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The Law of Peoples. By John Rawls. Cambridge, London: Harvard University Press, 1999. (Book Review)

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over certainty and judicial enforceability. Although he concludes that the ultimate effectiveness of nonbinding norms is still uncertain, Kiss, too—like most of the other contributors—defends their widespread use as tools in the increasingly complicated tasks of norm setting and standard setting for the world community.

The final chapter of *Commitment and Compliance*—Edith Brown Weiss's "Understanding Compliance with Soft Law"—begins by stressing the need to categorize instruments, both binding and nonbinding in their form and content, in light of the purposes to be served. This categorization would serve, in turn, as a means of gaining a better, more sophisticated understanding of patterns of compliance and noncompliance. (As an application of this kind of "functionalist theory," the present reviewer's own taxonomic work on negotiated instruments has since been published.²⁰) But the further development of functionalist taxonomies is only one of several tasks that need to be addressed by an equivalent group of scholars working along the cross-disciplinary, multisectoral, and transgenerational lines of the present volume and its seminal project. Because of the fundamental and global implications of such scholarship, it is surely important to move to the next stage by involving more scholars from non-Western cultures. Moreover, the challenge to legal orthodoxy inherent in this kind of scholarship seems to call for a richer blend of social and behavioral scientists—in addition to lawyers and political scientists. And the growing importance of nonstate institutions in the promotion, negotiation, interpretation, monitoring, and application of transnational commitments—not only by nongovernmental institutions, but by corporations, as documented by many of the volume's authors—makes it essential to involve a larger number of non-academic participants and observers in future projects of this collaborative sort. Indeed, it might be suggested that the "infinite variety" of international law²¹ reflected in the ever increasing diversity of negotiated instruments²² would be best explored through the development of a new cross-disciplinary field of studies designed to encompass all facets of these phenomena: the making and maintenance of treaty commitments, or "treaty studies."

²⁰ Johnston, *supra* note 8. [Editor's note: The book is reviewed by Robert E. Dalton, 94 AJIL 204 (2000).]

²¹ Richard R. Baxter, *International Law in 'Her Infinite Variety'*, 29 INT'L & COMP. L.Q. 549 (1980).

²² Anthony Aust, *The Theory and Practice of Informal International Instruments*, 35 INT'L & COMP. L.Q. 787 (1986).

In the meantime, the ASIL is to be congratulated for bringing together such a stellar panel of scholars for this significant venture. With the nucleus in place, perhaps the first step has now been taken toward the assembly of a larger scholarly community interested in contributing to the development of a new and much needed field of study.

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The Law of Peoples. By John Rawls. Cambridge, London: Harvard University Press, 1999. Pp. viii, 199. Index. \$23.95, £16.50, cloth; \$16.95, £11.50, paper.

John Rawls, arguably the most important political philosopher writing in the last half century, contends in *The Law of Peoples* that many widely accepted principles of international law coexist easily with a distinctively liberal conception of right and wrong governmental action in international settings. He suggests that, for states organized in light of liberal premises, their domestic constitutions and modes of public discourse oblige, in effect, adherence to a range of international norms. Other states, because they reflect "decent hierarchical" assumptions, are similarly constrained. Rawls also argues that "outlaw states"—states not meeting his definitions of "liberal" or "decent"—may be properly subject to international sanctions for their entirely domestic misconduct. War against "outlaw states" may well be just; war against "liberal" or "decent" states cannot be. States in which liberal developments are frustrated by adverse economic circumstances are owed a "duty of assistance."¹

The Law of Peoples might someday be grouped with writings of Grotius and Kant.² This review is not the place to explore that possibility.³ Rawls

¹ Along the way, illustrating his analysis, Rawls interjects sharp comments on a surprisingly wide range of topics; for example, conventional and atomic bombing of cities by the United States and Great Britain in World War II, the terms within which the Holocaust is relevant for international political theory, and the role of religion in the governments of Islamic-majority populations.

