

## BOOK REVIEW

*INTERNATIONAL LAW THEORIES: AN INQUIRY INTO DIFFERENT WAYS OF THINKING* BY ANDREA BIANCHI (OXFORD UNIVERSITY PRESS, 2016) 320 PAGES. PRICE AUD 34.95 (PAPERBACK) ISBN 9780198725114.

*International Law Theories* consists of a deep and critical examination of a wide range of theoretical approaches to international law across 14 chapters, each of which is devoted to a particular subfield of scholarly investigation. The book has a bold and ambitious aim — to consolidate myriad theoretical perspectives on a subject as diverse and as ill-defined as international law in one volume, all of which is written by a single author. Andrea Bianchi, a Professor of International Law at the Graduate Institute of International and Development Studies in Geneva, states from the outset that the purpose of the book is ‘to get an increasing number of scholars, researchers and students to realize that there are different ways in which one can think about international law’.<sup>1</sup> At first glance this seems almost tautological in its simplicity — surely it is obvious that there are different ways to look at international law. But, upon further reflection, there remains a profound unease within the discipline, not the least in terms of its uncertain sources, but also with regards to its purpose and its capacity to induce compliance.<sup>2</sup> It is this feature which Bianchi candidly observes is often associated with the regime’s legitimacy, the lack of which is a critique readily levelled at many modern iterations of international law, such as investment arbitration.<sup>3</sup>

The book is much more than a list of sub-specialisms within international law studies or even an explanation of their constituent ideas. It is a profound exposition of the intellectual underpinnings of an entire discipline from a scholar whose familiarity with the material is unparalleled. Bianchi has read (and practised) so widely across the landscape of international law that he is able to speak both authoritatively and critically on areas such as constitutionalism, feminism, law and economics, literature and Marxism, not to mention fields within international law such as the environment, development, human rights and war. Given its status as a survey volume, it is difficult to identify a single unifying theme in the book, other than perhaps the self-evident wisdom that there are numerous enriching perspectives which may be brought to bear on the study of international law. In one sense this is to the author’s credit but in perhaps another to the book’s detriment. Bianchi does not risk making an overarching judgment as to a hierarchy of value among the theoretical approaches which he studies. To do so could have undermined his aim to open the eyes of international law scholars to the wealth of insight derived from the assorted approaches which he explores throughout. Rather, he leaves or rather urges

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<sup>1</sup> Andrea Bianchi, *International Law Theories: An Inquiry into Different Ways of Thinking* (Oxford University Press, 2016) 1.

<sup>2</sup> *Ibid* 122.

<sup>3</sup> *Ibid* 64.

readers to derive their own sense of worth from the material as he presents it and in that sense this book will resonate differently with each reader.

For me, among the most penetrating observations which Bianchi draws attention to are those attributed to the Helsinki School and the work of Martti Koskenniemi, notably his unorthodox view that the indeterminacy of international law (in part due to its varied and contested sources) is an essential aspect of the system's acceptability. If the 'system' of international law (if it can be called such) were too rigid or too defiantly intolerant of adaptation to context then surely it could not exist, because no sovereign would condone to be bound by it. Bianchi characterises Koskenniemi's critique of the excessive 'managerialism' of international law as 'the prevailing professional mindset that looks at international law as a particular form of technical expertise to be put to use in managing the problems, and meeting the challenges, of the global world'.<sup>4</sup> Put another way, there is something about the mundane practice of international law, particularly in its less glamorous forms outside of the courtroom, which misses the point that there is a larger, normative universe at play behind the scenes rooted in power struggles at the political level. This view is echoed in Bianchi's own lightly cynical yet invariably accurate introductory comments on the value of multi-layered perspectives: 'I am not sure the penny will drop easily, as most of the international legal scholarship published nowadays is focused on the technicalities of lawmaking, adjudication, and enforcement.'<sup>5</sup> Bianchi presents the Finnish author's claim, in the later chapter on legal pluralism, that the preoccupation among international law scholars with the so-called 'fragmentation' of international law into disparate streams represents nothing more than a '(false) postmodern anxiet[y]'.<sup>6</sup> This is a wickedly astute observation which lays bare the futility of identifying coherence in a regime which has developed over centuries across many different cultures and which lacks a centralising authority. It also unveils, through allusion to art,<sup>7</sup> the recognition of this uncomfortable reality as key to understanding the discipline, paradoxically achieving knowledge through disorder. The author's cautious embrace of the use of interdisciplinarity to enhance our appreciation of international law is another of the book's highlights, captured by the memorable phrase: '[n]o discipline is willing to pay the price of being swallowed by another, if the relationship between the two becomes too unequal and unbalanced'.<sup>8</sup> Interdisciplinary scholars beware — don't take your innovative application of another perspective to international law too far or you risk losing the respect of your community of scholars, as well as obscuring its critical rigour.

