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**Seeing the Forest and the Trees:  
Reconceptualizing State and Government  
Succession**

Gregory W Bowman, *Mississippi College School of Law*



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Seeing the Forest and the Trees:  
Reconceptualizing State and Government  
Succession

Reviewing:

TAI-HENG CHENG, STATE SUCCESSION AND  
COMMERCIAL OBLIGATIONS (2006)

ABOUT THE AUTHOR: Gregory W. Bowman is Assistant Professor of Law at the Mississippi College School of Law. J.D., Northwestern University School of Law; M.A. (Econ.), University of Exeter, England.

## I. INTRODUCTION

With the stunning growth of international trade in the last half century, the distinction between public international law and private international law has become increasingly blurred. Private international concerns exert greater influence over decisions made in the international public sphere, and the policies and actions of governments and international organizations significantly affect domestic and transnational private parties. On a practical level, then, the interests and undertakings of national governments, international organizations, and private actors are more interdependent than ever before.

The effect of this definitional blurring is of particular importance in the area of state and government succession. Since the fall of the Berlin Wall in 1989, the world has experienced a spate of state and government successions in various forms, and more are possible in the near future. Moreover, while international law doctrine concerning state and government succession has long been the subject of energetic debate,<sup>1</sup> post-Cold War succession events have underscored even more clearly that international law doctrine on state and government succession does not reflect state practice.<sup>2</sup> When doctrine does not reflect practice — when there are as many (or more) exceptions to a rule as instances of following it — the time is ripe for a complete rethinking of that doctrine. Continuing to fit factual square pegs into doctrinal round holes is not only unedifying, but also a hindrance to meaningful analysis.<sup>3</sup>

Such a reconceptualization of state and government succession doctrine is precisely what Professor Tai-Heng Cheng's book, *State Succession and Commercial Obligations*, seeks to accomplish. The book is an ambitious work that cogently addresses the long-problematic subject of state and government succession. Yet, perhaps surprisingly, Professor Cheng's approach to this challenging task is based on a startlingly straightforward proposition: that the current discon-

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1. See, e.g., WILLIAM HALL, A TREATISE ON INTERNATIONAL LAW (A. Pearce Higgins ed., William S. Hein & Co. 2001) (1884); ARTHUR KEITH, THE THEORY OF STATE SUCCESSION WITH SPECIAL REFERENCE TO ENGLISH AND COLONIAL LAW (1907); YILMA MAKONNEN, THE NYERERE DOCTRINE OF STATE SUCCESSION AND THE NEW STATES OF AFRICA (1984); DANIEL O'CONNELL, STATE SUCCESSION IN MUNICIPAL AND INTERNATIONAL LAW (1967); Carsten Stahn, *The Agreement on Succession Issues of the Former Socialist Federal Republic of Yugoslavia*, 96 AM. J. INT'L L. 379 (2002); Ana Stanić, *Financial Aspects of State Succession: The Case of Yugoslavia*, 12 EUR. J. INT'L L. 751 (2001); Paul Williams & Jennifer Harris, *State Succession to Debts & Assets: The Modern Law and Policy*, 42 HARV. INT'L L.J. 355 (2001). For further discussion, see TAI-HENG CHENG, STATE SUCCESSION AND COMMERCIAL OBLIGATIONS 13–26 (2006).
  2. Current doctrine on these subjects is largely set forth in the Vienna Convention on Succession of States in Respect of Treaties, Aug. 23, 1978, 1946 U.N.T.S. 3, *available at* [http://untreaty.un.org/ilc/texts/instruments/english/conventions/3\\_2\\_1978.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf) [hereinafter 1978 Vienna Convention], which entered into force in 1996, and the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, Apr. 8, 1983, 25 I.L.M. 1640 (1986), *available at* [http://untreaty.un.org/ilc/texts/instruments/english/conventions/3\\_3\\_1983.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/3_3_1983.pdf) [hereinafter 1983 Vienna Convention], which has yet to enter into force but is reflective of current doctrine [Collectively hereinafter Vienna Conventions].
  3. It is also worth noting that, at least in this reviewer's personal experience, this sort of disconnect between doctrine and facts becomes especially apparent in the law school classroom, as students often struggle with distinctions that perhaps make theoretical sense but prove difficult in application.

