

Jean L. Cohen. ***Globalization and Sovereignty. Rethinking Legality, Legitimacy and Constitutionalism.*** New York: Cambridge University Press, 2012. Pp. xii + 403. \$59.95. ISBN: 9780521148450.

The intersection of constitutional ideas and international law has been the subject of a significant wave of scholarship in recent years. This monograph, written not by a lawyer but by a political theorist at Columbia University, addresses these themes in an engaging and rigorous way. And although it is a deeply scholarly work, it is also very much a politically engaged book, grappling with many fundamental questions of international law and governance today while trying to argue for 'realistic-utopian' reform.

While the book is not always an easy read, it is nonetheless a rich and rewarding one which does many things at once. It illuminates and critically analyses several bodies of literature from distinct though related fields – political theory, legal theory, constitutional law, and international law. Unusually in a cross-disciplinary book of this kind, Jean Cohen manages to do justice to each of these bodies of work, presenting the arguments fairly and meticulously before proceeding to critique them in a deft and nuanced way. She highlights points of agreement and disagreement, weaving specific strands of analysis from different bodies of scholarship into her own distinctive and powerful argument as the book proceeds.

It is a work that is both descriptive and prescriptive: the author argues for a particular understanding of the system of global governance today (presenting it in terms of what she calls a 'dualistic sovereignty' regime), and at the same time sets forth a normative political project of reconceptualization and reform. Cohen argues in particular for an understanding and a reconstruction of the international legal and political system along 'constitutional pluralist' lines.

The core of the book is an attempt to explain and reconcile the continuing existence and resilience of sovereign states on the one hand with a strong layer of global governance – an international legal order composed of powerful institutions with autonomous powers – on the other. One of the author's key concerns is to defend and justify (state) sovereignty, and its continued significance and centrality to the global legal and political order today, even while acknowledging the changing *nature* of that sovereignty, and its coexistence with a strong system of global governance.

The second main concern of the book is to propose reform of the global governance system, principally by arguing for the 'further constitutionalization' (or what the author terms 'light' and 'non-monist' constitutionalization) of the international system, and particularly of the UN system. In short, Cohen argues that a reformed global governance system can be understood and reconciled with state sovereignty through a constitutional pluralist understanding.

If we posit the options for reform of global governance as ranging along a spectrum from 'legalization' (subjection to law and legal principles) at one end to 'democratization' at the other end, with 'constitutionalization' somewhere in the middle, the normative stance of the author can be summarized by saying that she rejects the first option of legalization alone as inadequate, views the third option of democratization as excessively demanding and unrealistically utopian, and argues instead for the intermediate category of constitutionalization. Several terms and definitions are key to her argument, including most importantly sovereignty, constitutionalism, constitutional pluralism, legal pluralism, and federation.<sup>1</sup>

I want to highlight two questions (amongst many other fascinating questions) which the book raised for this reviewer, one minor and one more substantial. The first concerns the meaning of 'dualist sovereignty' as Cohen describes it, and in particular who or what is the second sovereign in the dualist sovereignty depiction of global governance. The second concerns the

<sup>1</sup> Democracy, interestingly, does not make a strong appearance other than towards the end of the book where the author argues that constitutionalism and democracy stand in relation to one another, and that although it is not possible to have a democratic system that is not constitutional, it is possible to have a constitutional system that is not democratic.

distinction between ‘constitutional pluralism’ and ‘legal pluralism’ which Cohen draws, and the implications for the reform dimension of her project of her decision to reject legal pluralism in favour of constitutional pluralism.

Taking sovereignty first: sovereignty is defined in various ways in different degrees of detail throughout the book, and different dimensions are emphasized. Sovereignty is ‘the unifying and self-identifying claim of a polity regarding the supremacy and autonomy of its legal order’; it is the ‘self-determination of a polity’s constitutional order which cannot be disaggregated’, and ‘sovereignty protects the special relationship between a citizenry and its government’. But at the same time sovereignty, in its changing form, entails ‘status and inclusion in coercive global governance institutions’.

While Cohen repeatedly refers to her descriptive/prescriptive account of the international governance system today as a ‘dualist sovereignty regime’, most of the book’s engagement with sovereignty is taken up with explaining and defending one aspect of this dual sovereignty, i.e., the importance of *the continued sovereignty of states* as political communities. It is more difficult in the book to find an explanation and defence of the idea of the sovereignty of the ‘global level’ or of global governance, although that notion seems at least implicit, if not explicit, at several points, particularly in the chapter on federation. In what sense is this layer of international or global order sovereign? Who is the sovereign here? The collection of states? The international citizenry? Further elaboration of this challenging idea would have been welcome.

