuing years, and before long, he wasn't alone in suggesting it.

Yunus's organization was the now-iconic Grameen Bank. Twenty years later, when he finally did win the Nobel Peace Prize, Grameen had extended loans to some seven million people with no other means of obtaining credit. Newly anointed an international media darling in the wake of his 2006 Nobel Prize win, Yunus is now turning his attention to the business world at large.

In *Creating a World Without Poverty*, he champions a tantalizingly simple concept: a new category of businesses geared at addressing social ills, functionally identical to traditional for-profit companies, but with one key exception. Investors in what Yunus terms "social businesses" make back only their investment, and any additional profit goes to expanding the business itself. Freed of the obligation to maximize investors' returns, their sole bottom line is improving the social impact of their operations.

The appeal of the social business concept is undeniable. Early in *Creating a World Without Poverty*, Yunus provides a tediously obvious (but convincing) laundry list of reasons why traditional catalysts of social progress fail where his new model might succeed. Governments, he notes, are slowed by the weight of their own bureaucracy and captive to the interests of the wealthy by virtue of the political process. The same is often true for multilateral economic institutions like the World Bank and the International Finance Corporation (IFC), which also suffer from a fixation on large-scale economic growth at the expense of small-scale development. Yunus reserves particular disdain—or the closest approximation his relentlessly cheerful delivery permits—for charities, which he deems wildly inefficient and beholden to the ebb and flow of unreliable revenues. Yunus's social

businesses would, by contrast, be self-sufficient, and retain the efficiency and competitive incentives of for-profit companies.

Perhaps the most exciting thread that runs through *Creating a World Without Poverty* is a fundamental critique of traditional business values. Yunus's goal is nothing less than undermining the foundations of capitalism. He proposes, with an optimism that would be mistaken for naïveté in anyone with less ironclad credentials, that human beings are ultimately fulfilled by factors other than profit, and that traditional capitalist values are, as a result, outmoded. In one of his few moments of genuine eloquence, he subjects mainstream economic wisdom to a withering invective:

> Mainstream free-market theory suffers from a 'conceptualization failure,' a failure to capture the essence of what it is to be human . . . . [W]e've created a one-dimensional human being to play the role of business leader. . . . We've insulated him from the rest of life, the religious, emotional, political, and social. He is dedicated to one mission only—maximize profit. He is supported by other one-dimensional human beings who give him their investment money to achieve that mission. To quote Oscar Wilde, "they know the price of everything, and the value of nothing." (p. 18).

In Yunus's view, social business wouldn't just serve the needs of the poor—it would fill a critical void for investors the world over. Investors in social businesses would make back their money and, in the process, accrue other benefits Yunus views as very tangible—an ownership stake in a movement that has real impact and the fulfillment of a basic human need to help others.

It is both the single most important argument to Yunus's case, and the hardest to swallow. Yunus genuinely believes in the idea of a thriving stock market exclusively devoted to social businesses, championed by executives who are judged by the amount of money they can pump back into the operation of their social endeavors, not the wealth they accrue for shareholders.

The challenge to this project, as it has been for microfinance, will be proving that the answer lies in an innovative new idea rather than in fixing the flaws of the old structures Yunus is so quick to dismiss. His ideas have consistently attracted a host of naysayers. A vocal minority of economists continues to decry microfinance as at best a misallocation of resources that could fund larger scale businesses and produce more jobs, and at worst an exploitative debt trap for the poor. Social business, an idea on an even grander scale, will have a still harder road to acceptance. And though Yunus's abstract ideas are robust, backed by genuine economic savvy, and acutely tuned to potential criticisms, real world illustrations of the efficacy of social business are limited.

As his most significant proof of concept, Yunus offers Danone-Grameen Foods, a joint venture between his own institution and French dairy powerhouse Danone. Yunus opens the book with a group of Danone executives, over lunch at a French restaurant, committing in-full to a proposal from the dumbstruck Yunus to begin a social business aimed at providing affordable yogurt to malnourished children in Bangladesh. The plan was simple: Danone would provide an initial investment and establish a distribution network offering yogurt at prices affordable to the very poor.

Three years into the life of the business, Danone would recoup its initial investment, and from that point, continue pushing profit back into the enterprise, expanding its reach and efficacy.

