Book Review

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Johnstone’s book deals with an age-old anxiety of international law and international lawyers: What is the role of international rules and principles in world politics? How does international law escape being a ‘sorry comforter of power’ or an irrelevant utopian project detached from reality? Challenges to the relevance of international law have come from realists such as Carr or Morgenthau, law and economics scholars such as Goldsmith and Posner, or from the critical legal studies movement as it developed since the late 1980s. As it is “difficult to imagine today a sphere of social activity that would not be subject to some type of international legal regulation”,¹ questions about the social and political impact of law have become only more acute. Johnstone takes up these questions, drawing from theories of deliberative action as well as his personal experiences at the United Nations, where he was inter alia political officer at the Executive Office of the Secretary-General. The result is a highly interesting study that combines insights from political and legal theory, political science, and international law across different functional fields and professional practice.

The book is based on the premise that understanding the dynamics of power in world politics requires an understanding of the dynamics of deliberation between powerful actors. Legal deliberation takes a distinct place among the discursive practices that structure world politics. International legal discourse revolves around a set of sources, specific curricula at universities, accepted methods of interpretation, privileged interpreters, groups of experts, and so forth: elements that set legal argumentation apart from other forms of deliberation. States invoking international law thereby subject themselves to discursive discipline: they have to follow certain tropes of argumentation in order for their claim to be heard as an international legal argument. Of course,

the motivation for states or other agents to rely on international law may be purely self-serving and strategic. The disciplining force of international law, however, does not depend on the motivations of states, but on the invocation of legal arguments as having intersubjective validity. In other words: states making international legal arguments should be willing to accept that the same legal argument can be used against them at some later stage. According to Johnstone, intersubjective validity claims are produced, assessed and critiqued in so called “interpretative communities". The notion of the interpretative community was originally put forward by Stanley Fish to make sense of the practice of (legal) interpretation, not as a way to identify specific groups of interpreters. Johnstone, however, makes a deliberative attempt to locate the relevant interpretative communities in international law more concretely. For him, international legal interpretation takes place in three concentric (and not closely sealed-off) circles:²

The inner circle consists of individuals responsible for the creation and implementation of a particular legal norm. It is surrounded by a second circle of government officials, lawyers, and other experts engaged in professional activities associated with the practice or issue regulated by the norm .... Around these two concentric circles is an even more amorphous constellation of actors whose interests are affected and ... accounted for by those in the two inner circles.

Throughout the second part of the book, Johnstone shows the three circles at work, with a particular focus on international organizations, which he regards as the space (or “public spheres”) where interpretative communities coalesce. The book takes the reader through legal deliberations in the fields of the responsibility to protect, counter-terrorism, nuclear non-proliferation, peace operations, operational activities of international organizations and trade. All these more practice-oriented chapters provide concise and very clear overviews of some recent legal developments, including their political and societal background. They not only inform the reader about the selected interpretative communities at work, but also raise several questions for further research. For example, Johnstone’s analysis raises further questions as to how certain groups manage to establish themselves as authoritative interpretative communities and what the role of the scholar is in identifying (and thus reifying) certain