

BOOK REVIEWS

Institutional Interaction in Global Environmental Governance

by John Martin Gillroy

Institutional Interaction in Global Environmental Governance: Synergy and Conflict among International and EU Policies. Eds. Sebastian Oberthür and Thomas Gehing, Cambridge: The MIT Press, 2006. 425 pp. US\$28.00 (paperback) ISBN 0-262-65110-6

John Stuart Mill wrote biographical pieces on both Jeremy Bentham and Samuel Taylor Coleridge. Reflecting on these men, with the first establishing science as the key to social studies and the other reminding us that anything involving human beings must also be considered a subject of philosophical method, Mill argued that anyone considering themselves an intellectual must trace their ontology back to one of these giants. This insight marked the establishment of dividing the positive from the normative and the scientific from the human in social affairs - an insight which still impacts the professions of law and policy to this day.

I believe the case studies presented in *Institutional Interaction in Global Environmental Governance* are well-written, informative, and thought-provoking. And while I find myself in substantial agreement with the importance of interaction effects, I put this book down with the lingering concern that the editors have ignored the important Coleridge component of philosophical argument completely—by buying into only the Benthamite side of social science research, the editors end up skipping some necessary elements of a systematic argument about interaction.

The volume maintains that its purpose is to trace the origins of a “system of norms” for interactions between trans-national institutions and to create ideal-types that can be used for further study. Simultaneously, the editors claim that what they are doing is exclusively “empirical,” with statistical analysis at the end toward which the entire effort aims. Considered at this superficial level, *Institutional Interaction in*

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Global Environmental Governance makes the case that the operationalization of both EU and international governance structures do not come about in isolation, but are the products of interaction between embedded, nested, vertical, or horizontally connected institutions. These interactions, within what G. Majone calls a “policy space,” are first set out within a theoretical model (Chapters One and Two), then this model is tested heuristically by being adopted for use in the ten case studies of EU and international environmental law that comprise the bulk of this book (Chapters Three through Twelve). Finally, in completing their empirical analysis of norms, the editors quantitatively coded and statistically analyzed the cases as a way to provide positive evidence for turning their model into a set of ideal-types (Chapter Thirteen).

Instead of quantitative analysis providing a systematic logic or a fundamental demonstration of the assumptions of the model in Chapter Two, the analysis provides the reader with nothing new. In fact, such analysis exacerbates one’s sense that basic philosophical questions regarding the assumptions and logic of the model have been posited and used for the analysis without adequate justification. At the core of their work, the authors assume, without argument, that the effects of interaction involve only two institutions at a time, and are “*unidirectionally causal*”: “A case of interaction thus comprises a source institution from which influence originates, a target institution that is affected, and a causal pathway through which influence runs from the source to the target.”¹ These are controversial assumptions that dodge some extremely important questions about the definition, ontology, and dialectic nature of interaction, causality, and the systemic links between variables. The editors hypothesize causal relationships without any argument for what this concept means, or if they need its strong implications to make their model work. Although avoiding these philosophical components of the argument may make conducting statistical analysis easier, it cheats the potential of the model by leaving it largely unjustified.

It is also put forward that interactions between institutions are of mainly three types: those accomplished through *cognition*; those that come from *commitment*; and those shaped by *behavior* after outcome. Yet, once again, no attempt is made to stake out the epistemological or philosophical roots of these phenomena. The argument is made that obligations must be part of any inherent commitments; the text depends on the idea of commitment without any argument for a principle or process-norm that would define its meaning. *Institutional Interaction in Global Environmental* assumes that cognitive impacts can be empirically tested, without an effort to persuade us of a definition of knowledge or how it can be transmitted by individual agents or through collective action.

To be fair, the editors acknowledge that many of these questions beg argument. However, each time they approach one of these issues, they rely on the Benthamite logic and maintain that empirical analysis requires no effort to integrate philosophical concerns. The editors seem to forget that even Max Weber spent many pages setting up and justifying his ideal-types on a foundation; the same should have been done here.

The topics covered in *Institutional Interaction in Global Environmental Governance* are of value and I support the idea of creating a set of ideal-types that might standardize the study of “governance interactions.” However, the lack of an argument concerning the concepts, premises, and essential logic of the model makes the rest of the research in this book less convincing. As such, *Institutional Interaction in Global Environmental Governance* is too much Bentham and not enough Coleridge. Like economic analysis that depends on ideas from Adam Smith’s *Wealth of Nations* without the substructure of his *Theory of Moral Sentiments*, the absence of the latter makes the former correspondingly less valuable. I recommend the case studies, and even the sparsely justified model in Chapter Two, to anyone interested in this topic. But, I would also encourage them to skip the statistical analysis at the end of the book, as it adds little to the conclusions of the cases themselves and is a distraction to establishing the philosophical core of this important work.

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1 Sebastian Oberthür and Thomas Gehing, eds., *Institutional Interaction in Global Environmental Governance: Synergy and Conflict among International and EU Policies* (Cambridge, MA: MIT Press, 2006), 19.