² See RICHARD TUCK, *THE RIGHTS OF WAR AND PEACE: POLITICAL THOUGHT AND THE INTERNATIONAL ORDER FROM GROTIUS TO KANT* (1999).

³ For discussions of *The Law of Peoples* from the perspective of present-day political philosophy, see Charles Beitz, *Rawls' Law of Peoples*, 110 ETHICS 669 (2000); Allen Buchanan, *Rawls' Law of Peoples: Rules for a Vanished Westphalian World*, 110 ETHICS 697 (2000);

draws upon a vocabulary that, initially anyway, is not especially technical; but he puts seemingly common terms to use in notably dense and intricate ways. The impact of *The Law of Peoples* outside the precincts of political philosophy will depend, to a large extent, upon whether readers find this process of analytical elaboration persuasive. Students of international law, in particular, should regard the Rawlsian analysis as at least provocative. It deploys a strikingly limited conception of international law, seemingly grudging in its account of international human rights and international organizations, but shows that conception to possess surprising and strong origins. I will suggest at the close of this review that it is relatively easy to fit additional international law nearby (as it were) the international law norms that Rawls singles out, and in the process buttress Rawls's own construction, as well.

The book has two large parts: "The Law of Peoples" and "The Idea of Public Reason Revisited."⁴ The first part itself repeatedly subdivides. Rawls begins with "Ideal Theory," considering only relations as among liberal peoples and governments; he then extends discussion to cover nonliberal, "decent hierarchical" peoples and governments. He next explores "Nonideal Theory," discussing, inter alia, the requirements for just war and the obligations that liberal and decent hierarchical states owe "burdened societies." The discussion of public reason in the second large part of the book is complementary. It generalizes, explores further, and defends key presuppositions of the argument of the first part. But it does not add new matter particular to the discussion of international norms.

The overall organization of *The Law of Peoples* is illustrative of the book's form of argument throughout—a cumulating claim, built up from a sequence of observations and simplified accounts. At times, sometimes at length, Rawls presents a course in "moral learning," an effort to show that persons living in both "liberal and decent societies" will "accept willingly and . . . act upon" international legal norms (p. 44). These norms, he thinks, will therefore be stable "for the right reasons," consistent with "reasonable interests," and more secure than any merely realistic

"*modus vivendi*, a stable balance of forces only for the time being" (p. 45). This educational exercise augments the analytical construction that is the distinctive contribution of *The Law of Peoples* (the reason why support is needed will become apparent later). Two devices, in particular, are prominent parts of this construction.

The first is suggested by the book's title. Rawls distinguishes between governments of states and the populations resident within state boundaries. He contends that populations—"peoples"—and not governments should be treated as fundamental entities. But this assertion is carefully limited. Rawls does not espouse any strong notion of "nationality"—that is, treat particular peoples as in some single important respect homogenous. He supposes not only that state boundaries are arbitrary, but that individuals within borders may be diverse in all kinds of ways—religiously, ethnically, ideologically, and so on. Rawls believes, even so, that governments may be meaningfully categorized on the basis of how they ordinarily deal with resident populations (which is what he means, methodologically, by the priority of peoples versus governments).

Liberal states are those that treat resident populations as liberal peoples—as populations of equally worthy individuals. Such states also treat the well-being of the population in general as the ultimate preoccupation of government; identify some set of individual interests shared by all (or almost all) residents as open only to limited governmental regulation; and tie identification of ultimately responsible government officers to some direct or indirect process of popular selection. Other states are decently hierarchical. They treat residents as essentially differentiated—to be given greater or lesser priority in cases of conflicting interests—but still treat the interests of residents, however ranked, as the ultimate preoccupation of government, and also seek to identify those interests through some process of consultation. Even if a majority population adheres to religious beliefs with strong political implications—here, Rawls treats Islam as paradigmatic—the government possesses enough of a separate identity to be able to frame its policies in secular terms.

For Rawls, these categories are not just descriptive, but decisively normative. They suggest a principle of self-censorship akin to the "original position" and "veil of ignorance" famously put to work in his 1971 book, *A Theory of Justice*. Governments that adopt liberal or decent hierarchical approaches may assert *only* those interests that

Andrew Kuper, *Rawlsian Global Justice*, 28 POLITICAL THEORY 640 (2000).

