

BOOK REVIEW

INFORMED PUBLICS, MEDIA AND INTERNATIONAL LAW BY DANIEL JOYCE (HART, 2020) 190 PAGES. PRICE USD44.63 (EBOOK). ISBN 9781509930432.

The present media landscape is increasingly fragmented. Amid an ‘infodemic’,¹ public debate has come to be shaped by a flood of febrile speculation across diverse digital ‘echo chambers’.² Unsurprisingly, the power of such media has transformed how the law is framed for public consumption. Perhaps less well known is its significant potential to regulate the development of legal phenomena too. Yet, despite this power and prevalence, international legal scholarship has largely overlooked the media as an object of academic enquiry.

Against this background, Daniel Joyce’s *Informed Publics, Media and International Law* offers a much-needed and well-crafted analysis of the relationship between media and international law. Filling an important gap in the literature, Joyce explores the interdependence and co-constitutive nature of media and international law. Specifically, his account is focused on two primary concerns: first, the absence of international media regulation, particularly global digital media, and second, the failure to acknowledge the dangers presented by the mediatisation of international law.

The central argument advanced is that international law is dependent on ‘informed publics’ to address pressing global problems. After fleshing out the concept, informed publics becomes the book’s central analytical theme and is used to critique international law’s attempts at regulation of the media.³ From a different angle, the book also highlights that establishing such publics is challenged by the increasing mediatisation of international law, including a neo-liberal turn to ‘publicity’ practices by international institutions.⁴ The broader implications of the argument speak to the risks posed by ‘communicative capitalism’: a commodified and unregulated marketplace of networked communications — as dominated by digital monopolies such as Facebook and Twitter — but which is at the expense of a more equal, inclusive and diverse set of information flows that truly enfranchise and inform publics.⁵

Joyce’s analysis is located across six chapters and, given the breadth of coverage, it is worth offering a detailed summary of their contents. In the opening chapter, Joyce explores the notion of informed publics and makes the

¹ On the term ‘infodemic’ and its origins, see Ben Zimmer, “‘Infodemic’: When Unreliable Information Spreads Far and Wide”, *The Wall Street Journal* (online, 5 March 2020) <<https://wsj.com/articles/infodemic-when-unreliable-information-spreads-far-and-wide-11583430244>>, archived at <<https://perma.cc/GG9G-XZLV>>.

² The figurative meaning of an echo chamber refers to environments where the views of a narrow set of persons are amplified and reinforced but, by implication, exclude or are less receptive to those persons with opposing views: see *Macquarie Dictionary* (online at 12 November 2022) ‘echo chamber’ (def 2).

³ Daniel Joyce, *Informed Publics, Media and International Law* (Hart Publishing, 2020) chs 2–4.

⁴ *Ibid* chs 5–6.

⁵ See Jodi Dean, *Democracy and Other Neoliberal Fantasies: Communicative Capitalism & Left Politics* (Duke University Press, 2009).

central case that they are crucial to the emergence of a diverse, inclusive, and more dynamic international society. Charting a brief history of the significance of public opinion and international law, Joyce rationalises why informed publics provide a useful lens with which to understand the intertwining of media and international law. Drawing on the work of Habermas, informed publics are pluralistic in character and crucial to challenge the structures and hierarchies of power in international law, as well as contest elite assumptions that publics are mere passive objects in need of one-way education.⁶ In making this argument, Joyce makes a powerful normative case: to realise the untapped potential of such publics in participating and shaping the priorities, values and agendas of international law.

In Chapter 2, Joyce situates efforts at international media regulation against the broader post-WW2 momentum towards a liberal economic and political order. In it, he argues that models of human rights regulation (based on freedom of expression) and other regulatory restraints (eg, laws on defamation, licencing, privacy and national security) simply defer to the media given its democratic function in both public awareness and deliberation. Likewise, international trade law, namely the framework offered by the World Trade Organization, offers a fragmented and loosely constructed regime that prioritises market freedom, but which fails to address pressing economic questions of media ownership, diversity and the risks of monopoly.⁷

