

Hollis-Brusky's account is not a surprise to close observers of politics and constitutional law. However, this work of a political scientist should give pause to lawyers espousing doctrinal purity. Hollis-Brusky leaves the reader doubting the sincerity of the third tenet of the Federalist Society, "that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be." Initially, Federalist Society members championed originalism as a constitutional method that would reduce judicial activism. More recently, originalism has served as the basis for the Court to overturn precedent and issue activist decisions such as *Heller* and *Citizens United*. *Ideas with Consequences* serves as exhibit number one not for originalism but for the progressive doctrine of legal realism. The Courts do follow the election returns, and constitutional interpretation, no matter the method deployed, is never devoid of politics.

Above all, *Ideas with Consequences* is about power—the strategic use of the political power and wealth of the Federalist Society. Hollis-Brusky's frank portrayal of how that power is exercised is a valuable addition to the literature on constitutional politics, much of which has focused on progressive constitutional movements. Like Sophia Lee's recent book, *The Workplace Constitution* (2014), *Ideas with Consequences* provides a welcome glimpse into the politics of conservative constitutional change.

References

District of Columbia v. Heller 554 U.S. 570 (2008).

McDonald v. Chicago 561 U.S. 742 (2010).

Lee, Sophia (2014) *The Workplace Constitution: From the New Deal to the New Right*. New York: Cambridge University Press.

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The International Rule of Law Movement: A Crisis of Legitimacy and the Way Forward. Edited by David Marshall. Cambridge: Human Rights Program Series Harvard Law School, 2014. 308 pp. \$21.95 paperback.

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Belief in the rule of law—and its capacity to achieve social transformation in virtually any context—has emerged as an article of faith in academic and policy circles. But while the already well-entrenched

literature on the boons of the rule of law are ever-proliferating and policy initiatives implementing it are ever-enthusiastic, critical examinations of the empirical results being achieved by the many rules of law programs world-over have been few and far between. Indeed, there has been little acknowledgement of failure—and even less deep analysis of the reasons behind the disappointing results. In rising to this challenge, *The International Rule of Law Movement: A Crisis of Legitimacy and the Way Forward*—edited by David Marshall—is a vitally important intervention in a literature that has largely lost touch with reality.

The stance of the book—a collection of nine essays by a range of stakeholders in the international rule of law movement, mostly (and not trivially) with some first-hand experience in the field—is not in opposition to the rule of law, but rather a call to rethink it (p. 7) especially in the light of the enormous investment in such initiatives globally in the wake of reconstruction efforts in Afghanistan, Iraq, and elsewhere. It is particularly gratifying to see representatives of international organizations like the United Nations and World Bank—often behind the curve in incorporating critical perspectives—participate in, and lead, this project. Indeed, Marshall argues that, contrary to an emergent academic literature advocating more modest interventions, the “rule of law industry” remains focused on “whole system” approaches (p. xiv): “The causes of the movement’s failure have remained constant—unrealistic objectives, misplaced doctrinal approaches, insufficient expertise, poor planning and execution, and a lack of deep contextual knowledge. The lessons learned suggest a need to calibrate goals and objectives so that they take account of the negligible impact that international rule of law assistance has had to date” (p. xiv).

Given the widespread failure of rule of law reform efforts, the volume asks if the response should be to do away with the initiatives or attempt to improve it, interrogates the role of international organizations in the movement and, in a rare move in the international law domain, queries the relative roles of state and informal institutions in the process (p. xiv). Finally, it is significant that it stresses that the “rule of law” is “work in progress” *everywhere*—and is in need of fixing even “at home” (p. xiv).

