

Book Notes

The Politics of Property Rights Institutions in Africa. Ato Kwamena Onoma. New York: Cambridge University Press, 2010. Pp. 246. \$82.00.

In *The Politics of Property Rights Institutions in Africa*, Ato Kwamena Onoma argues that the relative strength of property rights institutions in certain African countries can be explained by the manner in which elites harness the value of property to support their political ambitions. Promoting strong property rights institutions has become a favored strategy of many academics and development practitioners for raising incomes and empowering the poor. This book provides an important contribution in its recognition and exploration of the political forces behind the adoption of property rights-strengthening institutions. However, it may be criticized for its description of what constitutes a regime of strong property rights, which fails to take important elements into account, and its causal theory, which suffers from logical flaws and fails to address several other variables that might explain property rights outcomes.

Examining the ways in which the political classes of Botswana, Ghana, and Kenya have used property under their control, Onoma argues that the mode of property exploitation by the political elite reflects and informs whether the government implements policies that strengthen or weaken property rights. When elites use property “indirectly” — for productive, wealth-generating activities like agriculture or tourism — they tend to prefer strong property rights that would protect these enterprises and implement policies to strengthen property institutions. When they manage property “directly” — giving property to political supporters or threatening expropriation of opponents’ property — they prefer less secure rights, because such a regime allows them to promise the same property to multiple supporters and credibly threaten to evict non-supporters.

One limitation of the usefulness of this book is that its dependent variable, defined as “the concrete ways in which political leaders handle institutions that govern property rights in land,” lacks relevance in comparison to the ultimate objective of having such institutions: security in property rights. A direct measure — even one based on a survey of subjective feelings of security — would have been a more meaningful dependent variable. Onoma anticipates this criticism, arguing that the gains in feasibility of research resulting from the relative ease of capturing “concrete steps at reform” compensates for the indirectness of this measurement. For this reason, he measures the strength of property institutions as represented by the potency of four elements: the rules that govern the property system, the quality and completeness of property ownership information, the adjudica-

tion of property disputes, and the enforcement of property rights. Unfortunately, the use of these proxies does not eliminate the measurement problems that presumably motivated their adoption in the first place. Rather, Onoma replaces a direct measure of subjective appraisals of security of tenure with an indirect measure of subjective impressions — based largely on interviews with landowners and government officials — of the soundness of property rights-enforcing mechanisms. More worryingly, his dependent variable hardly seems relevant in predicting outcomes with regard to the right to hold one's property safe from the threat of expropriation. For example, although Onoma holds up Early Kenya's property rights structures as paradigms of property rights-strengthening institutions, they were incapable of constraining the violent and sudden decline in security of land tenure in Late Kenya.

Onoma's causal argument also suffers from shortcomings. His theory does not go far enough in explaining how indirect use of land translates into political power. As he explains it, when political elites use property indirectly for agricultural or other productive endeavors, they have an incentive to develop and maintain strong property rights. He contends that, in Botswana at least, leaders had "serious political motivations for their creation of secure property rights institutions," as "[t]hey were providing favorable institutions to political allies." Elsewhere, however, it appears that the causal mechanism of this part of Onoma's theory is that the economic value elites derive from their use of their own land is their source of political power. If the latter is a component of his causal story, he must go further in illustrating how value derived from indirect use of land compares to value derived from direct use. His theory is only viable if it is true that one can derive approximately the same degree of political power from the economic wealth generated from indirect use as from the promises, threats, gifts, and expropriations related to direct use. The book offers no explanation as to whether this is the case and why, and no empirical measurements upon which such an inference could be based.

When it comes to direct exploitation, both the carrot and the stick of Onoma's theory are subject to criticism. First, Onoma argues that politicians who directly exploit land by giving it away to supporters prefer weaker institutions that allow them to give or promise to give the same parcel to multiple people with nobody being the wiser. Such political calculus would make for a questionable long-term strategy, however, as it stands to reason that property people come to realize is insecure would become less valuable relative to more secure property. Without measurements of the value of property under secure regimes as opposed to insecure ones — which would admittedly be difficult to obtain — it is difficult to evaluate his claims. Second, Onoma explains that elites who use property directly prefer weaker property rights institutions in order to more credibly threaten eviction in order to pressure people to support them politically. However,

this explanation is undermined by the example of Kenya, where ostensibly strong property rights institutions could not prevent later threats — and execution — of expropriation on a massive scale.

