

Book Review

Reviewed Work(s): *No One Is Too Small To Make A Difference* by Greta Thunberg.

Published by: Penguin Books, London, United Kingdom, 30 May 2019

Length: 68 + vi

ISBN: 978-0-141-99174-0

Review by: Jing Zhi Wong*

BOOK REVIEW: NO ONE IS TOO SMALL TO MAKE A DIFFERENCE BY GRETA THUNBERG

I. WHAT THE BOOK ADDRESSES

The world has seen a number of major climate change demonstrations in 2019. The rationale behind these demonstrations is however unclear. Thunberg offers an explanation as to why these demonstrations have taken place and makes the case for why climate change should be taken seriously. Thunberg illuminates how the world has failed to take concrete steps towards tackling the likely consequences of climate change and pleads with world leaders to take climate change seriously and to act accordingly (p 3). Although the emotive framing of the climate change issues in this book invite the tendency for them to be characterised as politically polarised and emotive (pp 31-32), and invites *ad hominem* criticisms that Thunberg is ‘too young’ to hold

* JD (Research by Invitation) Candidate, Law School, The University of Western Australia. BSc ‘18 (W. Aust). I would like to thank Kate Koh and Kelsey Houwen for comments on an earlier draft. All errors are mine alone. benjamin.jz.wong@gmail.com.

such views,¹ it in no way detracts from the significance of the messages this book seeks to convey.²

No One Is Too Small To Make A Difference is a collection of Thunberg's inspiring speeches given at various climate change forums – numerous rallies across Europe, the United Nations Climate Change Conference, World Economic Forum, European Parliament, and British Parliament (p i). The book provides timely and critical hermeneutical insights into the international arena of international environmental law-making and law-enforcement. Though not of a legal nor doctrinal nature, this book provides ample fodder for thought about some of the contemporary issues in Public International law and International Environmental Law. This collection of speeches sheds light on aspects of bad '[political and] legal culture'³ and attitudes towards climate change which sections of contemporary western society perceives as rampant in the realm of international law and world politics.

II. THESIS

The thesis of the book is that our world leaders are not taking climate change seriously (p 13). World leaders and large corporations in positions of decision-making power have failed to recognise the urgency of the situation (pp 18, 32),⁴ and the overall failures of the current systems that are in place to tackle climate change (p 20). Thunberg makes clear that the view that the world is 'not doing enough' to tackle climate change is a misconception. By contrast, Thunberg claims the world is 'basically not doing anything' (p 17). In Thunberg's view, the treaty-based Paris Agreement and Kyoto Protocol targets are either met or not met (pp 9-10). Countries party to

¹ Eg, 'there is one complaint that "I sound and write like an adult". And to that I can only say: Don't you think that a sixteen-year-old can speak for herself?'; Greta Thunberg, *No One is Too Small to Make a Difference* (Penguin Books, 2019) 31.

² Ibid 25-6, 31-3. The fact that Ms Thunberg has Asperger's does not in any way affect the analyses of issues presented in her book. As Ms Thunberg courageously argues: '[it] is not a disease, it's a gift'.

³ Eg, David Nelken, "Using the Concept of Legal Culture," *Australian Journal of Legal Philosophy* 29 (2004): 1.

⁴ 'Our house is on fire'.

these international agreements should not rest on their laurels for their efforts that fall short of those targets. In Thunberg's view, there is no political will to abate the effects of climate change (pp 12, 22), but a rampant political culture of promising false hopes (p 58), denial and inaction (pp 37, 40); perpetuated by the relentless pursuit of economic and financial success and inaction for fear of losing political influence and popularity (pp 17-24, 36, 51-2). The author suggests that the world needs new politics to give effect to climate justice (pp 9, 36-7). Implicit in the author's arguments are that a rules-based international order is no longer sufficient to compel states' cooperation in tackling climate change.⁵

III. COMMENT

Thunberg's thesis, while obviously not of legal discourse, resonates with existing contemporary legal scholarship which posit that states are ill-equipped in implementing and giving effect to their treaty obligations on a domestic level, thereby failing in their international law obligations.⁶ Granted that climate change affects the whole world

⁵ Eg, Nicole Roughan, *Authorities: Conflicts, Cooperation, and Transnational Legal Theory* (Oxford University Press, 2013).

