

International Law and Its Discontents: Confronting Crises. Edited by Barbara Stark. New York, NY: Cambridge University Press, 2015. Index. Pp. xi, 306. \$102, £67.
doi:10.1017/ajil.2017.67

This volume originated as a panel organized for the American Society of International Law Conference in 2010, the theme of which was Dealing in Complexity. As the editor of the volume, Barbara Stark, a professor of law at the Maurice A. Deane School of Law, Hofstra University, explains in her introduction, the panelists were invited to reflect on the topic of international law and its discontents—drawing of course on Freud’s *Civilization and Its Discontents*¹ and more modern versions on the theme, such as Joseph Stiglitz’s *Globalization and Its Discontents*.² The financial crisis of 2008 is a major theme of the book, and the essays contained within it are divided into four sections: The Environment (essays by Ileana Porras and Karin Mickelson); Gender (essays by Dianne Otto and Barbara Stark); Sovereign States (essays by Dan Danielsen and Andrew Strauss); and International Political Crisis (a coauthored essay by Brad R. Roth and Sharon F. Lean, and Jeanne M. Woods). Freud, civilization, discontent, violence, crisis, Stiglitz—this is a rich matrix of authors, concepts, and theories upon which to draw for the purposes of reflecting on the “discontents” of international law, and the contributors have responded by providing rich and provocative works.

This is an engaging and valuable volume not only because of the range of issues it covers, but also due to the different techniques and approaches it presents collectively. The environment is the subject of the first two chapters, by Ileana Porras and Karin Mickelson, respectively. Porras’s long chapter offers a wide-ranging examination of the environmental crisis, which extends from a sharp image of human nature

that focuses not so much on man’s propensity toward violence, as is commonplace in discussions on the laws of war, but on the human instinct to consume. Porras argues the concept of “scarcity” has driven the development of international law: it has justified imperialism; the ongoing exploitation of natural resources; and, more intimately, the consumer behavior that is now animated by anxiety and insecurity as consumerism is so central to identity and status. Given all these imperatives, the idea of “sustainable development” is scarcely capable of restraining a set of forces that society and international law have put in place. The argument made here is especially effective because it draws with such facility and expertise on doctrine, history, and social theory. It connects, for instance, theories of providence developed by scholars such as Grotius to elaborate on their ideas of property and trade, to the formation of a set of practices and attitudes that now threaten the existence of the planet. For Porras, sustainable development, arguably the most central concept of the entire discipline of international environmental law, has failed because it has fed the fear of scarcity, which exacerbates the environmental crisis, while also lacking in any meaningful and effective implementation. Porras offers a series of broad and provocative proposals. She suggests for instance that it might be “time to set aside the concept of sustainable development, and to replace it with a concept that emphasizes environmental justice” (p.81). This shift is all the more interesting as Porras was herself involved in the 1992 Rio negotiations, and her chapter, “The Rio Declaration: A New Basis for International Cooperation,” was an especially good introduction to the topic.³

Karin Mickelson also addresses the failure of international environmental law to effect anything like the changes needed to begin addressing the issue of climate change. She points out that resource extraction is crucially connected to ideas of nation building, offering Canada as an example; and resource exploitation continues

¹ SIGMUND FREUD, *CIVILIZATION AND ITS DISCONTENTS* (1930).

² JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* (2002).

³ Ileana Porras, *The Rio Declaration: A New Basis for International Cooperation*, in *GREENING INTERNATIONAL LAW* 20–35 (Philippe Sands ed., 1993).

unabated regardless of the fact that we are heading inexorably toward environmental catastrophe. Despite ongoing efforts of international law to develop regimes to alleviate this situation, “[a]lmost 90 percent of fish stocks are either close to or past the limit for maximum sustainable production” (p. 90). The central issue haunting the writings of both Mickelson and Porras is that the gravity and magnitude of the environmental crisis, surely amongst the most compelling we confront, has not led to the changes in behavior and policy that are needed to prevent it from escalating. For Mickelson too, sustainable development has failed—this is because it proposed a balance between economic development and environmental protection that falsely suggested the two goals could be achieved simultaneously if only appropriate adjustments could be made. It is in this way that international law itself is at “war” against nature. And the concept of civilization itself, for Freud, was marked by a departure from “nature.” Our basic way of life then is fundamentally at odds with environmental protection.

