

exceptionally tolerant place, especially with regard to an unusual religious tradition that not only accepts, but in fact celebrates, social diversity. How can such idiosyncratic empirical information be pertinent to the American same-sex marriage debate and to the work's primary audience (described as "open-minded Americans" whose "point of view" requires that "any big change in public policy . . . be justified, and its risks carefully evaluated" [p. 13])?

Indeed, the book's title is misleading. As its authors acknowledge, the volume focuses on the experience of registered lesbian and gay partners, not married same-sex couples. Thus there is no "evidence" here regarding "gay marriage."

The difference is more than semantic. In California, Connecticut, New Hampshire, New Jersey, Oregon, Vermont, and other states, gay men and lesbians are fighting for marriage and not just civil unions or domestic partnerships. Many Americans see the latter categories as simply another experiment with the *Plessy*-esque "separate but equal" approach to social construction and wonder how fairly same-sex partners will be treated in a system where signs of "Heterosexuals Only" appear at the entrance to marriage bureaus.

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Malawi: Justice Sector and the Rule of Law. By Fedelis Kanyongolo. Johannesburg: Open Society Initiative for Southern Africa, 2006. Pp. 172. Available free of charge from the publisher.

Reviewed by Mtendeweka Mhango, University of the Witwatersrand, Johannesburg, South Africa

As Malawi celebrates its thirteenth anniversary since the adoption of a democratic constitution, a recent publication presents a comprehensive overview of challenges and progress in the promotion of justice and the rule of law in Malawi. Kanyongolo, who wrote the book in cooperation with the African Governance Monitoring and Advocacy Project (AfriMAP) of the Open Society Initiative for Southern Africa, presents a compelling argument for law reform in some areas. For example, the book recommends that the Law Commission conduct a comprehensive review of penal statutes to determine whether criminal offenses are consistent with constitutional and international human rights standards. The book argues that among the most important penal laws that require review are those creating the offenses of criminal libel and insulting the president.

In the introduction, Kanyongolo states the aim of this book as being "the principal tool in an advocacy initiative" in the promotion of justice and the rule of law in Malawi (p. 3). The chapters

review Malawi's commitment to constitutional and international standards and norms regarding human rights, the rule of law, and democratic governance. Kanyongolo makes recommendations for action that generally fall into three categories: legal and policy reforms, institutional restructuring, and changes in administrative and management practices. The intention seems to be to give an exhaustive overview of all that is available and relevant. As a result, the reader gets a very good institutional picture, but at the expense of an in-depth analysis of similarities, common trends, and discussion of substantive provisions.

The book's chapters are relatively short, not comprehensive, and often require significant background knowledge. The book is divided into two parts. The first part is a summary of the gaps in the legal tools for parliamentary domestication of international human rights treaties signed and ratified by Malawi. This part also discusses the role of the Law Commission and the judiciary, and some of the reasons the law proposals for law reform submitted by the Law Commission have not been implemented. It then argues that courts can play an important role in aligning national legislation to human rights standards that are guaranteed by international law and the constitution through their power of judicial review.

The second part of this book is a more in-depth analysis of the domestication of international law and review of national legislation. To illustrate the government's lack of respect for the rule of law, Kanyongolo describes an attempt by the president of Malawi to declare that the vice president had constructively resigned from his position because he rarely attended cabinet meetings. This part also includes a discussion of the following topics: management of the justice sector, independence of the judiciary, criminal justice, and access to justice.

In Chapter 5 of Part Two, the book discusses the criminal justice system in Malawi since 1994. On the positive side, police officers have undergone extensive training in human rights. On the negative side, most of the legal guarantees for fair trials introduced since 1994 have not been followed, and this has led to prison overcrowding. Kanyongolo makes several recommendations in this regard, including the revision of the legal regime for granting pardons and remissions for those convicted of minor offenses.

The book does not include a concluding section to draw the chapters together and fails to provide a central index to map the links between the various chapters. It is up to the reader to draw patterns and conclusions from the various chapters. There is also a lack of in-depth analysis of the legal issues, particularly from some of the relevant case law. From the reviewer's perspective, an implicit argument in many of the chapters of this book is that Malawi has many challenges to live up to its commitments. Nevertheless,

this book is a valuable addition to the growing literature on the justice sector and the rule of law in Southern Africa. The rule of law is perhaps the most important feature of any democracy. Many of the book's subparts contain constructive suggestions on how to improve respect for the rule of law and how to implement the law, and should be compulsory reading for human rights lawyers and academics and other practitioners.

This work is an important and complementary text for legal and political scholars and practitioners interested in justice sector issues in Malawi and Southern Africa. It is important not because it talks about the problems in Malawi and suggests solutions, but rather because it suggests the kind of law reforms that we in Southern Africa should be considering more often and in more depth as the region seeks to promote justice and the rule of law. It succeeds in its aim of providing an updated, comprehensive overview of activity, challenges, and progress in the promotion of justice and the rule of law. Its accessible style and text features should ensure a wide readership.

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Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear. By Jonathan Simon. New York: Oxford University Press, 2007. Pp. 330. \$29.95 cloth.

Reviewed by Jeannine Bell, Indiana University School of Law

In *Governing through Crime*, Simon explores the state's exploitation of ordinary Americans' fears about crime and security over the past four decades. In arguing that a variety of state actors govern through crime, Simon meticulously traces the development of the so-called war on crime from its creation during the Johnson Administration through the contemporary war on terrorism. Simon—who self-consciously attempts to provoke debate on the negative consequences of American leaders' focus on crime—aims to depict the culture of fear that has been created around crime and its implications for American life and American democracy in a variety of contexts.

The book's first four chapters, "Power, Authority, and Criminal Law," "Prosecutor-in-Chief," "We Are the Victims," and "Judgment and Distrust," display the structural, historical, and theoretical basis for governing through crime. After setting out some of the most visible attributes of the war on crime in Chapter 1—crime rate and imprisonment statistics and the structural arrangement of power in the regulation of crime—in Chapter 2, Simon outlines