Alexandra Xanthaki's, *Indigenous Rights and United Nations Standards: Self-Determination, Culture, and Land*

by Baron Pineda

Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land. By Alexandra Xanthaki. Cambridge: Cambridge University Press, 2007. 358 pp. US\$105.00 (hardcover) ISBN 0-521-83574-7

With the long awaited adoption of the Declaration of the Rights of Indigenous Peoples by the UN General Assembly on September 13, 2007, Alexandra Xanthaki's book could not be more timely. Xanthaki is a legal scholar and senior lecturer in International Human Rights at Brunel University and has worked as a consultant to the United Nations Special Rapporteur on Indigenous Issues. In *Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land*, Xanthaki surveys the most relevant United Nations instruments regarding indigenous peoples in order to "test" whether indigenous claims are consistent with current international legal standards.¹ She finds that this is indeed the case and provides a clear, and even impassioned, argument for why the international community should continue to make progress on the international law of indigenous peoples.

Throughout the book, Xanthaki engages her audience of state officials and other skeptics who may recognize the plight of indigenous peoples, but view attempts to address past and present wrongs against them as peripheral, impractical, or even discriminatory. Xanthaki argues that building on the existing structures of international law, indigenous rights can be effectively promoted to the satisfaction of both indigenous peoples and nation-states.

Although Xanthaki is clearly an advocate of indigenous peoples and their rights, she develops an argument that attempts to carve out a middle ground between states' fears (that recognition of indigenous rights will lead to secession or worse) and, what she perceives to be, the imprudent legal strategies taken by some indigenous peoples and advocates (which insist on a narrow definition of self-determination). In a move that runs counter to the rallying cries of much of the indigenous movement,

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Xanthaki outlines the case that indigenous peoples must not place a claim to the right of self-determination at the center of their legal strategies. In fact, she argues that although the United Nations was instrumental in shepherding the world through the decolonization process after World War II, indigenous peoples are better served by not casting their movement in terms of decolonization. Xanthaki explains with depth and clarity why this “maximalist approach” to self-determination is counter-productive.² She favors a more eclectic legal approach in which there is room for creativity in establishing new and unprecedented relationships between states and indigenous peoples; for Xanthaki, this approach is the only way forward.

In countering the claim that indigenous rights are illiberal (because they grant special rights that are not universally extended to all groups and individuals in society), Xanthaki demonstrates that international law can accommodate both the claims to rights made by people as individuals, as well as collective claims of groups. She takes productive forays into political theory as it pertains to issues of multiculturalism and argues for a variety of “critical pluralism.”³ Xanthaki makes repeated reference to the importance of viewing human beings as being composed of “concentric circles” of loyalties and identities that radiate from the individual out - from the local to the global. According to Xanthaki, all of these facets need to be protected by law. She writes:

In order to protect the individual, all the various ‘circles’—loyalties—around her need to be protected. Thus, international law includes a different set of protection for the individual (by establishing individual rights), but also for her family, ethnic, cultural or religious group, the society in which she lives in, and finally the culture of her continent and the culture of the world itself (by establishing collective rights).⁴

Far from a peripheral matter relegated to states, Xanthaki contends that the issues of pluralism and cultural diversity are central and critical issues for all nations and all peoples. In this sense, those of us who are interested in what are now the frontiers of human rights law (such as rights to sustainable development, a clean and safe environment, and others), should take heed.

The book is divided into two sections. The first section surveys existing legal instruments, including those pertaining to indigenous peoples such as ILO Conventions 107 and 169. Fortunately, this section includes an in-depth examination of the Declaration of the Rights of Indigenous Peoples which, at the moment of Xanthaki’s writing, had not yet been signed. Xanthaki analyzes these documents from both a legal perspective and in the context of other aspects of international law, such as human rights law.

In the second section of the book she establishes three thematic issues: self-determination, cultural rights, and land rights. In both sections, Xanthaki draws heavily on relevant secondary sources and United Nations documents. Although she draws most heavily from legal documents, Xanthaki also debates culture theory, which will certainly be welcomed by readers in the social sciences and humanities.

Alexandra Xanthaki has produced an accessible and densely researched book that is a productive read both for legal scholars who are not familiar with the international law of indigenous peoples, as well as the general reader who is interested in indigenous issues. She does an excellent job of explaining why this case is of broad significance for all of us—indigenous and non-indigenous alike.

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¹ Alexandra Xanthaki, *Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land* (Cambridge: Cambridge University Press, 2007), 5.

² Xanthaki, *Indigenous Rights and United Nations Standards*, 153.

³ Xanthaki, *Indigenous Rights and United Nations Standards*, 26.