nect between succession doctrine and practice is largely due to the effects of globalization, and that the nature of globalization provides an answer to the problem. The first sentence of his book, in fact, sweepingly asserts that “[t]he story of state succession and commercial obligations is a story about globalization.”<sup>4</sup> One might even go so far as to divide his book into two basic parts — the first part being the opening sentence, and the second part being the 408 pages needed to unpack this statement’s meaning.

Thinking about Professor Cheng’s book in this manner actually helps highlight one of the text’s greatest strengths: that it discusses the subject of state and government succession from a variety of detail-specific angles without losing sight of the enormously broad and complex picture of globalization, with its various factual permutations. Or perhaps to state it differently, the book maintains a strong thematic focus while also exploring in detail the evolution of current doctrine and the playing out of recent succession events.<sup>5</sup> Moreover, Professor Cheng seeks not only to recommend a new legal approach to state and government succession that is more consistent with actual practice, but also to mesh this approach, to the extent possible, with existing doctrine and to identify themes in current doctrine that are consistent with his recommendations. This is a difficult task, and accomplishing it well is a hallmark of the book. This “forest and the trees” quality is in fact consistent with Professor Cheng’s previous scholarship,<sup>6</sup> and it helps make *State Succession and Commercial Obligations* a thoughtful and clearly written volume that contributes significantly to the academic literature on state and government succession.

This book review will first provide a summary and analysis of key principles and observations discussed in the book. The review will then analyze Professor Cheng’s reconceptualization of state and government succession from two perspectives not explored in the text — namely, economic theory concerning the identification and allocation of rights, and virtual state theory, with its emphasis on commercial and financial concerns as bases for state power. While having a discussion along these lines in the book would have proved interesting, its absence is best viewed not as a shortcoming, but rather as an invitation for further inquiry. Professor Cheng’s approach to state succession stands up well from these other theoretical vantage points, which demonstrates the book’s usefulness as a framework for further scholarship on this historically problematic and fundamentally important area of international law. Playing off that point, this review will close with comments regarding how Professor Cheng’s reconceptualization

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4. CHENG, *supra* note 1, at 3.

5. The succession events included in the book as case studies are East Timor, Hong Kong and Macau, Czechoslovakia, Yugoslavia, and the U.S.S.R. *See id.* at 171–375.

6. *See* Tai-Heng Cheng, *Power, Authority and International Investment Law*, 20 AM. U. INT’L L. REV. 465 (2005); Tai-Heng Cheng, *The Central Case Approach to Human Rights*, 13 PAC. RIM L. & POL’Y J. 257 (2004).

might be applied to the 2003 invasion and subsequent reconstruction of Iraq, as well as other future succession events.

## II. RECONCEPTUALIZING STATE SUCCESSION

### A. Key Concepts

In exploring the implications of globalization for state and government successions, Professor Cheng crafts a compelling argument for his reconceptualization of international law on the subject. Two key points frame his analysis. First, Professor Cheng observes that the growing density of international commercial relationships and obligations means that state and government successions, and their concomitant effects on existing commercial obligations of and relating to the states in question, have a far broader impact than in previous eras.<sup>7</sup> Second, he adopts a broad conception of “state succession.” Traditional distinctions made between *state* succession and *government* succession — with the standard, stark contrast between universal succession (with state obligations generally passing in their entirety) and the clean slate doctrine (with obligations not passing unless expressly adopted) — are eschewed in favor of treating government succession as a subset of state succession. State succession is thus inclusively defined by Professor Cheng to mean “all changes to fundamental structures of internal governance that trigger international demands to adjust commercial obligations and require international responses.”<sup>8</sup>