These two opening chapters suggest crucial questions: if international law is a “discipline of crisis” as Hilary Charlesworth persuasively argues, who defines the character of a “crisis” and the appropriate responses to it? Why is it that another major crisis that has marked our times, the 9/11 attacks, has generated such an instant, overwhelming, and massive response, whereas the financial crisis and the environmental crises have changed the way things are far less significantly? The nature of the changes justified by 9/11 are explored in telling detail by Jeanne Woods, who again takes a historical approach to suggest ways in which new forms of violence have now been developed in the name of security and the war on terror may be traced back to scholars such as Vitoria and Grotius and their views of “just war.” Further, war is inseparable from political economy, slavery, land appropriation, and the other elements of imperial rule. While referring to his work, Woods goes far beyond Stiglitz and his critique of globalization; she argues that the essential characteristics of globalization must be traced back to the colonial

period and the systems of political economy and violence that were established at that time. A basic ambivalence features here, for civilization both eschews violence—the state monopolizes violence after all and the state is the acme of modernity—while also relying on and expanding the realm of violence.

Dianne Otto, also drawing on the concept of crisis and emergency and the justifications they provide for the expansion of the law, explores a far less publicized sort of crisis. She introduces the concept of “sexual panics,” the invocation of sexual exploitation to justify a preoccupation with the regulation of sexuality. The dynamics of sexual and gender panics are evident in the argument that wars in Afghanistan, for instance, would save women from primitive customs but they may also be seen in the context of human trafficking, sex work, or sexual relations between peacekeepers and the civilian population. Otto argues that the resulting legal strategies often have the effect of overlooking, if not obscuring, the underlying social and economic inequalities, the hardship and the poverty that are an everyday feature of the women involved. It denies the women agency—even if that agency has to be exercised within the context of structural inequality. Like many others in the volume, Otto attempts to reframe issues that international law claims to be preoccupied by; rather than trafficking, for instance, she would focus on issues of human rights, labor, and structural inequality. And she suggests ways of rethinking crisis and its effects in order to make progressive use of them.

For Stark, the striking feature of international law is its inability to respond to the crisis confronting women as a result of ongoing financial shocks. While globalization has been furthered by trade and investment regimes, international law norms relating to labor, the environment, and human rights have been only haphazardly and inadequately implemented. She discusses the startling research produced by the Harvard School of Public Health study which “describes the decline and stagnation in average heights among women in fifty-four poor and middle-income countries” (p.139). The fragmentation

of international law into specialized regimes with different levels of enforceability has had a clearly negative impact on women's rights, and efforts to "mainstream" human rights have only resulted in the reduction of funds for specialized women's units within UN agencies (p.155). The prospects of major financial actors being regulated to prevent further crises seems remote.

While dealing with very contrasting areas of law, Otto, Woods, Porras, and Mickelson in different ways suggest that the underlying and persistent problems we face have to do with the structure of political economy and the neoliberal system that has been entrenched and expanded through globalization. The crucial question then arises: how are we to understand this system and its operations, and its relationship to international law? Why do some regimes, of investment and trade, expand, while others, regarding human rights and environmental protection, fail?

Dan Danielsen's piece in Chapter 5, "Corporate Power and Instrumental States: Toward a Critical Reassessment of the Role of Firms, States, and Regulation in Global Governance," offers one sort of critical work, a far-reaching exploration of the analytic frameworks that structure our thinking on major issues such as international economic governance. Danielsen argues that the dominant thinking on governance is based on a view in which a balance has to be struck between public regulatory authority—represented by the state—and the market. Danielsen's article is devoted to demonstrating how inadequate this idea is either in terms of understanding how governance structures evolve, or how governance takes place. He argues, this model "is neither helpful as a means of describing the actual operation of the global economic and regulatory order as it currently exists, nor useful in explaining why a public global order intended to promote general welfare is leading to increasing asymmetries in power and resources both among states and within states" (p.175). A crucial aspect of this analysis is Danielsen's account of how firms (in an interesting decision he uses that term rather than "corporation") operate and "govern." Eschewing easy generalizations about the power of "the state"