⁶ See, eg, Rosalyn Higgins, *Problems and Processes: International Law and How We Use it* (Clarendon Press, 1995) 218; Antonio Tzanakopoulos and Christian Tams, "Introduction: Domestic Courts as Agents of Development of International Law," *Leiden Journal of International Law* 26, no. 3 (2013): 531, 533; Georg Schwarzenberger, "The Inductive Approach to International Law," *Harvard Law Review* 60, no. 4 (1947): 539, 555-7; Antonio Tzanakopoulos, "Domestic Courts in International Law: The International Judicial Function of National Courts," *Loyola of Los Angeles International & Comparative Law Review* 34 (2011): 133, 138-40; Helmut Aust, Alejandro Rodiles and Peter Staubach, "Unity or Uniformity? Domestic Courts and Treaty Interpretation," *Leiden Journal of International Law* 27 (2014): 75; Antonio Tzanakopoulos et al, "Study Group on Principles of the Engagement of Domestic Courts with International Law," *International Law Association Reports of Conferences* 77 (2016): 996, 1003-5; Amos Enabulele, "Multilateral Treaties and the Effects of the Universality of Customs on State Consent," *New Zealand Yearbook of International Law* 13 (2015): 3, 5-7; Takele Bulto, "The Human Right to Water in the *corpus* and Jurisprudence of the African Human Right System," *African Human Rights Law Journal* 11 (2011): 341; Richard Falk, *The Status of Law in International Society*

as much as it affects individual states, climate change as a local problem has become a ‘global problem’ of international importance.⁷ This has driven the perceived need for the ‘globalisation (internationalisation) of laws’.⁸ The application of laws (as a system⁹) at this ‘universal’¹⁰ level, requires a ‘truly global [political and] judicial system’.¹¹ Such a system would require corresponding normative and institutional hierarchy of laws that are justiciable and can be fulfilled by all states and within states.¹² Corollary, states ideally should harmonise international law and domestic law,¹³ and recognise globalisation as a socio-cultural phenomenon in order to facilitate, to the greatest extent, monist harmonisation of international law and domestic law.¹⁴ States should coordinate competencies and cooperate,¹⁵ in order to promote normative integration and organic

(Princeton University Press, 1970) 433; Joel P. Trachtman, *The Future of International Law* (Cambridge University Press, 2013).

⁷ David Kennedy, *A World of Struggle: How Power, Law and Expertise Shape Global Political Economy* (Princeton University Press, 2016) 24.

⁸ Pierre-Marie Dupuy, ‘Unity In The Application Of International Law At The Global Level And The Responsibility Of Judges At The National Level: Reviewing George Scelle’s ‘Role Splitting’ Theory’ in Laurence Boisson de Chazournes and Marcelo Kohen (eds), *International Law and the Quest for Its Implementation* (Brill, 2010) 417, 417; Michael Kirby, “Transnational Judicial Dialogue: Internationalisation of Law and Australian Judges,” *Melbourne Journal of International Law* 9 (2008): 171.

⁹ Jan Klabbbers, ‘Law-Making and Constitutionalism’ in Jan Klabbbers, Anne Peters, and Geir Ulfstein (eds), *The Constitutionalization of International Law* (Oxford University Press, 2009) 81, 94-5.

¹⁰ Philip Allott, ‘The Emerging Universal Legal System’ in André Nollkaemper and Janne Nijman (eds), *New Perspectives on the Divide Between National and International Law* (Oxford University Press, 2007) 63; Li Ming, “The Transcivilizational Perspective: A Legitimate and Feasible Approach to International Law,” *Asian Journal of International Law* 9 (2019): 165, 166.

¹¹ Allott (n 10).

¹² Dupuy (n 8) 417; See specifically, Charles Leben, *The Advancement of International Law* (Hart, 2010) 204-7; Hermann Kantorowicz, *The Definition of Law* (Cambridge University Press, 1958) 79.

¹³ Dupuy (n 8) 418.

¹⁴ Ibid.

¹⁵ Ibid.

cooperation.¹⁶ It is, however, easier said than done.¹⁷ States face many obstacles in implementing this ideal global political and judicial model.¹⁸

First, countries with a dualist constitutional system face barriers in adjudicating international law norms that have not yet been received into domestic law, or those that conflict with its Constitution.¹⁹ Monist countries, in a similar vein, may not apply international law that would modify existing law or conflict with existing rights or interests.²⁰ Here, international law is not invocable domestically because international law rules are not enlivened through reception or because states can choose to employ ‘avoidance/blunting techniques/canons’ to justify non-compliance.²¹ *Second*, the doctrine of ‘act of state’ imposes restrictions on states and their jurisdiction to enforce international law norms (immunities).²² *Third*, matters considered polycentric are not usually justiciable.²³ *Fourth*, where all states face the same obstacles, the failure of all states to comply with their international law obligations appear alright, because ‘if everyone is guilty then no one is to blame’.²⁴ In these four senses, states are constrained in their ability to give effect to their international law

¹⁶ Dupuy (n 8) 419.

