continues, however, to be resurrected in some circles when it is forgotten that "savagery is actually counterproductive."[47]

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The Art of Law in the International Community. By Mary Ellen O'Connell. Cambridge, UK: Cambridge University Press, 2019. Pp. x, 320. Index.
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If "all war is a symptom of man's failure as a thinking animal," as John Steinbeck stated in his dispatches from World War II, then humanity's collective irrationality has proved surprisingly enduring. Indeed, after a period of modest decline following the end of the Cold War, recent studies reveal an upward trend in the total number of armed conflicts, which are, moreover, increasingly complex and protracted in nature.[1] It is against this alarming backdrop that Mary Ellen O'Connell, Robert and Marion Short Professor of Law and Research Professor of International Dispute Resolution at the Kroc Institute for International Peace Studies, University of Notre Dame, offers an alternative to reinvigorate the human capacity for reason in the service of peace. *The Art of Law in the International Community* is a forensic attempt to uncover why the international legal tools that were meant to constrain state propensity and ability to engage in conflict proved unequal to the task. It is equally a set of injunctions, enjoining states to jettison war as an instrument of foreign policy through the reaffirmation of international law norms prohibiting the use of force.

The building blocks and central postulates of the thesis unfold over six chapters moving from the diagnostic to the prescriptive, and from the abstract to the concrete. The first two chapters, which constitute the backbone of the argument, are a wide-ranging incursion into international legal theory. O'Connell engages with the age-old conundrum of the source of the law's authority to bind and impose obligations on its addressees, in this case, states as the primary subjects of international law. On her account, while states may be expected to abide by the law's dictates when doing so would be to their benefit, the dominant positivist account of international law rooted in realism fails to explain altruistic state compliance with the law that is not in their self-interest. O'Connell does not however contend that this is a reason to give up on international law altogether; rather she argues that international law can be rescued from itself by revitalizing its natural law origins. The monograph develops a secular, universal account of natural law grounded in aesthetic philosophy as a transcendent source of knowledge that speaks to the shared human capacity for selflessness. This account of the law that can command sacrifice, including in the absence of state consent, provides the theoretical foundation for hierarchically superior extra-positive norms, including the *jus cogens* prohibition on the use of force and general principles such as necessity, proportionality, and attribution.

O'Connell is far from alone in questioning whether positivism can account for law's normativity. Indeed, much of the debate between positivism and its critics is precisely about the conditions for the law's validity and the basis on which legal norms can generate reasons for action. For O'Connell, an international law infused with positivism cannot but fail to explain state altruism, compliance with the law in the absence of consent, and the superiority of certain norms over others; a defect that she argues can only be cured by a natural law approach to international law. One can question, however, whether a more generous interpretation of positivism may not be capable of offering more than this impoverished view of international law.

[47] Benjamin R. Farley, *Enhanced Interrogation, The Report on Rendition, Detention, and Interrogation, and the Return of* Kriegsraison, 30 EMORY INT'L L.J. 2019, 2023 (2015).

[1] *See* United Nations and World Bank, Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict 12 (2018).

One masterful example of a positivist approach to international law that accounts for the hierarchically superior status of *jus cogens* norms grounded not in self-interested realism but in considerations of morality is Asif Hameed's persuasive account of *jus cogens*. Following the central tenet of positivism—that the existence and content of the law depends on social facts—Hameed refers to *social* or conventional morality, that is, the moral beliefs of a particular social group, as constitutive of *jus cogens* norms. Hameed thus takes a rule of international law to be *jus cogens* due to the belief of certain legal officials, primarily states, that it is not only morally important, but morally paramount.[2] This conception of *jus cogens*, moreover, does not owe its existence to state consent. In Hameed's view, consent involves voluntary agreement to a certain proposal. Since states of mind such as beliefs, including moral beliefs, are involuntary by their very character, one would be hard pressed to claim that they are consensual.[3]

