Book Review

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The International Legal Theory: Foundations and Frontiers, by Jeffrey L. Dunoff and Mark A. Pollack (Eds.), Cambridge University Press, 2022. 449 pp. ISBN: 978-1-108-42771-5*

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1. Introduction

The *International Legal Theory: Foundations and Frontiers* (Cambridge University Press, July 22, 449 pages) is the most recent co-edited volume investigating significant schools of thought within international legal theory. The book explores the fundamental assumptions, core concepts, analytical tools, and critical challenges associated with these theoretical approaches. In terms of the scholars and the subjects that it brings together, this collection is an outstanding contribution of legal theorists and practitioners who discuss the challenges and opportunities of competing theoretical foundations of contemporary international law. The comprehensive and well-argued content of this book make

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it an invaluable resource for academics and practitioners engaged in the training , teaching, practice, or reform of international law.

The book is comprised of six major sections (17 chapters). Each section can be read as a stand-alone essay, but collectively, they provide a comprehensive overview of competing theoretical approaches to endow legal practitioners with a more in-depth understanding of the strengths, limits, preoccupations, and insights of those approaches. In this review, I will assess the overall arguments presented in each chapter and provide comments on relevant clusters of chapters, with a focus on the fragmentation of international law in the context of emerging international non-state-based norms.

2. Description and Evaluation

2.1. Part One

The book starts with an introductory chapter by Dunoff, an international lawyer, and Pollack, an international relations scholar, who are the editors of this volume. Their introductory section, in chapter one, provides readers with an overview of the substantive discussions and arguments on the complex interplay between theory and practice. Dunoff and Pollack wisely initiate their discussion by rejecting the statement that "theory produces no real benefits" (p. 5). Dunoff and Pollack then criticize the traditional view that theory and practice are separate domains. They develop their arguments by emphasizing that "all practice unavoidably rests upon theoretical presuppositions, even if they are implicit or unacknowledged" (p. 6). While acknowledging the necessity of theory in law, the authors remain silent in explaining what exactly is the theory of international law. They outline the research path and delimit the scope of this book via questions of "what", "who",

"when", "where", and "how". By asking "what", they explain the subject matter of international legal theory. By asking "who", they direct attention to the creators of international legal theory. By asking "when", they invoke an awareness of the historical context within which theories are developed. By asking "where", they highlight the disproportionate role played by the Global West and Global South in theorizing international law. Finally, by asking "how", they discuss the interplay between theory and practice in international law. Dunoff and Pollack conclude this chapter by noticing that these questions enable contributors to define international legal theory without resorting to a rigid "check list" that might push discourse toward terminological dead ends

2.2. Part Two

The first cluster of chapters (two to five) delves into traditional and classical theories of international law, focusing on their contributions to understanding the subject matter of law. In Chapter 2, Follesdal discusses natural law theory and its relevance in addressing the normative legitimacy of public international law (PIL). He highlights the legitimacy crisis in PIL and proposes the Human-Oriented Minimalist International Natural Law (HOMINAL) framework as a rational reconstruction of natural law principles. This approach emphasizes objective standards of right actions discernible by human reason, aiming to secure individual human values while constraining state power. However, Follesdal's discussion leaves gaps in addressing potential conflicts between these values and how they might impact judicial decision-making. Chapter 3, authored by d'Aspremont, criticizes natural law and emphasizes the role of state consent and formal legal sources in legitimizing international legal norms through the lens of positivist

theory. He contests five attributes commonly associated with international legal positivism, including state-centrism and formalism, while recognizing its persistence in legal education and practice. Despite affirming the relevance of positivism, d'Aspremont does not address how it could resolve contemporary issues, such as the crisis of state-centralism or evolving subject categories in international law. In Chapter 4, Shaffer proposes a new form of legal realism that incorporates insights from social sciences and highlights law's role in shaping social expectations. He argues that legal realism criticizes power dynamics, bridges legal practice with social sciences, and enables law to adapt to changing social contexts. Shaffer underscores the interconnectedness of global social and institutional structures, which necessitate pragmatic decision-making and empirical approaches. However, his application of this theory, such as referencing the World Trade Organization Appellate Body, lacks detailed analysis of the way in which non-state actor interests and broader societal concerns are reflected in international law. Chapter 5, written by Koh, extends the discussion on legal realism through the New Haven School and Transnational Legal Process School. The New Haven School criticizes positivist views, advocating for a process-oriented understanding of law that promotes normative values. Koh introduces the Transnational Legal Process, which examines the interactions between public and private actors in creating, interpreting, and enforcing transnational legal norms. He emphasizes the significance of normative commitments to uphold human rights within a globalized context. Nonetheless, Koh does not sufficiently explore the way in which state and non-state actors can effectively collaborate to advance a global legal system promoting human dignity.

Together, these chapters present classical theories of

international law, showcasing their strengths and limitations. Each theory is updated to address contemporary critiques, but lacks comprehensive engagement with pressing modern issues. For instance, while Follesdal introduces HOMINAL to guide judicial discretion, he does not address potential conflicts between values or how they might lead to arbitrary decision-making. Similarly, d'Aspremont acknowledges the utility of positivism but fails to explore its adaptability to contemporary challenges. Shaffer's legal realism connects law to social sciences, but does not sufficiently address the way in which global legal systems accommodate non-state actors and societal concerns. Koh highlights the role of transnational actors, but leaves unanswered questions about practical collaborations for promoting human dignity. This cluster of chapters effectively revisits and reconstructs classical theories of international law. However, their collective shortcoming lies in the insufficient exploration of how these revised theories engage with evolving dynamics in international law, such as fragmentation, state-centralism, and globalization. Addressing these gaps could enhance their relevance to contemporary legal discourse.