This approach is, as Professor Cheng notes, a “policy-oriented” approach to state succession, in contrast to previous approaches based on territorial changes or changes in the legal personality of a state. Professor Cheng’s approach would cover three general forms of state succession (as broadly defined in the book). First, it would include consensual and non-consensual territorial relocations or changes, such as the transfer of Hong Kong from the United Kingdom to the People’s Republic of China. Second, it would cover breaks or changes in governmental power and control over a territory (e.g., decolonization, dissolution, etc.), such as the establishment of an independent government for East Timor. Third, it would include any fundamental changes in government structure that had significant effect on the state’s international commercial obligations (such as repudiations or modifications), but which did not change the territory of the state involved. The latter would include, for example, Myanmar’s (Burma) change

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7. See, e.g., CHENG, *supra* note 1, at 3, 8–9, 382.

8. *Id.* at 38. It should be noted that there have been previous proponents of inclusiveness in defining and establishing international law and policy concerning state (and government) succession, in particular during the drafting of and discussion of the 1978 Vienna Convention and the 1983 Vienna Convention. Vienna Conventions, *supra* note 2. As Professor Cheng points out, however, these conventions ultimately incorporated and reflected narrower conceptions of succession — such as excluding indirect commercial effects — and perpetuated the distinction between state and government succession. See CHENG, *supra* note 1, at 79–81, 123–24.

from democratic governance to military dictatorship.<sup>9</sup> It is this last category that is perhaps most interesting, since not only does it illustrate Professor Cheng's broad, inclusive approach of viewing government succession as a subset of state succession, but it also brings events such as the 2003 invasion of Iraq into the fold for discussion as a state succession event with significant legal implications.

The justifications offered for this approach are that the commercial and political effects flowing from state and government successions are largely the same; that in practice little or no real distinction is made between the different types of succession when deciding what commercial obligations continue, are modified, or are terminated; and that such artificial doctrinal distinctions do little to promote global order and commercial stability.<sup>10</sup> Professor Cheng particularly observes that recent state succession events have been characterized by pragmatic adjustments to existing commercial obligations, rather than any pattern of adherence to doctrinal categories in deciding which commercial obligations are terminated and which ones continue.<sup>11</sup> To put the point concisely, traditional doctrine, when viewed against the backdrop of actual state practice, embodies a distinction without much ultimate difference.<sup>12</sup> Professor Cheng's broad definition of state succession will be used for the remainder of this review to refer to both state and government succession.

Similarly, "commercial obligations" affected by state succession and "participants" in the process of state succession are also broadly defined to include not only financial debt obligations, but also international commercial obligations, both public and private, that can be interrupted by the process of state succession.<sup>13</sup> Again, this goes back to the first sentence of the book: Narrow or outdated definitions fail to capture the full scope or impact of state successions on global commerce and financial obligations, and thus are of limited or no use in understanding state successions or setting relevant policy.

### *B. Continuity of Cooperation*

With these observations in mind, one of Professor Cheng's primary theses is that with growing international interdependency, public and private parties with commercial interests affected by state successions often work cooperatively to maximize the continuation of commercial obligations to their collective benefit. Negotiations or discussions amongst the parties (which presumably can take a variety of forms, such as government negotiations, summits, sidebar meetings, and so on) may lead to the continuation of beneficial or mutually advantageous

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9. CHENG, *supra* note 1, at 51.

10. *Id.* at 4–5, 26–27.

11. *Id.* at 171–374.

12. This, of course, was not the view of many who drafted and debated the 1978 Vienna Convention and the 1983 Vienna Convention. Vienna Conventions, *supra* note 2; *see* CHENG, *supra* note 1, at 79–168.

