

humanitarian law and each subject's interaction with the other.

*reviewed by* JEREMY LEONG

*A Foucauldian Approach to International Law: Descriptive Thoughts for Normative Issues*  
BY LEONARD M. HAMMER [Hampshire: Ashgate Publishing Limited, 2007. vii + 154 pp. Hardcover: US \$99.95/£55.00]

In his book *A Foucauldian Approach to International Law*, Leonard M. Hammer eschews the "outmoded statist approach" and joins in the struggle to find a viable framework of international law.

The author nominates the ideas of Michel Foucault as the way forward in this endeavor, arguing first that such an approach can begin to address the dichotomous issue of norms, objectivity and state interests by transgressing the context of examination, and also that an alternative notion of power, which Foucault can provide, will begin to look at the manner by which states alter their positions, thereby recognizing the proper role of external actors as well (17). In this, Hammer neatly straddles the Constructivist emphasis on the social nature of the international system and the intersubjective constitution of actors and their interests, and the Poststructuralist critique of underlying discursive structures in their attempt to transcend the Westphalian statist paradigm. In his book, Hammer draws predominantly on three of Michel Foucault's more well-known and related ideas.

First, the author uses Foucault's notion of "discursive formations" to lay the foundations for a framework of international law that allows for not only the state, but the resistance amongst various external actors, to constitute power. Within this perspective, international law functions as part of the process of shaping states and allowing the reactions of these states in turn to further influence and shape the social process. Hammer argues that this way, the various and shifting positions of states and other actors with regard to international law may be accounted for (22).

Second, the author utilizes a Foucauldian analysis of power, postulating that that is helpful in the examination of the interplay between actors that constitute the processes of international law. It brings to the fore the notion that power is not simply divided up between

the various entities, but rather is distributed throughout complex social actions which serve to modify the actions of others—and not just because "a dominant agent possesses power in any structured sense" (22-23). The assertion here is that power is a multi-layered process that becomes part of an ongoing process of domination and resistance, and whereby not only the resistor but the actor asserting the power is subject to new influences and continually clarifies his role. As the author emphasizes strongly in his book, this power and influence pertains not only to states themselves, but also to the non-state actors.

Finally, Hammer attempts to apply the significant link between Foucauldian ideas of power and those of knowledge to issues of international law. With reference to international relations, the author asserts that: "Initially one might conclude that with the increase of the ability to acquire greater extensive knowledge, the means for controlling others will also increase. Nonetheless, concomitant with the acquisition of greater extensive knowledge is the development of more intrusive inquiry by all actors who are involved in the discourse" (26).

In sum, the author contends that the benefits of a Foucauldian approach lies in the most part not in discerning the law as such but in its ability to "account for the ongoing changes and developments as evidenced by the continuing discourses of the various actors" (28). Thus in each chapter, various issues of international law are seen through the prism of this perspective.

In "Chapter 3: Recognition, Transformation and Power", it is argued that while the recognition of international personality of a state might not serve in a constitutive sense in creating a state, there are ramifications emanating from a recognition decision for the status of the state and its international legal capacity (such as, for example, for commercial and diplomatic discourse). The idea here is that it would be useful to view recognition as having a more process-oriented nature, whereby recognition is seen as an ongoing reflective form of state policy and as a reflection of authoritative responses to the status of the entity by international agencies and governmental bodies. The premise is that the application of Foucauldian ideas of power would lead to a transformative framework for the constitutive elements of recognition. Within such a paradigm, both the "constant re-interpretation of events that derive from surrounding political and social effects", and the contingent nature of perception itself are acknowledged (44).

Likewise in “Chapter 4: Transgressing Problems of Customary International Law”, the author once more prescribes Foucauldian notions of knowledge and discourse as a step forward in dealing with the problematic issue of customary international law, and the discrepancies between *opino juris sive necessitatis* (“*opino juris*”), which constitutes the so-called subjective element of customary international law regarding a state’s claim of what it believes to be obligatory on one hand, and the more objective state practice that demonstrates evidence of a belief by the state that a practice is obligatory on the other (51).

The emphasis here is that upon considering the development of customary international law, the crucial element is not necessarily the internal organization of the terms or the present status of the norm (as reflected by practice), but rather the effects the discourse on customary international law is having on the actions of states. In this way, customary international law is not so much a matter of attaining the truth of the status of a particular norm, as it is the gauging of the effect of the discourse on the actions and beliefs of other states concerning their obligations. Customary international law thus becomes a compound of knowledge and practices, drawing together diverse problems, attitudes, and perspectives.

From chapters 5 to 7, the focus is on human rights and related issues in the international arena. It becomes clear as the book progresses that while expounding on a range of issues on international law, this is the author’s main passion and concern.

“Chapter 5: A Descriptive Moment for Freedom of Religion or Belief” introduces the idea that a belief (as a human right) is not a power play between the state and the individual or the majority group and the minority group, but a valuable contribution to an on-going social discourse in which there are no absolutes. In the most concrete argument in his book, the author cites two main cases from the European Court on Human Rights. In one, the claimant sought restitution for a violation of article 9 of the European Convention on Human Rights and Fundamental Freedoms by the French government for disallowing the claimant to slaughter animals in accordance with a more stringent interpretation of Jewish law. In the other, a child from a family of Jehovah Witnesses had been suspended from school for not attending a public celebration of the outbreak of World War Two outside of school hours because the

presence of military authorities at the parade proved an obstacle to the child’s (and family’s) beliefs. In both cases, the author criticized these verdicts, asserting that the Court should have been cognizant of the fact that the manifestation of beliefs, right or wrong, should have been treated with more respect as part of an on-going social discourse for the formulation of human rights.