Utilising the international legal regimes of human rights law, criminal law and humanitarian law, Chapter 3 considers the complex intersection of the media, international law and violence. By exploring punitive responses to incitement, hate speech and propaganda, the chapter highlights the dark side of media activity in ‘endangering publics’. This dark side emerges when it is in a mode of ‘attack’, perhaps the starkest example of which was the role of Radio Télévision Libre des Mille Collines radio broadcasts during the Rwandan genocide, as later explored by the International Criminal Tribunal for Rwanda.⁸ The discussion is brought up to date with a consideration of the way Facebook has been implicated and used as a tool for the organised persecution of the Muslim Rohingya population in Myanmar.⁹ Equally, the analysis highlights humanitarian law protections for the media given its function as a watchdog during conflict, such as security for gathering evidence of alleged crimes, as well as individual safeguards for journalists. What emerges is a double-sided approach in conflict settings; criminal prohibitions placed on the media but based on an underlying respect for media freedom, and yet, this dual approach does not address the real pressure on existing regulations due to the rise of digital media platforms.

⁶ Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, tr Thomas Burger and Frederick Lawrence (MIT Press, 1991).

⁷ Joyce (n 3) 61–2. See also *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995).

⁸ See *Prosecutor v Nahimana (Judgement and Sentence)* (International Criminal Tribunal for Rwanda, Trial Chamber I, Case No ICTR-99-52-T, 3 December 2003).

⁹ For a recent doctrinal analysis, see Mathias Holvoet, ‘International Criminal Liability for Spreading Disinformation in the Context of Mass Atrocity’ (2022) 20(1) *Journal of International Criminal Justice* 223, 242–8.

Chapter 4 concentrates on the regulation of digital media and its infrastructure. It does so, however, by telling a story of how regulation of this space began with telecommunications before examining the governance of the internet in the late 20th century, and more widely contemporary data governance. Of particular prescience is the analysis of ‘platform governance’¹⁰ and the threat that digital media platforms such as Facebook pose to democracy and individual human rights as highlighted by the Cambridge Analytica scandal.¹¹ There is a clear acknowledgement that digital media giants wield enormous power and are a critical global actor in the production and dissemination of knowledge and, as such, cannot be left to govern themselves due to their impact on public debate and the lived experiences of individual users. However, of the current preference for self-regulation, Joyce is damning:

[it] is offered and practised as a form of damage control. Regulation itself is mediatized as self-promotion and publicity. First comes the apology and then the virtue of self-restraint, all crafted with the goals of communicative capitalism at heart rather than driven by the interests, needs or rights of informed publics. This is a very hollow model ... with profit and the attention economy at its core.¹²

Before any novel models of regulation can be contemplated, there needs to be further examination of how international law is shaped by mediatisation. The penultimate chapter commences this analysis by examining how the process of ‘publicity’ shapes international institutions such as the International Court of Justice, the International Criminal Court, the United Nations system and the WTO, amongst others. More specifically, this turn to publicity is assumed to be essential in improving perceptions of the functioning, integrity, and transparency of these institutions. Yet, one is required to be circumspect and identify the dangers of publicity too: masking the underlying privatisation of international life and lending towards pacification, commodification, ‘dumbing down’, and most trenchant of all, its deployment as a cynical means to legitimate powerful interests and manage organisational reputation which, in reality, merely exacerbates existing legitimacy deficits.

¹⁰ Throughout the book, Joyce chooses to refer to these as ‘platforms’ and in doing so inadvertently risked endorsing the view that online giants such as Facebook and Twitter are not, or are less, responsible for content posted by individual users. Not only is this in contrast to the book’s central argument, it is also an unfortunate oversight given the long-standing coverage of the ‘platform vs publisher’ debate and the importance of shifting the terms of language and regulation which is advocated in the book. See, eg, Sam Levin, ‘Is Facebook a Publisher? In Public It Says No, but in Court It Say Yes’, *The Guardian* (online, 3 July 2018) <<https://www.theguardian.com/technology/2018/jul/02/facebook-mark-zuckerberg-platform-publisher-lawsuit>>, archived at <<https://perma.cc/79E8-32AT>>; Matthew Walther, ‘Facebook Is the World’s Largest Publisher — and That Should Terrify Us All’, *New York Post* (online, 20 July 2021) <<https://nypost.com/2021/07/20/facebook-is-the-worlds-largest-publisher-which-should-terrify-us/>>, archived at <<https://perma.cc/66TY-DU2Z>>; Aarthi Vadde, ‘Platform or Publisher’ (2021) 136(3) *Publications of the Modern Language Association* 455.