13. CHENG, *supra* note 1, at 37, 53–54, 65.

state obligations and the termination of non-beneficial ones.<sup>14</sup> Contrary to the traditional view of continuation-versus-termination of obligations as a zero-sum game (in which commercial obligations were generally more narrowly defined as state debt and financial obligations), taking a broader view of the parties involved and of obligations affected by state succession suggests that the balance generally weighs in favor of maintaining overall continuity of many obligations.<sup>15</sup> While specific, individual obligations may or may not be continued — and recognizing that some state succession events unfortunately may not be characterized by cooperation — Professor Cheng argues that from a macro-perspective, global interdependency encourages what he calls the overall “continuity of cooperation.” This means that the various parties involved in and affected by a state succession event typically seek to reach general, cooperative consensus on post-succession commercial obligations, which helps facilitate peaceful and orderly state succession and a net gain in ongoing obligations and commercial activity.<sup>16</sup>

In exploring the broad consequences of state successions and the importance of cooperation and continuity, Professor Cheng identifies three categories of impact: geopolitical impact, such as on global and regional balances of power; financial impact, such as through foreign investments by U.S. banks; and commercial impact, meaning the web of international trade in goods, services, and capital that may be affected by a state succession event.<sup>17</sup> In this respect, the book again exhibits attention to detail (in its appreciation that the effects of succession can take many forms), while maintaining a broader, meta-theoretical view of the full implications and interaction of these factors. The book’s common theme in this regard is that because of the “dense global fabric” of commercial and political relations, the repudiation or acceptance of prior obligations in a state succession event will exert a ripple effect on the global community.<sup>18</sup> For example, the repudiation of a particular state debt owed to another state affects not only the states directly involved, but also can impinge on existing commercial and financial relationships (or discourage future ones) between the repudiating state and private parties, who may see the repudiation as evidence of instability or unwillingness to honor existing or future agreements. The loss of such opportunities thus may cause an adverse, indirect effect on these private parties’ ability to enter into agreements or arrangements with other third parties (e.g., due to reduced profits), and this in turn can affect the third parties’ business opportunities, and so on. In other words, cooperation can be a positive-sum game, and non-cooperation — the repudiation of beneficial agreements and obligations — can be

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14. *Id.* at 5, 65–71.

15. *Id.* at 65.

16. *Id.* at 34.

17. *Id.* at 8–13.

18. *Id.* at 8.

a negative-sum game. Although not stated as such in the book, the result is akin to the multiplier effect concept commonly used to describe the positive (or negative) effect of marginal increases (or reductions) in discretionary spending on overall economic growth.<sup>19</sup>

Due to the importance of continuity and the broad impact of state succession events, Professor Cheng further suggests that because some affected parties (such as corporations) may not be at the succession negotiating table, the international law of state succession should take into consideration the interests not only of the decision-makers in a succession event, but also the other parties who are directly or indirectly affected by the succession but are unable to directly protect their interests.<sup>20</sup> Failure to do so would overlook important aspects of continuity in a given succession event, which would result in reduced overall benefits to the parties affected and to the overall global system.

### C. Case Studies and Policy Appraisal

*State Succession and Commercial Obligations* seeks not only to accurately describe state succession events, but also to provide a heuristic definition of state succession with analytical or predictive use.<sup>21</sup> Part II of the book thus reviews the evolution of the current international law of succession through the lenses of the *Vienna Convention on Succession of States in Respect of Treaties of 1978*<sup>22</sup> and the *Vienna Convention on Succession of States in Respect of State Property, Archives and Debts of 1983*.<sup>23</sup> Part III builds on this by discussing recent succession events involving East Timor, Hong Kong and Macau, Czechoslovakia, Yugoslavia, and the U.S.S.R. These parts of the book also provide a preliminary appraisal of existing, evolving, and recommended policy for state succession.