The most valuable contribution of this book to the new institutionalism literature is its contention that there must be politics at play behind the strengthening and weakening of property rights in the developing world, and that political motivations do not necessarily coincide with aspirations to strengthen property rights. Unless those who argue for the protection of property rights through revised laws and overhauled registry systems understand the implications of this argument, they will find it next to impossible to enact lasting reform.

—Rachel Crouch

Mobilizing for Human Rights: International Law in Domestic Politics. Beth A. Simmons. New York: Cambridge University Press, 2009. Pp. 468. \$29.99, paper.

In *Mobilizing for Human Rights*, Beth Simmons combines sophisticated quantitative analysis and in-depth case studies to dispel the commonly held skeptical view that “international law has done very little to improve the rights chances of people around the world.” Instead, Simmons attempts to provide proof that the ratification of international human rights treaties meaningfully alters state behavior and leads to a direct increase in respect for individual rights. To do so, the book attempts to address a classic question of international law: why do countries make commitments to their peers to respect the rights of their citizens, and how do those commitments have valence when there are not sufficiently coercive international mechanisms to compel compliance? To answer this question, Simmons first outlines a theoretical causal mechanism to explain why human rights treaties alter state behavior, and then provides empirical evidence to support her theory.

In Part I of the book, Simmons develops a theory to explain states’ compliance with human rights treaties based on domestic politics. Simmons argues that even though international organizations have limited ability to enforce treaty regimes, a state’s ratification of a human rights treaty provides a powerful tool for internal political discourse. After ratification, domestic political actors are able to appeal to the authority of the treaty to pressure the government to improve its rights practices. This pressure can be applied through both formal channels, such as legal challenges to state behavior, and informal channels, such as mobilized social movements. Ac-

ording to the theory, although the exact mechanism may vary by treaty, ratification helps to define the magnitude of the expectation gap between a state's commitments and its actual practices.

In Part II of the book, Simmons presents empirical evidence that supports her theory about the impact treaties have in providing leverage in domestic politics. To do so, Simmons compiles an impressive data set on the ratification of six major human rights treaties that have sought to ensure civil rights, protect the rights of women, eradicate the use of torture, and guarantee the rights of children. Using compliance with these treaties as the dependent variable, Simmons then tests a range of explanatory variables to provide robust statistical evidence supporting her theory that ratification has a statistically significant relationship with compliance for each treaty evaluated.

Although Simmons' work constitutes the most thorough empirical analysis of the effect of human rights treaties to date, the book does have a few admitted shortcomings. First, due to limitations on causal inferences in statistical analysis, Simmons' work can only definitively document correlations and not causations. Since the quantitative models control for other competing explanatory variables in their design, however, the case for causation is stronger than in previous studies. Second, although the book is able to document a positive effect on state behavior as a result of the ratification of human rights treaties over the previous sixty years, there is no guarantee that the theory provided by the book will continue to be valid as international institutions evolve and the density of international commitments continues to increase. That said, Simmons' effort should provide ample evidence to convince those concerned with the protection of human rights that instead of bemoaning the shortcomings and inefficacies of international law, increased efforts should be made to promote the use of international treaties. It is in this way that the book could have a potentially profound impact on our understanding of how international law can be mobilized to ensure the protection of human rights.

—Adam Chilton

Human Rights and the Ethics of Globalization. Daniel E. Lee & Elizabeth J. Lee. New York: Cambridge University Press, 2010. Pp. 280. \$27.99, paper.

How should principles grounded in ethics and human rights inform approaches to globalization in the production of goods and services? In *Human Rights and the Ethics of Globalization*, Daniel and Elizabeth Lee work to build

a common vocabulary for ethics and transnational business; the result is a set of guidelines that incorporates principles from human rights but ultimately fails to deliver a coherent analytic for decision-making.

The authors offer a number of ideas — largely drawn from various philosophical traditions — through which to conceptualize the ethics of globalization. First, and perhaps most central, is Kant's admonition to treat other people "never merely as means but always at the same time as ends in themselves" (*italics removed*). Second, the authors offer the idea of multiple stakeholders, arguing that a business has responsibilities not only to its investors, but also to its employees, customers, suppliers, and communities. Third, the authors draw upon the idea of relational rights, which are entitlements that — unlike natural rights, which are considered inherent to individuals — arise from the existence of a relationship between two or more parties. In this context, the authors discuss the idea of concentric circles of responsibility, in which our obligations to our "near neighbors" may be greater than those to our "distant neighbors," but conclude that globalization has made distant neighbors into near ones.

