

HUMANIZING THE PAX-AMERICANA GLOBAL EMPIRE

HUMANIZING OUR GLOBAL ORDER: ESSAYS IN HONOR OF IVAN HEAD. Edited by Obiora Chinedu Okafor and Obijiofor Aginam. University of Toronto Press, 2003. Pp. 214.

*Reviewed by James Thuo Gathii**

The 2003 United States-led war in Iraq and a series of militarized humanitarian missions under the United Nations after the end of the Cold War changed the way the world viewed international military action. Previously, both liberal and conservative internationalists criticized military conquests not preceded by armed attacks. Indeed, critics were reluctant to endorse military actions intended to end genocidal violence and serious violations of human rights.¹ The Bush doctrine of unilateral preemptive action radically departs from the internationalists' perception of justification for the use of force. First, the Bush doctrine evidences a full acceptance of military expansionism in the name of global security in the face of international terrorism. Second, it is regarded by many, including its proponents, as a strategy for maintaining American global dominance.²

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1. See, e.g., Michael Byers, *Recourse to Force: State Action Against Threats and Armed Attacks*, 97 AM. J. INT'L L. 721 (2003) (reviewing THOMAS M. FRANCK, *RECOURSE TO FORCE: STATE ACTION AGAINST THREATS AND ARMED ATTACKS* (2002)). But see 2002 NAT'L SEC. STRATEGY, at <http://www.whitehouse.gov/nsc/nss.html> (last visited Oct. 11, 2004).

For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack. Legal scholars and international jurists often conditioned the legitimacy of preemption on the existence of an imminent threat—most often a visible mobilization of armies, navies, and air forces preparing to attack.

We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries. Rogue states and terrorists do not seek to attack us using conventional means Instead, they rely on acts of terror and . . . weapons that can be easily concealed, delivered covertly, and used without warning.

. . . [T]he United States cannot remain idle when dangers gather.

Id. at 15. For an assessment of this doctrine of preemption, see James Thuo Gathii, *Assessing Claims of a New Doctrine of Preemption Under the Doctrine of Sources*, OSGOODE HALL L.J. (forthcoming 2005).

2. See Paul Wolfowitz, *Remembering the Future*, NAT'L INT., Spring 2000, at 35, available at http://www.findarticles.com/p/articles/mi_m2751/is_2000_Spring/ai_61299040 (last visited Oct. 27, 2004). Wolfowitz argues that Democrats and Republicans in Congress broadly share a goal of establishing and protecting a United States-dominated era in the modern post-Cold War period. Wolfowitz calls this view the "pax-Americana."

The Bush doctrine is predicated on the view that a pax-Americana empire can be built by forcible means. As President Bush has unequivocally announced to nations around the world, “you are either with us or against us.” Empire by consent is apparently not an option under this doctrine. The great project of humanizing global society through cooperation on the basis of shared values such as human rights, free markets, liberal democracy, and liberal internationalism thus plays a subsidiary role in the Bush doctrine.

While the essays published in *Humanizing Our Global Order* seem to predate the unfortunate events of September 11, 2001, I could not but read them against the context of these terrorist attacks. A central question uniting the essays is how the institutions created over the last fifty years (the United Nations, European Union, World Trade Organization, etc.) have sought to promote shared human values that did not depend solely on international military might. In fact, prior to the Cold War, restraining unilateral action was critical to the maintenance of U.S. hegemony. Until the Bush doctrine, cooperation with other countries was not viewed as diminishing or compromising U.S. interests or status in the world.³

Before the 2003 war in Iraq, the United States created a global empire based not on territorial occupation or military resolve,⁴ but on coordination

Further, according to Wolfowitz, this strategy ought to reflect the “recognition that the United States cannot afford to allow a hostile power to dominate Europe or Asia or the Persian Gulf [and] that the safest, and in the long run the cheapest, way to prevent this is to preserve the U.S.-led alliances,” in addition to preventing “any hostile power from dominating a region whose resources would, under consolidated control, be sufficient to generate global power.” *Id.* at 36.

