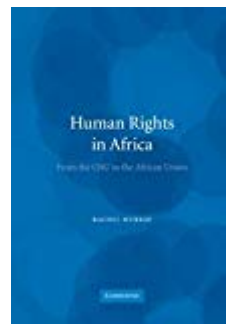
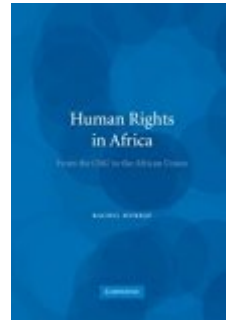


Anthony Anghie. *Imperialism, Sovereignty and the Making of International Law.* New York: Cambridge University Press, 2005. xix + 356 pp. \$100.00, cloth, ISBN 978-0-521-82892-5.

Rachel Murray. *Human Rights in Africa: From the OAU to the African Union.* New York: Cambridge University Press, 2004. viii + 349 pp. \$80.00, cloth, ISBN 978-0-521-83917-4.



Reviewed by David Penna

Published on H-SAfrica (November, 2005)

These two books deal with international law concepts: sovereignty in the Anghie book and human rights in the Murray book. Both employ very broad definitions of these concepts which arguably test the limits of current disciplinary understandings. Here is where most of the similarity between these books ends. Anghie's perspective is more global (although also focused on some concepts that are significant for Africa, like imperialism and sovereignty), while Murray concentrates entirely on the African Union (AU) and the Organization of African Unity (OAU). The approaches taken in the books differ significantly as well.

Anghie's work centers on the shifting conceptions of sovereignty in international law. The contention here is that the notion of sovereignty has

been manipulated over time to the disadvantage of what today is the Third World. These shifts have occurred in relation to what entities were entitled to sovereignty, as well as what actual rights and duties sovereign entities possessed. Professor Anghie's history begins with Francisco de Vitoria's sixteenth-century works that dealt with the problem of Spanish encounters with the New World.[1] Vitoria's writings simultaneously humanized the Native Americans (compared to other contemporary writers) but established Eurocentric standards for polities that permitted Spanish conquest under the law of nations. At the same time, Vitoria's work upheld standards of sovereignty among European states that sought to promote order and avoid conflict on the conti-

ment. Anghie traces this dual standard through the next five hundred years of international legal jurisprudence. He suggests an intentional manipulation of the standard: "What is notable is that at a time [the 1800s] when sovereignty was generally accepted as fixed, stable and monolithic, colonial jurists self-consciously grasped the usefulness of keeping sovereignty undefined in order that it be extended or withdrawn according to the requirements of British interests" (p. 89).

This raises interesting points, which the author does not resolve. Were these jurists mere apologists for national interests? Were they writing to justify colonial expansion and imperialism that had already taken place? Or, did these writings precipitate colonial expansion by providing a potential legal fig-leaf for contemplated imperial actions? From the perspective of the colonized, there may be little difference in the two scenarios, but from the perspective of international law it raises the important issue of whether international law really mattered at all outside the community of international jurists. Anghie, in several places, refers to the debates within the discipline that some of the changes in the concept of sovereignty provoked, but devotes little attention to how this actually affected the decision-making of national leaders or elites. This is obviously beyond the scope of the study, but it must be implicit in any reading of this work.

A similar issue is implicit in the other volume under review here. Rachel Murray traces the concept of human rights within the OAU and the AU. In the study, she employs a broad but well-reasoned definition of human rights that includes issues such as democracy, conflict, the rights of women, children and refugees, and the right to development, devoting a chapter to each topic. Murray provides an excellent overview and description of the relevant African organs, treaties, and declarations relating to each topic and provides wonderful documentation. She makes several important points. First, over time the OAU/AU

has come to recognize the importance of human rights and its many inter-relationships with other issues related to the organization. Secondly, the OAU/AU has not succeeded in developing institutional structures to reflect this level of attention and complexity. She suggests that the current transition from the OAU to the AU was a wonderful (and perhaps missed) opportunity to rationalize some of the human rights regimes in Africa by merging or dissolving certain duplicative organs, committees, and commissions and by clarifying the relationship between others.

The breadth of this book is impressive and an enormous amount of research must have gone into this project: stacks of OAU documents are cited as well as a broad range of secondary sources from scholars. The author seems well-versed in the relevant literature and the documents; it is therefore probably a reflection of human rights jurisprudence within the African system that the author's analysis (and description) often seems tentative and qualified. Almost every process or principle "appears to," "seems to," or "apparently is" something. Part of the problem here is attributable to the complexity and contradictions within the African human rights system itself, but some of the reason for the tentativeness lies in the design of the study. The author relies heavily on public documents from the institutions themselves, documents that have often been the result of negotiation and compromise. Rarely does the author succeed in presenting a context for the statements she cites from documents. Further, she has chosen to adopt a macro-level of analysis which largely ignores the role of individual states. This might make sense in the context of the OAU in a way that would not make sense if one were studying the Organization Of American States (OAS, and ignoring the role of the United States) or the European Union (and ignoring the role of France and Germany). By doing this, however, one is given a very broad picture where there is little focus on specific incidents.

Murray also seems to make an assumption similar to that of Professor Anghie about international law: that the institution of the OAU/AU matters and that what it says about human rights should be the subject of study. I intuitively believe this to be true, but I think that, at this point in its history, it is difficult to sort out whether what the OAU/AU says about human rights changes member states' practices or ideas in the field. What seems at least equally likely is that the institutional discussion is largely a reflection of already changed ideas and practices of its members. Therefore, by looking only at the statements of the institution, one is getting only a partial, and perhaps misleading, picture of human rights in Africa and perhaps a misunderstanding of the role of the future of the AU itself.

These criticisms should not overshadow the value of this work, however. This is a significant study of the evolution of ideas about, and the institutionalization of, human rights law that seeks to bridge the transition from the OAU to the AU. Important considerations about the rationalization of structures and processes are raised at an important time of institutional development. Furthermore, the broad approach to human rights, including the consideration of the human rights of refugees, marks an important concern for the continent.

Overall, both books are successful in accomplishing what their authors intend and are academically sound. They both raise issues that go far beyond the subject matter studied and should lead readers to think about the role of international law and international organizations in shaping Africa's future.

Note

[1]. Franciscus de Victoria [sic], *De Indus et de Ivre Belli Relectiones*, ed. Ernest Nys, trans. John Pawley Bate (Washington: Carnegie Institution of Washington, 1917).

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Citation: David Penna. Review of Anghie, Anthony. *Imperialism, Sovereignty and the Making of International Law*. ; Murray, Rachel. *Human Rights in Africa: From the OAU to the African Union*. H-SAfrica, H-Net Reviews. November, 2005.

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