

Tana Johnson. **Organizational Progeny. Why Governments are Losing Control over the Proliferating Structures of Global Governance.** Oxford: Oxford University Press, 2014. Pp. 284. £25. ISBN: 9780198717799.

According to mainstream functionalist theories of international law and relations, international organizations are vehicles of states, tied to their masters by meticulous legal instructions. As Jan Klabbers recently pointed out in this journal,<sup>1</sup> functionalism was based on the idea of establishing peace by channelling international relations into the purportedly technical, a-political realm of international organizations. Research of the last couple of decades has profoundly rebutted the assumption that international organizations are a-political. They have been discovered, among others, to serve as platforms for the formation of epistemic communities,<sup>2</sup> as agorae for political deliberation and contestation<sup>3</sup> or to use their bureaucratic potential and the flexibility of their mandates to establish a degree of independence from their principals.<sup>4</sup>

The book by Tana Johnson, professor of political science at Duke University, adds another important perspective that has not been explored so far. She turns our attention to the fact that institutional design might matter for the international organization's independence from member states. As chief witness for her thesis, she summons the Intergovernmental Panel on Climate Change (IPCC). Originally a brainchild of the US government, it is today a fairly independent institution fallen from grace with its master. Johnson argues that it owes its independence to the influence of international bureaucracies – that is, staff of other international organizations, upon the process that led to its establishment. The thesis puts the spotlight on the fact that a majority of new international organizations that saw the light of the day during the last decades was fostered by pre-existing international organizations (at 8).

In elaborating this argument, Johnson rigorously applies state-of-the-art research methods in political science. For international lawyers, her book resembles a methodological showcase, offering them an easily accessible grasp of the methodological potency of their neighbouring discipline. Johnson sets out her theoretical framework in Chapters 2 and 3. She argues that while states have an interest in retaining control over newly established international organizations, whether through funding, oversight of staff or involvement in decision making (at 53), international bureaucrats have an interest that they remain insulated from state influence. Such insulation affords them material advantages through multiple sources of funding, greater legitimacy since they would not be seen to not only pursue state interests but also the global common good and easier advancement of the policies they desire (at 54ff). Whether and to what extent a new international organization is insulated from its member states depends on the role of international bureaucrats in the process leading to its establishment. Johnson predicts that the insulation of the new organization will be greater the more the 'parent' organization is insulated from member state control (at 43) and the more the international bureaucrats working in the 'parent' organization create alliances with staff in other organizations or with civil society (at 44). These two factors determine the capacity of international bureaucrats to set the agenda for the design process of a new institution and influence it in their favour (at 68, 74). Johnson relativizes these predictions by two scope conditions, namely that greater salience of an issue

<sup>1</sup> Klabbers, 'The Emergence of Functionalism in International Institutional Law: Colonial Inspirations', 25 *European Journal of International Law* (2014) 645.

<sup>2</sup> Haas, 'Epistemic Communities and International Policy Coordination', 46 *International Organization* (1992) 1.

<sup>3</sup> Klabbers, 'Two Concepts of International Organization', 2 *International Organizations Law Review* (2005) 277.

<sup>4</sup> Venzke, 'International Bureaucracies from a Political Science Perspective: Agency, Authority and International Institutional Law', 9 *German Law Journal* (2008) 1401.

(‘high politics’) (at 45), as well as greater expert knowledge of the states involved in respect of the subject matter concerned (at 46), will reduce the influence of international bureaucrats.

The author tests her predictions with three different methodological approaches. Their combination should exclude possible alternative explanations (at 69). Chapter 4 introduces a large-n analysis of a dataset comprising 180 international organizations, randomly selected from the institutions listed in the *Yearbook of International Organizations*. Johnson considers the extent of state financing, oversight meetings, unanimous voting and staff recruitment from governments as indicators of state control over an international organization (at 76–77). She then assesses the agenda-setting role of international bureaucrats in the design of each selected organization on a scale from zero to four depending on their input to, and participation in, the negotiations leading to the new organization. A statistical regression reveals that state control over international organizations is significantly weaker the more their creation involved agenda setting by international bureaucrats (at 82). Johnson controls these results for alternative explanations – consistent with her expectations, high-politics issues or the involvement of a few great power states tend to increase state control, while a high degree of technical sophistication or a wide geographic focus of an organization might lower it. Hence, the quantitative analysis supports her prediction that agenda setting by pre-existing international organizations matters for the insulation of the newborn organization.

Chapter 5 adds a qualitative perspective to confirm these results by looking at the creation of the IPCC and comparing it with the creation of the Advisory Group on Greenhouse Gases (AGGG), which occurred a few years earlier. In both cases, staff from the UN Environment Programme (UNEP) and the World Meteorological Organization (WMO) was involved in the negotiations. However, in the case of the AGGG, they teamed up with civil society and the scientific community to create an expert institution without government representatives, in which great powers showed no interest (at 115ff). Once created, the AGGG’s reports soon annoyed the US government. The Reagan administration intended to strike back by establishing an institution of their own making, the IPCC. The USA managed to keep the scientific community out of the ensuing intergovernmental negotiations, though not UNEP or the WMO. Although heavily pressurized by the US government, the UNEP and WMO bureaucrats retained some influence over the institutional design of the IPCC (at 117ff). Consequently, experts and international bureaucrats enjoy considerable influence upon the IPCC’s reports.