For example, with respect to the transfers of British-controlled Hong Kong and Portuguese-controlled Macau to the People's Republic of China, Professor Cheng observes that direct and indirect participants in the process experienced few or no inequitable outcomes, in large part because the interests of parties involved or affected converged. Such a successful and largely seamless transfer suggests what factors might facilitate and promote continuity in future succession events.<sup>24</sup> Similarly, with respect to the dissolution of the U.S.S.R., Professor Cheng points to efforts to maintain existing commercial arrangements via treaties, the exchange of notes, and other instruments as positive developments, and

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19. See, e.g., TONY CLEAVER, UNDERSTANDING THE WORLD ECONOMY 62 (2002).

20. CHENG, *supra* note 1, at 71.

21. *Id.* at 46–50 (critiquing various personal approaches to state succession).

22. 1978 Vienna Convention, *supra* note 2, at 3.

23. 1983 Vienna Convention, *supra* note 2, at 1640.

24. CHENG, *supra* note 1, at 209, 233–34.

to difficulties in enforcing such agreements in domestic courts (which might terminate preexisting agreements on the basis of domestic law) as evidence of a need to modify and strengthen international law to support state succession based on the principle of overall continuity of cooperation.<sup>25</sup>

With these case studies in mind, *State Succession and Commercial Obligations* offers a framework for analyzing succession events that policy makers, private parties, and lawyers can use to assess particular succession events and the range of outcomes that might be expected. Professor Cheng is careful not to overreach or over-generalize in his conclusions: He acknowledges, for example, that a new set of comprehensive succession rules is not likely to emerge in the near future.<sup>26</sup> Instead, he suggests five “conditioning factors” to be used to examine state succession events, assess possible outcomes, and craft strategies for seeking the desirable continuation (or termination) of commercial obligations affected by state succession. The five factors proposed by Professor Cheng are the density of international relationships; the relative power and authority of decision-makers, which might lead to outcomes biased toward the interests or goals of certain actors; human rights considerations that might weigh in favor of discontinuity of certain obligations to eliminate oppression of certain populations; geopolitical factors that may overshadow commercial concerns; and the tendency for many decisions in succession events to be made on a collective basis — which sometimes means that certain parties collectively agree to an outcome but exclude other affected parties from the decision-making process.<sup>27</sup>

These conditioning factors are useful, and Professor Cheng’s broad, inclusive approach does provide for accurate description of state succession and appears promising as a predictor, at least on a general level, of outcomes in future state succession events. Yet he also offers some suggested changes to the international law of state succession that would further promote cooperation and continuity, especially in situations where cooperation and continuity might be overcome by other concerns. In his words, “[t]he next frontier for the law of state succession is to strengthen the policy of discouraging and correcting errant behavior” in succession events.<sup>28</sup> Professor Cheng thus recommends the development of stronger means to discourage unjustified successions and to minimize the impact of unjustified successions on commercial obligations. Whether this is accomplished through the creation of a new international adjudicatory body, the hearing of such disputes by an existing body, or even in some cases by encouraging adjudication by national courts, this goal can be at least partially achieved by supporting some sort of “final dispute resolution” in contested succession events.<sup>29</sup>

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25. *Id.* at 374–75.

26. *Id.* at 379.

27. *Id.* at 382–99.

28. *Id.* at 403.

29. *Id.* at 401–02.

### III. ALTERNATIVE PERSPECTIVES

*State Succession and Commercial Obligations* is a thought-provoking piece of work that holds the promise of spurring additional scholarly inquiry into the international law of state succession. In reading the book, one finds it difficult not to think about how different areas of scholarship or schools of thought apply to the subject and either support the book's arguments or raise questions worth further inquiry. Two brief examples of this are discussed below.