In the post-September 11, 2001 environment, this vision is embodied in the *National Security Strategy*, *supra* note 1. It states,

The United States must and will maintain the capability to defeat any attempt by any enemy—whether a state or non-state actor—to impose its will on the United States, our allies, or our friends *Our forces will be strong enough to dissuade potential adversaries from pursuing a military build-up in hopes of surpassing, or equaling, the power of the United States.*

2002 Nat’l Sec. Strategy 30, *supra* note 1 (emphasis added). The document declares the doctrine of pre-emption as

[D]efending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders [W]e will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country.

Id. at 6.

3. See, e.g., JOSEPH S. NYE, JR., *THE PARADOX OF AMERICAN POWER: WHY THE WORLD’S ONLY SUPERPOWER CAN’T GO IT ALONE* (2002).

4. Military force has certainly played a role. The invasions of Panama, assisting the Contras in Nicaragua and the role of the United State in the Vietnam War are widely cited examples of U.S. militarism prior to the end of the Cold War. In the *Nicaragua* case, the International Court of Justice found that the United States had violated norms against use of force inconsistent with the U.N. Charter and customary international law. See *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J.

of economic exchange and security guarantees. Less powerful countries sought to preserve their autonomy by cooperating with the United States. Thus, before the war in Iraq, the United States dominated the world through its central role in collective policymaking. As a result, it is arguable that the pre-2003 global empire was built on invitation and consensus. States like Castro's Cuba, Gaddafi's Libya, and Saddam Hussein's Iraq in the late 1990s were neither invited nor chosen to participate in this empire. The United States, in turn, regarded such countries as "rogue states."

In the post-Cold War period, the United States sought to subordinate diverse national elites through compulsion and through shared values of international governance within the system of international institutions. Under this system, dissent has always stood peripheral to dominant values. This dissent was shaped by several competing sources, including: inequality of resources; inequality of influence within the global structure; and the way international law and institutions are regarded as formalizing or disguising the imperial structure of international relations.⁵

Humanizing Our Global Order represents part of the larger dissent-movement against imperial governance of the pax-Americana empire. It is a thematically heterogeneous offering of well-written essays that are emblematic of the work of Ivan Head, in whose honor the book was put together.⁶ The editors tell us in the introduction that the book asks how to "deploy the political will necessary to ameliorate the serious crises our world now faces."⁷ The range of themes tackled in the process of responding to this quest include: the environment; sustainable development; the common heritage of mankind; the use of force; the protection of minorities; the civil dimensions of military strategy; the International Seabed Authority; the modernization of competition law; and the legitimacy of the international trading system.⁸ In short, this is a well-written, well-researched, and well-argued set of essays.

The quest of humanizing the global order, the editors tell us, must, at its heart, be "animated by a broader-based and people-centered concept of development, one that is far more aware of and accepting of the demands

14 (June 27).

5. One of the best critiques of this system is found in MOHAMMED BEDJAOUI, *TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER* (1979).

6. *HUMANIZING OUR GLOBAL ORDER: ESSAYS IN HONOUR OF IVAN HEAD* (Obiora Chinedu Okafor & Obijiofor Aginam eds., 2003) [hereinafter *HUMANIZING OUR GLOBAL ORDER*].

7. *Id.* at 4.

8. *Id.* at 5.

emanating from the South.’⁹ Although the North-South axis is not the organizing theme of the collection of essays, it is certainly a major inspiration of several authors.¹⁰ In this review essay, I will refer to this agenda to more fully include and to be sensitive to southern concerns as part of the quest for inclusivity and legitimacy in international governance.

There are at least three ways in which this collection of essays pursues the quest for inclusivity and legitimacy in international governance: first, through North-South cooperation, as opposed to co-existence; second, through constructivism or inclusion and not simply contributionism in the creation of norms; and third, through a process of critical pragmatic engagement by the South in its relations with the North. I address each in turn.

