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BOOK REVIEW

GERD WINTER, ED. MULTILEVEL GOVERNANCE OF GLOBAL ENVIRONMENTAL
CHANGE : PERSPECTIVES FROM SCIENCE, SOCIOLOGY, AND THE LAW
(CAMBRIDGE, CAMBRIDGE U. PRESS, 2006)

Reviewed by : David Takacs, IELRC



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Gerd Winter, ed. *Multilevel Governance of Global Environmental Change : Perspectives from Science, Sociology, and the Law* (Cambridge, Cambridge U. Press, 2006)

This volume's Introduction sets a familiar scenario : Humans have reached a stage of development where our environmental impact is causing biosphere-wide, complex, severe ecological degradation. In order to respond effectively, experts must develop nuanced, multilevel models of human institutions that work together effectively to mitigate eco-crisis. At the same time, experts must determine how the institutions exploiting the ecological world can work together with institutions seeking to undo the negative outcomes of that exploitation (or how the latter can outsmart the former). And they must figure out how a human mind chooses a paradigm of appropriate relationship towards (and thus treatment of) nature; if that were understood, planetary saviors could offer policy prescriptions that more people would deem as legitimate, and the business of governing the planet in a sustainable manner could proceed apace. Essentially, the authors wish to develop a multilevel ecosystem approach to global governance, except the ecosystem that concerns them is the human institutional ecosystem at multiple levels from individual human actor, to NGOs, to local communities, to international financial institutions and corporations, to national governments, to the U.N. and other organs of global governance. How do these diverse entities work together ? How *should* they work together if we are to save the planet from eco-destruction ?

Needless to say, it's a daunting task the authors have assigned themselves. They desire to figure out, systematically and scientifically, how all social institutions interact with all other social institutions, and thus how to make them work together better to stave off ongoing and incipient disasters facing the human species and those other species with whom we so poorly share the Earth. At 600+ pages and 24 submissions, the volume overwhelms, and it is best to sample the results in small doses.

Much of the volume is dedicated to in-depth analysis of international legal regimes: unwieldy, full of holes, yet not without promise for managing the relationship between Earth's human inhabitants and the ecological world that sustains human civilization. A theme running through several of the contributions is the not-altogether-welcome persistence of the nation state as the subject of international legal regimes. Some contributions want to empower institutions below the level of the state,

especially NGOs, or further strengthen supranational institutions like the U.N. or the European Union to form a more coherent international legal and policy regime.

Several authors want to constrain and control multinational enterprises whose deleterious environmental effects transcend state borders and elude legal shackles. Those who have tried to find ways to govern MNEs in any binding way find these slippery legal chimeras constantly wriggling out of their grasp. In a particularly dense chapter, Martin Herberg (ch. 6) uses the case study of the global chemical industry to show how transnational corporations slip through the porous net of most nations' domestic law, with no international law safety net to catch them; certainly industry self-regulation offers little relief to those who fall victim to transnational chemical pollution. As desirable as it might be for corporations to be directly responsible to some coordinated international legal order, André Nollkaemper (ch. 7) does not see this happening in the immediate future, and instead offers an agenda for legal scholars and justice advocates to 'strengthen the responsibility of both home states and host states, to strengthen the regulatory power of such states, and to improve coordination of national legal systems, for instance by clarifying rules on jurisdiction, applicable law, enforcement, transboundary access to decision-making, participation in impact assessment procedures, and access to courts. In that respect, it is national rules on responsibility and liability (although possibly guided by international law that offer the best prospects to contribute to improved environmental performance of transnational corporations'. (pg. 199)

Jonas Ebbeson (ch. 8), somewhat to the contrary, argues that uncoordinated, voluntary, solely national jurisdiction will not curb corporate environmental excesses, and thus lawyers and activists need to relax state borders to instill a global environmental law regime. Ebbeson finds 'fragments' (pg. 202) of an existing legal framework that could be stitched together, including such emerging elements of customary international environmental law as the precautionary principle, the polluter pays principle, the required use of best practical technologies, environmental impact assessment, and transparency in environmental decision-making. (Unexpectedly, one side benefit of this volume is the crisp review of, and novel perspectives on, international environmental law.) Both Ebbeson and Herberg suggest a scheme that imposes liability on multinational enterprises based on effective or de facto control of subsidiaries.

