Marks notes in this regard 'the indeterminacy of the central concept democracy', 'the norm's potential to serve as an agent of neo-colonialism', and the fact that the norm of democratic governance 'is too easily turned against redistributive claims and towards hegemonic agenda' (at 140–141).

I would strongly recommend Marks' book to all students of international law. It is an outstanding work on the relationship between democracy and international law in the era of globalization. What is more, the book is written with refreshing clarity. Critical scholars often do not appreciate the need for writing in accessible language so that they can reach out to those unfamiliar with the critical tradition and its sometimes difficult vocabulary. Marks must be congratulated on this count. She also bridges with great acumen and skill the work of critical theorists (such as Cox, Foucault, and Habermas) and the world of international law.

If I have any complaint about the book it is that Marks has not taken greater cognizance of critical Third World scholarship in international law. In my view, Third World scholarship has for the past several decades been advancing the principle of democratic inclusion, albeit admittedly not in the form in which Marks casts it. But surely Third World scholarship has commented on the meaning, implications and limits of promoting political democracy in an unequal international system. The current critique of the emergence of a norm of democratic governance and its advocacy is not very different from it. It would have greatly strengthened her proposal for a principle of democratic inclusion if its spirit were reflected in her scholarship as well.

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Robert Walter, Clemens Jabloner, Klaus Zeleny (eds). ***Hans Kelsen und das Völkerrecht. Ergebnisse eines Internationalen Symposiums in Wien* (1–2 April 2004).** Vienna: Manz, 2004. Pp. 241. €48. ISBN 3-214-07672-8.

This book contains 10 essays written for a symposium on Hans Kelsen and international law in April 2004 in Vienna, published by the Hans Kelsen Institute. Not only do multi-contributor works such as this contain a broad spectrum of approaches and views, but the reviewer also has to contend with the fact that the positively enlightened is often separated from the uninformed and trivial by no more than a page.

The reader already gets started off on the wrong foot with Jochen Frowein's article on US unilateralism.[1] Not only is there absolutely no connection with Kelsen or any of his theories, but Frowein writes using the exact sort of mix of political, moral, and legal argument (*Methodensynkretismus*) that Kelsen fought in his works. I hope that, in the final score, this turns out to have been a cunning plan by the editors to demonstrate traditional international legal scholarship's impure pragmatism, rather than mere ignorance on the part of the author. At this point one is almost happy – although in this case one should not be – that most scholars will approach this book as a *locus* from which to pick a noteworthy article, like a raisin in a cake, rather than a book to be read from cover to cover. Yet it is precisely in this second sense that the book shows its qualities best; the whole here *is* worth more than the sum of its parts.

It certainly is not an introduction for the uninitiated,[2] for we find some rather gross

[1] Frowein, 'Die Zukunft des Völkerrechts', in R. Walter, C. Jabloner and K. Zeleny (eds), *Hans Kelsen und das Völkerrecht. Ergebnisse eines Internationalen Symposiums in Wien* (2004) 7.

[2] A number of publications have already attempted this: A. Rub, *Hans Kelsens Völkerrechtslehre. Versuch einer Würdigung* (1995); The colloquim 'Hans Kelsen' in this Journal in 1998: 9 *EJIL* (1998) 287; J. Bernstorff, *Der Glaube an das universale Recht. Zur Völkerrechtstheorie Hans Kelsens und seiner Schüler* (2001).

misinterpretations of Kelsen's theories amongst the contributions. Stefan Griller, for example, in his zeal to demonstrate the non-necessity of the Kelsenian monistic approach, decides to throw out the baby with the bathwater, and in the space of three pages discards the *Grundnorm* as unnecessary for the Pure Theory of Law (at 87–89).[3] Doing away with the basic norm is not required to cast doubt on monism, as I show in a forthcoming article.[4] Also, Griller is wrong to state that Kelsen held that the *Grundnorm* is required only for norms in their objective (systemic) sense, not in their immanent sense (at 88). In order to perceive a norm as norm (i.e., at all), one has to propose a *Grundnorm*, even for non-legal norms, even for norms not belonging to a 'complex' system of norms. To think that the *Grundnorm* is unnecessary is to deny the duality of Is and Ought, for the *Grundnorm* is nothing but an expression of the dichotomy. To reduce Ought to Is makes it impossible to perceive norms at all – I submit that Griller still unconsciously presupposes a *Grundnorm*, despite his rejection of it.

Jochen Bernstorff,[5] on the other hand, wants to make us believe that the *Ordnungsfunktion* of law – a political *telos* he has just inserted as the basis of Kelsen's legal theory – demands that the results of interpretation be objectively determined by law (at 158–159). Despite referring to Merkl's and Kelsen's important idea of the double function of law-creation and law-application (*doppeltes Rechtsantlitz*),[6] he has obviously decided to ignore their work. Would he argue, for example, that legal science ought to objectively predetermine the content of a treaty on the basis of its meta-law (the Vienna Convention or *pacta sunt servanda*)? Would he equally argue that we ought to determine the content of a statute by interpreting the constitution? No, he would not, for there is a difference for him between general law-making (*Gesetz*) and individual law-application (*Urteil*). There could not be clearer proof that he simply has not understood the Vienna School's 90-year-old radical insight into the relativity of *all* positive law-making as law-application.