⁴ The first part elaborates and reworks an earlier essay, see John Rawls, *The Law of Peoples*, in *ON HUMAN RIGHTS: THE OXFORD AMNESTY LECTURES* (Stephen Shute & Susan Hurley eds., 1993). The second part reproduces an article Rawls had also previously published. See John Rawls, *The Idea of Public Reason Revisited*, 64 U. CHI. L. REV. 765 (1997).

derive from the well-being of their peoples as modeled in the one way or the other.⁵ States are not understood differently in international and domestic perspectives. Governmental interests unrelated to peoples—such as the interests of governments in their own prestige vis à vis other governments—are irrelevant across the board. This view of governmental interests does not imply, though, that for Rawls all the different interests that populations possess are, in fact, equally pertinent. Nominally liberal or decently hierarchical populations might be notably wolfish at times—caught up in jingoist claims to empire, in *la gloire* or ideas of manifest destiny, or in racial or religious hatred. But these inclinations are irrelevant from the perspective of peoples considered as liberal or decently hierarchical.⁶ The only underlying common interests of peoples are their shared commitments to liberality or decent hierarchy.

These agenda restrictions make it possible for Rawls, at least in dealing with liberal and decent hierarchical peoples and states, to characterize some disputes as effectively false conflicts, as implicating no legitimate substantive issues. In such cases, the interests that governments may rightly seek to advance, he is able to argue, are sufficiently restricted that one government can frame no arguments against the acts of another government that count (within the Rawlsian system) as objections. Not all conflicts are false, however. Acts of one government might adversely affect at least some interests of some of the peoples represented by other governments, even in instances in which the acting government is ostensibly addressing only the needs of (some of) its own population. The possibility of dispute remains even within the liberal or decent perspective that *The Law of Peoples* adopts.

Rawls deploys a second device—a revised version of the familiar idea of reciprocity—that provides a way to judge the importance of actual conflicts between states. “[I]n proposing a principle to regulate the mutual relations between peoples, a people or their representatives must think not only that it is reasonable for them to propose it, but also that it is reasonable for other peoples to accept it” (p. 57). Proposals meet this requirement if they “ask[] of other societies only what they can reasonably grant without submit-

ting to a position of inferiority or domination” (p. 121). Liberal or decent governments, in other words, could properly agree to (or otherwise accept) acts of other states because they would have no grounds for objecting if the organization of government and people—the only concern, Rawls posits, that each government understands other governments as necessarily possessing—is not put at risk. Governments would plainly have grounds, however, to protest acts that threaten constitutional integrity.

Two corollaries, I think, follow. First, because all governments involved could accept adverse acts that meet the Rawlsian test, “tit for tat” arrangements would be utterly noncontroversial. Rawls does not proclaim the end of international politics. Second, the idea of reciprocity, on this account anyway, acquires at least some of its persuasiveness from assumptions about the usual magnitude of effects and the duration of relevant time periods. Adverse effects produced by one government are not likely to threaten the liberal or decently hierarchical organization of a second government and population if the effects are not in themselves so dramatic or if, over a relevant period of time, they will likely be offset.

The Law of Peoples thus supplies an explanation for “[t]he absence of war between major established democracies”—which Rawls describes as being “as close as anything we know to a simple empirical regularity in relations among societies” (pp. 52–53).⁷ The point of war is to force “submission”; its initiation cannot, therefore, be defended in terms acknowledging the norm of reciprocity. But Rawls means to do more. Taken together, his two central notions here—the priority of peoples and requirement of reciprocity—organize a distinctive account of public reason. Within its terms, liberal or decent hierarchical peoples and governments have no reason not to accept familiar principles of international law—principles that Rawls readily translates, moreover, into terms consistent with his emphasis on peoples as primary and governments as secondary. He refers, in particular, to the freedom and independence of peoples; their obligation to adhere to treaties and other undertakings; the relative equality of peoples and their status as parties to binding agreements; their duty of nonintervention; their right of self-defense; their obligation to honor human rights; their obligation to restrict their conduct in war-

⁵ See also JOSEPH RAZ, *THE MORALITY OF FREEDOM* 38–69 (1986).

