

Redaelli has written a sophisticated account of the international law on intervention in civil war. She has presented a marvel of analytic clarity and integrity regarding the many interrelated changes that must take place for the established rule on intervention to expand to non-state actors: the abstention rule must end; the effective-control rule must end; a government must be illegitimate, and a non-state actor opposing it must be legitimate. Despite these hurdles, she indicates her own support for such an expansion, yet avoids finding evidence where it does not exist. She can foresee a time when the necessary changes will occur, but acknowledges they had not happened when she concluded her book. In the meantime, the pandemic struck and long-running interventions in Afghanistan and elsewhere have come to an end. The possibility that there will be sufficient state practice to change even a positive law version of the rule on intervention in civil war appears remote.

Instead, the book supports drawing the pro-intervention era to a close. Redaelli's effort marks a watershed moment for scholarship aimed at expanding the right to resort to war. Legal research, long conducted in support of expanding military conflicts, can now focus on imperative challenges such as climate change and racism. Post-mortems will be written on why post-Cold War interventions, from Afghanistan to Yemen, have failed, spurring, we can hope, a new interest in work on peaceful resolution of disputes and promotion of the human right to peace. The human right to peace supports all other rights, including the rights to life, equality, health and a healthy planet. It is a right to prioritize in a post-pandemic, post-intervention world.

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Stefano Ponte. **Business, Power and Sustainability in a World of Global Value Chains**. London: Zed Books, 2019. Pp. 273. £19.99. ISBN: 9781786992604.

Conveying an aspiration to marry the competing logics of economic growth and environmental protection, sustainability has come to function as both an objective and a source of legitimacy of international law. Anchored in multilateral environmental agreements and customary international environmental law,<sup>1</sup> sustainability finds its most pronounced expression in the UN sustainable development goals (SDGs), which are presented as a *telos* of the international legal system. At the same time, sustainability's definitional vagueness has sustained the notion that it captures the 'global public interest'.<sup>2</sup> This elevates sustainability to a justification of the system of international law.

<sup>1</sup> Viñuales, 'Sustainable Development', in L. Rajamani and J. Peel (eds), *The Oxford Handbook of International Environmental Law* (2021).

<sup>2</sup> Schill and Djanic, 'Wherefore Art Thou? Toward a Public Interest-based Justification of International Investment Law', 33 *ICSID Review – Foreign Investment Law Journal* (2018) 29, at 29.

Joining a growing stream of literature that offers a critical outlook on the content and function of ‘sustainability’,<sup>3</sup> Stefano Ponte shows how sustainability has been used by transnational corporations that function as ‘lead firms’ of global value chains (GVCs)<sup>4</sup> as a way to extract higher margins of value from their suppliers – usually producers in the Global South. The main analytical contribution of *Business, Power and Sustainability in a World of Global Value Chains* lies in its discussion of sustainability management as a feature of contemporary capitalism. By means of an empirical analysis and a wide-ranging literature review, Ponte shows how lead firms have made specific operationalizations of sustainability management profitable, while also using its instruments to ‘externalize risk, widen product portfolios, improve information about and control over suppliers, and manage brand reputation’ (at 19).

While Ponte mainly writes for international political economists, political scientists, business studies scholars and policy makers, his critical work also conveys important insights for international lawyers. The first reason for this is that, at a time of growing interest in the intersection of international law and political economy,<sup>5</sup> the analysis of *Business, Power and Sustainability* blazes a promising methodological trail. International lawyers commonly think of sustainability through state-centred institutional schemes and legal instruments, including multilateral environmental agreements, the SDGs, etc. The focus is then on the content of such instruments, their legal bindingness (if any) and the instruments they provide for enforcement or remedy. Ponte’s analysis, coming from the angle of international political economy, instead, takes the reader to the granular world of GVCs and the management of sustainability therein.<sup>6</sup> It is this change of perspective, from the macro to the micro and from the public to the private, that constitutes a key methodological takeaway from *Business, Power and Sustainability* for international lawyers. In contractually governed GVCs, lead firms that ‘drive’ value chains have the capacity to act as regulators of the production process, mandating sustainability requirements from their suppliers. There could be multiple reasons for this corporate-mandated sustainability, including

