

BOOK REVIEWS

International Human Rights & Humanitarian Law: Treaties, Cases & Analysis EDITED BY FRANCISCO FORREST MARTIN, STEPHEN J. SCHNABLY, RICHARD J. WILSON, JONATHAN S. SIMON AND MARK V. TUSHNET [Cambridge: Cambridge University Press, 2006. xxviii + 990 pp. Hardcover]

Through *International Human Rights & Humanitarian Law: Treaties, Cases & Analysis*, its editors sought to provide students with an introductory casebook on international human rights law and international humanitarian law. They have achieved that. However, if the editors sought to produce an authoritative textbook, they would have fallen foul of their ambitions.

To be fair, it is not easy to compile a consolidated and comprehensive textbook on both international human rights and international humanitarian law. An integrationist approach to these two subjects is not a novel one. After all, it makes historical sense given that they shall the same roots in the post-World War II reconstruction of the international legal order. However, this book fails to recognize that each field of law developed differently thereafter and thus produced separate corpuses of norms that are relevant to different contexts. This argument being well articulated in *International Human Rights and Humanitarian Law* (Cambridge: Cambridge Studies in International and Comparative Law, 2007) by René Provost. Hence, this book bears the risk that international human rights law and international humanitarian law cannot be taught or even thought about in the same analytical framework.

Nonetheless, it tries. Chapters 1 and 2 are dedicated to introducing the reader to the international human rights and humanitarian law institutions, sources of international law and principles of state responsibility. These chapters are generally quite adequate for the purposes of providing the reader with the basic background to international law at large. In particular, discussion of the concept of *jus cogens* was succinct enough for digestion without being scanty. Chapter 3 deserves special mention as

it is an outstanding summary of United States practice in the incorporation of international law into municipal law. The editors emphasize that this book was targeted for students in the United States. However, Chapter 3 provides us all with a concise yet detailed look into the United States' theory and jurisprudence in this area. Chapter 4 is dedicated to the procedural aspects of international human rights law. I had expected the editors to have taken the opportunity to explore differing procedural aspects of each human rights tribunal. Disappointingly, Chapter 4 only provides the reader with a brief introduction to procedural issues such as jurisdiction and remedies at general international law, topics which are covered in greater depth in other international law textbooks.

Chapter 5, which is entitled, "Substantive International Human Rights and Humanitarian Law Protections" is intended to be the core of the book. This chapter lists down and addresses a number of human rights ranging from trite ones such as the right to life to more disputed rights such as the right to marriage. Moreover, the editors have seamlessly slipped a section on "International Humanitarian Law Protections and Human Rights-Related International Crimes" right into this chapter. In so doing, created a risk that a student reader may neglect the conceptual and practical distinctions between international human rights law and international humanitarian law.

Ultimately, this book is a casebook and no more. That being said, it is a good casebook. The most relevant materials on international human rights law and humanitarian law can be found in this book, which is organized in a neat manner for ease of use. Even the book's admitted "United States-centricity" cannot detract from the fact that it provides the reader, student and practitioner alike, with the basic authorities in the two fields. Yet, in conclusion, I suggest that this book is best used in conjunction with a good textbook on each subject to provide the reader with a broader, deeper and full discourse on international human rights law, international

humanitarian law and each subject's interaction with the other.

reviewed by JEREMY LEONG

A Foucauldian Approach to International Law: Descriptive Thoughts for Normative Issues
BY LEONARD M. HAMMER [Hampshire: Ashgate Publishing Limited, 2007. vii + 154 pp. Hardcover: US \$99.95/£55.00]

In his book *A Foucauldian Approach to International Law*, Leonard M. Hammer eschews the "outmoded statist approach" and joins in the struggle to find a viable framework of international law.

The author nominates the ideas of Michel Foucault as the way forward in this endeavor, arguing first that such an approach can begin to address the dichotomous issue of norms, objectivity and state interests by transgressing the context of examination, and also that an alternative notion of power, which Foucault can provide, will begin to look at the manner by which states alter their positions, thereby recognizing the proper role of external actors as well (17). In this, Hammer neatly straddles the Constructivist emphasis on the social nature of the international system and the intersubjective constitution of actors and their interests, and the Poststructuralist critique of underlying discursive structures in their attempt to transcend the Westphalian statist paradigm. In his book, Hammer draws predominantly on three of Michel Foucault's more well-known and related ideas.

First, the author uses Foucault's notion of "discursive formations" to lay the foundations for a framework of international law that allows for not only the state, but the resistance amongst various external actors, to constitute power. Within this perspective, international law functions as part of the process of shaping states and allowing the reactions of these states in turn to further influence and shape the social process. Hammer argues that this way, the various and shifting positions of states and other actors with regard to international law may be accounted for (22).

Second, the author utilizes a Foucauldian analysis of power, postulating that that is helpful in the examination of the interplay between actors that constitute the processes of international law. It brings to the fore the notion that power is not simply divided up between

the various entities, but rather is distributed throughout complex social actions which serve to modify the actions of others—and not just because "a dominant agent possesses power in any structured sense" (22-23). The assertion here is that power is a multi-layered process that becomes part of an ongoing process of domination and resistance, and whereby not only the resistor but the actor asserting the power is subject to new influences and continually clarifies his role. As the author emphasizes strongly in his book, this power and influence pertains not only to states themselves, but also to the non-state actors.

Finally, Hammer attempts to apply the significant link between Foucauldian ideas of power and those of knowledge to issues of international law. With reference to international relations, the author asserts that: "Initially one might conclude that with the increase of the ability to acquire greater extensive knowledge, the means for controlling others will also increase. Nonetheless, concomitant with the acquisition of greater extensive knowledge is the development of more intrusive inquiry by all actors who are involved in the discourse" (26).

In sum, the author contends that the benefits of a Foucauldian approach lies in the most part not in discerning the law as such but in its ability to "account for the ongoing changes and developments as evidenced by the continuing discourses of the various actors" (28). Thus in each chapter, various issues of international law are seen through the prism of this perspective.

In "Chapter 3: Recognition, Transformation and Power", it is argued that while the recognition of international personality of a state might not serve in a constitutive sense in creating a state, there are ramifications emanating from a recognition decision for the status of the state and its international legal capacity (such as, for example, for commercial and diplomatic discourse). The idea here is that it would be useful to view recognition as having a more process-oriented nature, whereby recognition is seen as an ongoing reflective form of state policy and as a reflection of authoritative responses to the status of the entity by international agencies and governmental bodies. The premise is that the application of Foucauldian ideas of power would lead to a transformative framework for the constitutive elements of recognition. Within such a paradigm, both the "constant re-interpretation of events that derive from surrounding political and social effects", and the contingent nature of perception itself are acknowledged (44).