Yet another morally rich account of *jus cogens* norms that explicitly denies its natural law character is John Tasioulas's interpretation of *jus cogens* as a subset of customary international law norms that are universal, peremptory, and nonderogable. Tasioulas emphasizes two dimensions of *jus cogens* norms: fit and justification. Similar to Hameed, the first dimension consists of the unique content of the *opinio juris* that attaches to *jus cogens*, which involves a moral judgment that the norm fulfills the distinctive features of *jus cogens*. The second dimension consists of an interpretive judgment as to whether the norm has the sort of international character and importance that would justify according it *jus cogens* status and as to the impact this would have on the international legal order.[4]

These explicitly positive law accounts of *jus cogens* are in tension with O'Connell's thesis that *jus cogens* cannot be considered a "stronger type of customary international law," since it can exist even in the absence of state practice. O'Connell thus claims that while state practice might be used as evidence of the existence of *jus cogens*, it is not a necessary condition. This position is in fact remarkably similar to Tasioulas's version of customary international law, whereby customary norms may be established primarily on the basis of robust *opinio juris*, and notwithstanding the lack of state practice.[5]

All of this is to say that a positivist account of *jus cogens* need not be empty of moral content, may not privilege consent, and is capable of explaining the elevated status of *jus cogens* norms. Thus, the stark opposition between the positivist and natural law camps that *The Art of Law* constructs might not be sustainable once one takes into consideration the thoughtful and nuanced versions of positivism that have enriched discussions of international law, including the theoretical basis of *jus cogens*.

Indeed, it is not entirely clear whether a positivist—as opposed to a natural law—approach may not yield similar interpretations and conclusions on the boundaries of, and exceptions to, the *jus cogens* prohibition of the use of force, which are the subject of the subsequent three chapters of the monograph. Chapters 3 and 4 focus on the international institutional framework established to regulate the use of force and draw on both the status of the prohibition as a (natural law) *jus cogens* norm and as a positive law prescription supported by the drafting history and text of the United Nations (UN) Charter and the institutional role of the UN and its organs. Chapter 3 responds to calls by states to be able to use force in the absence of UN authorization given the UN Security Council's checkered record in maintaining peace and security through enforcement action. O'Connell is critical of the Security Council's performance in service of peace, but her ire is directed not toward the failure of the Council to authorize offensive force,

[2] Asif Hameed, *Unravelling the Mystery of* Jus Cogens *in International Law*, 84 BRIT. Y.B. INT'L L. 52, 76–78 (2014).

[3] *Id.* at 98–99.

[4] John Tasioulas, *Custom,* Jus Cogens, *and Human Rights*, *in* CUSTOM'S FUTURE: INTERNATIONAL LAW IN A CHANGING WORLD 95, 108–09 (Curtis A. Bradley ed., 2016).

[5] *Id.* at 110–12, 116.

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but rather its all-too-ambitious efforts to champion military means over peaceful ones, including in its peacekeeping operations in the post-Cold War period. Tracing the recent history of failure of military interventions, O'Connell argues that Security Council reform must proceed from strengthening the Council's respect for the *jus cogens* norm and Charter rules prohibiting force, with a narrow exception for Council-authorized military force that complies with the general principles of necessity and proportionality to respond to breaches of peace. The Council should also be true to its Charter mandate and prioritize alternative, peaceful means of dispute resolution, including economic sanctions and traditional peacekeeping.

Chapter 4 then analyzes the second, limited exception to the prohibition on the use of force: self-defense. O'Connell traces the evolution of resort to force in self-defense from the pre-World War II period to its current articulation in Article 51 of the Charter as embodying both the natural law and positive law of self-defense. As in the case of the peremptory norm prohibiting use of force, O'Connell contends that defensive force must be exercised in accordance with the general principles of necessity, proportionality, and attribution (of responsibility). According to O'Connell, faithful compliance with these principles precludes the possibility of anticipatory or preemptive self-defense in response to a hypothetical armed attack as well as use of force against states that are "unable or unwilling" to control terrorist attacks on their territory. O'Connell also urges greater use of multilateral peaceful measures, including international treaties, to address international security objectives such as arms control and counterterrorism.

