

BOOK REVIEWS

State Responsibility in the International Legal Order: A Critical Appraisal by KATJA CREUTZ [Cambridge University Press, Cambridge, 2020, 352pp, ISBN 978-1-108-49429-8, £95 (h/bk)]

In Ibsen's play *The Enemy of the People*, Dr Stockman fights relentlessly for the truth, even if it runs counter to the wishes of the majority. Reflecting this Nordic tradition, Katja Creutz challenges the generalised support for the regime of international State responsibility and argues for caution in approaching this 'shiny apple' because it might be rotting at its core.

After more than a century of scholarly literature on the topic of international State responsibility, Creutz's book feels honest and refreshing. Creutz argues that the legal framework of State responsibility is very limited when it comes to tackling the problems and complexities of the modern world. Consistent with Nordic legal realism, Creutz pragmatically approaches the topic and highlights the shortcomings of the regime in light of the rise of non-State actors, which has changed ways of governing, as well as the rise of new phenomena and threats, from climate change to human cloning. She argues that the law of international State responsibility is too general to be useful, either for upholding legality, to compensate victims, or to prevent future violations. But this is not a book about disillusionment with international law. The author's criticism is constructive. She highlights more effective alternative constructions of responsibility, notably international liability and international criminal law.

Creutz organises her book into four parts that follow logically from problems and causes to consequences and alternatives. First, she begins by presenting the contemporary challenges to State responsibility; both internal, from within the system itself, and external, those posed by globalisation. The second follows a historical account of the conceptual construction of the regime, with strong methodological and theoretical support. The third part pinpoints some of its structural problems, showing the practical limitations of its central concepts, from attribution and wrongfulness, to remedies and dispute settlement. Finally, the book ends by discussing the fragmentation of the regime and alternatives to responsibility that are better suited to tackling current challenges, namely international liability and criminal law.

The book, stemming from her doctoral dissertation, has a solid and diverse basis regarding both case law and scholarly works. Readers will not find an article-by-article analysis of the International Law Commission's articles on the topic, but rather a holistic approach to the regime. She stands on the shoulders of giants in order to contribute to a wide range of international legal fields, from investment and human rights law, to climate litigation and space law.

The direct and clear style makes it an accessible, informative and interesting read, not only to lawyers, both scholars and practitioners in these fields, but also to anybody interested in international accountability. This topic of international accountability could have been addressed in a more straightforward fashion, as it could be argued that the regimes of international liability, international criminal law and international State responsibility, are all complementary mechanisms of international legal accountability, rather than a fragmentation of the regime of State responsibility. Also, the book lays fertile ground for discussions of the degree to which such fragmentation is by design, rather than accidental.

The sole hint of disenchantment with international law comes when the author advances arguments concerning the factual inequalities of States and how State responsibility is used as a mechanism to advance the interests of powerful States. But no field of law, whether domestic or international, can escape the ultimate argument of 'political will'. Moreover, as the author's approach is pragmatic, the argument of political will could not have been avoided. She swiftly moves beyond this discussion towards more constructive arguments, filled with strong legal theoretical and practical implications.

Her work is timely, as the regime of State responsibility is currently itself on trial in the Rohingya genocide case (*Gambia v Myanmar*) before the International Court of Justice, and is also of great

relevance for discussions concerning the consequences of potential breaches of international obligations regarding the Covid-19 pandemic.

MONICA NAIME* 

A Landscape of Contemporary Theories of International Law by EMMANUEL ROUCOUNAS [Brill Nijhoff, Leiden, 2019, xvi + 702pp, ISBN: 978-90-04-38535-1, €380/\$456 (h/bk)]

Professor Emmanuel Roucouas, born in Zagazig, Egypt, now in his 88th year, takes inspiration apparently from that other Greco-Egyptian author, Athenaeus. In Athenaeus's *The Deipnosophists*, a series of erudite discussions by philosophers and other learned personages occur over dinner. Rather than presenting us with a singular thesis, Roucouas gathers the authors he tells of and adopts something of Athenaeus's dinner conversational tone. In the Preface, he describes the landscape of theoretical writings on international law as one consisting of some 500 authors, whose contributions require an unusual structure and approach to the way we might understand and explain them. When put together, the array of voices resembles what Roucouas terms 'a choir group without a choir master'. There are voices of 'widely recognized virtuosi, tenors, sopranos, prima-donnas, basses and *sotto voce* chanters, imitators, and those who only hum or sing in languages not understood by the others'. There are soloists, ensembles, and even madrigalists who use different melodies. While some exceptions lend a 'semblance of disarray', most carry on harmoniously. Some have never even heard of the others, whom they simply ignore, but all are together on the same stage. The distinguished author, a leading light in the firmament of Greek international law scholarship and member of the Institut de Droit International, considers that our choristers comprise some 30 or more subgroups, although only three or four major groupings are usually observable to the naked eye.

Professor Roucouas, calling his book a mere sampling of these various writers' views, admits his is a daunting task, but says simply that the challenge of 'seizing the momentum' to offer a rendition—an 'image', as he puts it—of the state of theory at this time has proven attractive. He cautions us, however, that there is mystery involved when one attempts to answer the question—When does a voice become a theory? In the age of the blogosphere and countless publications in endless journals that becomes not only a real question but one bound up with the technological transformation of international law scholarship.

Thankfully, the author confines himself to the more traditional sources of writing. Part I is about the nature and place of theory, and the history of theory. Part II comprises a survey of 'enduring' and new schools. It discusses liberal agendas; the 'positivist stronghold'; natural law writing in all its guises, be it repackaged, explicit, hidden or borrowed; realism; idealism; rationalism; pragmatism; empiricism and formalism. There are others, classified separately, though most of which we might subsume under the broad church of realism—the Yalies, Harvardian crits, fem-crits, bloods and Twailers, the economists, and public choice theorists. There is functionalism, instrumentalism, there are regime theorists, European crits and more, much more. We are treated to a kaleidoscope of colourful cameo appearances.

Professor Roucouas offers terse but gentle opinions on a seemingly endless array of theorists new and old. The views on contemporary authors are especially fascinating, expressed—as with our learned banqueters in the *Deipnosophists*—as if we had caught the author himself in mid-dinner conversation. Harold Koh did that, here is Stephen Krasner's influence on lawyers, Hermann Mosler thought that of regimes, Keohane understood this, but for Stephen Toope and also, lest I forget, both Jutta Brunée and Stephen Toope did once elaborate upon and emphasise ... then, suddenly, we are plunged into Diogenes, Demetrius of Phaleron, whom one is told wrote the first book on international diplomatic law.

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