¹⁷ Eg, Lauri Malksoo, “Civilizational Diversity as Challenge to the (False) Universality of International Law,” *Asian Journal of International Law* 9, no. 1 (2019): 155.

¹⁸ Dupuy (n 8) 419.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Eg, see Antonio Tzanakopoulos, “Domestic Courts in International Law: The International Judicial Function of National Courts,” *Loyola of Los Angeles International & Comparative Law Review* 34 (2011): 133, 138-40; Tzanakopoulos and Tams (n 6) 534-5; Helmut Aust, Alejandro Rodiles and Peter Staubach (n 6) 75; Tzanakopoulos et al (n 6) 1008.

²² Schwarzenberger (n 6) 555-6.

²³ Ibid 556; Tzanakopoulos et al (n 6) 1005.

²⁴ Thunberg (n 1) 17.

obligations by self-interest²⁵ and power politics, and the lack of socio-political will.²⁶

Further, while several ‘outward-looking’ traditional international law obligations (state-to-state rules, eg, of prohibition on use of force,²⁷ freedom of navigation, *jus cogens*, etc) are well developed to deal with inter-state relations,²⁸ the trend in emerging provinces of international law such as human rights, environmental protection, trade and commerce are increasingly ‘inward-looking’.²⁹ They ‘demand a state to take or refrain from certain conduct’,³⁰ or ‘enable conduct within certain parameters’.³¹ This requires states to oversee the implementation of internationalist rules domestically.³² This poses major problems. Human and environmental rights jurisprudence are less developed and are politically ‘precarious affairs’.³³

For example, there have been mounting pressure on states to hold corporations liable for breaches of international environmental

²⁵ Schwarzenberger (n 6) 559; See also, Phillip Allott, “Kosovo and the Responsibility of Power,” *Leiden Journal of International Law* 13 (2000): 83, 89.

²⁶ Eg, Brent Wible, “De-Jeopardizing Justice: Domestic Prosecutions for International Crimes And The Need for Transnational Convergence,” *Denver Journal of International Law and Policy* 31, no. 2 (2003): 265, 266; Eibe Riedel, “Standards and Sources: Farewell to the Exclusivity of the Sources Triad in International Law?,” *European Journal of International Law* 2 (1991): 58, 61.

²⁷ Eg, *US Citizens Living in Nicaragua v Reagan*, 859 F 2d 929, 934-5 (DC Cir 1988).

²⁸ Erika de Wet and Jure Vidmar, “Conflicts between international paradigms: Hierarchy versus systemic integration,” *Global Constitutionalism* 2, no. 2 (2013): 196, 204; Tzankopoulos and Tams (n 6) 534.

²⁹ Tzankopoulos and Tams (n 6) 534.

³⁰ Ibid.

³¹ Ibid.

³² Ibid; See also Slaughter and Burke-White (n 56).

³³ André Nollkaemper, “The Independence of the Domestic Judiciary in International Law,” *Finnish Yearbook of International Law* 17 (2006): 261, 262-3.

law,³⁴ especially natural resources companies who collude with foreign governments in violating ‘basic human and environmental rights’.³⁵ But as corporations are not ordinarily subjects of international law,³⁶ responsibility for reining in errant corporations lie with states.³⁷ States often face difficulties due to the lack of domestically justiciable rules that are harmonised and integrated with international law,³⁸ and a lack of *will* to police environmental wrongs.³⁹ While claims of environmental wrongs have sound bases in various sources of international law (eg, the *UN Charter*, *United Nations Declaration on the Rights of Indigenous Peoples*, various treaties,⁴⁰ etc), these norms have not yet been received⁴¹ into domestic law.⁴² Claims of environmental rights in domestic law are then usually couched in terms of extant ‘rights to life and property’.⁴³ But because the dispute is in substance on establishing corporate liability for harmful impacts on individuals, rather than environment impact itself,⁴⁴ such claims stretch the realisable rights to life and property in domestic law a little too far.⁴⁵ At present, environmental rights and duties are not being recognized at the domestic level because they do not exist domestically, and plural understandings of property rights encompassing environmental rights are not recognised due to the perceived disparate effect on pre-existing property rights and interests. That said, while current rules of international law allow internal discretion, they impose expectations to

³⁴ Eg, Giorgia Papalia, “Doing Business Right: The Case for a Business and Human Rights Treaty,” *Perth International Law Journal* 3 (2018): 96.

