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## [Review of] Vassillis Pergantis, The Paradigm of State Consent in the Law of Treaties: Challenges and Perspectives

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Vassilis Pergantis. **The Paradigm of State Consent in the Law of Treaties. Challenges and Perspectives.** Cheltenham, UK: Edward Elgar, 2017. Pp. 329 (370 including back material)

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Since its codification almost fifty years ago, the law of treaties has laboured under constant tension between the egoism of States and the increasing communitarian nature of contemporary multilateral treaties. Treaties that are crafted to protect human rights, preserve the environment or otherwise restrict State actions are indicative of this growing communitarian nature where collective action is necessary to achieve the overarching aims of the treaty. Debates about State consent and the extent to which a State has exercised its sovereign right to be bound under international law are the manifestations of this tension. The tension is borne of the allegiance of many scholars, and indeed States, to traditional characterisations of consent in international law and questions about the capacity of the 1969 Vienna Convention on the Law of Treaties (Vienna Convention) to guide modern international legal relations.

In *The Paradigm of State Consent in the Law of Treaties: Challenges and Perspectives*, Vassilis Pergantis sets out to contextualise this tension using four distinct aspects of treaty practice – construction of consent to be bound, withdrawal clauses, succession and reservations. Part I presents the theoretical framework for the study and defines the terms and limits of the case studies that make up Part II. Though the book is very much a work of legal analysis, Part I is reminiscent of Douglas Johnston’s plea for a broader, cross-disciplinary evaluation of the traditional theory of international consent so as to avoid its ‘myth power’ and enable a dispassionate enquiry that encompasses a range of approaches adopted from sociology, economics, political theory, etc, as much of the text is about the ‘socialised’ development of the international community of States through treaty relations. Through carefully crafted parallel arguments, Pergantis ‘challenge[s] ... the reference to a “traditional concept” of treaties and its routine association with the contractual paradigm’ by acknowledging that ‘States constitute the main pillars of international law and [while] we need to take into account their will and practice’ we must recognise that ‘States can exist only within a collaborative framework (legal order), which means we are forced ... to “construct” their will on the basis of communitarian ideals’ (at 2-3). Each self-contained chapter case study outlines the historical and theoretical underpinnings of the relevant rules, a critical appraisal of the application of the theory to the rules and perspectives on future applications of the rules.

Pergantis begins by unpacking the most common arguments made in terms of treaty classification and treaties as sources of international law. He posits that ‘treaties indeed have various facets, some of which might be contradictory’ (at 54), which accounts for the

limited use of strict classification or source labels. These positions are familiar to international lawyers as such critiques are bandied about frequently, particularly as increasing effort goes into expanding the subject matter of treaties across power divides, e.g. the 2017 Nuclear Ban Treaty, and more stringent enforcement of existing treaties, e.g. the increasing activity of the treaty body overseeing the International Covenant on Economic, Social and Cultural Rights. Carefully weaving the theory of consent through a well-researched historical, doctrinal and practical account of treaty law, Pergantis develops a fulsome picture of the continual balancing act performed by States and the scholars who obsess over the State's fluctuating power in treaty regimes.

The increased informality in methods of expressing a State's consent to be bound is the first case study (Ch 3). Pergantis carefully sets out how this deformalization has paralleled the institutionalisation of treaties, with integrated treaty bodies becoming the norm, rather than the exception and, in many ways, co-opting oversight roles otherwise exercised by States. The presentation responds to discourses such as those developed with respect to remote consent under the UN Charter to binding decisions taken by the UN Security Council under Chapter VII as well as to the evolving competencies of treaty bodies. While methods of consent to be bound demonstrate the increased flexibility in both the conclusion and implementation of treaties, the rules on withdrawal presented in the second case study demonstrate a return to more formal rigidity (Ch 4). A rigidity, however, that is invoked by specific treaty organs through their institutional frameworks to serve the communitarian ideal when deemed necessary, as drawn out by an examination of successful and unsuccessful attempts by States to withdraw from disarmament and human rights treaties. The formalities of the Vienna Convention rules and value placed on communitarian interest treaties are conflated resulting in the 'consent' of all of the States parties carrying greater weight than the individual State's right to contract out from treaty obligations, thus holding States captive to a treaty regime (at 157). Pergantis concludes that strict procedural conditions are put forward in order to deflect the weakness of the substantive arguments against withdrawal, effectively adopting a 'new wine in old bottles' strategy (at 173) in an attempt to clarify ambiguous application of the rules.

The third case study on succession to public order treaties contemplates the ever-present reflection that international law prefers continuity, but frequently fails to consider the cost of this preference in terms of State consent. Unlike the other case studies, this chapter focuses on the Vienna Convention on Succession of States in Respect of Treaties. Highlighting the twists and turns of existing case law, Pergantis argues that current theories on succession are ineffective as demonstrated by the ICJ's approach to claims of treaty succession. Across a number of cases, the ICJ has avoided the doctrine of automatic succession and instead used another means of continuity, including imperfect notification or accession under Vienna Convention article 11. Thus whether State succession is in the context of decolonization or State dissolution, the consent paradigm is tied to the moment in time, a reality that Pergantis argues is absorbed as the law of State succession

'constitutes one of these areas of linkage that imprint elasticity in international law' (at 190).

Dissecting the unanimity versus universality debates that shaped the development of Vienna Convention reservations rules as well as the continued consideration of the non-reciprocal nature of obligations under many subsequently developed communitarian treaties is the focus of the final case study (Ch. 6). Noting that the reservations rules enable the formulation of a reservation by a State (Article 19), permit other States to accept or object to the reservation (Article 20) and then deprive both of these consensual rights based on a conclusion that the reservation is void without defining who makes this determination. Presenting the well-trodden conundrums of the reservations regime, Pergantis explains that the consent paradigm is frequently 'turned on its head' in the attempt to reconcile competing interests in reservations practice (at XX).

In many ways, this is a coming of age story for the Vienna Convention as well as international law, tracking the growth of the international community and its goals and also the institutionalization required to achieve them. Ultimately, the book demonstrates the evolution of the Vienna Convention, its nuanced maturation and its enduring malleability. Treaties and the purposes that they serve have advanced since the negotiation of the Vienna Convention, as has the understanding of the collective problems of the international community. *The Paradigm of State Consent in the Law of Treaties* contributes a useful perspective on how international lawyers can move forward in their understanding of these changes.

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