<sup>3</sup> See, e.g., Pahuja, ‘Changing the World: The Ethical Impulse and International Law’, in R. Gaita and G.J. Simpson (eds), *Who’s Afraid of International Law?* (2017) 65; Adelman, ‘The Sustainable Development Goals, Anthropocentrism and Neoliberalism’, in D. French and L. Kotzé (eds), *Sustainable Development Goals Law, Theory and Implementation* (2018) 15. Specifically on SDG 12 on sustainable consumption and production, see Arcuri and Partiti, ‘SDG 12: Ensure Sustainable Consumption and Production Patterns’, in J. Ebbesson and E. Hey (eds), *Cambridge Handbook on the Sustainable Development Goals and International Law* (forthcoming 2022).

<sup>4</sup> Examples of ‘lead firms’ are Nestlé or JAB Holdings, in the case of the coffee supply chain. On how global lead firms ‘drive’ the actions of other firms in the chain, see e.g., Gereffi, Humphrey and Sturgeon, ‘The Governance of Global Value Chains’, 12 *Review of International Political Economy* (2005) 78; Gibbon, Bair and Ponte, ‘Governing Global Value Chains: An Introduction’, 37 *Economy and Society* (2008) 315; Ferrando, ‘Private Legal Transplant: Multinational Enterprises as Proxies of Legal Homogenisation’, 5 *Transnational Legal Theory* (2014) 20, at 24.

<sup>5</sup> See Haskell and Rasulov, ‘International Law and the Turn to Political Economy’, 31 *Leiden Journal of International Law* (2018) 243.

<sup>6</sup> For a similar perspective, but with a focus on private regulation, see T. Barley, *Rules without Rights: Land, Labor, and Private Authority in the Global Economy* (2018).

participation in multistakeholder initiatives, partnerships with non-governmental organizations (NGOs), compliance with various 'soft law' requirements or self-imposed commitments as a response to consumer demands or as brand risk management. What is particularly important for legal analysis is that in privately co-ordinated, globally fragmented regimes of production, lead firms function as gatekeepers to global markets and, as such, shape the actual content of sustainability reforms.

The second reason *Business, Power and Sustainability* resonates with international lawyers – particularly those interested in the SDGs and in business and human rights – is substantive. Ponte's scathing critique of 'green capitalism' as a mechanism of value extraction and wealth transfer from the Global South to the Global North dispels the narrative of sustainability as the cornerstone of public interest or as supposedly inimical to profit-making. In short, 'green capitalism' remains 'capitalism', possibly even intensifying existing power asymmetries. At the same time, considering sustainability's role as a moral fundament of the international legal order, the critique of green capitalism also invites a reckoning with the goals and identity of the international legal system. This is because it prompts a question both about the institutional shifts that enabled new regimes of value accumulation and about the kind of institutional imagination that is required to address the aggregate impact of production and consumption on the Earth and in its biosphere.

Linking institutional shifts to changing processes of value accumulation is facilitated by Ponte's theoretical conceptualization of power in GVCs. In his broad account, power in GVCs should not be understood as stemming solely from bargaining power that is based on superior market position, but also as a product of institutions and informal social pressures. Yet, this account could be challenged as not going far enough. This is because it underestimates the role institutions play not only in shaping existing private power but also in generating it in the first place. Indeed, I argue that, from a legal-theoretical perspective, Ponte's theoretical account does not sufficiently capture the *constitutive role law plays in the formation of GVCs*. Tectonic shifts in the global economy that led to the prevalence of offshore outsourcing, to the vertical disintegration of corporations and to the increasing significance of private ordering – including for purposes of sustainability – did not simply 'happen', but, rather, they were the products of various institutional re-arrangements, such as reforms of trade and market liberalization or labour under-regulation associated with export-led growth. In other words, trade agreements guaranteeing market access, robust protection of intellectual property rights, the protection of foreign direct investment against expropriation or national policies reducing labour costs to facilitate local businesses joining value chains as suppliers enabled the formation of GVCs and undergird the private power of lead firms. Thus, while shifting the attention to the power and potential of private ordering is analytically justified, corporate power should not be studied in isolation but instead in parallel with national and international institutional reforms.