³⁵ Olivier Salas-Fouksmann, “Corporate Liability of Energy/Natural Resources Companies at National Law for Breach of International Human Rights Norms,” *UCL Journal of Law and Jurisprudence* 2 (2013): 201, 202.

³⁶ Ibid 203; cf José Alvarez, “Are Corporations “Subjects” of International Law?,” *Santa Clara Journal of International Law* 9 (2011): 1.

³⁷ Salas-Fouksmann (n 35) 203.

³⁸ Tzanakopoulos et al (n 6) 1005; Papalia (n 34).

³⁹ Salas-Fouksmann (n 35) 207-8.

⁴⁰ Amos Enabulele (n 6) 5-7.

⁴¹ Antonio Tzanakopoulos et al (n 6) 1003.

⁴² See also, Takele Bulto (n 6).

⁴³ Salas-Fouksmann (n 35) 207.

⁴⁴ Ibid.

⁴⁵ Ibid 207-8; See also Nicole Roughan and Andrew Halpin, “A Response to Commentators on In Pursuit of Pluralist Jurisprudence,” *Transnational Legal Theory* 8 (2017): 415.

fulfil often unclear, uncertain and broad ‘inward-looking’ obligations which states are unwilling and ill-equipped to enforce and realise.⁴⁶ Thunberg’s view that there is no political will to abate the effects of climate change (pp 12, 22) may be understood in this context.

In an ideal utopian world, international law can be thought of as a rules-based international order – a system of politically neutral, objective,⁴⁷ and value-free rules, where all countries obey these rules, where international law exists ahead of policy decisions and can resolve all issues which the world faces.⁴⁸ But in reality, this is not often the case. While treaty-based rules setting out climate change targets such as the Paris Agreement and Kyoto Protocol exist, they are inadequate in compelling compliance on the domestic level.

A rules-based international order does not effectively compel states to act. A rules-based international order discounts a vital piece of the puzzle – states’ *will* (whether voluntary or coerced) in implementing and giving effect to international law rules. Rules themselves cannot compel action if they cannot be enforced by institutions.⁴⁹ When we talk about law, we assume almost as a

⁴⁶ Tzankopoulos and Tams (n 6) 534; Various authors propose creative solutions. See, eg, Koh Kheng-Lian, Nicholas Robinson and Lye Lin-Heng, *ASEAN Environmental Legal Integration: Sustainable Goals?* (Cambridge University Press, 2016); Jolene Lin, *Governing Climate Change: Global Cities and Transnational Lawmaking* (Cambridge University Press, 2019); Jan Klabbers and Touko Piiparinen (eds), *Normative Pluralism and International Law: Exploring Global Governance* (Cambridge University Press, 2013); Michael Giudice, “Global Legal Pluralism: What’s Law Got to Do With It?,” *Oxford Journal of Legal Studies* 34, no.3 (2014): 589; De Wilde (n 49).

⁴⁷ Rosalyn Higgins, “Policy Considerations and the International Judicial Process,” *International & Comparative Law Quarterly* 17, no. 1 (1968): 58, 58.

⁴⁸ Shirley Scott, ‘In Defense of the International Law-Based Order’ (Web Page, Australian Institute of International Affairs, 7 June 2018) <<https://perma.cc/56TW-9556>>.

⁴⁹ Kantorowicz (n 12) 79; See also, in a functionally similar context, Tommy Thomas, *Abuse of Power: Selected Works on the Law and Constitution* (SIRD, 2016) 272 *et seq*; By reducing law to ‘a set of norms’, the problem of ‘realization of law’ is obscured. See, Marc De Wilde, “The Dark Side of Institutionalism: Carl Schmitt Reading Santi Romano,” *Ethics & Global Politics* 11, no. 2 (2018): 12, 13, 17, 19-20, 22; Carl Schmitt, *On*

pleonasm, a minimum degree of institutionalization.⁵⁰ We assume that law is individuated in political and legal systems whose institutions have the ability to compel action.⁵¹ Focusing on rules and norms of law without reference to institutional contexts of rule-enforcement does not address with whether states should, beyond normative reasoning, generate *will* to act. As Thunberg argues, the lack of enforceable environmental law norms⁵² have allowed decision-makers to get away with denying climate change (pp 17, 40).