COOPERATION AND COEXISTENCE

A long-standing theme in North-South relations is whether cooperation would be a more fruitful framework within which to resolve problems and differences than confrontation. The politics of confrontation have been characterized by intransigence on both sides in matters such as the New International Economic Order, the Multilateral Agreement on Investment, and, most recently, the divisive agricultural reform proposals of the Doha Round of WTO negotiations. During the Cold War, the United States exemplified the politics of confrontation and isolationism by walking out of organizations like UNESCO and withdrawing from the compulsory jurisdiction of disputes of the International Court of Justice. In the same period, developing countries formed organizations such as the Non-Aligned Movement, ostensibly to create an alternative framework of South-South cooperation outside the Cold War East-West axis. However, with the end of the Cold War and the demise of global bipolarity, an unspoken consensus appears to have emerged that cooperation, rather than confrontation, had emerged as the new global formula of addressing issues related to human rights, the environment, and trade. This same post-Cold War period saw the rise of militarized humanitarianism in the service of ideals—examples include the intervention in Kosovo to prevent genocide,

9. *Id.* at 4.

10. See, e.g., Obijiofur Aginam, *Saving the Tortoise, the Turtle, and the Terrapin*, in HUMANIZING OUR GLOBAL ORDER, *supra* note 6, at 12; Karin Mickelson, *Co-Opting Common Heritage: Reflections on the Need for South-North Scholarship*, in HUMANIZING OUR GLOBAL ORDER, *supra* note 6, at 112; Kristy G. Middleton, *Modernization of European Community Competition Law Enforcement for the Twenty-First Century*, in HUMANIZING OUR GLOBAL ORDER, *supra* note 6, at 125.

and the restoration of the democratic government in Haiti that was deposed by rebel military leaders.¹¹

Thus, it is evident that cooperation as a framework for resolving global problems did not resolve the dangers of militarized conflict that characterized the Cold War period.

Cooperation is premised on the expectation that a participatory process of crafting genuinely global norms and institutions to resolve the world's problems provides the most promise for their resolution. Kirsty Middleton's essay on competition law in the European Community (EC) exemplifies the hope that inter-state cooperation offers for the resolution of monopoly problems in a transnational context.¹² Cooperation is imperative because an individual state cannot effectively counteract the monopolistic competition of large multinational corporations.¹³ Yet, as Middleton reminds us, proposals for such cooperation—for example, the cooperation among national courts within the EC—raise difficult questions of “procedural harmonization.” Hence, problems have arisen with regard to the harmonization in the issuance of interlocutory orders and remedies.¹⁴ Further tensions exist between EC and national laws with regard to the balancing of competitive efficiency, on the one hand, with restrictions on competition to promote social, cultural, industrial, and environmental objectives pursuant to article 81(3) of the EC Treaty, on the other.¹⁵

Olivier A.J. Brenninkmeijer's essay on the work of and approach taken by the High Commissioner on National Minorities in the Organization for Security and Cooperation in Europe (OSCE) is a study of novel forms of cooperation intended to prevent deadly conflict.¹⁶ The essay is premised on the now widely accepted approach of preventive diplomacy, which seeks to avoid violence arising from “discriminatory laws, weak regional or local autonomy, and ill-considered policies and their outcomes.”¹⁷ Accordingly, OSCE members are encouraged to recognize minorities as integral parts of their societies and, where minority communities live across national boundaries, to facilitate rather than challenge relations

11. See DAVID KENNEDY, *THE DARK SIDE OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM* (2004).

12. Middleton, *supra* note 10.

13. *Id.* at 126.

14. *Id.* at 136.

15. *Id.* at 137.

16. Oliver A.J. Brenninkmeijer, *Multilateral Prevention of Internal Conflicts in the Face of Interethnic Tensions*, in *HUMANIZING OUR GLOBAL ORDER*, *supra* note 6, at 30.

17. *Id.* at 50.

between them.¹⁸ In so identifying the sources of inter-ethnic tension, the preventive diplomacy of the High Commissioner has steered away from treating ethnic differences and cultural identity as causes of inter-ethnic tension.¹⁹ Following these principles, the High Commissioner encouraged Hungary and Romania to sign a Treaty on Understanding, Cooperation and Good Neighborliness.²⁰ In such instances, the prior consent of the OSCE member states to the High Commissioner's involvement in resolving inter-ethnic tensions helps explain the diplomatic machinery of this multilateral conflict prevention effort.²¹