Yet here we must hope that the reader of this book has chosen to read the whole, rather than pick out these two contributions, for in Heinz Mayer's article[7] we find eloquent responses to both erroneous views. Anticipating Griller's and Bernstorff's criticisms, he restates what the *Grundnorm* means (at 125–128), namely (with respect to Community law) that '*eine rechtswissenschaftliche Erfassung der Normativität des Gemeinschaftsrechtes nur möglich ist, wenn man eine Grundnorm annimmt, die auch dieses erfasst*'[8] (at 127). The connection between interpretation and application is also explored in great detail (at 130–137). It seems that the two authors criticized above should at least have tried to incorporate predictable opposition from Kelsenian orthodoxy.

If one were to believe that the central theme of this book is 'Hans Kelsen and international law' – that its title is its programme –

[3] Griller, 'Völkerrecht und Landesrecht – unter Berücksichtigung des Europarechts', in R. Walter, C. Jabloner and K. Zeleny (eds), *Hans Kelsen und das Völkerrecht. Ergebnisse eines Internationalen Symposiums in Wien* (2004) 83, at 87–89.

[4] Kammerhofer, 'Kelsen? – which Kelsen? Kelsen the Theoretician and Kelsen the International Lawyer – A Tentative Re-application of the Pure Theory to International Law', in I. Scobbie and A. Rasulov (eds), *International Legal Positivism* (2006 *forthcoming*).

[5] Bernstorff, 'Kelsen und das Völkerrecht: Rekonstruktion einer völkerrechtlichen Berufsethik', in R. Walter, C. Jabloner and K. Zeleny (eds), *Hans Kelsen und das Völkerrecht. Ergebnisse eines Internationalen Symposiums in Wien* (2004) 143.

[6] Merkl, 'Das doppelte Rechtsantlitz. Eine Betrachtung aus der Erkenntnistheorie des Rechtes' 47 *Juristische Blätter* (1918) 425, 444, 463.

[7] Mayer, 'Reine Rechtslehre und Gemeinschaftsrecht', in R. Walter, C. Jabloner and K. Zeleny (eds), *Hans Kelsen und das Völkerrecht. Ergebnisse eines Internationalen Symposiums in Wien* (2004) 121.

[8] '. . . a legal-scientific cognition of the normativity of Community law is only possible if one presupposes a *Grundnorm* which also includes [Community law]' (translation mine).

one would be disappointed. It quite plainly is not a precise 600-odd page description of what Kelsen wrote on international law, a task fulfilled most aptly by Alfred Rub in his 1995 book.[9] For a start, the book simply is too slim – the page count does not reflect the 'bulk' of some of the topics. This leads to superficiality, in particular with those contributors who chose to submit a shortish essay. Manfred Rotter[10] delivers what I consider to be the best article in the book because he has written a paper of substantial length focussing solely on the theoretical underpinnings of Kelsen's international law doctrine. If the book's title was indeed its programme, the editors would seem not to have succeeded – in this form it simply cannot be a comprehensive treatment of the topic.

If read from cover to cover, however, this book does tell us a lot about Kelsen and international law. Four contributions, ostensibly concerned with other scholars (Robert Walter writes on Verdross, Nicoletta Bersier Ladavac on Campagnolo, Alfred Rub on Guggenheim, and Christoph Kletzer on Lauterpacht),[11] actually describe Kelsen in a 'negative' way, by showing how other works are distinguishable from, and interact with, Kelsen's. Kletzer's paper is, I believe, the most thorough and innovative of the *genre* in this book. His insights into the argumentative dialectic of the two forces pulling on Lauterpacht – the *Kakanische*[12] tradition that spawned the Pure Theory, on the one hand, and a pragmatic natural law developed amongst post-Victorian English international lawyers, on the other hand – show the important and unconscious connection that exists between him and Kelsen; in Kletzer's words: '*Lauterpachts* enger verwandschaftlicher Gegensatz *zu Kelsens Lehre*'[13] (at 230) – a wonderfully enlightening contradiction.

My proposal is this: the Hans Kelsen Institute must not stop here; this can only have been the first of many works on the international legal dimension of Kelsen's thought. First, we need more publications on Kelsen in all languages; apart from the pioneering work done in this Journal in 1998, we need many more contributions on Kelsen and international law in English. Second, while there is a healthy dose of criticism in Sucharipa-Behrmann's,[14] Griller's, and Bernstorff's papers, we need *more thorough critique* (not just criticism) and discussion of Kelsen's international law doctrine, especially one that remains within the Vienna School's 'parameters' (i.e. adopts its basic programme of purity on the basis of a dichotomy of Is and Ought). Third, I submit we need new *application* and *implementation* of the Pure Theory to topics in international law. It is in this sense that I understand my current work[15] as a re-application of the Pure Theory of Law to international law. I believe that this can reinvigorate international law as a subject and will enable us to question traditional doctrines by applying the radically consistent force of Kelsen's

[9] Rub, *supra* note 2.