For those who advocate against the unwelcome hegemony of the nation state in international governance, the most unwelcome, hegemonic nation state seems to be the United States. Thomas Giegerich (ch. 11) presents a well-balanced view of why the USA does what it does (and mostly doesn't) for international environmental law. Noting its laudatory achievements in the past, Giegerich states that '[I]nstead of exercising leadership by example, the USA has increasingly assumed the role of a nay-sayer, and even a gravedigger, to concerted efforts of the international community. It has thereby seriously damaged its international credibility as a responsible and law-abiding nation'. (pg. 303). Because of its hegemony, the U.S. is an indispensable player who often forces its policy prescriptions on the rest of the world (e.g. forcing emissions trading as a centerpiece of the Kyoto Protocol, which it then refused to ratify), and thus somehow, the world must convince American citizens that it is in their best interest to join the rest of the world in multilateral attempts at environmental governance. (Despite the volume's stated intentions, it doesn't spend much time focusing on how to rouse citizens towards greater environmental participation.)

Less well-balanced – but not unjustifiably so – is Ludwig Kramer's (ch.13) observation that apart from the 1987 Montreal Protocol, 'there appears to be not one single global Convention or Protocol where the USA used its overridingly strong position in international environmental negotiations to press for better, more stringent, and more protective measures. They used their position in the driver's seat to step on the brakes rather than advance the spaceship (Earth) in its environmental dimension'. (pg. 345) It is not that the USA is thoroughly unilateralist; it is just that 'the three priorities for the USA at the international level are free trade, free trade, and free trade'. (pg. 345) And so a question for these authors is not merely how to dethrone the nation state as the locus for all legal and policy activity; it is how to convince the most hegemonic nation state to play fair, or to find ways to work around this most obdurate sovereign. One solution, for Kramer, is to emulate the EU as a model for a regional coordinated approach for enlightened international environmental law, strengthening a super-national entity that can counter the hegemony of the US.

Despite the porosity of the international governance regime, interesting policy innovations do occur, and they do work to both curb environmental destruction and strengthen democratic institutions. How they come about is not so much the subject of this book, but how they diffuse and can be woven together is. Several chapters

discuss how to effectively 'frame' environmental issues. Karl-Werner Brand & Fritz Reusswig (ch. 4) look for the conditions that would enable a world society to transcend national barriers and formulate effective international institutions; they see the 'master frame of sustainable development' (pg. 94) as a rhetorical paradigm that can help build social bonds and coordinated political action. Asher Alkoby (ch. 5) examines how transnational actors – NGOs, social movements, corporations – are building webs of actors who shape international norms, and who may act as 'moral entrepreneurs' to frame issues that draw political support across national lines. Kerstin Tews (ch.9) examines how environmental policy innovations successfully diffuse, and finds that the 'negotiated harmonisation' (pg. 252) of international treaty making may be less successful than informal diffusion facilitated by environmental NGOs and think tanks.

At the same time, Tews warns that successful policy prescriptions are often successful only in their cultural and institutional context, and that transplanting them often fails. Andrew Jordan et al. (ch. 19) examine which New Environmental Policy Instruments (NEPIs) formulated in EU nations have diffused successfully, and come to the not-altogether-helpful conclusion that some work better than others in different contexts. Reading these chapters, it strikes me that only the nimble generalists, the cheap and painless, or the morally ineluctable policy tools will diffuse and adapt successfully. Furthermore, it strikes me that the state, the bete noire of some of the authors here, still ends up as both the crucible and adapter of successful environmental policy innovations, albeit aided from below (e.g. the NGOs and scholars) and above (e.g. regional bodies, international treaty bodies).

I would have liked more explicit analyses of what the authors are aiming *towards*. Is preservation of the Earth's biotic systems the end that justifies any means? Or are the means the ends in the making, i.e. is the goal to create processes and institutions that are themselves just (democratic, transparent, etc.), which in turn will – ineluctably? possibly? - advance environmental goals? The chapters by Joyeeta Gupta (ch. 18) and Charlotte Streck (ch. 20) offer a fascinating contrast on how scholars' sometimes unnamed agendas shape their research and policy prescriptions. These two articles present well-written, accessible, and not entirely complimentary insights on formulating international policy regimes and consequent difficulties in implementing them effectively. Instructors for courses in international environmental law or policy should

consider pairing them, and perhaps constructing an in-class debate around the legitimacy and efficacy of Streck's and Gupta's examples.