Ronald St J. MacDonald's essay argues that the International Seabed Authority should be more active.²² MacDonald believes that harmonization and cooperation between the Authority and other international bodies, such as those established under the Convention on Biological Diversity and the Framework Convention on Climate Change,²³ would help these organizations realize their complementary responsibilities in the sustainable management of deep seabed resources.²⁴ He proposes a tripartite "Memorandum of Understanding" upon which this overlapping mandate would be executed. The article further proposes initiatives for closer cooperation in ocean affairs.²⁵ MacDonald laments that cooperation and coordination have been hampered by a dearth of processes sufficient to realize better ocean resources management such as joint development regimes and a system of taxation of ocean cables that would fund these initiatives.²⁶

MacDonald's disappointment is rooted in a classic collective action problem of international governance. Simply put, states have varied and heterogeneous interests. Thus, in the absence of coercive measures or incentives to cooperate based on shared values or some other mechanism, states do not tend to act in their common interests. For instance, it may be easier for richer nations to exploit ocean resources individually rather than collectively. In such situations, co-existence becomes the default rule.

18. *Id.* at 48.

19. *Id.* at 50.

20. *Id.*

21. *Id.* at 55.

22. Ronald St J. MacDonald, *The International Seabed Authority: Challenges and Opportunities*, in HUMANIZING OUR GLOBAL ORDER, *supra* note 6, at 168.

23. *Id.*

24. *Id.* at 173.

25. *Id.* at 173.

26. *Id.* at 174–77.

Thomas Franck's essay on the use of force best exemplifies a world where co-existence, rather than cooperation, reigns.²⁷ Franck reiterates his argument that the U.N. Charter's prohibition against the use of force is obsolete.²⁸ However, he qualifies this argument by asserting that the Charter has evolved through interpretations to accommodate the use of force in order to allow humanitarian missions, prevent gross abuses of human rights, and to promote democracy.²⁹ This evolution, Franck argues, has allowed the United Nations to maintain its relevance, and secure over time the "acquiescence of the international system."³⁰

Franck discusses instances when the use of force without security council authorizations, while controversial and contested, was justified as self-defense (anticipatory or otherwise). He concludes there is "a calibrated range of tolerance depending on ascertainable and perhaps definable contextual variables" and speculates that new principles are emerging to govern the use of force.³¹ Franck concludes by suggesting that "no constitution can flourish if its branches can be torn off by any malevolent passer-by," but "[f]lexibility in fundamental law needs to be supported by the inflexible probity of the factual and contextual evidence to which that law is applied."³²

Franck wants to have his cake and eat it, too. He tells us that the prohibition on the use of force has now been relaxed, yet he laments that malevolent "passers-by" threaten what is left of the prohibition.³³ Franck also suggests that safeguarding against such malevolence can be done only on a case-by-case basis.³⁴ Yet, it is hard to maintain the credibility of such an ad hoc approach in the face of questions that require a principled and predictable response to avoid the spectre of an anarchic world where unilateral exertions of force in interstate relations became normalized. Franck's proposals are dangerous because they may be viewed as a status quo legitimization of unilateralism by powerful states unwilling to play by the rules of international law.³⁵

27. Thomas M. Franck, *The Use of Force in the Struggle between Humanity and Unreason*, in HUMANIZING OUR GLOBAL ORDER, *supra* note 6, at 80.

28. *Id.* Franck first announced this in 1970. See Thomas Franck, *Who Killed Article 2(4)? Changing Norms Governing the Use of Force By States*, 64 AM. J. INT'L L. 836 (1970).

29. Franck, *supra* note 27, at 81.

30. *Id.* at 83.

31. *Id.* at 85.

32. *Id.* at 86.

33. *Id.*

34. *Id.*

35. For a similar view, see James Thuo Gathii, *Foreign and Other Economic Rights Upon Conquest and Under Occupation: Iraq in Comparative and Historical Context*, 25 PA. J. INT'L ECON.

Franck seems overly influenced by ideas of power and interest and, as a result, he distances the normative considerations that underlie the international legal norms and rules prohibiting the use of force.³⁶ Franck therefore promotes an anarchical and abstract notion of sovereignty as the sole template guiding state behavior, and he does not reserve space for a set of values³⁷ to guide the making of exceptions to the prohibition of the use of force. Indeed, those who follow Franck's analysis are susceptible to the shifting predilections that justify ever-increased instances of forcible measures. If it turns out that Franck's analysis adjusts the norm that prohibits use of force in international relations in order to suit the political expediences of powerful states, then his vision of the U.N. Charter as a flexible and adaptable framework has transformed the Charter's restraint on the use of force.