The individual chapters cover a variety of themes, ranging from the abstract to the applied. James Goldston argues that the rhetorical popularity of the rule of law may be linked to the fact that it is more-or-less content free—and calls for an account of it that is not just formalistic, but incorporates the “experiences of ordinary people” (p. 1). Deval Desai grapples with the seemingly paradoxical situation that spending on rule of law reform is increasing even as it goes into deeper crisis about its identity (with this crisis increasingly substituting for the identity)—and argues that the search for conceptual content

should be abandoned in favor of learning from practice. Marshall focuses specifically on the United Nations, calling for it to re-examine its “purpose, approach, methodology, and results” (p. 84)—and making the case that broad, complex, and unrealistic goals have led the organization to lose its way, as evidenced by its very limited success on the ground, in cases ranging from South Sudan to Haiti. Many of these results, he argues, are the product of insufficient reflection on the part of the United Nations—and that the chances of success of more locally engaged, smaller scale intervention are much greater. Haider Ala Hamoudi’s chapter is particularly good: it points out that the rule of law discourse ignores the lessons of legal pluralism (i.e. that the state is but one of multiple co-existing legal orders)—but advocates, more fundamentally, for a “decolonization of the mind” to overcome the fetishization of legal centralism. This is not, for Hamoudi, the product of romanticizing indigenous forms of law (for instance, religious, tribal or customary), but a question of *plausibility* as much of *desirability* (p. 146). Through a range of examples illustrating the dynamics of the interaction between state and non-state law, he shows that there is much that state law can learn from informal orderings if it abandons its blanket mistrust of such regimes. Mareike Schomerus problematizes the rather two-dimensional conception of context specificity in rule of law discourses in the case of South Sudan—arguing that what is really called for is a deep engagement with ever-evolving surroundings. Vivek Maru focuses on the complexities that arise from the interaction of formal legal structures and community land rights in various contexts—and the possibility of harnessing the law to the ends of social movements. Todd Foglesong argues that seemingly banal changes in legal systems (both procedure and indicators of performance) can have profound impacts on the prospects of establishing the rule of law. Margaux Hall, Nicholas Menzies, and Michael Woolcock advocate the adoption of a “conscious state of experimentalism” in response to the uncertainties inherent in social systems, i.e. a shift from “best practice” to “best fit,” and describe its application in the context of the World Bank’s Justice for the Poor Program in Sierra Leone. Finally, the chapter by Louis-Alexandre Berg, Deborah Isser, and Doug Porter call for a reorientation on the part of donors to focus on the sociopolitical embedding of reform efforts.

The volume can seem fragmented at times due to the different issues and geographical contexts with which the individual authors deal, as well as the very different styles they adopt. The volume also lacks a clear “prescription”—or silver bullet—in terms of what the international rule of law movement must do to remedy its ills. But this weakness is also its greatest strength: as Elinor Ostrom (1990), the leading institutional theorist of informality argued, the devil is in the details when it comes to institutional reform efforts. Thus, while the appeal of grand theories of the rule of law to both readers

and funders is obvious, the questions of *mechanics* with which this volume deals are just as important, if not more, than delineating the contours of the institutional ideal as has been the preoccupation of the mainstream rule of law discourse. The smaller scale, more incremental reform agenda based on close engagement with—and learning from—local context that this book advocates may make less-ambitious promises than the over-night tectonic shifts that reform programs normally attempt, but holds the promise for a more embedded and durable mode of transformation with impacts for some of the most vulnerable communities in the world. The volume should be of interest to legal scholars and students interested in the transposition of the rule of law from the classroom to the real world, but is particularly recommended for policy makers in the position to allocate precious resources better and more effectively—as a reminder of the often uncomfortable and inconvenient realities of the world we inhabit.

Reference

Ostrom, Elinor (1990) *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge: Cambridge University Press.

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Saffron Shadows and Salvaged Scripts: Literary Life in Myanmar Under Censorship and in Transition. By Ellen Wiles. New York: Columbia University Press, 2015. 288 pp. \$50 cloth.

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Myanmar turns a historic corner this year: the National League for Democracy party, led by Aung San Suu Kyi, has just formed the majority of a new democratically elected parliament. The military government, which came to power in 1962, has been peacefully relinquishing control, albeit retaining a 25 percent presence in parliament which gives them the continued power of veto. A key indicator of change is the military's relaxation of its stranglehold on free speech, which supported half a century of repressive rule. At long last, Myanmar is on track to join the ranks of countries which protect freedom of expression. *Saffron Shadows* by Ellen Wiles is an important record of Burmese cultural production during this transition to democracy. Sociolegal scholars interested in censorship