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** The surnames are listed in alphabetical order.*

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- Social Sciences Information Space (SOCIONET)
- Ulrich's Periodicals Directory

the rest: journal of politics and development

Previously published as Journal of Global Analysis (JGA)

Vol.9 | No.1 | 2019

TABLE OF CONTENTS

RESEARCH ARTICLES

6

**Rent Seeking and Industrial Growth in Africa:
The Case of Dangote's Cement Industry**

By Adeoye O. Akinola

20

**A specter is haunting the West (?):
The BRICS and the future of global governance**

By Francesco Petrone

34

**Indonesian political economy:
A historical analysis**

By Tommaso Rossotti

44

**Not Our War:
Iraq, Iran and Syria's Approaches towards the PKK**

By Aytac Kadioglu

BOOK REVIEWS

58

Ian Hurd

How to Do Things with International Law

By Rajeesh Kumar

60

Muhammad Qasim Zaman

Islam in Pakistan: A History

By Sayed Hassan Akhlaq

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BOOK REVIEW

Ian Hurd

How to Do Things with International Law

(Princeton: Princeton University Press, 2017, ISBN: 9780691170114., Pp.187, \$ 29.95.)

Conventional legal scholarship views international rule of law as one ideal in an assemblage of values that governs modern nation-states. They believe that rule of law can transform the chaotic international politics into just, stable and predictable one. Thus legalization of international affairs is viewed as a struggle against the fundamental characteristics of international politics, anarchy and power politics. The past two centuries have witnessed numerous efforts to interpret diplomatic practices into objective and neutral rules. Majority of the conventions and treaties of today are the outcome of such wisdom and the endeavours followed. Ian Hurd's *How to Do things with International Law* is a critique of conventional wisdom that the international rule of law is inherently good and outside politics. The purpose of the book is to understand the power and politics of international law. By dissecting state practices of rules related to war, torture and drones the author uncovers the complex politics engrossed in international law.

The book has put forth two principal arguments. First, the international rule of law is not progressive since politics is inherent in it. However, the political nature of law does not make it worthless. Since states find the law is useful, latter becomes a source of power in which the former invests its energies. The analysis of domestic and international law highlights the political power rule of law. Contrary to the domestic situation where law is set and limited by governments at the international level actors themselves decide what constitute legal and what not. In addition, at the international level rules also need the consent of actors. This not only discards the traditional liberal presumption that rule of law is neutral and non-political but demands a distinct approach, combination of legal realism and practice theory. Use of practice as a unit of analysis enables to understand the

instrumental utility and productive power of the international rule of law.

This reveals how content of international law and interests of actors are mutually reinforcing, the second argument of the book. According to Hurd, international law not only restrains states but also empowers them. The constraining and permissive power of the international rule of law depend upon the importance states put in it. However, the law is powerful since states persistently use it to justify foreign policy conducts. The author argues that international rule of law 'cannot be separated from state practice, and state practice does not exist independent of the legal explanations, justifications and rationalizations that governments give for it' (p.7). Nonetheless, the instrumental utility of international law does not make the law irrelevant. Rather 'state practice invests in law's discursive authority' (p.50). The cases studies of war, torture and drones explain this puzzle, how the rules empower some actors and weaken others.

The legal rules that ban war have both constraining and permissive powers. The principle of self-defence in the United Nations Charter is a case in point. According to Hurd, state practice and interpretative trends have played a significant role in the evolution of laws of war. The 'changing interpretative resources have driven the contemporary content of law away from its black-letter text.' For instance, since the 2003 Iraq War, pre-emption became the central question regarding the use of force in international politics. It replaced the genuine issue of self-defence with preventive and pre-emptive use of force with justifications. Here legality became a function of state interests, and certain categories of wars become legitimate. The evolution of rules related to nuclear weapons and drones is another case which shows the role of practice in the progress of the rule of law. It explains how international law works in situations of legal vacuum and how states

utilize such circumstances. The cases study of torture, United States practice against international human rights law, illustrates how distinctly diverging policies can be defended under a single set of rules. It points towards the political power of legal justification, particularly by strong states to affirm the legitimacy of their choices. It is in this sense the author sees the international rule of law as an empire—a global political arrangement of authority that shapes the possibilities of action for states (p.137).

However, due to the complexity of the subject under concern, this work also has certain inevitable drawbacks. First, it is true that international law not only constrains states but empowers them by providing opportunities to justify their actions. Indeed the use of law by governments grants authority and power to international law. Nonetheless, this argument alone is not enough to counter the realist claim that state power overwhelms international law. Realist would argue, states are intrinsically powerful to do what they desire, and hence the contents of international law reflects the interests of states. Hence, it is not an empire of legalism or

nomos as the author argues, governs the international affairs. But it is a *global state of exception* where sovereign is privileged to decide 'exception.' The principle of self-defence in the UN Charter and its various interpretations by states in practice are cases in point.

Secondly, the cases that Hurd chose to problematize the nexus between state power and international law are appropriate but insufficient. For instance, two cases among three focus on one state, the United States. The US is a hegemonic power in international politics and scrutinising its approach towards international law will not necessarily provide a reliable account of the mutually reinforcing relationship of international law and states power. In other words, to generalize the inferences that the author put forth requires an analysis of more cases, how differently positioned states in international politics practice the law. However, this limitation can be a possibility as well, scope to contribute further research in this field. Therefore, this book is essential reading for everyone who engages with international law and international politics.

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