#### A. *The Coase Theorem and the Prisoner's Dilemma*

Professor Cheng posits in the book that current state succession doctrine — with its artificial distinction between state and government successions, and with its sometimes stark contrast between universal succession and the clean slate doctrine — is harmful not only because these distinctions do not reflect practice, but also because the doctrine seeks to establish clear and unambiguous rules in an area where such allocations of rights are not beneficial. Specifically, he notes that “international law should influence the substantive adjustments to commercial arrangements that are reached by consensus among decision makers in successions. This policy . . . rejects the binary choice between continuity or discontinuity of all obligations . . . [and] favors a contextual approach.”<sup>30</sup>

This is an extremely interesting statement. Is it an assertion that not clearly allocating rights in a succession event — in this case, the right to continuity of obligations versus discontinuity or the right to terminate — is efficient? Whether or not this is the case, it is a question worth exploring further. The Coase Theorem posits that “bargainers” — which parties to state succession certainly are — “are more likely to cooperate when their rights are clear and less likely to agree when their rights are ambiguous . . . .”<sup>31</sup> The possible application of this theorem in the international law arena was in fact discussed in another recent book on the sharing of transboundary resources, and the theorem also might translate well to a discussion of commercial rights and obligations in the state succession context.<sup>32</sup>

Thus, we might ask whether Professor Cheng's position, which sounds reasonable, is consistent with Professor Coase's famous theorem. That is, do Professor Cheng's conclusions jibe with the Coase Theorem because transaction costs in state succession events are generally too high due to the large number of potential bargainers and interests involved? Language in the book suggests this conclusion — namely, statements characterizing commercial arrangements amongst parties

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30. *Id.* at 31–32.

31. ROBERT COOTER & THOMAS ULEN, *LAW AND ECONOMICS* 89 (3d ed. 2000).

32. EYAL BENVENISTI, *SHARING TRANSBOUNDARY RESOURCES: INTERNATIONAL LAW AND OPTIMAL RESOURCE USE* 161–68 (2002) (discussing vague international law standards in general and the international law principle of equitable and rational use in particular); *see also* Daniel Bodansky, *Recent Book on International Law*, 99 AM. J. INT'L L. 280 (2005) (reviewing *id.*).

to state succession as “overlapping,” and statements noting that the “costs of dismantling and recreating these commercial arrangements” would be high.<sup>33</sup>

Alternatively, is the problem perhaps due to an insufficient or unfeasible allocation of property rights — meaning that it is often not apparent who has what rights, given that it is frequently unclear whether a succession event is one of state succession or government succession? Professor Cheng implies this may not be the problem in all cases (although it certainly is in some): In the context of a regime change, he suggests that a bright-line rule regarding state obligations after regime change is problematic not because it is not clear, but rather because it “may cause disorder if the predecessor government’s obligations no longer serve the needs of the international community and prevent the swift reintegration of the successor government into the international community.”<sup>34</sup>

With this in mind, then, is it more accurate to say that regardless of the Coase Theorem, as a policy matter Professor Cheng is arguing that less defined rights and obligations are desirable, since in the absence of clear rights parties will be more cooperative? Or might we posit that ambiguously defined rights and obligations would discourage distributive payments, such as from developed countries or large international companies to a developing country? Such payments might smack of payoffs, i.e., payments might be necessary to prevent (or achieve) cancellation of obligations — an efficient result, but perhaps a politically undesirable one.<sup>35</sup> The possibility exists that certain parties might hold out in the hope of higher payoffs (much like the last property owner in the way of a new development gets a higher price). From that perspective, ambiguous assignment of post-succession rights might help forestall this — or would it replace it with overt power politics?

Finally, might this subject be more appropriately viewed as a prisoner’s dilemma? Might a lack of clear post-succession rights encourage cooperation to the general benefit of all, whereas clearly delineated rules might encourage gaming behavior in pursuit of individual gain, and therefore lead to overall suboptimal outcomes? Or might the opposite be true, such as if the parties involved suffer from optimism bias and fail to appreciate the negative outcome of non-cooperation?

These questions are certainly worth further discussion and exploration. Professor Cheng’s positions are well reasoned and compelling, and it must be said that despite decades of effort, international commentators have not come up with

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33. CHENG, *supra* note 1, at 384.

34. *Id.* at 49.