⁶ Point of view—the possibility of differences in point of view—is thus a foundational premise for Rawls.

⁷ The now-classic statement of these propositions is Michael W. Doyle, *Kant, Liberal Legacies, and Foreign Affairs I & II*, 12 PHIL. & PUB. AFF. 205 & 323 (1983).

time; and their duty to assist other peoples living in unfavorable circumstances (Rawls sees this last duty to be the most controversial item on the list). Notably, within this account, international law figures as unobjectionable rather than as affirmatively justified. Usual international law is fallout, its acknowledgement a product of the straitenings of Rawlsian public reason. Equally notably, it is domestic constitutional arrangements that do the restrictive work, that constrain states to acquiescence in, and therefore contribute to, the persistence of international law.

The consequences of this approach are especially dramatic for analysis of the law of war, international human rights, and any international duty of assistance. *The Law of Peoples* at times relies upon the sympathies of liberal and decent peoples for other peoples. For governments that take their cues from popular concerns, such fellow feeling is pertinent. But there is also a strong "reason of state" line of argument. There are, for Rawls, no reasons that liberal or decent hierarchical states can assert that would justify war with each other. Other states—within his terms, "outlaws"—might not sufficiently limit their governmental agendas and might therefore pursue courses of action too extreme to be brought within the assumptions of reciprocity. Liberal or decent hierarchical governments could properly act to counter outlaw ambitions—even to the point of waging (morally) just defensive wars. The conduct of these wars, Rawls thinks, should remain as true as possible to the organizing premises of the prosecuting governments, and thus should respect the basic distinction between governments and peoples. He believes that outlaw regimes—he explores in some detail the "demonic" case of the Nazi perpetrators of the Holocaust—do not ordinarily represent a sufficiently independent popular will to justify equation of states and peoples. Acts of war should aim first at outlaw governments themselves, next at their military forces, last of all at civilian populations, and then only if the populations in particular instances have plainly aligned themselves with their governors. This hierarchy provokes the book's sharply critical account of the firebombing of Dresden and Tokyo, and of the atomic destruction of Hiroshima and Nagasaki, in the final phase of World War II. Rawls believes that, at that stage especially, German and Japanese peoples could not have been equated with their leaders.

International human rights are depicted in *The Law of Peoples* as including only a skeletal subset of the individual rights ordinarily acknowledged by liberal states. "Human rights . . . express a special class of urgent rights, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide" (p. 79).⁸ These rights "set a necessary . . . standard for the decency of domestic political and social institutions" (p. 80). Limiting the set of international human rights is, in part, necessary in order to group together liberal and decent hierarchical peoples and governments; Rawls cannot, for example, recognize an international right to democracy.⁹ But this limitation in the scope of human rights is also a corollary of the idea of reciprocity: liberal and decent governments may properly respond only to acts that put at risk their own liberal or decent constitutions. International human rights are not therefore irrelevant, however, within the Rawlsian scheme. Acts of a government, in dealing with its own people, promise danger for other states if those acts amount to infringements of "urgent rights." That is, since for Rawls the only international human rights are those that derive from the premises of liberal or decent domestic constitutional arrangements, a government's failure to treat people within its borders in keeping with international human rights (as he defines them) is a hallmark of an outlaw regime and is also a threat to—and a once-removed act of aggression against—liberal or decent hierarchical peoples within the borders of other states. Outlaw governments, in dealing with their own peoples, signal what other states might expect. "Outlaw states are aggressive and dangerous; all people are safer and more secure if such states change, or are forced to change, their ways" (p. 81). Sanctioning such states for their domestic hu-

⁸ Rawls also presents a fuller list, but again emphasizes limits:

Among the human rights are the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly). (P. 65, footnotes omitted)

⁹ For discussion of such a right, see THOMAS M. FRANCK, *THE EMPOWERED SELF* 263–75 (1999).

man rights abuses is therefore akin to just war; indeed, Rawls acknowledges the possibility that domestic human rights abuses could warrant use of force against an offending government.