The concept remains unproven—Danone-Grameen is still in its infancy. Yunus's romanticism about the revolutionary nature of the venture makes it easy to forget that Danone's actual contribution—$500,000—represents a minute investment for a business giant. But it's undeniably a significant milestone, and in the years to come may be remembered as a forerunner of the social business revolution Yunus is fighting for.

Yunus laces the book liberally with that lone example. Indeed, repetition, perhaps an unavoidable consequence of his dogged polemicism, is a problem throughout *Creating a World Without Poverty*. The entirety of Yunus's argument is delivered with PowerPoint precision and occasionally even bullet points in the book's first forty pages. The remainder of the text rehashes material from Yunus's previous book—touches of his own biography, a glowing rendition of the history of the Grameen Bank—before closing with a giddily optimistic projection about the potential of social business.

Yunus's case is done few favors by his workmanlike, matter-of-fact prose, or his slightly irritating proclivity for acronyms (he insists early on that he refer to conventional businesses as PMBs—Profit Maximizing Businesses—then proceeds to do so ceaselessly). And for a book about the plight of the poor—written by a man who justifiably claims to have spent a lifetime "on the front lines" (p. 43) of poverty in his native Bangladesh—*Creating a World Without Poverty* is surprisingly devoid of human drama. Yunus's tirelessly chirpy and amiable worldview leaves room for barely a mention of the realities of the tragedy he fights. Much space is devoted to meetings with executives at fancy restaurants, while the personal stories of the monolithic poor Yunus so often refers to are nowhere to be found.

Yunus's ideas are on such a grand scale, however, that it's hard not to be won over. His obvious passion and the enormity of his undertaking are enough to render inconsequential complaints about the book itself. Muhammad Yunus is a visionary, and the potential his new ideas hold for real change reads loud and clear on every page. Given his track record, and the astute, finely honed set of guidelines with which he justifies his social business model, it's difficult not to share his excitement.

Cultural Products and the World Trade Organization. By Tania Voon. New York, NY. Cambridge: Cambridge University Press, 2007. Pp. xxxv, 306. $117.00 (Hardcover). Reviewed by Margot Kaminski.

Tania Voon's *Cultural Products and the World Trade Organization* is a call for WTO members to address what she calls the "trade and culture" problem. The conflict between trade liberalization and cultural protectionism has already surfaced in several cases before the WTO Appellate Body, and looks likely to arise again under the WTO's stalled Doha Round of

negotiations. In this timely volume, Voon argues that the attempt to fit cultural protectionism into the various exceptions to trade liberalization that the WTO treaties provide has produced a "result that is unsatisfactory for all WTO members" (p. 34). Her solution is to acknowledge cultural concerns by allowing cultural subsidies, while otherwise standardizing and liberalizing approaches to trade across WTO agreements. Unfortunately, Voon's solution is neither wholly practicable nor visionary, leaving the reader with a work that is detailed and informative, but yields unsatisfactory generalizations.

A former Legal Officer in the Appellate Body Secretariat of the WTO, Voon decidedly supports trade liberalization. She recognizes, however, that cultural protection could be a valid national goal, differing in kind from discriminatory policies that merely favor domestic industry. This book is an immensely thorough examination of what Voon calls "discriminatory cultural policy" in light of the details of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the General Agreement on Trade in Services (GATS) (p. 43). Voon describes discriminatory cultural policy as aiming to bolster national culture through the imposition of tariffs, quotas, or subsidies supporting goods that are deemed "national," either through geographical origin or through choice of language. Such measures have been imposed or supported by Canada, France, Brazil, and Switzerland, among others, and have generally been opposed by the United States and Japan—especially in GATS negotiations.

The current wording of GATT 1994 and GATS provides no common standard for handling cultural products in light of protectionist tendencies. GATT 1994 forged multilateral commitments to national treatment, Most Favored Nation (MFN) status, and market access. Article XX outlines the only explicit exceptions to these commitments, including the protection of public morals, health, national treasures, and exhaustible natural resources. Although cultural protectionism might be argued to fall under some of these categories (particularly the protection of national treasures and public morality), this approach has not worked in cases before the WTO Appellate Body. Therefore, there is no explicit exception for the protection of culture under GATT 1994. Rather, cultural goods under GATT 1994 are meant to be treated the same way as all other goods. The WTO Appellate Body affirmed this conception in *Canada-Periodicals*, concluding that competing American and Canadian publications were to be considered "like" products despite potential cultural differences in content.

