

Review - Norms Without the Great Powers

Written by Andrea Birdsall

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ANDREA BIRDSALL, JAN 20 2018

Norms without the Great Powers: International Law and Changing Social Standards in World Politics

By Adam Bower

Oxford: Oxford University Press, 2017

Adam Bower's book grapples with the timely and important question of whether international treaties that are concluded without support of the most powerful states are worthwhile endeavours or weak and misguided efforts. Over the past two decades, there has been an acknowledgement that it might be better to work with strong rules (even at the risk of incomplete membership) rather than weaker agreements that incorporate concessions to include all actors from the outset.

Bower's book provides a challenge to some International Relations scholarship that presumes the success of global governance mechanisms to be wholly determined by great powers and their interests. Instead, the book examines consequences of institutional creations without such great power support and evaluates the success (or not) of treaties in internalising globally respected norms. In order to make the argument, the book analyses two case studies: it examines the Mine Ban Treaty (MBT) and the Rome Statute of the International Criminal Court (ICC) as non-great power treaties, i.e. instances in which multilateral treaties were negotiated and entered into force regardless of great power resistance to them. Rather than focussing on processes surrounding these treaties' creations, the book explores important underexplored questions related to their implementation. The starting point for this analysis is an acknowledgement that the creation of a treaty is not the endpoint of norm development but a transition to a new phase in which questions of adherence and contestation become relevant. The analysis uses a constructivist approach to examine the role international law plays in international politics, arguing that "legal institutions possess greater capacity to reshape international affairs than sceptics allow, due to the pre-eminent role that law plays in defining acceptable behaviour in the international system" (p. 13).

The first half of the book does a great job in developing a theoretical framework to explore how multilateral treaties may shape international relations regardless of great power support. Bower makes a strong case for constructivism as the most appropriate approach to study the role of law and its influence in international politics. He argues that law is embedded in the wider social system and that "conceiving of law as part of an interconnected international social system helps explain how non-great power treaties may defy the wishes of powerful actors to promote authoritative legal commitments and norms" (p. 39). Bower sees treaties and legal institutions not only as instruments that coordinate preferences, but also as ways to introduce new ideas about appropriate behaviour.

The second half of the book engages in in-depth analyses of the two case studies that are examined in light of their dynamics of legal implementation and norm development. Firstly, the MBT is examined as a treaty that has a large number of member states, but excludes those that have the most military strength and resources to use antipersonnel (AP) mines. Bower argues that a number of non-parties have partially adapted the mine ban norm and support a complete prohibition at some point in the future, which he sees as an important/notable shift from the previous status quo. He concludes that state practice shows that social expectations embedded in the MBT have an impact on great powers and other non-parties. They cannot ignore the norm (as realists would suggest), but must engage with the collective expectations they officially reject. This is not fully universalised, however, and Bower cautions that a number of non-parties try to avoid the MBT through alternative legal structures that seek to narrow the

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conditions under which AP mines may still permissibly be employed.

The ICC as the second case study paints a different and more complicated picture. Less optimistically, Bower finds that social pressures towards compliance and internalisation of norms have only partially been realised. In terms of non-parties to the ICC, he argues in line with Bosco (2014) that 'mutual accommodation' is taking place, i.e. efforts of non-parties have impacted the global status of the Court but equally had substantial unanticipated consequences in limiting their own political room for manoeuvre. Bower argues that engagement with the Court has led to some meaningful adaptation but not full internalisation of ICC norms (p. 153). He concludes that even though the ICC has not been as successful as the MBT, its norms have proven more resilient than many would have anticipated (p. 184).

Comparing the two case studies, Bower observes that even though both treaties influenced state practice, effects are more pronounced in relation to the MBT. The ICC also led to *some* changes within states, but there are still substantial barriers with regard to state cooperation that hinder a complete norm internalisation in this case. Both treaties have effects on wider social 'nested structures'; they "provide foundational reference points for a diverse set of debates over the meaning and extent of obligations in the international system" (p. 190). Bower finds that because non-parties have to engage with both legal instruments, they make them more influential in international relations.

The two cases show different results in how well their respective norms are internalised and Bower does well in attempting to explain those variations. Whilst it is difficult to isolate one or two factors that can be seen as having the greatest impact on normative developments, he formulates three hypotheses to explain differences in the respective treaty implementation. Firstly, he looks at the issue area of the treaties and concludes that even though the ICC imposes more substantial and extensive changes to state practice than the MBT, issue complexity cannot be seen as an isolated factor. He secondly examines closely related factors of sovereignty costs associated with the institutions. Here he finds that the ICC "represents a more fundamental challenge to foundational tenets of statehood than the comparatively modest intrusion of the AP mine ban." (p. 195). Finally, Bower examines questions of the enforcement regime and argues that both treaties rely on monitoring by states and civil society. In the case of the MBT, however, there is less demand for special responsibilities for great powers to take a leading role, than there is in the case of the ICC that is far more reliant on states' resources for its effective functioning. This then also means that powerful states have a stronger role within the Court system and can resist or obstruct it more easily.

In the book's final section, Bower engages in an interesting thought experiment of counterfactual great power support for the treaties and concludes that "the decision to proceed without the great powers has not, on balance, been detrimental to the causes of eliminating AP mines or providing criminal accountability for grave violations of atrocity laws." (p. 208). Even though there are differences between the two treaties' respective impacts, they have both had effects on state interests and practice. He concludes his overall study on an optimistic note by arguing that "developing treaties without great power support can prove a successful approach to creating strong international norms, even in challenging contexts that implicate core matters of state security and sovereignty" (p. 223).

Adam Bower's is an important book that moves beyond more traditional studies of power politics in International Relations. Its theoretical framework makes a valuable contribution to constructivist scholarship and particularly its study of the role of law in international relations. The book's rich empirical chapters provide reasons for optimism that (particularly humanitarian) norms can have an impact in international relations regardless of great power politics.

References

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About the author:

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Andrea Birdsall is a Lecturer in International Relations at the University of Edinburgh. Her work lies at the intersection of International Relations and International Law with a particular focus on human rights, international criminal justice and global governance. She is author of *The International Politics of Judicial Intervention* (Routledge) and a number of journal articles covering topics in human rights, the International Criminal Court and Human Rights Law in the context of counterterrorism efforts.