¹¹ Joyce (n 3) 110; see also Carole Cadwalladr and Emma Graham-Harrison, ‘Revealed: 50 Million Facebook Profiles Harvested for Cambridge Analytica in Major Data Breach’, *The Guardian* (online, 18 March 2018) <<https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-election>>, archived at <<https://perma.cc/XKJ4-ZRuz>>.

¹² Joyce (n 3) 114.

Drawing on a wider account of communicative capitalism and illustrating the wider mediatisation of international law, the final chapter turns to critique publicity in conflict and humanitarian settings. Specifically, the chapter examines the representation of refugees, to the growth of human rights information advocacy, to the communicative dimensions of humanitarianism. In it the chapter accounts for publicity techniques such as ‘framing’ that render lives and events either visible or invisible and which have the potential to not only entrench narratives and imagery in public consciousness, but also silence, infantilise and de-humanise minority groups such as refugees and victims of atrocities and/or humanitarian crises. These effects of publicity not only simplify and distort issues, but preserve the concentration of corporate powers. Joyce outlines the obstacles facing international law:

[T]o ensure that international law responds to the dangers posed by digital media monopoly, to its preference for technology in place of regulation or policy, and to wider challenges posed by the continued impoverishment and manipulation of the flow of information on the international plane.¹³

Joyce provides a genuinely rich interdisciplinary discussion in a book that makes its case cogently and robustly. By way of critical observation there are, however, areas where the account warranted further development to substantiate the claims. First, despite dedicating a chapter to its analysis, one is left with unanswered questions about the term ‘informed publics’: what do they look like? How ‘informed’ are they? How inclusive is membership of ‘public’ given its exclusionary tendencies that marginalise minority voices? And perhaps, fundamentally, why *publics* and not one (global) ‘public’? It is hard to overlook the fact that by envisaging publics in the plural, one is reflecting back the contested and fragmented state of international law, which, of course, makes global consensus difficult to achieve, and thus attempts at regulation just as difficult to implement. Otherwise, one might have been forgiven for thinking that what Joyce is imagining is an ‘ideal’ or ‘rational’ set of publics keen for neutral analyses of facts, but which overlooks the fact that publics are more likely to be emancipated and participate when *motivated* by narratives, emotions and stories that do not always appeal to rationalism.¹⁴

Relatedly, the argument’s emphasis on how regulation can normatively establish informed publics and facilitate their participation so as to ‘guide the development of international law’ did not entirely acknowledge the barriers to meaningful participation, or indeed what that participation looks like, eg, at the local, national or global level. It is equally uncertain whether such participation would guide the development of international law in a progressive direction. As Madelaine Chaim has recently argued the expansion of the language of international law in the public square has created a ‘popular international law’ that can be reduced to simple autonomous justifications which over-privilege questions of legality above considerations of morality and fraternity.¹⁵ In doing so, one might see enhanced ‘international law literacy’ but then see it utilised

¹³ Ibid 158.

¹⁴ See Matthew D’Ancona, *Post Truth: The New War on Truth and How to Fight Back* (Ebury Press, 2017) 127–9.

¹⁵ Madelaine Chaim, *International Law in Public Debate* (Cambridge University Press, 2021) 182

cynically in ways that portray individuals as ‘possessing whatever authority [is] needed to give a plausible opinion on international legality’.¹⁶ Put another way, despite some cautionary words, the exposition carried an expectation that informed publics would fulfil an instrumental and benevolent function, but that assumption was not meaningfully explored and addressed.

Second, there was a missed opportunity to more fully engage with the misinformation and disinformation dilemmas that are besetting both traditional and digital media. The current inability to tackle these dilemmas merely reflect the awesome power that is wielded by the so-called ‘tech giants’ and, by contrast, the fledgling power of the state. What was missing was a more principled and granular reckoning of the risk of ‘mis-informed publics’. For instance, it is clear that the prevalence of misinformation also reflects a ‘bottom-up’ symptom of a ‘mediatised society’ and the wider ‘attention economy, ie, the growing socio-cultural dependence on online interactions and peer-to-peer sharing of content that is deemed engaging, but which has, arguably, catalysed a decline in public trust in institutional expertise.