These are appealing ideas, and they seem like they could serve as building blocks for a more comprehensive theory or analytic — a framework that could help to address the complex and vexing questions that surround globalization. Regrettably, however, it is hard to escape the conclusion that the whole is less than the sum of its parts; the philosophical ideas that the authors advance never seem to add up to a larger structural solution, and no idea on its own provides answers to the complex tradeoffs the authors identify. Insofar as the audience is the business community, a community that seeks practical solutions rather than elegant formulations, the lack of specific guidance will be unsatisfying.

Perhaps the book's most interesting question — and one the authors could have explored further — is whether the existence of a relationship between corporations, first-world consumers, and third-world employees creates, or should create, positive economic, social, and cultural (ESC) rights, perhaps akin to the rights to health, education, and adequate living standards enumerated in the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The authors seem to think not, arguing for a "more limited, more carefully defined notion of rights," enforced in part through litigation under the Alien Tort Statute (ATS) and supplemented by principles of good corporate citizenship. Although this is a defensible position, it's not the only possibility; one could argue that the situation calls for new thinking on rights — for example, possibly including progressively realized ESC rights, which could be embodied in either international corporate social responsibility standards or national legislation. A model in this regard could be decisions of the South African Constitutional Court, which has enforced the ESC rights enshrined in that country's constitution on a progressive, "reasonable efforts" basis. Such an approach, reflected in cases

like *Soobramoney v. Minister of Health*¹ and *Minister of Health v. Treatment Action Campaign*,² seeks to give meaningful content to these rights while respecting resource constraints and the need for sensitive distributional choices.

The authors also seem too quick to dismiss the invocation of non-justiciable rights, which can have important discursive and expressive value even if no one gets to enforce them in court. For example, if a corporation were to recognize its employees' right to earn a living wage, rather than simply a more general principle of good corporate citizenship, that recognition could significantly raise the costs, in terms of international public opinion, of any subsequent failure to provide one. Such a rhetorical shift from "citizenship" to "rights" dialogue can have real consequences, even if — for reasons such as lack of jurisdiction or judicially cognizable standards of review — enforcement is limited to public disapprobation.

Finally, rights can be articulated in terms of procedural guarantees for local consent to corporate practices. It is good for the communities where corporations operate to be considered stakeholders, but it is better for them to have concrete entitlements, embodied in corporate codes of conduct or national legislation, to influence the design and conduct of businesses that affect their interests. These entitlements should include guarantees of transparency, as well as input from women, ethnic or religious minorities, and other traditionally disadvantaged groups. This approach has the advantage of letting local people articulate the content of their rights, rather than relying on outsiders to define them, although there may still be a role for the international community in setting minimum standards. In the end, the authors have succeeded in contributing to the dialogue on globalization, largely by reframing existing ideas about corporate social responsibility in philosophical terms; it remains to be seen, however, whether their work could yield either a more rigorous analytic framework or new and more creative uses of human rights.

—Joshua Gardner

Bloody Harvest: The Killing of Falun Gong for their Organs. David Matas & David Kilgour. Woodstock, Ontario: Seraphim Editions, 2009. Pp. 232. \$19.95, paper.

In recent years, China has taken a key role on the world stage; books like this remind us that there are aspects of the Chinese state and society that

1. *Soobramoney v. Minister of Health* 1998 (1) SA 765 (CC) (S. Afr.).

2. *Minister of Health v. Treatment Action Campaign* 2002 (5) SA 721 (CC) (S. Afr.).

remain a black box to the outside world, the contents of which may be difficult to imagine. The crime alleged in *Bloody Harvest* embodies the ultimate reduction of human dignity — being killed and sold for parts by the political authorities of one's own country. That the targets are members of Falun Gong, a religious minority group that has been relentlessly vilified and persecuted by China's ruling Communist Party through an opaque system of mostly secret detentions, torture, and widespread "disappearances," makes the allegations chillingly plausible. The book does not fully prove its thesis, yet it gives a revealing account of Chinese policy towards Falun Gong, and provides what should be sufficient grounds for inference to convince the reader of the need for further investigation.

