War, Commerce, and International Law
By James Thuo Gathii, Oxford: Oxford University Press, 2010. 304 pp. $ 65.00 (Cloth).
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Commercial empires have never been merely commercial and even today they are very effective at waging war to secure access to new markets and resources. In *War, Commerce, and International Law* James Gathii demonstrates authoritatively the impossibility of divorcing commerce from geopolitical processes and relations of power, from slippages of the public and private in resource wars, and from the use of force by myriad state and non-state actors. Gathii's investigation of the complex and fluid relationship between war and commerce in international law, whose rules still bear the imprint of colonial conquest, calls into radical doubt traditional understandings of this relationship. Rather than being amenable to linear periodizations into epochs where commerce trumps war or vice versa, or into narratives of commerce's progress towards safe passage from and during war, war and commerce are deeply intertwined, frequently blurring and entering into complex interactions with each other. A closer look at the rules of international law related to war and commerce reveals a "messy story in which the relationship between law and morality, on the one hand, and violence on the other, produced and continue to produce new rules, soft norms, and doctrines of international law as well as replaying old rules, norms, and doctrines" (xvii).

Perhaps, the key contribution of Gathii's analysis of the continuities and discontinuities of international law is that it enables the reader to locate the emergence and application of international norms within existing global power relations and within a peculiar logic of dual sensibility that engenders them. Despite its constitutive ambiguity and rich potential to produce profoundly different outcomes, in the context of war and commerce, international law exhibits a tendency towards inegalitarian consequences; it produces predictable routines for ordering relations between center and periphery and between Western and non-Western societies (xxii, 33). This tendency is illustrated by a number of examples documenting how the differential application of the rules prohibiting confiscation and interference with private property continue to carry forward the legacy of colonial dispossession. As a young and militarily weak nation in the late-eighteenth and early-nineteenth century, the United States advanced strong anticonfiscation rules in its commercial relations with European states. Yet, at home, the Marshall Supreme Court inconsistently applied the customary international law norm prohibiting the extinction of private property rights. Despite the common absence of formal grants and the analogous settlement patterns of Native Americans, Spanish and white settlers, the land use and occupation of the former "did not rise to property rights under the Western system and its customs and usages" (69). Similarly, the protection of private property of Italians and Germans during the Allied occupation after World War II can be contrasted with the disrespect for these occupation rules safeguarding property in post-war Japan and more recently in the de-Baathification and transformation of Iraq into free market during the U.S. occupation in 2003. Hence, in Japan and Iraq, the wholesale reorganization of these societies adversely affected thousands of lives to a far greater degree than the lives of similarly situated people in Italy and Germany (97). According to Gathii, a central

feature of these racist modes of jurisprudence is a set of underlying assumptions that constructs the image of non-Europeans as backward and uncivilized and that posits the superiority and inevitability of the Western values of democracy, freedom and free markets as Western norms against which the rest of the world is measured and expected to conform (xx, 35).

Gathii persuasively argues that this hegemonic dimension of international law is a particular instance of the coercion inherent in all rules of law, rules that "more often than not" function as "politics by other means" (154). Notwithstanding the safeguards of self-determination and sovereignty over national resources, the rules and institutions of international trade and investment have rechanneled the use of force from the coercive collection of contract debt to arbitral and judicial forums. Bilateral investment treaties, ICSID tribunals, and NAFTA investment chapter tend to protect the rights of foreign investors at the expense of former colonies. Cases such as the successful lawsuit against the Sri Lankan government by AALP, a foreign firm, for war destruction during a military offensive against the Tamil Tigers illustrate the ways in which these rules of economic governance continue to "repackage" inequalities between capital-importing and capital-exporting states.