[10] Rotter, 'Die Reine Rechtslehre im Völkerrecht – eine ekletizistische Spurensuche in Theorie und Praxis', in R. Walter, C. Jabloner and K. Zeleny (eds), *Hans Kelsen und das Völkerrecht. Ergebnisse eines Internationalen Symposiums in Wien* (2004) 51.

[11] Walter 'Die Rechtslehren von Kelsen und Verdroß unter besonderer Berücksichtigung des Völkerrechts', 37; Bersier Ladavac, 'Hans Kelsens Genfer Jahre (1933–1940)', 169; Rub, 'Guggenheim und Kelsen: Orthodoxie und eigener Weg', 191; Kletzer, 'Das Goldene Zeitalter der Sicherheit: Hersch Lauterpacht und der Modernismus', 223, all in R. Walter, C. Jabloner and K. Zeleny (eds), *Hans Kelsen und das Völkerrecht. Ergebnisse eines Internationalen Symposiums in Wien* (2004).

[12] R. Musil, *Der Mann ohne Eigenschaften* (1930–1933).

[13] 'Lauterpacht's *closely related antagonism* to Kelsen's teachings' (translation and emphasis mine).

[14] Sucharipa-Behrmann, 'Kelsens "Recht der Vereinten Nationen". Welche Relevanz hat der Kommentar heute noch für die Praxis?', in R. Walter, C. Jabloner and K. Zeleny (eds), *Hans Kelsen und das Völkerrecht. Ergebnisse eines Internationalen Symposiums in Wien* (2004) (21).

[15] E.g., Kammerhofer *supra* note 4.

theory without destroying international law as such. I, for one, look forward to 'Hans Kelsen und das Völkerrecht II'.

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Pierre D'Argent. ***Les réparations de guerre en droit international public: la responsabilité internationale des États à l'épreuve de la guerre***. Bruxelles: Emile Bruylant, 2002. Pp. 904. €150. ISBN: 2802715933

Andrea Gattini. ***Le riparazioni di guerra nel diritto internazionale***. Padova: CEDAM, 2003. Pp. 722. €59. ISBN: 8813245149

The year 2002 should long be remembered by those dealing with the legal aspects of war reparations. In the course of that year two comprehensive books on the subject were completed: the first was Pierre d'Argent's book, *Les réparations de guerre en droit international public: la responsabilité internationale des États à l'épreuve de la guerre*, followed by Andrea Gattini's *Le riparazioni di guerra nel diritto internazionale*. These two publications fill a long-standing gap in international law. While many aspects of war have been codified by international law, there has been a surprising silence on the issue of war reparations. The failure of the Versailles system, which originally inspired several books on war reparations in the 1920s and 1930s,[1] made the topic of war reparations unpopular with both politicians and scholars. Furthermore, the emergence of a totally different approach to war reparations after the Second World War and the waning importance of the topic during the Cold War years, did not help to inspire academics.

It was the process regarding compensation for damage caused by Iraq's invasion and occupation of Kuwait established by Resolution 687 (1991) of the Security Council that revived interest in the issue. Both d'Argent and Gattini participated in this new development by publishing papers on the UN Compensation Commission.[2] The finalization by the International Law Commission in 2001 of the long-awaited Draft Articles on State Responsibility, although making surprisingly little reference to war reparations in its comments on articles dealing with reparations in general, gave the topic new impetus.

The coincidence in timing of these two publications and the fact that they do not refer to each other make them an interesting pair to compare. A parallel review shows not only how different and how complementary approaches to this topic can be, but also serves as evidence that general principles for dealing with war reparations are beginning to emerge.

Both books start by presenting an overview of international practice. D'Argent, who devotes the whole first part of his book (six chapters) to this presentation, starts with antiquity, and works through the Middle Age and the French Revolution. When dealing with reparations between 1816 and 1918 he also indicates various general motivations behind requests for the payment of such reparations. Among these he mentions compensation for war expenses, for actual war damage or the simple lump-sum payment of a global amount, in which case it is not always clear what were the underlying reasons for the payment and whether it may be considered as

[1] For example, C. Bergmann, *The History of Reparations* (1927); J. Personnaz, *La réparation du préjudice en droit international public* (1939); L. Reitzer, *La réparation comme conséquence de l'acte illicite en droit international* (1938); L Camuzet, *L'indemnité de guerre en droit international* (1928); M. Edmond, *Les dommages de guerre de la France et leur réparation* (1932).

[2] D'Argent, 'Le Fonds et la Commission de Compensation des Nations Unies', 25 *RBDI* (1992) 485; Gattini, 'La riparazione dei danni di guerra causati dall'Iraq', 4 *Rivista di diritto internazionale* (1993) 1000; Gattini, 'The UN Compensation Commission: Old Rules, New Procedures on War Reparations', 13 *EJIL* (2002) 161.