or "the firm," Danielsen argues that what is needed is a more nuanced and contextualized picture of the specific ways in which regimes are created by interactions amongst multiple actors whose identities—and resources and capacities—vary in each setting. Thus, no easy generalizations can be made to the effect that all firms benefit from a particular regime—firms, after all, compete with each other and regulations have a differential impact on them—or that we have shifted to something like a rule by corporations, or that what is needed in general is "more regulation." Small states can undermine highly developed legal regimes—for instance, the bank secrecy laws of the Bahamas. Danielsen is powerful and persuasive in his argument that generalizations should be avoided, and in his call for a more nuanced understanding of how governance evolves. The classic work of Braithwaite and Drahos might be seen as embodying the sort of analysis he calls for.⁴ The question then remains, however, as to whether we should regard inequality as an outcome of a systemic trend or simply a coincidence of aggregations in various ways. And while the specifics of how particular regimes come into place require detailed and specific study, perhaps it is now established that the international foreign investment regime, for instance, has considerably expanded the rights of private entities in general. Danielsen argues that until we engage in this analysis and have a better map and understanding of these processes and institutions, it would be difficult to offer any prescriptions as to what needs to be done. He seeks to expose the "gaps and conflicts in the logics of the regime's self-articulation" (p. 193); and thus invent ways of "understanding, strategies of resistance and mechanisms for progressive transformation" (*id.*).

If chaos is a ladder and crisis an opportunity, will it generate new initiatives and responses by international law and institutions? Andrew Strauss, drawing on the ambitious and important work he and others such as Richard Falk have engaged in for decades now, suggests ways in

⁴ JOHN BRAITHWAITE & PETER DRAHOS, *GLOBAL BUSINESS REGULATION* (2000).

which inequality and crisis may further the demands for more global democracy: the formation of a Global Parliamentary Assembly (GPA). The GPA has received some support from various bodies such as the Human Rights Council (p. 214). Such a body would enhance the prospects of an integrated, people-based, rather than state-based, approach to global well-being. Strauss draws upon the functionalist approach of David Mitrany, arguing that the emergence of the GPA is consistent with functionalist theory: the development of institutions to deal with ever more complex phenomena. Strauss's argument is interesting, however, because functionalism also lends itself to the domination of expertise and technocracy rather than democracy. Complex issues arise here about the extent to which political action and democracy can unseat the logic of capital. This is also a theme taken up by Roth and Lean in their examination of the Bolivarian Alliance for the Peoples of Our America—the effort made by Hugo Chavez to spearhead an alternative to a globalized, neoliberal world order. Roth and Lean argue that while the initiative had its flaws, it was nevertheless significant as it “prominently restored the socioeconomic component to the international conversation about democracy and human rights—a component that had been effectively relegated to the margins for nearly a generation” (p. 248).

Much, of course, has happened in the relatively short time since this book was published. The crisis that this book sought to explore, the inequalities and hardships caused by globalization, have been felt not only in the Third World, but most dramatically, in the rich world itself—the United Kingdom and the United States. Change has been wrought, not in an orderly way that is attuned to environmental and economic crises and an urgent sense of global interconnectedness that drives the need to develop a system that furthers global welfare, but rather by a return to atavistic urges, to a nationalism that proponents of globalization have overlooked or dismissed. Each of the authors suggests, in various ways, that the crises and tensions of globalization would create

political gaps and frictions and opportunities. Those frictions and opportunities have been filled by a force that Freud would also have recognized as powerful and primitive: nationalism. There is surely a chapter that must now be added that deals with the complex issues of the effects of globalization on identity, on nationalism. What the book offers, is a valuable and enduring set of insights into the character and causes of the crisis, and the role that international law has played in its furtherance. Perhaps acknowledging that role is the beginning of ways of thinking beyond it.

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BOOKS RECEIVED

International Law—General

- Bennouna, Mohamed. *Le droit international entre la lettre et l'esprit*. La Haye: Académie de droit international de La Haye, 2017. Pp. 298. Index.
- Costelloe, Daniel. *Legal Consequences of Peremptory Norms in International Law*. Cambridge, UK: Cambridge University Press, 2017. Pp. xlvi, 322. Index.
- Dawidowicz, Martin. *Third-Party Countermeasures in International Law*. Cambridge, UK: Cambridge University Press, 2017. Pp. xxiv, 431. Index.
- Mälksoo, Lauri. *Russian Approaches to International Law*. New York: Oxford University Press, 2017. Pp. xii, 225. Index.
- Rossi, Christopher R. *Sovereignty and Territorial Temptation: The Grotian Tendency*. Cambridge, UK: Cambridge University Press, 2017. Pp. xiii, 356. Index.
- Ziccardi Capaldo, Giuliana. *The Global Community: Yearbook of International Law and Jurisprudence*. New York: Oxford University Press, 2017. Pp. xxi, 920. Index.