The insufficiency of international law to register non-state economic violence looms even larger with regard to the law's failure to provide categorizations that address its Eurocentric distinctions between public and private and its assumption that only states monopolize violence (192, 222). By underplaying the use of force by non-state actors and relying on soft rather than hard norms to regulate it, contemporary international law is "split at its root" (197). It leaves untold the story of war outside the West dominated by the violence of quasi-sovereign chartered companies such as the International African Association in Congo, sham states such as Somalia without any effective government control over its territory, and the symbiosis between ruthless bandits such as the RUF of Sierra Leone and multinational corporations that control the international diamond trade. Threats posed to poor countries by mercenarism and private military companies do not receive the same regulatory oversight by the UN Security Council as do terrorist threats to powerful countries that are increasingly subject to international legal scrutiny (236). This uneven application of rules is traced to the artificial compartmentalization of crimes against bodily integrity such as war crimes and genocide from those of economic nature such as arms dealing by security companies and the illicit looting of natural resources. Gathii insists, however, that such evasion of liability by economic actors is not inevitable. He calls for the expansion of the definition of war to incorporate the above non-Western experiences and for the deployment of the available international criminal and humanitarian law mechanisms of the Nuremberg trials to try corporate crimes. In spite of the book's focus on "exposing the legacy of imperialism and colonialism in the context of war and commerce," Gathii remains a firm believer that "the liberal guarantees of international law have much to offer to counter these inegalitarian tendencies (xii).

Gathii's faith in liberal solutions seems somewhat at odds with the consequences of his analysis and the book's decolonizing project. That is, Gathii's project alerts us to the impotency of international law to produce the kind of egalitarian outcomes that it is supposed to produce and to overcome its own bias to proliferate and apply rules, according to a logic of self and community specific to Western culture. Why, then, would the liberal

guarantees of international law open up, rather than keep foreclosing, spaces for the institutionalization of a differentiated system of rules that recognizes the Other as the Other without subsuming it into the order of the West and that respects diverse property regimes and juridical practices? To what extent is its failure to "see" complex indigenous modes of land tenure, juridical practices and economic life, endemic to the modern nation-state itself? Yet, these tensions running throughout the text need not necessarily be a problem. Gathii's cogently argued and intellectually stimulating book already entertains a more open future than the future the reader is asked explicitly to conceive.

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The Ugly Laws: Disability In Public
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In 1911, the city of Chicago ratified a municipal ordinance that read: "Any person who is diseased, maimed, mutilated, or in any way deformed, so as to be an unsightly or disgusting object, or an improper person to be allowed in or on the streets, highway, thoroughfares, or public places in this city, shall not therein or thereon expose himself to public view..." (1–2). Chicago's White City of the 1893 World's Fair not only inspired citywide beautification initiatives, but also motivated city officials to criminalize ugliness at the scale of the human body. This memory underlies citations of "the ugly laws," the popular pseudonym for the ordinances in twentieth-century disabilities studies. The laws were real. Yet as disabilities scholar Susan Schweik explains in *The Ugly Laws,* the story is largely fiction.

The Ugly Laws historicizes two phenomena: the "unsightly beggar ordinances" cited above and the memory of "the ugly laws" in contemporary disabilities studies. Schweik's extensive archival research locates variations of the ordinance in no less than a dozen American city codebooks from 1859 to 1905, and she confirms that the ordinances anticipated urban reform movements envisioning a sanitary city free of human abnormality. Yet the regulations first emerged not in 1911 Chicago but forty-four years earlier in San Francisco. Why, Schweik asks, do so many misremember the ordinances? And what are the consequences of doing so?

Schweik demonstrates that cultural memory of the ugly laws forgot many whom the ordinances targeted. Citations of the ugly laws too often simplified the ordinances as measures taken to cleanse the city of physically anomalous bodies–an idea conflated with memories of Chicago's city beautiful movement. As a result, references to the ordinances effaced many other agendas and actors at work, especially a figure that Schweik insists must be reinserted into the history of the ordinances and the broader history of disability: the beggar. As law, the ordinances appeared as subsets of general prohibitions against mendicancy to criminalize any body not at work. As cultural phenomenon, the ordinances emerged alongside welfare campaigns that identified the beggar as a social deviant in need of reform. Rhetorics of disgust, remedy, and contagion circulating in reformist discourse rendered both the begging hand and the infirm limb as "capitalist deformities" (59). Public displays of poverty, as well as physical anomaly, constituted unsightliness.