Bianchi does not engage only with the substantive content of the scholars which he examines, but also, delightfully, with their own styles of writing. In this sense, *International Law Theories* assumes a compelling meta-analytical posture. It is criticism about criticism and as such it invites the reader to evaluate it on its own terms. This effect is most pronounced when Bianchi speaks with fondness towards the style and technique of his contemporaries whom he so obviously

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<sup>4</sup> Ibid 172.

<sup>5</sup> Ibid 6.

<sup>6</sup> Ibid 232.

<sup>7</sup> Ibid 291.

<sup>8</sup> Ibid 134.

respects (notably Jean d'Aspremont<sup>9</sup> and Koskenniemi)<sup>10</sup> and the old masters who appear to have influenced the development of his own critical faculties (such as Plato<sup>11</sup> and Marx).<sup>12</sup> His analysis of the idiosyncratic approach of Philip Allott in the chapter on social idealism is captivating.<sup>13</sup> Bianchi's own varied tone, which moves from heavy academic analysis to lighthearted jokes and playful digressions into personal experiences are themselves enjoyable features of the book. In one amusing instance, he recalls a 'ruthless attack' levied against him from a practising barrister in attendance at a lecture Bianchi delivered at University College London, who angrily informed him of his disdain for Bianchi's lack of pragmatism in his treatment of international human rights law.<sup>14</sup> Since we have all had these kinds of unpleasant experiences, this anecdote was an effective and self-effacing way to draw the reader into his world.

It is somewhat disappointing that Bianchi himself does not always wield the techniques of criticism as powerfully in this volume quite as readily as the many authors which he studies. One cannot escape the impression that on occasion he is being too soft. When he identifies usually minor weaknesses in the theoretical approaches, Bianchi typically draws upon criticisms identified by other authors within each community as surrogates (for example, Richard Posner's takedown of the law and literature movement<sup>15</sup> and Mark Kelman's wry labelling of critical legal studies as 'trashing')<sup>16</sup> rather than marshalling his own attacks. Although introducing his own line of critique may have compromised his goal of offering an overview of the many theories of international law upon which other scholars can draw inspiration, surely Bianchi must hold stronger views on at least some of the theories of international law than it appears from this book.

While Bianchi devotes an early chapter to social science methodologies covering interdisciplinarity generally, which he skilfully augments in his later commentary on the important roles of the New Haven School and the now ubiquitous critical legal studies movement, the omission of 'pure' or physical science based approaches to international law in a distinct chapter is lamentable. Just as politics and economics have shed light on the way international law does or should function, there is an increasing body of scholarship which has leveraged insights from fields such as physics.<sup>17</sup> Likewise, it is questionable that Bianchi's treatment of behavioural psychology was framed as a counterpoint to the field of law and economics whereas it is arguably now a theoretical approach in its own right. Unfortunately, despite the inclusion of a chapter on third world approaches (which probably should have been entitled 'developing world approaches') there is a relatively limited engagement with scholars from the

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<sup>9</sup> Ibid 41.

<sup>10</sup> See especially ibid ch 8.

<sup>11</sup> Ibid 30.

<sup>12</sup> Ibid ch 4.

<sup>13</sup> Ibid ch 12.

<sup>14</sup> Ibid 26.

<sup>15</sup> Ibid 308.

<sup>16</sup> Ibid 156.

<sup>17</sup> See, eg, David Collins, 'Towards a Grand Unified Theory of International Economic Law' (2015) 12 *Manchester Journal of International Economic Law* 140; Joost Pauwelyn, 'At The Edge of Chaos? Foreign Investment Law as a Complex Adaptive System, How It Emerged and How It Can Be Reformed' (2014) 29 *ICSID Review* 372.

Global South in other chapters, as if their voices were confined to this narrow perspective. Lastly, despite musings in the introduction that he will draw upon the practice of international law including his own professional experience, there is a dearth of ‘war stories’ in favour of academic commentary.

Given its exhaustive depth and intimate and nuanced understanding of a wide range of highly sophisticated approaches to a complicated field, *International Law Theories* is an essential reference point for anyone interested in serious international legal scholarship. It is also a remarkably enjoyable read. In no other single volume is such a breadth of critical material on this vast subject orchestrated with this level of clarity and perception — a truly indispensable resource.

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