A similar analysis underlies the duty of assistance that Rawls describes. "A government's allowing people to starve when it is preventable reflects a lack of concern for human rights, and well-ordered regimes . . . will not allow this to happen" (p. 109). Even in the absence of deeply felt concern for the fate of other peoples, liberal and decent states might properly prefer a world in which there were more states of their own kind: recognition of reciprocity would become routine, and the need to anticipate extreme conduct would diminish. Aid to governments and peoples blocked by economic or other addressable circumstances becomes prudent defensive policy—just like punitive responses to domestic human rights violations.

The analysis that Rawls sets forth is, I think, obviously vulnerable in at least one important respect. A large part of a population might adopt a strongly systematic (Rawls uses the term "comprehensive") view of their own well-being and therefore understand seemingly separate matters as interconnected parts. If so, a representative government—either liberal or decent—might feel obligated to proceed on the same assumption. Specific acts of other governments could therefore appear to possess a larger significance, to threaten general popular commitments, and, accordingly, to loom disproportionately large, notwithstanding the mitigating effect of the principle of reciprocity. Rawls, of course, is well aware of this risk. He argues that at least in the case of liberal peoples and governments, the social and political arrangements generate their own sensibility, one that values tolerance of disagreement and that also reduces the appeal of "all or nothing" agendas. Religious concerns—which are, for Rawls, the paradigmatic source of systematic unease—may at least sometimes be addressed, albeit obliquely, in terms that are also part of secular political vocabularies. Consequently, governments that act in conformity with secular norms—such as reciprocity—may be able to portray their conduct as religiously unprovocative. It is this possibility that Rawls underscores both in his discussion in the latter part of the book of the relationship of religion and public reason in liberal societies, and in his construction of the model of the decent hierarchical state (notably, he depicts its exemplar as Islamic).

Although *The Law of Peoples* does not much discuss the possibility, there are obviously other system builders besides religion. Nationalism, in Benedict Anderson's famous phrase, generates "imagined communities."¹⁰ Sometimes, the related notions of race, ethnicity, or gender work similarly—even, potentially, across state boundaries. There are, we all also know, economic systems. Perhaps the "specter of Communism" has receded into the past. But participants in contemporary international market economies, for example, may also proceed on the basis of modes of thought that aggregate individual transactions and that lead the participants to judge the results and consequently to develop larger agendas—seeking various forms of distributive justice, for example. States may find it difficult not to take seriously such agendas, and thus governments may become implicated in the conflicts between market "winners and losers." Environmental, ecological, and public health concerns arguably prompt an analogous politics.

Systematic agendas could conceivably overwhelm liberal, decent arrangements of the sort that Rawls depicts—but this Armageddon, at least, is not a likely prospect at present. The more interesting question concerns the consequences for *The Law of Peoples* of a kind of *punctuation*—the possibility that liberal or decent hierarchical peoples and states either will sometimes act as prompted by systematic concerns or other stimuli difficult to defend in liberal or decent terms, or will confront other states that are (for the moment, at least) little constrained by liberal or decent reciprocity. Rawls is, of course, aware of this possibility.¹¹ He tends to focus his own attention, however, on extreme departures from liberal and decent international order. Consideration of Nazi Germany and discussions of right responses to true outlaw states do not, it seems to me, come to grips with the likely more frequent problem. If occasional departures from liberal or decent norms of reciprocity by themselves justify hostile action—action that in the circumstances may not always be perceived as tit for tat—*The Law of Peoples* would appear to authorize a surprisingly edgy, tumultuous international politics.

¹⁰ BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* 5–7 (rev. ed. 1991).

¹¹ His sense of the requirements of a liberal state, in particular, is at times quite rigorous. Arguably, the United States does not pass muster (see pp. 48–51).