2.3. Part Three

Chapters six to eight explore who creates international law through Critical International Legal Theory (CILT), as well as Third World Approaches to International Law (TWAIL), and feminist international legal theories. Chapter six, authored by Johns, traces the history of CILT, emphasizing its focus on bias, power dynamics, and the role of law in perpetuating inequality. Johns highlights the intellectual richness of CILT, which criticizes law's unjust distribution of authority and resources, while maintaining a dialogue with feminist and TWAIL perspectives.

Chapter seven, by Gathii, examines TWAIL's criticism of international law's Eurocentric colonial legacies and its role in marginalizing Third World perspectives. Gathii outlines TWAIL's goals, including ending third-world marginalization, prioritizing values over capital interests, and reforming international law to reflect diverse perspectives. In Chapter eight, Engle, Nesiah, and Otto criticize mainstream feminist approaches in international law that emphasize state-led interventions against violence toward women. They argue that these approaches often reinforce dominant power structures, colonial tropes, and securitization, undermining alternative perspectives. The authors advocate for inclusive feminist frameworks, such as queer, anti-imperial, and sex-positive feminism, to address structural injustices and push for fundamental legal changes.

Despite their insights, these theories face practical challenges. They do not offer clear methodologies for eliminating European-centric human rights norms from customary international law. For instance, while the authors mention the UN addressing gender binaries, they fail to explain how state practices could incorporate non-binary perspectives into international law. Additionally, they overlook the role of non-state actors, which are vital in empowering the Third World within the international legal order.

2.4. Part Four

Chapters nine to eleven shift their focus to the post–Cold War international legal order, exploring Global Administrative Law, International Constitutionalism, and Global Legal Pluralism. Chapter nine, by Casini, examines the proliferation of lawmaking beyond state-based processes. The author highlights the role of global institutions in creating "distributed administration," where

hybrid dispute settlement mechanisms such as arbitration address issues traditional courts cannot. Casini emphasizes participatory procedural tools that enhance legitimacy by ensuring transparency and competition across borders. Chapter ten, by Kallber, discusses international constitutionalism, arguing that the legitimacy of the global legal order stems from its alignment with the rule of law rather than empirical acceptance by citizens. He views constitutionalism as a normative framework for legitimizing international law. Chapter eleven, by Krisch, introduces global legal pluralism, which theorizes interactions among competing legal regimes. He criticizes monism for its inadequacy in addressing the legitimacy of fragmented global governance and emphasizes procedural legitimacy over state consent.

These chapters introduce valuable perspectives on international law's legitimacy, although they have their limitations. Kallber's constitutional theory does not address the rising influence of non-state actors or legitimacy concerns beyond state consent. Similarly, Krisch highlights the challenges of soft law and private norms, but offers no solutions for their legitimacy within global governance.

2.5. Part Five

Chapters twelve to fourteen analyze different social science methodologies applied to international law, including rationalist, behavioralist, sociological, and interpretive approaches. In chapter twelve, van Aaken examines the potentials and limitations of rationalist and behavioral theories. Rationalism focuses on predicting behavior through incentive-driven analysis, especially in treaty-making and customary international law. It can address issues such as enforcement and uncertainty. In contrast, the behavioralist approach emphasizes that human behavior deviates

from rational assumptions, viewing international law as a public good supported by internalized norms, reciprocity, communication, trust-building, and sanctions, offering a more optimistic view of compliance. Chapter thirteen, by Hirsch, applies sociological theory to international law, emphasizing that the social context of groups shapes legal formation, practice, and evolution. Sociological analysis deepens understanding by showing how the establishment of legal rules alone is insufficient for normative change in communities. Chapter fourteen, by Venzke, focuses on the practice of interpreting international law. The author identifies four strategies: formalist, which adheres strictly to legal text; instrumentalist, which considers the broader context and purpose of rules; realist, which examines how interpreters' preferences influence outcomes; and immanent, which seeks to reveal contradictions in law to inspire change. These strategies highlight how interpretation shapes the application of international law.

However, these chapters do not address the ways in which these theories contribute to the legitimacy of international law. The rationalist and behavioralist theories focus on compliance, but do not link it to legitimacy. Sociological theory stresses the importance of compliance for normative change, although it fails to explain how sociocultural factors legitimize international law. Hirsch's exploration of interpretation strategies is valuable, but somewhat disconnected from the thematic focus of previous chapters.

2.6. Part Six

Chapters fifteen to seventeen explore the relationship between theory and practice in international law. Chapter fifteen features an interview with Abi-Saab, who reflects on how theoretical

approaches shape international legal practices. He explains that the rules of law have varying interpretations, which practitioners must navigate by selecting plausible theories. In chapter sixteen, Boisson de Chazournes argues that theory and practice are inseparable and mutually dependent, influencing each other in both directions. She claims that practice informs theory, providing material for theorists, while theory helps practitioners shape their actions. In chapter seventeen, Weiler introduces a dialogue format in which contributors restate key issues from their chapters. This format fosters a deeper understanding of the theory-practice dynamic, although it does not provide concrete guidelines for practitioners.

While these chapters aim to explore the interaction between theory and practice, they remain abstract and lack practical guidance for legal practitioners. The final chapter's dialogue format, although insightful, does not directly address how theory and practice influence each other in everyday legal practice.

3. Conclusion

The *International Legal Theory: Foundations and Frontiers* effectively challenges the traditional separation between theory and practice in international law, emphasizing that all legal practice is based on underlying theoretical assumptions. By framing its discussion around key questions about the subject, the creators, the historical context, and various global perspectives on international law, this book provides a comprehensive foundation for international law theory. This approach encourages a dynamic exploration of international legal theory, highlighting the interplay between theoretical concepts and their real-world applications.