⁴ Xanthaki, *Indigenous Rights and United Nations Standards*, 23

Jan Zielonka's *Europe as Empire: The Nature of the Enlarged European Union*

by Matthew Omolesky

Europe as Empire: The Nature of the Enlarged European Union. By Jan Zielonka. New York: Oxford University Press, 2007. 304 pp. US\$35.95 (paperback) ISBN 0-199-23186-9

In an otherwise unremarkable speech on July 17, 2007, European Commission President José Manuel Barroso made reference to the European Union as “the first non-imperial empire...Sometimes I like to compare the EU as a creation to the organization of empire.” Barroso continued, concluding that the EU has “the dimension of empire.” These statements raised heckles throughout Europe (particularly in Britain, where the new EU treaty signed on June 23, 2007 has led to widespread calls for a referendum), and allowed wags and pundits to liken their own democratically-elected national governments to mere provincial satraps. Yet, as Oxford professor Jan Zielonka has shown in his recent book, *Europe as Empire: The Nature of the Enlarged European Union*, the result of decades of European integration

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does have something of an imperial savor (albeit, in Zielonka's words, a "neo-medieval" one).

The starting point for Zielonka's analysis of the present state of the European Union, is the aftermath of the French and Dutch rejection of the European constitutional project, which effectively mooted the idea of a European superstate. Zielonka introduces a new model for viewing the EU system, one radically different from the standard Westphalian federal model, namely that of a "neo-medieval empire." Under the "neo-medieval empire" conception, the future EU system will feature: soft-border zones in flux; multiple cultural identities; interpenetration of various types of political units and loyalties; a blurred distinction between the European center and the periphery; overlapping military institutions; and divided sovereignty along functional and territorial lines. In other words, the "neo-medieval empire" is something of a post-modern Holy Roman Empire.

In positing a neo-medieval alternative to the neo-Westphalian system, Zielonka concentrates on the effects of EU enlargement and the incorporation of post-Communist states. The effort to include these states began as an attempt to "assert political and economic control over that unstable and impoverished neighborhood," but led to East-Central and Southeast European "access to the EU's decision-making and resources at the end of the accession process," with profound ramifications in terms of social, economic, and foreign policies.¹ Like the aforementioned referenda, the latest rounds of eastward expansion have undermined Brussels' aspirations of European superstatehood, lending further credence to Zielonka's alternative conception.

Throughout *Europe as Empire*, Zielonka is mindful of recent developments within the EU that seem to support neo-Westphalian aspirations (for example, the increase in EU delegations abroad, the creation of the European Military Committee, and EU peacekeeping operations in the Central Africa and the Balkans), but these are shown to be more or less chimerical. Instead, Zielonka astutely argues that European foreign policy remains in the hands of the individual states. Moreover, Zielonka contends that that EU membership is instead instrumentalized as one of many institutional foreign relations tools, along with membership in the UN, NATO, OSCE, and involvement in contact groups or bilateral ties. Furthermore, as nations are wooed by both Brussels and Washington, "like in the Middle Ages, European actors are subject to two competing universalistic claims."²

Zielonka prefers to look at the EU's strategic goals in terms of economic governance, citing the body's stated aims of "a zone of prosperity and a friendly neighborhood."³ Thus, future EU efforts beyond its borders will likely be centered on building up common infrastructure, bolstering energy security, and enhancing cross-border cultural links, as opposed to pursuing traditional superstatist goals. If Zielonka's thesis is correct, this will have considerable impact on EU accession hopefuls like Ukraine, Croatia, or Turkey, as well as states within the EU's broader sphere of influence (e.g. the Black Sea region or the Maghreb).

This paradigm offers a new way forward for EU neighborhood policy, especially in light of the recent European “enlargement fatigue” (a stumbling block Zielonka himself has in the past underestimated, having in the 2006 edition of *Europe as Empire* operated under the curious assumption that Croatia was “quite likely” to join the EU along with Bulgaria and Romania). As Zielonka notes, “it is not hard to conclude that were this strategy to succeed the distinction between EU members and non-members would become blurred and the Union would shape economic transactions and legal rules on the territory of its neighbors.”⁴ For Zielonka, the fuzzy borders and amorphous characteristics of this potential arrangement are what would give the EU its “neo-medieval” aspect.

Zielonka’s framework is a novel and compelling one—the first to fully grapple with the implications of the failed constitutional referenda and recent rounds of EU enlargement. By looking beyond the superstatist aspirations of many policymakers in Brussels, *Europe as Empire* sheds considerable light on the direction the EU is being taken by its constituent states. Aside from validating Mr. Barroso’s (perhaps unartful) comments on the subject of European empire, Zielonka has made a genuine contribution to scholarly EU literature. It is now to hoped that the “neo-medieval” paradigm will enter the European lexicon.

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¹ Jan Zielonka, *Europe as Empire: The Nature of the Enlarged European Union* (New York: Oxford University Press, 2007), 20.

² Zielonka, *Europe as Empire*, 141

³ Zielonka, *Europe as Empire*, 111

⁴ Zielonka, *Europe as Empire*, 112