Rawls relies on “statesmen” to manage problems like this last one. But it is also possible, I think, to frame a more general response. A better result might obtain if states adopted a quantitative version of the principle of interpretive charity (as they probably already do). It may be that, on occasion, momentarily systematic states act in ways that, even if not likely to be soon repeated, cannot be interpreted as other than unequivocal acts of war. But hostile, systematically prompted, one-time acts short of war do not always demand a punitive response even if, as in the case of a thoroughgoing outlaw regime, such a response might be readily justified. After all, the real accomplishment—and what is really at stake—is the stability and therefore the persistence of the overall framework of peaceful relations that is accepted by liberal and decent hierarchical states and peoples. If states only intermittently depart from liberal or decent hierarchical expectations, sharply punitive responses may not be necessary.

If states are liberal or decent often enough, and therefore deal with each other often enough within the familiar terms of international law that Rawls seeks to reinforce, international norms ought to be sufficiently well established to at least sometimes constrain momentarily systematic states, if only for reasons of tactics. In any event, violations of international law will occur within a context that also calls attention to the possibility of conformity, for other states or in other circumstances.¹² Interpretive charity also suggests that states that are not ordinarily liberal or decent need not, in every case, be treated as outlaws. We might imagine a category of intermittently liberal or decent states. Sufficiently free-standing acts of these states—when judged as meeting Rawlsian tests—could be understood to contribute to the reinforcement of international norms, and should therefore trigger corresponding responses from other states.

Adjusting the approach of *The Law of Peoples* in this way highlights the contribution that Rawls makes to our thinking about international law. He presents something very much like an existence theorem. Given enough states that act often enough as liberal or decent states, familiar norms of international law will be observed often enough to remain relevant in practice. This argument is a notably parsimonious one. It supposes only ap-

propriate domestic constitutions: Rawls need not posit any particular role for international agencies. Institutions—even ones as encompassing as the United Nations—figure simply as means of expressing state understandings. Nongovernmental organizations seem to be beside the point. It is not necessary, moreover, for international law itself to undertake the sometimes difficult effort of characterizing states as liberal or decent.¹³ International principles are in their own terms entirely general, and may be argued about and put to use as such, even though their persistence is a by-product of particular state arrangements.

The narrow substantive scope of Rawls’s discussion has drawn much criticism.¹⁴ The restricted domain of international law justified in *The Law of Peoples*, however, is not preemptive—need not, as it were, occupy the field. I reach this conclusion through a somewhat roundabout way. Rawls leaves an obvious, provocative gap in his account. Although he draws repeatedly on World War II for illustrations, he largely ignores the Cold War. In one respect, of course, it is easy to understand why—a period in which two regimes tend to treat each other as systematic opposites is not likely, it would seem, to leave a history useful in elaborating a defense of international law premised on the existence of numerous and independent liberal or decent states. But the Cold War is also often thought of (and remembered) in a rather different way. The adversaries typically found—and felt themselves under pressure to find—ways to isolate or accommodate particular conflicts, to anticipate and appreciate each other’s reactions, and to negotiate quid pro quos. The deterrent effect (for both sides) of nuclear weapons worked very much like liberal or decent order—motivating both sides to work out modes of dealing characterized by something very much like a sense of reciprocity.¹⁵ There was, moreover, another relevant aspect of the Cold War. Opposition drove both sides to articulate, repeatedly and at considerable length and depth, critiques of each other’s systematic pretensions, as well as defenses of each side’s own claims. Sensitivity to critique

¹³ Concerning this difficulty, see Anne-Marie Slaughter, *Law Among Liberal States: Liberal Internationalism and the Act of State Doctrine*, 92 COLUM. L. REV. 1907 (1992).

¹⁴ See, e.g., WILLIAM TWINING, *GLOBALISATION AND LEGAL THEORY* 69–75 (2000); see also sources cited *supra* note 3.

¹⁵ See, e.g., Jonathan Schonsheck, *Nuclear Stalemate: A Superior Escape from the Dilemmas of Deterrence*, 20 PHIL. & PUB. AFF. 35 (1991); Abram Chayes, *An Inquiry into the Workings of Arms Control Agreements*, 85 HARV. L. REV. 905 (1972).