O'Connell's emphasis on the strict and narrow construction of exceptions to the prohibition on the use of force and her call to prioritize peaceful means of dispute resolution is a welcome reminder that abjuring use of force does not mean abdicating responsibility for international peace and security. It is also a thought-provoking and unorthodox challenge to the evolving nature of UN peacekeeping operations and the appropriate mandate of UN organs that are at times under intense political pressure to expand the scope of their humanitarian activities. However, much of this analysis does not seem to presuppose or be contingent on adopting a natural law approach to the *jus cogens* prohibition on the use of force and would be equally sustainable within a positivist framework.

The one caveat to this observation is O'Connell's references to the "general principles" of equality, necessity, proportionality, and attribution that cabin the powers of the Security Council and also set limits to the use of force in self-defense. On her account, while these general principles are distinct from *jus cogens* norms in that they are procedural rather than substantive in character, they share the quality of being immutable principles that are rooted in natural law and intrinsic to legal systems. However, in contrast to the detailed treatment of the potential natural law origins of *jus cogens*, the monograph contains very little discussion of the origins of and evidence for this category of general principles. O'Connell points to scattered references in academic writing and case law to specific "general principles" such as *pacta sunt servanda* and necessity, but several of these sources do not consider these norms to be "general principles" at all, but some other established international legal source— thus, scholarly writing labels *pacta sunt servanda* as *jus cogens* and International Court of Justice (ICJ) jurisprudence refers to necessity and proportionality as customary international law principles. The only direct ICJ source that O'Connell relies on and quotes with approval is Judge Tanaka's dissenting opinion interpreting the general principles in Article 38(1) of the ICJ Statute to include natural law elements that give them a binding quality even in the absence of state consent.[6] O'Connell herself, however, pointedly refrains from relying directly on Article 38(1)(c) of the ICJ Statute referring to "the general principles of law recognized by civilized nations" as a source of international law for her concept of "inherent general principles."

[6] South West Africa Cases (Eth. v. S. Afr.) (Liber. v. S. Afr.), Judgment, 1966 ICJ Rep. 6, 285–315 (July 18) (diss. op., Tanaka, J.).

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This is a somewhat puzzling omission, given that there is not insubstantial support in the drafting history of Article 38(1)(c) for considering general principles, not as norms that are common to and derived from national legal systems, but as inherent and universal general principles that can be induced from the nature of mankind and human society.[7] Perhaps O'Connell is reluctant to follow this path because there is scant evidence that the general principles in Article 38(1)(c) are nonderogable in character. While there might well be other international legal sources, including scholarly writing, that could be marshalled to flesh out O'Connell conception of general principles, their current formulation as well as their place in the hierarchy of international legal sources remains somewhat elusive.

The final two chapters of the monograph, which are less beholden to the theory and sources of international law, are in some ways, the most powerful, but also the most likely to find both staunch allies and strong detractors amongst different stakeholders in the international legal community. Chapter 5 surveys a third set of exceptions to the prohibitions on the use of force that have less firm foundations in international law but sound in the moral register of legitimate intervention on the basis of consent and the right to rebel against an oppressive government. O'Connell adopts a restrictive approach to intervention by invitation as well as the right of rebellion, arguing that not only is this position consistent with the *jus cogens* prohibition on the use of force and international legal principles of equality and self-determination, but is also necessitated by practical reasons relating to ineffectiveness and escalation of conflict. Thus, O'Connell would limit external military assistance by invitation only to states dealing with violence that is well below the threshold of an armed conflict on their territory. State intervention is not permissible to assist states where no group exercises governmental control or to nonstate actors. The Security Council too should refrain from military intervention in situations of civil war and instead resort to measures that do not involve use of force. O'Connell is equally opposed to expanding the right to use force to rebel against an oppressive government on the basis that the right encompasses planning and preparation for gathering resources and weapons and conducting training to engage in conflict. This conduct falls outside the limits of self-defense that is a narrow right to use force in immediate response to an initial attack and in situations that permit no alternative course of action.

