



SANT'ANNA LEGAL STUDIES
STALS / PANOPTICA BOOK REVIEW

Filippo Fontanelli, Giuseppe Martinico and Paolo Carrozza (eds),

**Shaping rule of law through dialogue:
international and supranational experiences,**

Europa Law Publishing, Groningen (2009)

reviewed by T. Teubner Guasti

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Tatiana Teubner Guasti¹

The book *Shaping Rule of law through dialogue: international and supranational experiences*, edited by Filippo Fontanelli, Giuseppe Martinico and Paolo Carrozza, is a remarkable work that shows the importance of judicial dialogue in the construction and definition of the rule of law in different legal systems (better, in the interplay between them).

The book is comprised of 14 Chapters, gathering the proceedings of a seminar cycle held in Pisa at the Scuola Superiore Santa'Anna (Sant'Anna School of Advanced Studies) in 2008 and 2009, within the STALS project (www.stals.sssup.it).

Short of analyzing each chapter of the volume, this review examines the main point subject of the book: the phenomenon of judicial dialogue as a viewpoint for studying the increasing interdependence among legal orders.

The issues studied in this book obviously rely on an indispensable condition precedent, that is the judges' readiness to engage in a confrontation, are judicial actors in the mood for dialogue, and if this is the case, has this dialogue any role in the development of the international rule of law? Patterns of judicial interchange may prove decisive in facing some of the common problems of the administration of justice, such as the overload of cases brought for adjudication, the conflicts of jurisdiction between judicial actors, and the risk of conflicting or unsatisfactory decisions issued by non-harmonized *fora*.

The dialogue between judicial or quasi-judicial bodies has gradually become a prominent feature of the current context of fragmentation of the global legal system and this volume provides an exhaustive overview of a variety of instances where such dialogue takes place (or does not).

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Arguably, also due to the otherwise inextricable intertwinement of the legal regimes, the dialogue nowadays is easier and more necessary than it was in the past, when judges were more reluctant to look outside the system they belonged to, and bring about a connection between regimes.

National judges play a major role in this dialogic endeavor, due to their “duplicated” role (they are normally entrusted with the application of both national and international law in domestic proceedings). This intensive and center-less application of international norms in national litigation (and to fact-intensive disputes) will likely result in a progressive development and refinement of the consistency and effectiveness of the international regimes.

Something similar can be observed in the European Union system, where the relationship between national courts and the European Court of Justice (ECJ) has developed both based on the codified machineries of coordination (such as the preliminary ruling procedure) and on a more or less informal spirit of cooperation (and competition). This emerged particularly in the field of human rights, where the ECJ has strived to find a balance between the EU agenda and a sense of deference towards the constitutions of the member states.

On a merely international plane, cooperation tactics are less evident. For instance, the relationship between the case-law of the proliferating international criminal tribunals and the International Court of Justice is not subject to any rules of harmonization: it is for the judges to show some consideration (or rather to ignore) what their colleagues might have already stated, often on very similar legal or factual issues.

More generally, jurisdictional rules that are common in domestic orders are still rarely applied international scenario: principles like *res judicata*, *ne bis in idem*, *litis pendens* have to be re-defined in light of the peculiarities of international litigation to prove effective.

Granted, the “perfect” situation has not been achieved yet, and the cooperation between these different actors has to be continued and progressive, resulting in a better scenario of dialogue on the International and European Law field.

The techniques described in these books and the case-studies included therein, far from representing isolated and regime-specific phenomena, are worthy of attention for their potential application in other legal orders. For instance, the balanced interplay between

national courts and the ECJ or the European Court of Human Rights presents many elements of interest for the analogue situation of the Inter-American Court of Human Rights, and might help to formulate a solution for some issues such as the overloaded docket of the Court, or the excessive length of its proceedings.