An international law-based order is, on the other hand, a functionally more effective system in compelling compliance and combating the effects of climate change. As scholarly literature suggests, an international law-based order provides the necessary renewed political *will*⁵³ required to compel states not only to comply with international law on an inter-state level, but also on a domestic level.⁵⁴ It can propel the world into a ‘future of international law that is

the Three Types of Juristic Thought, tr Joseph W Bendersky (Praeger, 2004) 11, 20, 27, 48, 57, 65.

⁵⁰ Roger Shiner, *Norm and Nature: The Movement of Legal Thoughts* (Clarendon Press, 1992) 22.

⁵¹ Joseph Raz, *The Concept of a Legal System: An Introduction to the Theory of Legal System* (Clarendon Press, 2nd ed, 1980) ch iv; De Wilde (n 49).

⁵² Papalia (n 34).

⁵³ André Nollkaemper and Janne Nijman (eds), *New Perspectives on the Divide Between National and International Law* (Oxford University Press, 2007) 13; Thunberg (n 1) 9, 36-7; New Zealand recently passed its climate change bill. See AP and Staff Writers, ‘Jacinda Ardern gives inspiring speech as New Zealand passes historic climate change law’, *News.com.au* (Online, 8 November 2019) <<https://perma.cc/TD3Z-XTYA>>.

⁵⁴ See Diane Desierto and Colin Gillespie, “A Modern Integrated Paradigm for International Responsibility Arising From Violations of Economic, Social and Cultural Rights,” *Cambridge Journal of International and Comparative Law* 3, no. 2 (2014): 556, 556-7; Masha Fedorova and Goran Sluiter, “Human Rights as Minimum Standards in International Criminal Proceedings,” *Human Rights and International Legal Discourse* 3 (2009): 9; Massimo Lando, “Intimations of Unconstitutionality: The Supremacy of International Law and Judgment 238/2014 of the Italian Constitutional Court,” *Modern Law Review* 78, no.6 (2015): 1028, 1028.

domestic’ and based on multilateral cooperation, pluralism,⁵⁵ and integration.⁵⁶

Thus, instead of seeing international law as being mere rules that operate in an ‘all or nothing’ fashion (cf p 31), international law should be seen as ‘a continuing process of authoritative decisions’ – ie, a ‘decision-making process, and not just [a system] of ... ‘rules’.⁵⁷ In this way, decisions made by international institutions (to which states are party to) on climate change matters may be given greater weight by local institutions. This may better influence domestic policy-making, law-making and law-enforcement.

IV. CONCLUSION

In conclusion, one should note that although the book is not a legal text, it gives us context to understanding issues in international environmental law, and how international environmental law could relate to the political and legal systems it demands deference from. This book is more than a phrasebook of inspirational quotes. It is of less consequence that the author’s analyses are scant and abrupt, given that the book is a collection of speeches and aimed at the general public. Nevertheless, the arguments within the book are well thought-out and

⁵⁵ Eg, Michael Addaney, “Governing Climate Change: Global Cities and Transnational Lawmaking, written by Jolene Lin,” *Climate Law* 9 (2019): 149; Giudice (n 46).

⁵⁶ See, eg, Letizia Lo Giacco, “Swinging between finding and justification: judicial citation and international law-making,” *Cambridge International Law Journal* 6, no. 1 (2017): 27, 27, 34; Fuad Zarbiyev, “Judicial Activism in International Law,” *Journal of International Dispute Settlement* 3, no. 2 (2012): 247, 248; Anne-Marie Slaughter, *A New World Order* (Princeton University Press, 2004) 86; Dirk Pulkowski, ‘Structural Paradigms of International Law’ in Tomer Broude and Yuval Shany (eds), *The Shifting Allocation of Authority in International Law* (Hart, 2008) 51, 69; Anne-Marie Slaughter and William Burke-White, “The Future of International Law is Domestic (Or the European Way of Law),” *Harvard International Law Journal* 47 (2006): 327; Anne-Marie Slaughter, “Judicial Globalization,” *Virginia Journal of International Law* 40 (2000): 1103; André Nollkaemper and Janne Nijman (eds), *New Perspectives on the Divide Between National and International Law* (Oxford University Press, 2007) 13; Eibe Riedel (n 26) 58-9.

⁵⁷ Higgins (n 47) 59.

are well supported by a wide array of contemporary legal scholarship (although not referred to by the author, given that this book is not aimed at the legal community). These are small criticisms of a book that is otherwise a useful addition to the bibliography of literature evidencing political and legal culture⁵⁸ on international relations, international law and environmental law.

⁵⁸ Nelken (n 3) 1.