Third, perhaps an obvious critique, but there was an assumed degree of confidence in the potential of *international* law at a time when domestic regulatory responses are yet to be exhausted (if indeed implemented at all). Leaving that aside, one might fundamentally question the confidence in *law* when legislative interventions are proving difficult to pursue, frame, and ultimately enforce.¹⁷ No doubt the law is necessary but not a panacea and where regulators operate there is the inevitable slide towards technocracy and the risk of ‘regulatory capture’.¹⁸ Instead, whilst the account focused on law, the true cause for why *liberal democracies* (cf more autocratic regimes such as that in China) are unable to rein in the technology giants are ideological and socially embedded. It is the immovability of market individualism where society is not concerned with the pursuit of the common good, but about competitive value and advantage, that is at the root cause of the inability to tackle the concentration of power.¹⁹ If the real concern is the accountability deficit and how tech giants exercise an excess of unaccountable power, then it does not follow that only laws and regulations can secure it without a more wholesale ideological re-appraisal of the state’s relationship with private capital and the corporate sector.

Fourth, as has been acknowledged by the author himself in a different setting,²⁰ there was an opportunity in the final chapters for a deeper engagement with the ‘practices of persuasion and distraction’ that can accompany the pursuit of publicity.²¹ One such illustration is the deployment of marketing and branding

¹⁶ Ibid 178.

¹⁷ See for instance, the considerable debate about the UK’s Online Safety Bill currently going through the UK House of Commons. See ‘Headline Removed For Your Own Safety’ (28 May 2022) *The Economist* 23.

¹⁸ See Daniel Carpenter and David A Moss, ‘Introduction’ in Daniel Carpenter and David A Moss (eds), *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (Cambridge University Press, 2014) 1.

¹⁹ Jamie Susskind, *The Digital Republic: On Freedom and Democracy in the 21st Century* (Bloomsbury, 2022).

²⁰ See the online Zoom roundtable on the book organised by the London Review of International Law which took place on 15 December 2021.

²¹ See generally Christine Schwöbel-Patel, *Marketing Global Justice: The Political Economy of International Criminal Law* (Cambridge University Press, 2021) 41.

techniques in international criminal law. These techniques create an illusory and spectacularised version of justice that perversely adopts racial tropes and imagery and diverts attention from structural violence and Global North–South inequalities. Yet, despite the pejorative associations of marketing, ‘spin’, or even propaganda, what is lacking in the final chapters is a more balanced and neutral acknowledgement of public *relations* and its significance. At its core, public relations is less one-way publicity and more a two-way interaction that is necessary in democracies to inform and enable individuals to exert leadership, enable group associations, evaluate efforts made by organisations and to suggest courses of action.²² In the later chapters, there is a degree to which Joyce misses this potential of public relations to be a medium through which organisations *listen* and commence genuine dialogue that would be entirely consistent with the creation of informed publics.

None of the observations above, however, detracts from the fact that this is an impressive and extensively researched book that warrants serious engagement. It offers a concise and persuasive exploration of the role that international law can play in the regulation of the media and, equally, invites scrutiny on how processes of mediatisation shape the international legal system. The book will be of interest to both academic and practitioner audiences including those in policy circles wanting a thematic account of the potential of regulation. In illuminating this area, Joyce offers a critical perspective in analysing the deficits in participation and legitimacy in institutions such as the ICC that will also make the book of interest to those professionals working ‘on the inside’. Perhaps its greatest virtue, however, is to further catalyse research and build on an emerging and crucial body of literature drawing attention to communicative practices *in* international law and the nature of the public conversation *about* international law.²³ In making the case for informed publics, Joyce leaves the reader feeling more hopeful and optimistic about the future of the media and international law. At a time when there are more reasons to be sceptical, that is very much to be welcomed.

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²² E Bernays, *Public Relations* (Norman: University of Oklahoma Press, 1952) 1–12.

²³ Chiam (n 15); Schwöbel-Patel (n 21); See also Birju Kotecha and Daley J Birkett ‘International Criminal Justice in an “Age of Misinformation”’ (2022) 20(1) *Journal of International Criminal Justice* 1.

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