Streck, former Senior Counsel with the World Bank, analyses new financial mechanisms that transfer wealth, expertise, and technology from Northern to Southern states, and which involve MNEs, IFIs, global institutions, and NGOs. A logical extension of the notion of common but differentiated responsibilities in international environmental treaties, such transfers are deemed the responsibility of the North (who disproportionately create the problems) to the South (who disproportionately suffer) so that the latter may fulfill their treaty obligations. For example, the Kyoto Protocol's Clean Development Mechanism (CDM) allows developed nations to invest in greenhouse gas-reducing projects in the developing world and consequently buy the right to continue to pollute by the same amount. Streck declares that the CDM 'demonstrates a step in the right direction', (pg. 516) as it shows how 'economic instruments can leverage commitments under international treaties. It also shows how the principle of common but differentiated responsibilities can be taken beyond government commitments to increase flows of private investments in developing countries. The Kyoto Protocol hereby sets an important framework and creates a platform for the development and transfer of technology, as well as for leveraging financial resources'. (pg. 515)

Streck acknowledges some of the problems of the CDM: like medieval sinners purchasing indulgences, it allows developed nations to buy their way out of cleaning up their own acts. It also allows them to purchase the cheapest 'low hanging fruit' mitigation measures that thus won't be available to the developing nations later. (She does not mention the lack of transparency of the CDM, whose operation makes it all but impossible for citizens anywhere to understand and evaluate the trades and thus participate in governing the CDM.)

But Joyeeta Gupta (Ch. 18) believes that the Kyoto Protocol's intricate emissions trading mechanism 'is doomed to failure...' (pg. 456). Beyond the developing world's lack of 'institutional wherewithal to cope with such a complex system with such high financial stakes' (pg.456) and beyond the uncertainties of emissions science, a more insidious problem lurks: Inequitable negotiating power dooms most international environmental policy regimes to illegitimacy. While mechanisms like the CDM aim to remedy postnegotiation lack of capacity in developing countries, Gupta focuses on *pre*negotiation: Industrialised nations develop policy

tools that fit the way they frame environmental problems, and they 'dump' policies, i.e. they push their own high standards and complex solutions because they already have these policies in place domestically. Northern nations who are successful at imposing their tested policy solutions thus minimise their own cost of implementation. Southern nations bring fewer formulated, domestically implemented policies to the table, and lack negotiation capacity – and even if they had beautiful policies and polished negotiators, they still are compelled to toady to developed nations who so often hold the purse strings of multilateral aid.

Thus, for Gupta, the high standards in many treaties are not the result of Northern altruists bent on saving the planet, but self interested, cheaper policy choices that the South will lack the capacity to implement. And that is assuming the South wishes to implement these solutions at all. Gupta argues that Southern leaders see these international environmental law and policy solutions as illegitimate, and thus may have no interest in implementing them, even if they had the resources to do so. Thus postnegotiation aid like the CDM neither is successful in getting Southern nations to the point where they have the institutional capacity to effectuate their commitments, nor does it undo the procedural inequity that allowed the overdeveloped nations to frame the problems, to fob off their favored solutions, and to control the debates in the first place. For Gupta, the first step in effective sustainable global governance for mitigating environmental problems is to help Southern nations develop their own policy solutions that make sense in context, and help them with the capacity to effectively negotiate for these solutions to be part of any international global solutions.

Streck and Gupta are crystal clear writers. The blurb for the book notes the suitability of this publication for academics and politicians. But the language in some of the volume's articles is dense, including the introductory chapter whose purpose would normally be to lure readers. I'd guess that politicians (or any bureaucrat or activist looking to make real world change) would have trouble making it through the Introduction, and if they did, some selections in this book are even tougher slogging. I'm not sure academics will find the going much easier. Part of the problem, to be sure, must stem from complicated ideas being expressed in English when English may not be the first language of many of the contributors. But after translation, Professor Winter and his contributors might have considered hiring a young graduate assistant (with one foot in academia and one foot in peppy, magazine style) to translate abstruse academic-ese into

accessible language, perhaps simply to provide abstracts for each article to lure interested parties to read further. As is too often the case, the excellent ideas of academics will have trouble escaping the claustrophobic confines of the land of Academia. For Professor Winter or any future authors who wish to have a real impact on revamping global governance to reverse the ravages of global environmental change, an accessible translation between different levels of the policy institutional ecosystem should be a condition of textbook publishing or research funding.

Nonetheless, Gupta's article itself is worth the price of admission as required reading for anyone interested in working across North-South (and any other) borders to formulate policy prescriptions and governing models, and many other authors here make valuable contributions for those who interested in saving the South from the North, the nonhuman from the human, and all of us from ourselves.

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