

Perhaps one extended example will suffice: his chapter entitled “Customary (and Not So Customary) Norms.” He unpacks the traditional requirements of state practice and *opinio juris*. He initially approaches customary law from a social-science perspective, seeing social norms enforced by community pressure as an important aspect of community life. He then examines some theories of social-norm creation, such as rational self-interest (as with diplomatic immunity: the so-called “market for norms”), psychological needs for norms, and the role of “norm entrepreneurs,” who might be religious leaders (as with the campaign against slavery), governments (as with the 1945 Truman Proclamation on the Continental Shelf), or, presumably, environmental NGOs—maybe even academics? He then reexamines the traditional requirement of custom—state practice and *opinio juris*—and applies these lessons to certain “established” international environmental law norms, asking whether they are actually customary in nature. Heretically, he asks if regular state practice actually reflects norms, such as the firmly established duty to prevent transboundary harm, and concludes that it does not. This assessment is certainly true of traditional pollutants of course—not to mention emissions of greenhouse gases—that still remain largely unregulated in many developing countries and some developed countries, such as, unfortunately, the United States. According to this approach, the precautionary principle fares little better. “If one were a government lawyer providing advice to policy makers,” he suggests, “then relying on the purported norms of customary international environmental law as the basis of one’s predictions would constitute malpractice” (p. 199). Heady stuff indeed.

What about the decisions of international courts and tribunals? one may ask of him; aren’t they the traditional basis for the analysis of custom cited in the overwhelming body of literature? Indeed, I, like most *AJIL* readers I suspect, already fell into his trap, citing above the recent ICJ *Pulp Mills* case and the 2011 ITLOS Seabed Disputes Chamber advisory opinion. At present, he says that “legal discourse that presupposes a judicial

audience plays to a largely empty house” (p. 203). *Touché*.

Like Monsieur Jourdain, the tradesman in Molière’s *Bourgeois Gentleman*, who discovered that for more than forty years he had been speaking prose without realizing it,⁵ I never thought of myself as a possible norm-entrepreneur; I shall begin to work on it directly.

More seriously, this book is challenging and thought-provoking and would, as I comment above, serve as an excellent introductory book for students approaching international law for the first time, not just international environmental law. My only complaint is addressed to Harvard University Press, rather than the author. The notes are all collected at the back of the book—not even at the end of each chapter (which I also hate in any event)—and the numbering is not cumulative, so each chapter’s notes begin from 1. There are more than 150 pages of notes, so they are a major part of the work.

Nevertheless, I will definitely be recommending it for my classes and strongly recommend it to others. It manages to combine a lot of sharp analysis and scholarship with a degree of controversy, all presented in an honest and engaging style. It has, with obvious justification, already been awarded the 2011 Harold and Margaret Sprout Award by the Environmental Studies Section of the International Studies Association.

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⁵ MOLIÈRE, *LE BOURGEOIS GENTILHOMME*, act 2, sc. 4 (first performed in 1670).

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