O'Connell's analysis and final conclusions in Chapter 5 are less firmly anchored in the existing law of armed conflict, which, as she herself points out, has often either wavered or been silent on these questions, and have as much to do with international and domestic diplomacy, statecraft, and policymaking as with international law. This places her squarely in the middle of heated confrontations between those who consider it a moral failing to refrain from intervening—including with force—in situations of civil war and governmental oppression and others who point to the litany of failed experiments in military interventions in these circumstances, which are moreover often a unilateral exercise of force by powerful states who can afford to ignore or flout the law. O'Connell is clearly aware of these debates in international relations and public policy circles, but they do not loom large in the chapter, most likely due to the monograph's focus on the international *law* of exceptions to the prohibition on the use of force. However, given that the current state of international law only takes one so far in building a convincing case for her thesis, it is perhaps best read alongside eloquent criticisms of purportedly morally oriented intervention, which do not take international law as the fulcrum of the analysis.[8]

Chapter 6 proposes a shift away from the international community's preoccupation with the use of force as a method for resolving conflicts

[7] See the discussion and references in Neha Jain, *Judicial Lawmaking and General Principles of Law in International Criminal Law*, 57 HARV. INT'L L.J. 111, 117–120 (2016).

[8] *See, e.g.*, Samuel Moyn, *The Road to Hell*, IV AM. AFF. 149 (2020).

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toward revitalizing faith in legal process and peaceful methods of dispute resolution. O'Connell argues that instead of viewing international disputes as zero-sum games, participants in the international legal process, including states, judges, lawyers, and legal scholars, should draw on the imaginative power and potential of the performance arts to communicate and model peaceful ways of settling disputes. O'Connell introduces the evocative metaphor of theater and the performance arts as a way to ignite respect for and passionate commitment to legal process among participants in international law, including through generating enthusiasm for international courts of general jurisdiction as an alternative to war.

O'Connell's plea for creative means to both educate international legal participants in, and secure buy-in for, the value of legal process and the importance of peaceful methods of dispute resolution is both powerful and timely, especially given the recent backlash against international tribunals and other international organizations. It is worth asking, however, whether state suspicion of international dispute settlement mechanisms is merely because of the propensity to favor force, or whether structural and institutional problems associated with international courts and tribunals have also contributed to this state of affairs. In other words, while realism may certainly be one explanation for the attraction of might over right, there may also be legitimate reasons for disenchantment with international adjudicative mechanisms, arising from factors such as the legitimacy deficit and poor institutional performance. To rebuild the world of international law in the image that O'Connell invokes might need to involve an effort not only of aesthetic imagination, but equally importantly, empathetic engagement with concerns, grievances, values, and worldviews that look very different from one's own.

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Cyber Operations and International Law. By François Delerue. Cambridge, UK: Cambridge University Press 2020. Pp. xxii, 513. Index.
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Cyber Operations and International Law explores some pertinent questions with regard to the application of international law to the use of cyberspace for offensive operations. The book was written by François Delerue, a research fellow in cyber defense and international law at the Institute for Strategic Research based in Paris. Delerue's work dates back before the publication of this important book, and includes an extensive body of scholarship on various international law matters arising out of cyberspace.

Cyber Operations and International Law is a compelling, logical, and important book that touches on all of the critical international law topics while asking difficult questions. It surveys topics of attribution, substantive international law, and countermeasures, while also being cognizant of the trends, techniques, actors, methods, and novel effects demonstrated by the growing frequency of transborder cyber operations. Delerue offers a granular and persuasive analysis of existing international law in the context of cyber operations while acknowledging the grim reality that "international law does not constitute a panacea" and that "[t]here are several situations in which international law leaves the State victim of cyber operations helpless" (p. 496).

The book is divided into three parts. It starts with an Introduction, which makes the case that international law matters in cyberspace. Part I focuses on attribution, Part II addresses the lawfulness of cyber operations under international law, and Part III covers the remedies against cyber operations. Throughout its many chapters, the book also reveals broader themes that deserve some focus, which this review will address.

In the Introduction, Delerue sets the stage for the main three themes that appear throughout the book: attribution, lawfulness, and remedies. Delerue asks the preliminary question of whether international law applies to cyberspace. This portion of the book is truly thought-provoking,