35. In this regard, it is interesting to note, as Professor Cheng does, that the clean slate rule was largely intended to provide newly independent colonies with a favorable position regarding their obligations going forward, but in many cases these newly independent states chose voluntarily to assume prior debts and obligations. *See id.* at 105–06; OPPENHEIM’S INTERNATIONAL LAW 228–30 (Robert Jennings & Arthur Watts eds., 1992).

a viable system for clearly assigning rights in state succession events. So perhaps Professor Cheng has it right. Nonetheless, these questions invite further inquiry, and *State Succession and Commercial Obligations* helps bring these issues into starker relief and provides a useful framework for further analysis.

*B. Virtual States and International Law*

In the past decade or so there have been several works from the field of political science that might be best characterized as research on the subject of the “virtual state.” In *The Rise of the Virtual State: Wealth and Power in the Coming Century*, Professor Richard Rosecrance boldly asserts that “developed states are putting aside military and territorial ambitions as they struggle not for political dominance but for a greater share of world output,” and he concludes that “[t]he nation-state is becoming a tighter, more vigorous unit capable of sustaining the pressures of worldwide competition.”<sup>36</sup> In other words, Professor Rosecrance asserts that GDP has become a primary indicator of national power. Other commentators have discussed the identity of states in light of increased interdependence and growth in electronic communications and the Internet.<sup>37</sup>

It is far beyond the scope of this book review to discuss the metaphysics of the nation-state, or whether those predicting its demise assert too much, as they likely do.<sup>38</sup> It useful to note, however, that viewing states as a nexus of commercial interests fits nicely with Professor Cheng’s view of state succession as largely being driven by efforts of states and private actors to protect overall commercial interests. When a state undergoes a radical transformation in the form of state succession, then, a primary concern of all, including the state, is to ensure the continuity of the commercial interests that are indicia of power. It is in other words a positive-sum game, and cooperation and continuity tend to protect and enhance the very economic activity that virtual state theorists suggest states would indeed want to protect. Moreover, drawing distinctions based on the *type* of state succession event adds little or no richness to the analysis, since at the end of the day what matters is the commercial interest, not the form of the event through which it is continued or repudiated.

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36. RICHARD ROSECRANCE, *THE RISE OF THE VIRTUAL STATE: WEALTH AND POWER IN THE COMING CENTURY* 3 (1999).

37. *See, e.g.*, JERRY EVERARD, *VIRTUAL STATES: THE INTERNET AND THE BOUNDARIES OF THE NATION-STATE* (2000); Paul Schiff Berman, *The Globalization of Jurisdiction*, 151 U. PA. L. REV. 311 (2002); Cristoph Engel, *The Internet and the Nation State*, in *UNDERSTANDING THE IMPACT OF GLOBAL NETWORKS ON LOCAL SOCIAL, POLITICAL AND CULTURAL VALUES* 201 (Cristoph Engel & K.H. Keller eds., Patricia Adler trans., 2000), *available at* [http://www.coll.mpg.de/pdf\\_dat/9907.pdf](http://www.coll.mpg.de/pdf_dat/9907.pdf); James Child, *Terrorism, the Internet and the Decline of the Nation-State* (Working Paper, 2004), *available at* <http://www.bgsu.edu/departments/phil/faculty/child/globalizationpaper.pdf#search=%22terrorism%20internet%20decline%20nation-state%22>.

38. For discussion of these issues see EVERARD, *supra* note 37, at 3–9.

#### IV. CONCLUSION: FUTURE APPLICATIONS

All in all, *State Succession and Commercial Obligations* is an admirable book. Professor Cheng recognizes the ambiguities and complexities of his subject, and he successfully crafts an approach to state succession that is promising both as a descriptor and a predictor of state succession events. That is no mean feat. While one might wish for more specific or particularized conclusions than the generalized observations and conditioning factors presented in the book, such abstraction is unavoidable — and in a way it is a virtue, since his approach recognizes the breadth and nuance of globalization's multifaceted impact on state successions. Instead of trying to shoe-horn this rich subject into a specific theoretical model or set of recommendations, the book acknowledges and accepts the complicated nature of this subject for what it is.