However, the author’s contention is problematic. His argument is predicated on two assumptions: 1) That the achievement of truth is part of the eventual goal for a religious believer, and 2) that a believer does not seek to subject others to his or her particular view. Given these assumptions, it is possible, through continual discourse between individuals and groups, that a social balance would be achieved. While this is something that should be aimed for, these assumptions should be deemed aspirational rather than entrenched in reality, since many religious individuals (and organizations) today are not so much premised on the idea of seeking after the truth, but rather that they are already in possession of an immutable truth presented to them by an omniscient entity. Their purpose then is not to engage in social dialogue, but to continually struggle to assert the preeminence of their version of the truth.

But certainly to some extent, social interactions are indeed derived from discourses that not only influence, but also have been influenced by surrounding social factors. The significance of this is that we do not only alter our modes of operations because of a particular belief but, because of the transformative process, we also modify the rules of formation (91).

Turning to another aspect of human rights, one of the contentions made in the book is that a human security approach to issues of international relations may help transcend the Westphalian state-centric approach to international law and international relations. In “Chapter 6: Human Security from a Transformative Context”, the author suggests that within the human security context, the importance of providing security for specific population groups rather than the centrality of the state is the main focus. Thus the state is not acting solely for the benefit of its existence, but also for the improvement of the individuals (citizens and others) who fall within the state’s purview (107). Such a focus on the security of individuals and groups within the state certainly goes some way in providing a viable approach to the rife internal and secessionist conflicts that have sprung up in the post cold-war period. For Hammer,

perceiving human security as a process readily adapts to the approach of Foucault. He asserts that “security, as understood by Foucault, is not a broad element of political power to be exercised by the state, but a principle of political method and practice capable of various modes of combination with other principles and practices within the diverse government configuration” (110). This brings us back to a main idea woven throughout the chapters of the book—the notion that it is the social process and discourse rather than the outcome, which should be the focus for a more meaningful discussion of international law to take place.

Related to Human Rights is the explosion of non-governmental organizations that exist to promote Human Rights and other issues. “Chapter 7: Non-Government Organizations and Power” focuses on the emergence of global civil society and the profusion of non-government organizations that have been established in recent years. The author argues that the variety of interests represented by various non-government organizations and the influence of these in the international arena “reflect emerging roots of some form of international governance that recognizes the derivation of power from a host of non-state actors” (125). From a Foucauldian context of power, Hammer postulates that “[r]ather than examining non-governmental organizations pursuant to their link to the state (which tends to limit the scope and operation of the NGOs), it would be of greater benefit to consider the altered power arrangements that have resulted from the ongoing resistance offered by non-government organizations that have shifted the capacity to govern outside the realm of the state” (125).

Each of the seven chapters clearly explicates and reiterates the basic aim of the book, which is to consider issues pertaining to international law from a perspective that elucidates relations between the participating actors from a transformative context while at the same time highlighting the importance of discourse and the ensuing role of power and knowledge (130). This work urges a de-coupling of international law from the traditional Westphalian notions of state sovereignty, allowing for the interaction and influence of actors above and below the state level. By doing so, the author makes an important contribution to the discussion of a more accommodating framework of international law and international relations. He argues convincingly for a transgressive framework, suggesting that the focus should be on the fluidity emanating from on-going discourse rather than on a

more static outcome-based approach. As the author himself asserts, “it is important to provide notions that allow for a broader spectrum of views and ideas without summarily dismissing perceptions that are inherently contrary to what is understood to be the legitimate system” (133).

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*Leashing the Dogs of War: Conflict Management in a Divided World* EDITED BY CHESTER A. CROCKER, FEN OSLER HAMPSON AND PAMELA AALL [Washington D.C.: United States Institute of Peace Press, 2007. xviii + 726 pp. Softcover]

In 1996, *Managing Global Chaos: Sources of and Responses to International Conflict* presented us with an exposition on the post-Cold War sources of international and intra-national conflicts. Analyzing issues of global security in a world which was just getting to grips with an invigorated era of globalization and its resulting phenomena, its focus was on the weaknesses of new post-Cold War societies and the violence in the Balkans, Africa and the Caribbean.

Five years later, *Turbulent Peace: The Challenges of Managing International Conflict* provided a deeper discourse into a fractious and differentiated international society which had already been confronted with some of the fallacies and disillusionment of globalization's promises of integration and peace. More importantly, it brought third party or multi-track diplomacy to the forefront as diplomats and policymakers realized that third parties have a niche role to play in international conflict management. In globalization, international relations found both an opportunity as well as utility for dexterity in its affairs.

Unfortunately, *Turbulent Peace* was published before the terrorist attacks of September 11 and hence, does not reflect and record the paradigm shift in international relations and international law scholarship that took place since. As the third installment of this series by the United States Institute of Peace, *Leashing the Dogs of War* aims to do that and more. Clearly, this book had big shoes to fill. However, assembling, again, an outstanding repertoire of experiences from leading international relations practitioners and scholars, *Leashing the Dogs of War* does not disappoint.

It is an excellent textbook for the international law and/or international relations student