An illustrative case study, discussed in the book, of how institutional shifts facilitated new modes of value accumulation is that of coffee. While the coffee market was regulated under the International Coffee Agreement (ICA) and its export quota system, prices remained stable with significant benefits for exporting countries in the

Global South. As the ICA system broke down in 1989 and ‘market relations substituted political negotiation over quotas’,<sup>7</sup> the capabilities of producing countries to control exports weakened and roasters, functioning as lead firms in the new coffee value chain, gained significantly in bargaining power. The result of these new dynamics was that while in the 1970s producers retained an average of 20% of the total value generated by coffee sales globally, this percentage dropped to 13% after 1989. At the same time, the percentage of total value accruing to roasters in the consuming countries increased from 53% to 78%, indicating the transfer of value that started taking place from the Global South to the Global North. This was accompanied by increasing industry concentration worldwide, with now two groups dominating the coffee value chain – JAB Holdings and Nestlé. Even though these major roasters faced a challenge with the advent of the speciality market of sustainable coffee, they regained their bargaining position by increasingly requiring third-party sustainability certifications, making the distinction between the speciality and mainstream markets less clear-cut.

As a result, sustainability features, like reduced greenhouse gases emissions or organic certification, increasingly become a central demand for producers, who must comply if they wish to keep participating in GVCs. Empirical research indicates that sustainability certifications are indeed linked to modest improvements in the environmental conduct of producers. However, it also shows that producers do not gain from this upgrade to their content in terms of the proportion of the retail price that they receive – in fact, even when they obtain a higher price for higher quality in absolute terms, the proportion of the retail price they receive has dropped dramatically, with lead firms extracting a lion’s share of value. This showcases how sustainability in production is not only compatible with, but may itself be instrumentalized to lead to, increased wealth inequality. What Ponte calls ‘sustainability-driven supplier squeeze’ (at 134) is a pervasive phenomenon of value chains, with the garment or the furniture value chains providing further examples. Beyond functioning as a lever for lead firms to capture more value, sustainability certifications are also useful for the purposes of risk management, allowing lead firms to be disassociated from possible wrongdoing.

The example of the coffee value chain illustrates how institutional shifts – in this case deregulation and the dismantling of the quota system – play a decisive role for the consolidation of bargaining power by corporations, which then assume the role of ‘leading’ value chains, dictating goals to suppliers and producers and operationalizing aspirations of sustainability. Following the assumption that national and international law is constitutive of GVCs in the first place would lead to the conclusion that state-driven institutional re-arrangements could reverse such processes. The possibility of reversal rests on the fact that the allocation of power-conferring legal entitlements (unimpeded market access, protection from expropriation, low labour and transaction costs, etc.) is inevitably political and subject to change depending on the socio-historical context. In the case of coffee, for example, returning to an export quota system remains

<sup>7</sup> Ponte, ‘Standards and Sustainability in the Coffee Sector: A Global Value Chain Approach’, *International Institute for Sustainable Development* (May 2004), at 4, available at [www.iisd.org/system/files/publications/sci\\_coffee\\_standards.pdf](http://www.iisd.org/system/files/publications/sci_coffee_standards.pdf).

a theoretical possibility, which would presumably have dramatic consequences for the existing value chain and the power of the lead firms therein. However, Ponte does not draw this conclusion from his exposition of the coffee value chain, suggesting that top-down regulation is not sufficient in addressing the scale and complexity of the problems at hand. Instead, he advocates for an approach of ‘orchestration’ – that is, a pragmatic approach of steering the market economy through a combination of policy tools that may be direct or indirect, soft or hard, and which operate on the basis of concrete knowledge of the actual power dynamics that drive GVCs. The orchestration paradigm seeks to harness the different sources of knowledge and regulatory power in complex societies, encouraging, for example, the incorporation of private standards, codes of conduct or transparency measures in public regulation or the participation of multiple stakeholders in decision-making or monitoring processes.