While policy-relevant reports formally need to be approved line by line by member state representatives in the IPCC’s plenary, political control over these reports is limited by the need to establish consistency with the underlying scientific reports. They are written by expert-driven working groups. The plenary may only accept or reject language in the reports but not modify it (at 121). Overall, these findings confirm some of Johnson’s predictions, namely that alliances with civil society and the influence of international bureaucrats over the design process (agenda setting) increase the independence of the resulting new organization, which is higher for the AGGG than for the IPCC. Nevertheless, the IPCC has successfully expanded its insulation from governmental influence in the subsequent years (at 128ff).

In Chapter 6, Johnson compares the design processes of three organizations with different ‘parent’ bureaucracies, namely the World Food Program (WFP), the UN Development Programme (UNDP) and UNAIDS, fostered by the Food and Agriculture Organization (FAO), the United Nations (UN) and the World Health Organization (WHO), respectively. In each case, international bureaucracies forged alliances among themselves and with civil society, which allowed them to set the agenda and push for the establishment of new organizations featuring a fair degree of insulation from the will of their member states. For example, they have relied on an array of funding sources or are overseen by governing councils where only a fraction of the

member states are represented on a rotating basis (at 154, 165) or where government representatives sit alongside civil society, as in case of UNAIDS (at 178). The void left by reduced member state control is usually filled by the 'parent' organization and its bureaucracy (at 183–184). Remarkably, these findings are, by and large, consistent across the three cases, which feature notable differences. While the WFP and the UNDP had to be pushed through by international bureaucracies in different alliances against initial resistance from the US government, UNAIDS required international bureaucracies interested in protecting their turf to team up under pressure from donor governments and unite their programs.

Chapter 7 tests the scope conditions by referring to one high politics organization, the International Energy Agency (IEA), and one low politics technical organization, the Financial Action Task Force (FATF). The case of the IEA shows how high politics issues reduce manoeuvring space for international bureaucrats to areas where their technical expertise enables them to influence the design of a new organization. The case of the FATF shows that member state influence prevails where they have the necessary technical expertise.

What are the book's main outcomes? It adds a moderating voice to the polarizing debate between realists and constructivists in international relations. International organizations can be autonomous, even from the start – but only under certain conditions (at 205). This has policy implications. While insulated international organizations cannot derive much legitimacy from state control, they might be better guards of global public interests than self-interested states due to their greater independence (at 215). Nevertheless, Johnson argues that considerations of legitimacy require improving the internal law of international organizations (at 217). The book concludes with a question of life and death, namely whether insulation from member states helps international organizations prevent their own shutdown (at 220). Johnson leaves the answer to further research.

I consider the book's findings about the role of international bureaucrats in creating new international organizations as solid and impressive. However, what I find perhaps most fascinating is the particular US perspective that characterizes Johnson's book. It is clearly written for an audience that expects powerful states to be the main players in the international arena and watches with amazement how international organizations develop a life of their own, challenging even the great powers. This perspective provides a welcome contrasting foil for the European view of international organizations, which tends to take a strong role of international organizations for granted. It reminds us of the idiosyncratic character of our own views. In particular, a strong notion of state sovereignty seems incompatible with the reality of most European states, which are closely integrated into a network of international and regional organizations. One might even go as far as claiming that international integration has become a defining part of the political identity of Europeans across a broad spectrum of political views, at least as long as they see in it a promise of a better life for a large part of the population. Granted, the Eurozone crisis might change this attitude.<sup>5</sup> However, for the time being, Europeans still often associate with international organizations the hopes that their ancestors cherished with regard to the nation state. In other words, the ethical idea that used to be associated with the state has been transferred to international organizations.

From the European point of view, there are at least two important insights to be gained and two points of criticism that might be raised. The insights are especially relevant for public law approaches to international law that focus on the 'holy trinity'<sup>6</sup> of public law values on the international level – democracy, rule of law and human rights. While some of them originate

<sup>5</sup> Most insightful on the dual trends of endorsement and rejection of international organizations, Zürn, 'Politisierung als Konzept der Internationalen Beziehungen', in M. Zürn and M. Ecker-Ehrhardt (eds), *Die Politisierung der Weltpolitik* (2013) 7.

<sup>6</sup> Kumm *et al.*, 'How Large Is the World of Global Constitutionalism?' 3 *Global Constitutionalism* (2014) 1.

in academic institutions along the US east coast, they seem to prevail on the continent.<sup>7</sup> First, Johnson demonstrates that the legal qualification of an organization does not matter much for its actual function or its independence. States and international bureaucrats consider non-treaty-based organizations such as the FATF and the AGGG simply another option that might suit their needs in a specific situation. The lack of international legal personality does not seem to prevent them from exercising power effectively. In turn, this might give rise to questions of responsibility. For public law approaches, therefore, it seems apposite to attribute international legal status to such organizations.