The analysis turns on a few, universally accepted facts: the number of organ transplants conducted in China spiked dramatically after 1999. But there had been no such increase in the number of officially-sanctioned donors, almost all of whom were executed convicts or deceased medical patients. The same year as the increase, however, the Chinese Communist Party had launched the largely extra-legal crackdown against Falun Gong. Much of the key data associated with both the crackdown and the transplants went either classified or undocumented. The authors lead readers to ask whether these shadowy places overlap in a startling atrocity.

Bloody Harvest examines allegations — from Falun Gong believers and third party observers — that many members of the group who "disappeared" into Party custody were then extrajudicially killed so that their organs could be used in profitable transplant operations. In the process of evaluating these claims, the authors also offer a general dissection of the crackdown against Falun Gong, and the administration of justice by the modern Chinese Communist Party. At each stage of their analysis, they find no smoking gun to prove or disprove the allegations, but do find, in copious quantity, motive, opportunity, and inclination of Party agents to engage in such behavior.

The authors are David Kilgour, former parliamentarian and Secretary of State for the Asia-Pacific region of the Canadian federal government, and David Matas, a Winnipeg-based human rights lawyer. Their substantial knowledge of Chinese rights issues and the political context of the Communist Party's crackdown against the Falun Gong belief is evident throughout the book. Indeed, where evidence is scarce, they often operate through induction or analogy based on their previous experience with the Party, particularly with regard to its opaque diplomatic communications and policy-making.

Hard evidence is indeed difficult to come by when probing the inner workings of what remains one of the world's most secretive governing bodies. Perhaps inevitably, the authors' analysis relies heavily on first or secondhand anecdotal accounts, publicly available statistical data, coded diplomatic or internal policy statements, behavioral analysis, and tech-

niques of investigative journalism (such as contacting hospitals and public security bureaus under the guise of a potential transplant patient). The balance of this evidence corroborates allegations of targeted organ harvesting. Among the facts lending credibility to the charge of organ harvesting are the nonchalance with which numerous Chinese medical professionals give assent to hidden investigators' requests for "Falun Gong organs," the vitriol with which all official Party sources vilify and dehumanize the group, and the believers' frequent unwillingness to self-identify when in police custody for fear of incriminating friends or relatives (thus becoming nameless, untraceable by those same friends or relatives, and far more vulnerable).

To their credit, the authors do not purport to have provided conclusive proof. Their first chapters establish the immense difficulty of the investigative task before them, and proceed with a cogent and transparent explication of their research methodology. Although one wonders whether they might have tried more roundabout methods of procuring hard data, one can hardly fault the authors for deciding not to endanger their own, nor anyone else's, personal safety with a more direct or hands-on penetration of the Chinese security state.

The presentation of methods and context is quite clear and comprehensible. The statistical data is likewise well-presented, and where this data is dependent upon unofficial or potentially unreliable sources, such caveats are explicitly noted. Perhaps the most readable, if chilling, segments of *Bloody Harvest* are the personal accounts of formerly imprisoned Falun Gong refugees. These accounts are awash with the pathos of the persecuted and marginalized minority in the collectivist state, as well as a kind of distinctively Chinese subordination of emotional to objective details (the numbering system of interrogation rooms, the quality of furnishings, conversations among torturers). Taken as a whole, such details implicate what Hannah Arendt has called "the banality of evil": the melancholy thesis that great injustices are often committed not out of personal hatred or fanaticism, but rather as the result of an accepted system of political authority that routinely commands their perpetration.

This work has the potential to stimulate debate on certain widespread human rights violations in China. These violations encompass the specific allegation of organ harvesting (which has been underreported), the ongoing anti-Falun Gong campaign as a whole, and a range of broader philosophical and moral concerns. From the perspective of post-Enlightenment Western liberalism, the alleged abuse might be viewed as the 20th century's final *reductio ad nihilum* of individual human value before the dictates of collectivist political ideology. From the Marxist-Leninist-Maoist perspective, it is perhaps the ultimate expression of dialectical materialism; that because of an individual's way of thinking, he or she can be worth more as physical bio-matter than as a sentient being.

In the latter view, the Party is the elite agent of a revolutionary agenda which is the source of all political authority and legitimacy, and individuals have no natural rights, only those conferred by the Party, at its own discretion and subject to retraction. The question of whether meaningful rights can coexist with this style of absolutist state — and thus of what sort of rights the one-fifth of humanity that lives in China may enjoy — is a topic much deserving of public debate and careful consideration. It may well be the central political and moral question of the 21st Century.

—Ryan J. Mitchell