Karen Guttieri's essay on civil dimensions of military strategy tells us that "the final determinant of the military as a humanizing force is the will of civilian policymakers who deploy it."³⁸ Guttieri's essay examines the merits of U.S. military democratization operations. She concludes that the record is mixed.³⁹ Guttieri tells us that the U.S. Army's civil affairs doctrine is essentially a post-conflict policy intended to "protect and control populations, restore order and facilitate the transition from hostilities to peace."⁴⁰

From a public international law point of view, the principles governing an occupier are found in the Hague Regulations of 1907.⁴¹ Article 43, in particular, empowers an occupying state to restore and ensure public order and safety while respecting the laws of the occupied state.⁴² However, the conquered states have often had to undergo large-scale social and economic transformation. This is certainly the case in present-day Iraq. The transformation of Iraq into an open market economy illustrates how military necessity and the political and hegemonic objectives associated with the transformation of Iraq—rather than the civil-military relations

L. 491 (2004) (arguing that the United States has progressively sought to be free from the constraints of international law in its foreign affairs); Byers, *supra* note 1 (arguing that Franck's arguments implicitly license powerful governments to take advantage of less powerful States).

36. OSCAR SCHACHTER, *INTERNATIONAL LAW IN THEORY AND PRACTICE* 35–37 (1991).

37. *C.f.*, TERRY NARDIN, *LAW, MORALITY AND THE RELATIONS OF STATES* 19 (1983).

38. Karen Guttieri, *The Civil Dimension of Strategy*, in *HUMANIZING OUR GLOBAL ORDER*, *supra* note 6, at 87, 102.

39. *Id.*

40. *Id.* at 101 (internal citations omitted).

41. Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277.

42. *Id.* art. 43.

discussed by Guttieri—have justified U.S. occupying power that goes beyond what is permissible under the Hague Regulations of 1907.⁴³

CONSTRUCTIONISM AND CONTRIBUTIONISM

Contributionism is premised on a simple model of inter-civilizational participation in the process of crafting genuinely universal norms.⁴⁴ The problem with contributionism is that, like cooperation, it overstates the importance of participation by diverse constituencies in the creation of global norms, while telling us little about how such norms are implemented. It is really the process of implementing norms, and not only their formation, that demonstrates biases and blindspots that evidence the interests that prevail at crucial stages of implementation. In addition, norms negotiated through an inclusive process of lawmaking could reflect priorities consistent with the interests of some dominant groups at the expense of others.

Constructivism is premised upon the need for new voices and values to supplement state-based lawmaking processes as part of coordinated international action taken in order to resolve global problems.⁴⁵ Unlike contributionism, constructivism focuses on the influence of new voices in conjunction with the voices of established states in legitimating global norms. Jutta Brunnée's essay on the making of multilateral environmental agreements adopts such a constructivist lawmaking model.⁴⁶ She refers to constructionism as "a continuous interactional process."⁴⁷ By her account, lawmaking obtains legitimacy through fulfillment of internal criteria of legitimacy rather than through state consent.⁴⁸

One method of fulfilling the criteria of internal legitimacy, Brunnée argues, is by triggering domestic legitimation processes, such as civil society participation, before incurring international obligations.⁴⁹ However, multilateral lawmaking has moved away from such domestic

43. For a more expansive discussion, see Gathii, *Foreign and Other Economic Rights*, *supra* note 35.

44. See, e.g., PRAKASH SINHA SURYA, *LEGAL POLYCENTRICITY AND INTERNATIONAL LAW* (1996).

45. See e.g., Benedict Kingsbury, "Indigenous Peoples" in *International Law: A Constructivist Approach to the Asian Controversy*, 92 AM. J. INT'L. L. 414 (1998); Benedict Kingsbury, *The Concept of Compliance as a Function of Competing Conceptions of International Law*, 19 MICH. J. INT'L. L. 345, 358–60 (1998).

46. Jutta Brunnée, *Between Sovereignty, Efficiency, and Legitimacy*, in *HUMANIZING OUR GLOBAL ORDER*, *supra* note 6, at 62.

47. *Id.* at 63.