While I am partially sympathetic to the pragmatism of a vision of empirically and contextually informed regulatory incisions that work synergistically with private regulatory initiatives, I think this is a normative vision that neither corresponds to the intensity of Ponte’s critical analysis and convincing exposition of the ‘sustainability-driven supplier squeeze’ nor lives up to the normative standards that Ponte himself sets in the conclusion. In sync with the main strands of literature in transnational governance and private regulation, ‘orchestration’ connotes aspirations of public–private synergy. Nevertheless, the critique of sustainability – a supposedly public interest – devolving into a mode of capitalist expansion undercuts the confidence in public–private synergies as *the sole* strategy in addressing current environmental challenges. And Ponte does not shy away from the magnitude of these challenges. In a blistering conclusion, he denounces the narrow focus on resource efficiency, unit-level improvements and green consumption, which all do not hinder the aggregate growth of consumption that makes environmental sustainability suffer. As such, Ponte recognizes that while incremental changes are necessary, they are not sufficient ‘without a systemic rethinking of the relations between capitalism and nature’ (at 221). Framing capitalism – as opposed to humanity – as the culprit of the global sustainability crisis means that only structural reforms could deliver on aspirations of setting quantitative and qualitative limits to growth and addressing inequality – the latter being the driver of competitive consumption and an obstacle to public action.

Drawing on Ponte’s critical analysis, and in agreement with his aspirational conclusion, I retain my doubts as to whether ‘orchestration’ sufficiently captures the kind of institutional imagination that can surmount the global sustainability challenges. Orchestration, through its metaphor of conducting, constitutes a useful heuristic for thinking about reforms within the framework of existing power relations in GVCs. However, institutions and legal instruments, as the example of the ICA powerfully demonstrates, have the capacity to undo these power relations. Power in the global economy is not a natural artifact, but it is rather traceable – at least to a significant degree – to the legal architecture of the global political economy. Taking this into account, institutional imagination can assume two dimensions. One is that of incremental reforms, which require knowledge of existing power dynamics in GVCs and the harnessing of decentralized energies to re-orient value chains and their actors

towards ‘just sustainabilities’. From this perspective, sustainability could still function as a justification and a normative horizon of the international legal system – albeit tainted with the knowledge that the broader framework in which sustainability-oriented reforms unfold precludes the achievement of sustainability as an end goal. The other dimension is that of centralized legal designs that seek to fundamentally restructure the international political economy and deliver on aspirations of global justice through planning and centralized social action. In this case, sustainability is not an aspiration to be approached but never reached, but rather a condition of limits to growth that can be articulated and achieved by political means within the international legal order. While Ponte focuses his normative section on the former of those two dimensions, I argue that *Business, Power and Sustainability in a World of Global Value Chains* should be read as a work that also highlights the urgency of the latter dimension. Even if such re-arrangements currently appear politically distant, political feasibility need not – in fact, it should not – define institutional imagination.

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## 1 Introduction

The central claim of Pavlos Eleftheriadis’s book is that the European Union is not a constitutional order, or a federation, or a federal union; it is, instead, a construct of international law that primarily regulates the relations between its member states and is, as such, part of the law of nations. Thus, *A Union of Peoples* radically differs from most conventional analyses of the EU legal order, which conceive of the European Union as somehow distinct from ordinary international law. The book, however, also takes a controversial view of public international law by arguing that it has a distinct and limited role, as the law that only operates between sovereign states. Drawing on political and legal theory, the result is an original and provocative attempt to offer a distinctly *jurisprudential* account of the European Union’s nature.

The book can be divided in two parts. The first part, comprising chapters 1 to 5, outlines Eleftheriadis’s theory of the EU legal order. He calls this theory ‘progressive internationalism’ (at 109–111). Progressive internationalism is both a political theory and a theory of law. In the tradition of Ronald Dworkin’s jurisprudence, it aims to both explain and justify the nature and characteristics of the EU legal order and its relationship to (inter)national law. The second part, comprising chapters 6 to 10, focuses on the three key principles which contribute to the integrity of EU law as a progressive internationalist order: accountability, liberty and fairness.