Second, the role of international bureaucrats in the design process of new organizations raises a host of normative questions. One of the bedrocks of international organizations' legitimacy is their legal basis. If member states cannot effectively control all of their operative activities, they should at least remain the masters of the treaties. Johnson reveals the sobering news that this is sometimes an illusion. As a consequence, one should closely scrutinize the creation of international organizations with a view to enhancing the mentioned public law values. This should not automatically amount to reassigning the driver's seat to states. Johnson is right in pointing out the limited ability of states to foster the global good. Rather, one might think about requirements of transparency, participation and accountability on the part of both states and international organizations. That would be a new branch of international institutional law – the principles relating to the formation of new international organizations.

My first point of criticism regards the author's assumptions about the interests of states and international bureaucrats. She assumes that states more or less share an interest in preserving control over international organizations and that certain issues – 'high politics' such as security issues – matter more for states than other issues. Conversely, she presupposes that the interests of international bureaucrats are aligned even across different organizations and that they are usually opposed to those of the member states. The European experience tells that this assumption might be difficult to sustain. For example, different issues matter differently for different states. This creates a whole different dynamic. Some states might forge alliances with international bureaucrats against other states or against other international bureaucrats that, in turn, are allied with other states. A classic example would be the relationship between the UN Conference on Trade and Development and the Bretton Woods institutions and the alliances they have formed with their respective supporting states. In the European Union (EU), alliances between member states and the European Commission might vary from one issue area to another. Moreover, one might have wished for a more complex view of inter-institutional relations.<sup>8</sup> For example, while I follow Johnson in her argument that international bureaucrats strive for insulation from member state will, I wonder whether they have a strong interest in equipping new organizations with similar independence. Competition among international organizations abates, as the case study of UNAIDS in Chapter 6 amply demonstrates.

Further, one might question the assumption that it matters for an organization's independence whether its staff is recruited from among government officials. Upon closer inspection, one might even find networks of government officials hosted by international organizations that retain a considerable degree of independence from their respective governments due to their technical expertise and agenda-setting capacity. So why should it matter whether bureaucrats are former government members? The Programme for International Student Assessment of the

<sup>7</sup> Public law approaches include global administrative law, research on the constitutionalization of international law as well as on international public authority.

<sup>8</sup> Cf. B. Kingsbury, 'Introduction: Overview of the Project, Workshop on Analyzing and Shaping Inter-Institutional Relations in Global Governance', Institute for International Law and Justice, New York University School of Law, 16 April 2012.

Organisation for Economic Development and Co-operation (OECD) is a case in point. It owes its existence to the operation of a long-standing international expert network including government officials and advisors. When the programme was established, it soon became an issue of high politics in some states, which were unable to reign it in effectively or even stop it.<sup>9</sup>

The second point of criticism is a methodological one. Johnson's study is based not only on strong assumptions about states but also on international bureaucrats as rational, egoistic actors. Although her approach is free from realist reverberations, she follows a (neo-)institutionalist approach that considers preferences as being relatively fixed and international negotiations as being characterized by bargaining, not arguing (for example, at 187). Certainly, her research design depends on such assumptions, and keeping them simple is a precondition for getting significant results. However, from a European perspective, one might desire an epistemologically richer view of the dynamics of international bureaucracies and international negotiations. The first desideratum concerns the relationship between the initial design of an institution and its later development. The transformations of the European Economic Community to what is today the EU with relatively few treaty modifications make it difficult to believe in the lasting significance of an institution's original design. If you consider this example to be an idiosyncratic trait of EU organizations, take the example of the OECD. It has matured from a Cold War think tank to an innovative, influential and increasingly global policy engineer since the 1990s, a development that occurred without any change in its formal design, except for its membership. The second desideratum would require a richer epistemology that recognizes not only purpose rationality but also value rationality,<sup>10</sup> or social and cultural capital,<sup>11</sup> as legitimate and effective drivers of behaviour. It would allow us to understand negotiations between states and international bureaucrats as processes of arguing, not just as bargaining exercises. Admittedly, the downside of this approach would be that this might render large parts of Johnson's research framework inoperative. Its benefits would therefore hardly outweigh the disadvantage of losing many of the valuable insights that the book provides.

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<sup>9</sup> von Bogdandy and Goldmann, 'Taming and Framing Indicators: A Legal Reconstruction of the OECD's Programme for International Student Assessment (PISA)', in K.E. Davis *et al.* (eds), *Governance by Indicators: Global Power through Classification and Rankings* (2012) 52.

<sup>10</sup> M. Weber, *Wirtschaft und Gesellschaft*, edited by J. Winckelmann (5th edn, 1972 [1922]), ch. 1, para. 2.

<sup>11</sup> Cf. Bourdieu, 'Force of Law', 38 *Hastings Law Journal* (1987) 805.