48. *Id.* at 65.

49. *Id.* at 67.

mechanisms. Thus multilateral law-making has become increasingly perceived as having a democratic deficit. In addition, the gains from increased transparency and the participation of civil society in multilateral lawmaking do not necessarily eliminate the danger of a democratic deficit or, more importantly, they do not adequately address issues of substantive fairness.⁵⁰

Brunnée argues this democratic deficit is best addressed when legal arguments are “broadly congruent with existing norms and practices.”⁵¹ In other words, the inclusiveness of “shared understandings” results from an inclusive interactional framework that involves diverse actors in constructing and reconstructing norms. This “shared understanding,” in turn, influences conduct and promotes compliance between norm and praxis. To succeed, an application of interactional lawmaking does not require abandonment of consent-based multilateral treaty-making, but requires the development of new means of treaty-making that strive for internal legitimacy and that seek to provide “rules that ask reasonable things.”⁵²

While the interactional or constructivist approach offers hope for resolving issues of democratic legitimacy, it may be more useful where a relatively homogeneous group of state and non-state actors share common commitments—for example, the movement to arrest ozone-layer depletion. In contrast, in contexts where issues represent incommensurable differences or values, such as agricultural reform in the WTO, an interactional or constructivist framework would face significant challenges.

The following discussion of the critical pragmatic approach addresses challenges that arise from these incommensurable differences. One such difference, as discussed in the Obijiofor Aginam chapter,⁵³ arises between developing and developed countries in the context of conflict between Northern versus Southern environmental values.

Like Brunnée, Robert Shum’s article on the institutional legitimacy of the WTO is organized around the question of enhancing the legitimacy of an international organization.⁵⁴ While he argues that the WTO has gained the legitimacy of certain private constituencies, he notes that it is far from

50 James Thuo Gathii, *Process and Substance in WTO Reform*, 56 RUTGERS L.J. (forthcoming 2004).

51. *Id.* at 69.

52. *Id.* at 70–71.

53. Aginam, *supra* note 10.

54. Robert Shum, *The Institutional Legitimacy of the International Trade System*, in HUMANIZING OUR GLOBAL ORDER, *supra* note 6, at 149.

being considered legitimate in the eyes of groups that feel alienated by the WTO's goals and global trading mandate.⁵⁵ For the WTO to gain legitimacy before these groups, Shum argues, it must include these constituencies when defining its goals.⁵⁶ Exclusion of civil society groups like environmentalists, he argues, may cause a particular negotiation to deteriorate into "anger when combined with the perception that certain constituencies do indeed have privileged access to the organization."⁵⁷ Greater representation, participation and accountability are the linchpins of any effort to increase the legitimacy of the WTO. Shum also calls upon the WTO to work in collaboration with institutions like the International Labor Organization in these efforts.⁵⁸ However, Shum acknowledges, in many areas including labor standards, controversy between developing and developed countries will remain for the foreseeable future⁵⁹ because, unfortunately, there are many dissatisfied constituencies and no quick fixes.

Protectionism takes subtle forms in the modern era. One example that can be cited is the setting of environmental standards, including "green protectionism." The United States and European Union have also used the WTO's dispute settlement process to delay changing otherwise illegal trade practices, thereby harming the legitimate trade interests of less powerful states. In addition, protectionist forces in developed countries have selfishly held their governments ransom, making it virtually impossible to reform global agricultural rules so that developing countries can earn legitimate returns on otherwise competitive farm products.

TOWARD A CRITICAL PRAGMATIC (OR THIRD WORLD) APPROACH TO NORTH-SOUTH ISSUES

A critical pragmatic approach involves investigating, selectively embracing, and combining the egalitarian values of non-Western and Western legal, customary, religious, and cultural norms, rather than relying on dominant narratives that reinforce the patriarchal hierarchy or narrow aims of either.⁶⁰ Under this approach, markets, states, laws, and

55. *Id.* at 150.

56. *Id.* at 163.

57. *Id.* at 159.

58. *Id.* at 160.