The next decade or so likely will provide fertile ground for assessing the utility of Professor Cheng's reconceptualization of state succession. How well, for example, does his approach hold up in the context of the 2003 regime change in Iraq? Events thus far indicate that heavy emphasis has been placed on the adjustment of obligations undertaken by the previous Iraqi government, with the intended aim being the cancellation of substantial portions of Iraq's debt in order to facilitate the emergence of a stable Iraqi regime that is beneficial to the international community.<sup>39</sup> In other words, the process of assuming and repudiating commercial obligations in post-invasion Iraq seems to be largely consistent with Professor Cheng's reconceptualization of state succession. Multiple parties have significant interests in the future of post-invasion Iraq — including its creditors, the United States (largely from a geopolitical perspective), neighboring states, and private parties wanting to do business with the new government. The relative weight of these interests will help shape the final structure of the new Iraqi government's ongoing commercial obligations. Further study of Iraq as an example of state succession is thus certainly warranted — and, in fact, some of Professor Cheng's current scholarship focuses on Iraq and the restructuring of its debt load.<sup>40</sup>

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39. See, e.g., MARTIN A. WEISS, CRS REPORT FOR CONGRESS, IRAQ: DEBT RELIEF 1–5 (2005), <http://www.fas.org/sgp/crs/mideast/RS21765.pdf#search=%22paris%20club%20iraq%20debt%22>; Bush Hails Paris Club Decision to Reduce Iraqi Debt, PortalIraq (Nov. 22, 2004), [http://www.portaliraq.com/news/Bush%20Hails%20Paris%20Club%20Decision%20to%20Reduce%20Iraqi%20Debt\\_\\_644.html?PHPSESSID=8ec6e42702c086ebf01a860ca8f4](http://www.portaliraq.com/news/Bush%20Hails%20Paris%20Club%20Decision%20to%20Reduce%20Iraqi%20Debt__644.html?PHPSESSID=8ec6e42702c086ebf01a860ca8f4); Denmark Cancels 80 Percent of its Iraqi Debt, PortalIraq (Dec. 28, 2005), [http://www.portaliraq.com/news/Denmark%20Cancels%2080%20Percent%20of%20its%20Iraqi%20Debt\\_\\_1111726.html?PHPSESSID=8ec6e42702c086ebf01a860ca8f4](http://www.portaliraq.com/news/Denmark%20Cancels%2080%20Percent%20of%20its%20Iraqi%20Debt__1111726.html?PHPSESSID=8ec6e42702c086ebf01a860ca8f4); Iraq Announces Results of Commercial Debt Settlement, PortalIraq (Apr. 4, 2006), [http://www.portaliraq.com/news/Iraq%20Announces%20Results%20of%20Commercial%20Debt%20Settlement\\_\\_1111902.html](http://www.portaliraq.com/news/Iraq%20Announces%20Results%20of%20Commercial%20Debt%20Settlement__1111902.html).

40. Tai-Heng Cheng, *What's Wrong with the Odious Debt Doctrine and How to Fix It*, LAW & CONTEMP. PROBS. (forthcoming 2007), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=948704](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=948704).

In addition to Iraq, there may be other succession events in store for the near future. What sort of continuity of cooperation might we expect in the event of a regime change or other type of succession event in North Korea? Or Iran? Or Chechnya? Or in other countries or regions in which there is the possibility of events such as regional independence or significant changes in government? It would be enormously interesting to see Professor Cheng's approach employed to predict likely outcomes regarding commercial obligations prior to such secession events, and then to compare this predictive work against actual results as they unfold. In this sense too, *State Succession and Commercial Obligations* is both a welcome contribution to the academic literature on state succession and an invitation for further inquiry.