¹² See generally ANTHONY GIDDENS, *THE CONSTITUTION OF SOCIETY* 41–92 (1984).

may have contributed to at least some changes in domestic arrangements and international conduct (school desegregation in the United States supplies one well-known example).¹⁶ Indeed, liberal political theory itself—in its still-current form—emerged in this “as against” setting. For example, the extraordinary worldwide reception of *A Theory of Justice* was, I suspect, at least in part a Cold War phenomenon. Rawls put forward what was easy to read as a comprehensive underpinning for (perhaps especially American-style) liberal political arrangements.

In *The Law of Peoples* and other recent work, ironically, Rawls assigns his own masterpiece an only marginal role, precisely because of its systematic tendency. Nevertheless, within an international setting that does, by and large, square with Rawls's assumptions in *The Law of Peoples*, punctuated order—with its sometime departures from liberal or decent courses of conduct—remains a real possibility, or so I have suggested. In those moments at least, liberal or decent politics may not be free from challenge; defenders may not find it sufficient to catalog the deficiencies of systematic adversaries. The Cold War—something very much like its ideological battleground, anyway—would from time to time reappear in microcosm. Liberal assumptions could once more—repeatedly, actually—require extended assertion and defense.

In these intervals of conflict, questions of international law, like questions of domestic law, would become occasions for registry—sites for the assertion of competing perspectives. A jurisprudential politics of this sort demands concrete illustrations of abstract premises; it need not, insofar as it is importantly demonstrative, sharply distinguish between local and global opportunities. It might, therefore, readily encompass much of what Rawls leaves out—all sorts of matters of economic, environmental, and human concern—as well as the design of institutions appropriate for addressing these concerns. (Legal debate, international and domestic, would within this account look much like what it often actually looks like.) Composite argument of this sort would not ground international legal order. But pursued successfully by partisans of liberal or decent premises, it would reinforce the relevance of the presuppositions that Rawls identifies as fixing that order.

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The Role of Law in International Politics: Essays in International Relations and International Law.
Edited by Michael Byers. Oxford, New York: Oxford University Press, 2000. Pp. xvi, 354. Index. \$80, £50, cloth; \$22.95, £12.99, paper.

The past decade has seen a growing interest of international lawyers in the study and practice of international politics. While international law practitioners have always been aware of the policy (and political) context of their work, legal scholarship has not always so clearly reflected the intimate relationship between law and politics. *The Role of Law in International Politics* is self-consciously exceptional in this respect. Michael Byers of Duke University Law School has brought together a diverse set of scholarly essays that examine various aspects of the law-politics nexus in international relations.

The volume's title does not adequately prepare the reader for the range of issues and concerns covered in the essays, which touch upon myriad themes relating to the changing environment of international lawmaking and governance. Actors, processes, structures, and intellectual agendas all come under scrutiny in this eclectic volume. Key questions include: What are the sites of international lawmaking in the current milieu? What actors are empowered to take part in the norm-making and law-creating process? Most generally, how has international law adapted to a changing global environment?

Be warned that this volume is not at all geared toward providing a coherent response to these questions. Rather, it takes on the less ambitious but perhaps more stimulating task of presenting a disparate set of perspectives that situate international law (and sometimes legal studies generally) in its broad social and political context. In a *very* brief introduction that does little to dictate directions or boundaries to the contributions, Byers suggests that the volume's essays address three major themes: first, the relationship between the disciplines of international law and international relations; second, the role of state and nonstate actors in the development and application of international law; and third, the character of international legal norms and rules, and how these affect state behavior.

The first of these themes—how the disciplines of international relations and international law relate to one another—gets sparks flying in the early chapters of the book. “Collaboration” between scholars of international relations and international law now has enough of a track record to

¹⁶ See, e.g., Mary L. Dudziak, *Desegregation as a Cold War Imperative*, 41 STAN. L. REV. 61 (1988).