59. *Id.*

60. See, e.g., Celestine I. Nyamu, *How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?*, 41 HARV. INT'L L.J. 381 (2000) (describing the critical pragmatic approach).

norms interact fluidly, although any one of these norms may often take precedence over the others in this quest for a non-hegemonic order. Part of this approach, therefore, involves analyzing these overlapping norms and determining whether any of them has a hegemonic relationship in relation to the others. If so, policymakers must determine how to arrest such a hegemonic relationship in order to achieve an egalitarian and democratic ethos.

Karin Mickelson's essay on the common heritage of mankind deploys this approach by uncovering ways that it has been interpreted in order to limit its utility as a means of attaining global redistributive justice.⁶¹ She does not regard the common heritage of mankind as a tool for opening up resources (such as the deep seabed) that only benefit countries with the capability of exploiting them. Instead, Mickelson agrees with Mohammed Bedjaoui in arguing that the common heritage principle results in unfair and unequal distribution of resources.⁶² Thus, she advocates for the principle to be reconstrued as a principle of global solidarity, which can, in turn, be applied as a means of avoiding tragic outcomes. For example, based on such a principle of solidarity, the resources of the global South could be used to address questions of hunger, disease and poverty, and not simply to enrich rich and powerful nations. An important illustration of this concept is the prevention of mass starvation during famines when, meanwhile, food is plentiful in another part of the world.⁶³

Consistent with this approach, which Mickelson dubs "Third World," Bhupinder Chimni has observed that the principle of permanent sovereignty over natural resources should be viewed from a material, rather than a formal or statist, interpretation to avoid overlooking its originating motivation of addressing the inequities of resource exploitation between alien colonial rulers and formerly colonized peoples.⁶⁴ As Mickelson reminds us, Ivan Head's legacy compels us to remain compassionate world citizens—we must not simply be critical of the North, but we must also be vigilant against all oppression originating in the South.⁶⁵ This, then, is the sum of the critical pragmatic approach: there must be not only a more inclusive, but a more just and compassionate global order.

61. Mickelson, *supra* note 10, at 122.

62. *Id.* at 118–19.

63. *Id.*

64. Bhupinder Chimni, *The Principle of Permanent Sovereignty Over Natural Resources: Towards a Radical Interpretation*, 38 INDIAN J. INT'L L. 208, 214 (1998) (reviewing NICO SCHRIJVER, *SOVEREIGNTY OVER NATURAL RESOURCES* (1997)).

65. Mickelson, *supra* note 10, at 122.

For his part, Obijiofor Aginam discusses how northern hegemonic “globalism” has dominated the prevailing orthodoxy of sustainable development, at the expense of the “environmentally friendly and sustainable conservation practices” that are so important to many indigenous societies.⁶⁶ In his view, this hegemonic, state-centric framework of sustainable development has facilitated environmentally harmful practices by multinational corporations.⁶⁷ This critique leads to his proposal of integrating ecologically sound indigenous practices into a sustainable development framework by balancing environmental conservation with sustainable exploitation.⁶⁸

Aginam advocates an approach intended to avoid the environmentally disastrous consequences of the prevailing sustainable development models, which privilege the protestant ethic of individual industrialism at the expense of community interests. Aginam also draws from principles of international human rights and self-determination to inform the rich matrix of approaches he proposes to resolve the contemporary crisis bedeviling the global sustainable development movement.⁶⁹ Like Mickelson and Bedjaoui, Aginam calls for the inclusion of conservation and sustainable use as part of the core of the sustainable development agenda. Aginam therefore agrees with Justice Weeramantry’s observation that a vision of sustainable development that excludes and silences competing conceptions from around the world or that does not incorporate the developmental aspirations of the poorest members of the global community ought to be considered illegitimate.⁷⁰

CONCLUSION

Cooperation, constructivism, and the critical pragmatic approach have a role to play in “humanizing” the global order, as explained in the essays in this collection. Each of these approaches serves a useful role in its own unique way. Ultimately, in the era of a global pax-Americana empire, resistance within and against the empire must also have a place at the table if the values of the post-Second World War international system—non-use of force, the rule of law in international relations and the entire corpus of international human rights guarantees—are to continue to be relevant.

66. Aginam, *supra* note 10, at 13.

67. *Id.*

68. *Id.* at 25.

69. *Id.*

70. *Id.* at 23–24.

Humanizing Our Global Order contributes in no small way to this crucial engagement.