The second and larger question is about the choice of constitutional pluralism as the appropriate framework for reform of global governance, and the rejection of legal pluralism as inadequate or inappropriate to the task. The argument of the book in this respect runs as follows: while both legal and constitutional pluralism refer to a multiplicity of competing, overlapping jurisdictional normative orders independent of one another without a hierarchical relationship between them, constitutional pluralism (unlike legal pluralism) requires a ‘complex of political communities within an overarching political association of communities, each of which has its own legal order of constitutional quality’. The constitutional pluralist framework which Cohen is advocating thus requires an overarching ‘political community of communities’,<sup>2</sup> and she rejects forms of legal pluralism as inadequate to the task of reforming and disciplining global governance because legal pluralism and its advocates (within which she includes Matthias Kumm and Armin von Bogdandy) are ‘unable to provide a coherent concept of law or to distinguish law from other sources of normative order’ (at 63).

Her rejection of legal pluralism – including the disciplines and checks that arise from a plurality of competing normative orders – as inadequate to the task of reforming and disciplining global governance implicitly rejects the claims of other normative projects, such as Global Administrative Law (GAL), which are engaged in the same endeavour. And yet the scholars advocating the development of global administrative law do present a coherent conception of law, even without presupposing the more demanding political community of political communities advanced by Cohen.

In other words, the problem and the challenge identified by Cohen – namely how to propose and promote a normatively desirable framework for the continuing existence of resiliently sovereign states on the one hand, and powerful global governance institutions on the other hand, captures many features of the current arena of global governance (e.g., the many international and transnational bodies like ICAO, international and regional trade organizations, global financial and banking institutions, regulatory bodies, etc.) that the prescriptive and normative part of the book then arguably leaves aside.

<sup>2</sup> Some of the reforms to the UN which this would require are, according to Cohen, the abolition of the P5 veto, with all states to become equal co-states of the UN system, and the acknowledgement of the UN as a quasi-federation.

Her normative prescriptions, in other words, by insisting on a framework of constitutional pluralism and rejecting other forms of legal pluralism, leave aside the many other powerful global institutions and bodies that generate rules and norms, other than the UN Security Council or other UN bodies on which the book concentrates. While it is clear that the UN is the predominant global security organization, and the one with military power at its service, there are also many other organizations and bodies which have morphed or are morphing, as Cohen puts it in the book, into global governance institutions. Yet the book's focus on the need for political communities which participate in an overarching 'political community of communities' seems to leave many of these other important sites of legal and political authority out of the picture, and to reject as inadequate some of the more modest but perhaps also more currently feasible legal reform proposals which have been made.

Further, the demands of the constitutionalism prescriptions put forward in the book are strong, pushing towards an acknowledgment of the sovereignty or sovereign quality of the global governance institutions, and towards very significant reform of these bodies. These two features – the limited scope of the global governance institutions under scrutiny in the book, and the demanding reform prescriptions – both of which result from the choice of constitutional pluralism as the normative frame preferred by the author, risk limiting the likely success or influence of the book's otherwise attractive proposals.

These quibbles aside, this book is a very impressive achievement and well worth reading by anyone interested in the debates on global governance, international law and constitutionalism, and reform of the UN system. The author does a superb job in weaving together some of the diffuse and often somewhat inaccessible bodies of literature that together present the complex picture of scholarly understandings of the future of global governance.

Gráinne de Búrca

NYU Law School

Email: [deburcag@exchange.law.nyu.edu](mailto:deburcag@exchange.law.nyu.edu)

doi:10.1093/ejil/cht070

Sari Kuovo and Zoe Pearson (eds). ***Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance?*** Oxford: Hart Publishing, 2011. Pp. 250. £36. ISBN: 9781841134284.

Gina Heathcote. ***The Law on the Use of Force: A Feminist Analysis***. London: Routledge, 2012. Pp. 230. £24.95. ISBN: 9780415870238.

Feminist engagement with international law is coming into its own. From the early days of Charlesworth, Chinkin, and Wright's tentative yet electrifying alchemy of international law and feminism in 1991,<sup>1</sup> feminists have enthusiastically taken up the implicit challenge those authors made to their colleagues to contribute to the creation of a richer and deeper understanding of the discipline.<sup>2</sup> While feminist scholarship is rich in its complexity and diversity and does not

<sup>1</sup> Charlesworth, Chinkin, and Wright, 'Feminist Approaches to International Law', 85 *AJIL* (1991) 613.

<sup>2</sup> Although the literature is now considerable: see, e.g., Engle, 'International Human Rights and Feminism: When Discourses Meet', 13 *Michigan J Int'l L* (1991–1992) 517; D. Dallmeyer, *Reconceiving Reality: Women and International Law* (1993); Charlesworth, 'Alienating Oscar? Feminist Analysis of International Law', 25 *Studies in Transnat'l Legal Policy* (1993) 1; Knop, 'Re/Statements: Feminism and State Sovereignty in International Law', 3 *Transnat'l L & Contemp Probs* (1993) 293; Binion, 'Human Rights: A Feminist Perspective', 17 *Hmn Rts Q* (1995) 509; Charlesworth, 'Feminist Methods in International Law', 93 *AJIL* (1999) 379; H. Charlesworth and C. Chinkin, *The Boundaries of International Law: A Feminist Analysis*