According to Voon, cultural products might merit some sort of exception, although she does not advocate adding protection of culture to the Article XX list. Voon does acknowledge that cultural products might be particularly prone to market failure, since "sales of local cultural products in the marketplace may not adequately reflect the cultural value of those products to the wider community" (p. 33). This market failure justifies, in Voon's view, a review of the approaches to cultural products articulated in GATT 1994 and GATS.

The fundamental problem is that cultural products can be classified as either goods or services and, depending on their classification, are subject to

differing standards under GATT 1994 and GATS. GATS "imposes fewer general disciplines and offers fewer general escape routes," while GATT 1994 imposes "exacting disciplines" on cultural products, with no special treatment except for Article IV (a relic from GATT 1947 which allows countries to impose "screen quotas" requiring a minimum number of domestic films to be screened in commercial theaters) (p. 118). The discrepancy between GATT 1994 and GATS is one of Voon's most compelling arguments for revising these agreements. Unlike her market failure argument, which can be challenged according to varying ideas of the value and efficacy of national paternalism, the discrepancy between the two WTO agreements clearly begs for resolution in the near future.

Voon examines several options for revision of GATT 1994 and GATS, both within the text of the agreements and in other bodies of international law. WTO dispute settlement has not thus far allowed for exceptions due to the cultural aspects of commercial products (as in the aforementioned *Canada-Periodicals* case). International agreements external to the WTO, such as UNESCO's 2003 Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions or the UNIDROIT 1995 Convention on Cultural Objects, also would not successfully overcome WTO regulations on cultural products, as both are written to comply with preexisting treaties. Voon thus returns to the text of GATT 1994 and GATS to make a three-prong suggestion for revision of both agreements. She suggests that rather than creating a new exception under GATT 1994, WTO Members should push for recognition of digital cultural products as services under GATS. Also, members should allow for an exception for discriminatory subsidies for cultural products under GATS. Voon further supports increasing liberalization under GATT 1994 by removing Article IV's allowance of screen quotas, or revising it to apply to television and radio broadcasting as well.

This conclusion seems logically supported, and the book is well written. The tone is evenhanded, avoiding the high versus low culture debate, while still recognizing that culture is an issue that needs to be reckoned with in trade. More importantly, Voon's work is very detailed, with background information presumably gathered during her time at the WTO. Her intensely thorough approach and deep knowledge of the tests applied to GATT 1994 language by the WTO Appellate Body render the book both scholarly and practical.

The detailed nature of Voon's approach, however, leads to several problems. While Voon declares that her conclusions are "not intended to be practical suggestions to be implemented in the Doha Round of negotiations," her proposals are so detailed that they fail to be visionary (p. 247). She is so focused on the restrictions imposed by existing structures that she rejects nearly every proposal for reform as impracticable. Readers may find this frustrating.

The biggest problem in Voon's argument is that she addresses GATT 1994 and GATS in somewhat of a vacuum. There is no discussion of the negotiating agendas of different WTO parties, and even more troubling, there is nearly no mention at all of intellectual property law. Any book that

approaches WTO policy with regard to cultural products and spends only three sentences addressing the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) runs the risk of overlooking a broader set of pertinent questions. After all, regulating cultural products is impossible if they have not been declared to be uniformly accepted economic products at the outset. Voon suggests that she has chosen not to discuss TRIPS because to her, the agreement seems to facilitate cultural protectionism by monetizing or incentivizing the creation of culture. This view, however, is not widely accepted. In fact, from ongoing debates regarding the value of traditional knowledge and geographical indicators in relation to trade and culture, it is clear that intellectual property law is a prime locus for exactly the sort of protectionism-versus-trade-liberalization debates Voon envisions.

Cultural Products and the World Trade Organization is thus a thorough but also myopic approach to the issue of cultural products within current international trade law. Voon's suggestions for reform are sensible, yet somewhat disappointing in their lack of vision. One hopes that her extensive research and knowledge might provide a backdrop for further study of this important issue.